

AGENDA ITEM

123 JULY

DATE: July 18, 2013

TO: Members, Committee on Regulation, Admissions and Discipline Oversight
Members, Board of Trustees

FROM: Robert A. Hawley, Deputy Executive Director

SUBJECT: Chief Trial Counsel Annual Performance Evaluation Procedure 2012-2013

EXECUTIVE SUMMARY

Historically, the Board Committee on Regulation, Admissions and Discipline Oversight (RAD) oversees the performance evaluation of the Chief Trial Counsel (CTC) in accordance with the governing statutes, criteria and process and reports to the Board Operations Committee (BOps). In 2011, RAD reviewed and revised the CTC evaluation criteria and process. As the CTC position was in transition in 2011, there was no evaluation conducted that year. The first evaluation under the new criteria was conducted in 2012. It is now appropriate to conduct the 2nd annual evaluation for the incumbent CTC in 2013. The process for this annual evaluation is presented here for approval. If you have questions, please call Robert Hawley at 415-538-2277 or Robert.Hawley@calbar.ca.gov.

BACKGROUND

A. The Authorities

Under Board policy, the Executive Director is responsible for evaluating the performance of all State Bar staff. The CTC position is unique. Under Business & Professions Code Section 6079.5, the Board appoints the CTC who serves a term of four years. The Board has delegated to the Executive Director the selection of the CTC, which is then acted upon by the Board. The appointment is subject to the confirmation of the State Senate. The CTC, by statute, reports to the Discipline System Oversight Committee of the Board and, in connection with the exercise of prosecutorial discretion, does not report to the Executive Director. The CTC is subject to the Executive Director's administration of personnel, budget, and facilities support functions that the Executive Director executes in conformity with Board policy. (See, Board Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel], Article 3 [Lines of Authority], Attachment 1; Business & Professions Code Section 6079.5, Attachment 2).

Executive Staff, including senior managers, are evaluated each year in October. Because of the special role of the CTC position, the Board, through its Regulation, Admissions & Discipline Oversight Committee (RAD) has undertaken the responsibility for conducting the CTC's evaluation. Recognizing the Executive Director's institutional role regarding the CTC, the CTC's role as a senior member of the Executive Director's management team, and the responsibility of the Executive Director for institutional oversight and administration of personnel, budget, and facilities support functions of the State Bar as a whole, including the Office of the Chief Trial Counsel, the Executive Director sits as a member of the Evaluation Committee in connection with the CTC's review. (See, Board Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel], Article 3 [Lines of Authority] Attachment 1).

The CTC's salary and salary adjustments are determined by the Executive Director along with the annual Executive Staff evaluation process. The Executive Director takes into consideration the performance evaluation conducted through this process in adjusting the CTC's salary in October when Executive Staff salary adjustments are made at the discretion of the Executive Director.

The CTC serves a four-year term, subject to reappointment. (Business & Professions Code Section 6079.5, Attachment 2). Incumbent CTC Jayne Kim began serving as Acting CTC in September 2011. She was appointed to the position on a regular basis and confirmed by the Senate in May 2012. This makes this year the target for the second year CTC evaluation.

Following a review of the then existing evaluation criteria and process, in 2011, RAD revised both as reflected in the revised Board Policy Book, (See, Board Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel], Section 3 [The Chief Trial Counsel's Annual Performance Evaluation], Attachment 1).

RAD continues to oversee the evaluation process, coordinating with BOps. The State Bar's Office of Human Resources continues to administer the process. This item is before the Board to confirm the process and timeline for the 2012-2013 evaluation period.

B. Timeline

The following timetable is proposed:

July	Board confirms the 2012-2013 process.
August/September	Evaluation forms are distributed to all current 2012-2013 Board members.

September/October	Completed evaluation forms are returned to the State Bar. Any written comment the CTC wishes to provide is returned to the State Bar.
October/November	Evaluation forms are synthesized. A written Evaluation Report is prepared and shared with RAD.
November	The Evaluation Report is shared with the CTC. The Evaluation Report is discussed between RAD and the CTC.

C. Procedure

All communications pertaining to the evaluation process are strictly confidential. The Board Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel], Section 3 [The Chief Trial Counsel’s Annual Performance Evaluation] provides in this regard:

“The meetings of the committee and all information obtained in the course of the evaluation proceedings shall be confidential, and shall not be disclosed except as otherwise provided herein. Sufficient disclosure shall be made to the evaluatee on request to assure a full and fair opportunity to respond to evaluation material, except that the identity of the persons providing evaluation material shall not be disclosed.”

All Board members should strictly adhere to this confidentiality requirement.

RAD is chaired by the RAD Chair in conducting the CTC’s evaluation. The Executive Director sits as a voting member of the CTC evaluation team. The Office of Human Resources, under the Direction of the Deputy Executive Director, has staffed and provided administrative assistance in conducting the CTC’s review in the past, subject to strict confidentiality requirements. The Office of Human Resources is available for this purpose in connection with this year’s process as well.

ISSUE

Should the process described here be affirmed for the 2012-2013 evaluation period.

CONCLUSION

It is recommended that the process described here be reaffirmed for the 2011-2012 evaluation period.

FISCAL/PERSONNEL IMPACT:

Any fiscal or personnel impact is within existing budget and policy standards.

RULE AMENDMENTS:

None.

BOARD BOOK IMPACT:

None

RECOMMENDATION

Assuming the above meets with the approval of the Board and RAD, it will serve as the procedure for the 2012-13 review process for the CTC. Assuming this procedure is acceptable, the following resolution is recommended:

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Board Committee on Regulation, Admissions and Discipline Oversight agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Board Committee on Regulation, Admissions and Discipline Oversight recommends that the Board of Trustees approve the procedure for conducting the Annual Performance Evaluation of the Chief Trial Counsel, consistent with the item before the Board Committee and Board this date.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Board Committee on Regulation, Admissions and Discipline Oversight's recommendation, the following resolution would be in order:

RESOLVED, that upon the recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, the Board hereby approves the procedure for conducting the Annual Performance Evaluation of the Chief Trial Counsel, consistent with the item before the Board Committee and Board this date.