

# **Attachment 1**

Board Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel]

## **CHIEF TRIAL COUNSEL**

### **SECTION 1: Relationship with the Executive Director**

The executive director shall bring his or her choice for Chief Trial Counsel (subject to Senate confirmation) to the board for approval. The Chief Trial Counsel shall report to the Board of Trustees discipline system oversight committee consistent with Business & Professions Code Section 6079.5 on substantive issues pertaining to the discipline enforcement system. The Chief Trial Counsel and the Office of the Chief Trial Counsel shall otherwise be subject to the executive and administrative authority of the Executive Director in like manner as other executive staff.

(Source: Board of Governors' Resolution, May 20, 1997, March 2002, March 2003, March 2004, Business and Professions Code § 6079.1.)

### **SECTION 2: Appointment, Term, Qualifications**

The rules governing the appointment, the term, and the qualifications of the chief trial counsel are described in Business & Professions Code section 6079.5 (a) (b) (see State Bar Act, Appendix 3e).

(Source: Bus. & Prof. Code, § 6079.5 (a) and (b).)

### **SECTION 3: The Chief Trial Counsel's Annual Performance Evaluation**

Under Board policy, the Executive Director is responsible for evaluating the performance of all State Bar staff. The Chief Trial Counsel position is unique. Under Business & Professions Code Section 6079.5, the Board appoints the Chief Trial Counsel who serves for a term of four years. The Board has delegated to the Executive Director the selection of the Chief Trial Counsel which is then acted upon by the Board. The appointment is subject to the confirmation of the State Senate. The Chief Trial Counsel, 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 [fn1].

[fn1] Consistent with statutory authority, the Chief Trial Counsel reports to the discipline system oversight committee and is independent of the Executive Director with respect to the exercise of the Chief Trial Counsel's prosecutorial discretion. The Chief Trial Counsel is subject to the Executive Director's administration of personnel, budget, and facilities support functions which the Executive Director executes in conformity with Board policy.

At the recommendation of the Executive Director, because of the uniqueness of the Chief Trial Counsel position, the Board, through its discipline oversight and Board Operations Committees, has undertaken the responsibility for conducting the Chief Trial Counsel's evaluation. Recognizing the Executive Director's institutional role in selecting the Chief Trial Counsel, the Chief Trial Counsel'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 Board Committee on Operations in connection with the Chief Trial Counsel's review. The Chair of the Board Committee on Regulation, Admissions & Discipline chairs the review committee.

(a) Evaluation Criteria

The Chief Trial Counsel's evaluation is conducted based on performance criteria and competencies and on goals and objectives set by the designated Board Committee. The designated Board Committee annually sets the Chief Trial Counsel's performance targets and annually evaluates progress in achieving these targets. The performance criteria and competencies for evaluation include: job skills, technological proficiency, quality performance, quantity of work, leadership, teamwork and collaboration, public protection commitment, communication, fiscal accountability, compliance with policies and procedures, strategic perspective/planning, managing change, managing and developing period, interpersonal/conflict resolution skills, valuing diversity.

I. Performance Criteria I: OCTC Backlog Management

- A. Progress reducing Notice Open inventory (2011 Goal TBD).
- B. Progress reducing investigative backlog (2011 Goal TBD).
- C. Progress sustaining or improving OCTC productivity in
  - 1. Resolution of matters in Intake.
  - 2. Resolution of Investigations.
  - 3. Resolution of Notice Open matters.
- D. Progress in reducing average time from date of NDC filing to resolution.

II. Performance Criteria II: Overall Indicators of OCTC Efficiency and Effectiveness

- A. Success in meeting annual budget targets (2011 Goal TBD).
- B. Achievement of cost savings (2011 Goal TBD).
- C. Litigation results and effectiveness, as shown by
  - 1. Effective use of settlement as a tool of resolution
    - a. Number of settlements [fn2]

[fn2] To be used as a baseline, not a standalone positive indicator

- b. Number of settlements in which discipline sought was substantially obtained.
    - 2. Success rate at trial
      - a. Number of trials [fn3]

[fn3] To be used as a baseline, not a standalone positive indicator

- b. Number of trials in which none of the charges in the NDC were sustained
        - c. Number of trials in which the charges in the NDC were substantially sustained

3. Positive year-to-year “dashboard” trends in overall case-processing statistics and case cycle times, taking into account on an annual basis at least the following

a. Number of Complaints received [fn]4

[fn4] To be used as a baseline, not a standalone positive indicator

b. Year-end number of open Investigations

c. Number of cases resolved upon completion of Investigation, with no NDC filed

d. Year-end number of Notice Open matters

e. Number of NDCs filed

f. Number of cases resolved following filing of NDC

g. Within cases resolved following filing of NDC,

(i) Number of cases withdrawn or dismissed

(ii) Number of cases resolved by settlement

(iii) Number of cases resolved by pretrial adjudication

(iv) Number of cases tried

h. Total number of cases resolved at any point following filing of Complaint

i. Speed of resolution

(i) Average investigation time (time from filing of Complaint to completion of Investigation)

(ii) Average Notice Open time (time from completion of Investigation to filing of NDC)

(iii) Average prosecution time (time from filing of NDC to resolution)

(iv) Average total case cycle time (time from filing of Complaint to resolution)

j. Year-end inventory of unresolved cases (i.e. open matters)

k. Average costs per case

(i) Average costs per case from date of filing of Complaint to Notice Open date

(ii) Average costs per case from Notice Open date to resolution.

- (iii) Total average costs per case
- 4. Case administration: Affected Party Notification Practices
  - a. Complainants appropriately advised of the status of their matters.
  - b. Respondent attorneys timely notified of the status of the charges against them.
- 5. Number and nature of orders from the Supreme Court directing that OCTC's resolution of a case be re-opened, re-examined or reconsidered
- 6. Number and nature of cases in which the State Bar Court declined to accept a resignation with charges pending that was recommended by OCTC
- 7. Number and nature of complaints received against the discipline system from dissatisfied participants in the system.

### **III. Performance Criteria III: Leadership and Management Skills**

- A. Quality of judgment shown in exercise of prosecutorial discretion.
- B. Success in establishing reputation for integrity, highest standards of ethics, and strong commitment to public protection.
- C. Timeliness, clarity and effectiveness of reporting to RAD and BOG.
- D. Quality of reputation with and ability to inspire confidence in key external stakeholders (i.e. the Legislature, the Supreme Court, the State Bar Court).
- E. Development, maintenance and administration of written policies designed to ensure just and uniform handling and resolution of all cases (e.g. charging guidelines, guidelines for settlement).
- F. Quality of relationship with ADDC (Association of Disciplinary Defense Counsel).
- G. Timeliness and thoroughness of response to issues raised in audits of OCTC.
- H. Clarity and utility of OCTC written communications (e.g. Discipline Report).
- I. Willingness and ability to adopt innovative approaches to management of OCTC (e.g. new approaches to cutting case backlog and expediting preparation NDCs).
- J. Outreach and education efforts directed to the legal community.
- K. Effectiveness as a manager
  - 1. Establishing and communicating office priorities and core values.
  - 2. Efficiency and effectiveness in balancing time spent in Los Angeles office vs. San Francisco office.
  - 3. Delegation to others.
  - 4. Supervising, evaluating and motivating assigned subordinates.
  - 5. Obtaining maximum productivity and cooperation from and among staff.
  - 6. Team-building and promoting good office morale.
  - 7. Planning and effectuating change within the office.
  - 8. Teamwork and collaboration in relations with Senior Staff peers.
  - 9. Commitment to appropriate level of transparency in decision-making.
  - 10. Training and mentoring.

11. Personal organization and temperament.

#### **IV. Performance Criteria IV: Public Communications**

- A. OCTC Messaging effectiveness (i.e. publicly communicating OCTC successes).
- B. Level of skill as chief spokesman for the Bar on disciplinary matters.
- C. Willingness and ability to use different types of media outlets (including traditional as well as new media) in OCTC messaging.

#### **EVALUATION PROCEDURE**

All communications pertaining to the evaluation process are strictly confidential. The Board Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel] Section 3 (b) [CTC 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.”

The Evaluation Committees and Board should strictly adhere to this confidentiality requirement.

The Regulation, Admissions & Discipline Committee is chaired by the RAD Chair in conducting the Chief Trial Counsel’s Evaluation. The Executive Director sits as a full member of the evaluation committee during the CTC evaluation process. The Office of Human Resources, under the Direction of the Deputy Executive Director, has staffed and provided administrative assistance in conducting the Chief Trial Counsel’s reviews in the past, subject to strict confidentiality requirements. The Office of Human Resources is available to the RAD Committees for this purpose in connection with this review process as well.

#### **(b) Confidentiality**

The meetings of the designated Board Committee and all information obtained in the course of the evaluation shall be confidential and shall not be disclosed except as otherwise provided in this article. Sufficient disclosure shall be made to the Chief Trial Counsel to assure a full opportunity to respond to evaluation material. The identity of the persons providing evaluation material shall not be disclosed.

#### **(c) Timetable and Procedures**

Each year, the Board sets the timetable and procedures for conducting the Chief Trial Counsel’s annual performance evaluation. The committee shall meet with the Executive Director as soon as practical in the board year to discuss the performance standards, goals, procedures and timetable. The Board Committee

shall set the procedures and meetings during the board year to assure a full and fair evaluation, and shall present its report to the Board in executive session at the July meeting.

(Source: Board of Governors' Resolution, March 2002, March 2003, March 2004, May 2011.)

## Board Book, Tab 18 [Staffing], Article 3 [Lines of Authority]

\* \* \*

### **The Chief Trial Counsel**

Under Board policy, the Executive Director is responsible for annually evaluating the performance of all State Bar staff. (Executive Staff, including senior managers, are evaluated each year in October.) The Chief Trial Counsel position is unique. Under Business & Professions Code § 6079.5, the Board nominates the Chief Trial Counsel who, upon confirmation by the California State Senate, serves for a term of four years. The Board has delegated to the Executive Director the selection of the Chief Trial Counsel, which is then acted upon by the Board. The Chief Trial Counsel, by statute, reports to the discipline system oversight committee of the Board and, in matters related to the exercise of prosecutorial discretion, does not report to the Executive Director. [fn]

[fn] Consistent with Business & Professions Code section 6079.5, the Chief Trial Counsel reports to the discipline committee and is independent of the Executive Director with respect to the exercise of the Chief Trial Counsel's prosecutorial discretion. The Chief Trial Counsel is subject to the Executive Director's administration of personnel, budget, and facilities support functions, which the Executive Director executes in conformity with Board policy.

As noted above, because of the uniqueness of the Chief Trial Counsel position, the Board, through its Board Regulation, Admissions and Discipline Oversight Committee and Board Committee on Operations, has undertaken the responsibility for conducting the Chief Trial Counsel's evaluation.

The State Bar's Office of Human Resources and the State Bar's Deputy Executive Director assist the Board Committee on Operations in administering the review process.

\* \* \*

### **Procedures Governing Annual Performance Review of The Executive Director and Chief Trial Counsel**

All communications pertaining to the evaluation process are strictly confidential. Division 4, Chapter 6, Article 5, Section 3 of the State Bar's Administrative Manual 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."

The Evaluation Committee and Board should strictly adhere to this confidentiality requirement.

The President, in conducting the Executive Director's evaluation, chairs the Board Committee on Operations. The Board Regulation, Admissions and Discipline Oversight Committee's Chair chairs the Chief Trial Counsel's Evaluation.

The Office of Human Resources, under the Direction of the Deputy Executive Director staffs and provides administrative assistance in conducting the Executive Director's and Chief Trial Counsel's reviews and is subject to strict confidentiality requirements.

\* \* \*

## **Chief Trial Counsel**

The Executive Director “bring[s] his or her choice for Chief Trial Counsel (subject to Senate confirmation) to the Board for approval” who serves as a member of the Executive Director's Senior Management Team. (Admin. Man. Div.8, Ch. 1, Art. 2.)

The Chief Trial Counsel is the Senior Executive for the Office of the Chief Trial Counsel, the enforcement/prosecutorial arm of the disciplinary system. This position is a Senior Executive of the State Bar serving subject to a statutory term. The qualifications and term of the Chief Trial Counsel are set by statute. By statute, the Chief Trial Counsel “reports to and serves under” the Board discipline system oversight committee “and does not serve under the direction of” the Executive Director. The Chief Trial Counsel is subject to the Executive Director's institutional administration of personnel, budget, facilities and other institutional matters in conformity with the policy parameters established by the Board.

The terms and conditions of employment for the Chief Trial Counsel are set by the Executive Staff Rules, subject only to the provision that the State Bar (through its Executive Director) must assure the prosecutorial integrity and independence of the Chief Trial Counsel. The Board's discipline oversight committee administers the Office of the Chief Trial Counsel through the Executive Director except where the prosecutorial independence of the office is threatened. Depending upon the nature of such a transgression, the Chief Trial Counsel is to report the transgression to the Board and/or the Supreme Court. (See generally, Business & Professions Code § 6079.5).

(Source: Board of Governors' Resolutions, July 2004, July 11, 2008, January 9, 2010)