

AGENDA ITEM

704 JANUARY 16, 2015

DATE: January 16, 2015

TO: Members, Board of Trustees

FROM: Robert A. Hawley, Acting & Deputy Executive Director

SUBJECT: Amendments to Board Policy Book Regarding Lines of Authority for the General Counsel

EXECUTIVE SUMMARY

This agenda item recommends changes to existing Board resolutions regarding the selection and Lines of Authority of the State Bar's General Counsel. Specific amendments to the Board Policy Book summarizing and articulating existing Board resolutions regarding the authority to employ and direct the General Counsel and the General Counsel's reporting lines are recommended. In general, clarifications are sought to ensure that the General Counsel has a direct reporting and accountability relationship with the Board of Trustees and that the Board has direct responsibility for the selection of the General Counsel. The terms and conditions of employment of the General Counsel are still to be set in accordance with those governing all Executive Staff.

BACKGROUND

The Executive Director is the Board of Trustees primary employee. The Executive Director serves the Board pursuant to a contract the terms of which the board defines. All other executives at the State Bar are governed by the Rules & Regulations Pertaining to the Employment of Executive Staff (Executive Staff Rules), which treat all executives similarly. The Executive Director is not subject to the Executive Staff Rules but to the contract between the Executive Director and the Board. This gives the Executive Director an independence from the Executive Staff that enables the Executive Director to manage the Executive Staff without self-interest.

Certain Senior Executive positions at the State Bar have special considerations that have historically resulted in them being specially identified for board attention. For example, the Chief Trial Counsel (CTC) is a statutorily created office that has certain provisions uniquely applicable to that position. See, Business & Professions Code 6079.5; Board Policy Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel]; Article 3 [Lines of Authority]. The Board Secretary is also statutorily defined in Business & Professions Code Sections 6020 and 6022 as well as in Board Policy. See, Board

Policy Book Tab 18 [Staffing], Article 1 [Executive Director], Sections 7.a and b [Secretary and General Counsel].

The General Counsel is not statutorily addressed. However, the position is defined by board resolutions to some extent. See Board Policy Book, Tab 18 [Staffing], Article 1 [Executive Director], Sections 7.a and b [Secretary and General Counsel], Article 3 [Lines of Authority]. The professional duties of the General Counsel are also addressed in Rule 3-600, Rules of Professional Conduct [Organization as Client] that applies to all counsel who represent entities as clients.

The Board's policy currently identifies the General Counsel as the State Bar's chief legal representative representing the State Bar institution as a whole in conformity with Rule of Professional Conduct 3-600.¹ The selection of the General Counsel has been the sole domain of the Executive Director. The General Counsel's client relationship with the Board of Trustees as well as the other constituent parts of the institution is defined, as with any counsel representing an institution, by Rule 3-600, California Rules of Professional Conduct. It is the object of the amendments here to clarify that the General Counsel has not only a client relationship with the Board of Trustees, but is also selected by the Board and is reviewed by the Board with respect to performance issues.

ISSUE

Whether to adopt the proposed resolution that would provide amendments to the State Bar's Policy statements regarding the General Counsel.

CONCLUSION

It is appropriate to adopt the amendments here proposed to the General Counsel's relationship to the Board of Trustees and Executive Director.

DISCUSSION

It is proposed here that existing resolutions as summarized in the Board Policy Book, Tab 18 [Staffing], Article 1 [Executive Director], Sections 7.a and b [Secretary and General Counsel] be amended in the manner set forth immediately hereafter:

Section 7 Secretary and General Counsel

(a) The Secretary and General Counsel, and the respective offices of each, shall be subject to the executive and administrative authority of the Executive Director in like manner as other Executive Staff, [regarding operational issues including, personnel administration, budget and facilities.](#)

¹ Similarly, Rule 9.12 of the California Rules of Court recognizes that the General Counsel as the position within the State Bar for service of petitions and briefs seeking review by the Supreme Court of any action of the State Bar Court, the Board, Board designated committees, the chief executive officer or his or her designee

(b) The Executive Director consults with the Board on the selection and performance of the Secretary and General Counsel ~~should bring his or her choice for Secretary and General Counsel to the board for approval; otherwise all personnel decisions reside exclusively in the executive director.~~

(Source: Board of Governors' Resolution, May 20, 1997; Amended Board of Governors Resolution, January 16, 2015)]

It is proposed here that the existing resolutions summarized in the Board's Policy Book, Tab18 [Staffing], Article 3 [Lines of Authority], page 25 be amended in the manner set forth immediately hereafter:

d. **General Counsel** - The General Counsel is the Senior Executive serving as the State Bar's ~~Chief~~ Legal Officer. As legal counsel for the State Bar itself, the General Counsel, under the ~~Rules of~~ Professional Conduct, ~~reports both to the Executive Director and the Board of Trustees~~ represents the State Bar as an entity, acting through the Board of Trustees, its highest authorized body except as otherwise required by Rule of Professional Conduct 3-600. This position is a Senior Executive of the State Bar serving in conformity with the Executive Staff Rules, subject ~~only to the limitations of~~ to the duties and responsibilities incumbent upon the attorney-client relationship in the institutional setting. ~~The General Counsel has no independence from the Executive Director on any issue except where mandated by legal and professional duties to the various constituent parts of the institution represented.~~ The General Counsel has the duty to provide accurate and complete legal advice and counsel to the Board and to other constituent elements of the institution regardless of the consequences to him or herself personally. (See generally, Rule of Professional Conduct 3-600.)

(Source: Board of Governors' Resolution, May 20, 1997; Amended Board of Governors Resolution, January 16, 2015)]

It is proposed that the following provision of Tab 18 [Staffing], Article 1 [Executive Director], section 7, page 5 be amended as set forth below. [Attachment 1]

Authority of the General Counsel

The Board of Trustees hereby reaffirms that the Office of General Counsel is and continues to be the designated legal counsel to the State Bar as an entity, including the State Bar's subentities, subject to the direction of the Board of Trustees and its Board Executive Committee or the committee designated by the Board to review legal matters. As legal counsel for the State Bar itself, the General Counsel under the Rules of Professional Conduct, ~~reports both to the Executive Director and the Board of Trustees~~ represents the State Bar as an entity, acting through the Board of Trustees, its highest authorized body except as otherwise required by Rule of Professional Conduct 3-600. Legal advice to the State Bar as an institution, including its subentities and programs, shall in all instances be rendered only by the Office of General Counsel, except where outside counsel is retained for specific purposes in compliance with existing protocols for the retention of outside counsel.

(Source: Board of Governors' Resolutions, June 2000, January 9, 2010.)

It the intent of these amendments to clarify that the selection of the General Counsel is a process that directly involves the Board. The General Counsel has a reporting relationship to the Board of Trustees as a client as well as to other constituent parts of

the State Bar of California as an entity, consistent with Rule 3-600, Rules of Professional Conduct.

The terms and conditions of employment for the General Counsel are set in conformity with institutional standards governing Executive Staff, and in particular senior executive staff. The Board, therefore, does not set the terms and conditions of employment for the General Counsel separately from any other State Bar employee, except the Executive Director.

FISCAL / PERSONNEL IMPACT

There is no fiscal impact. The personnel impact is described above.

RULE AMENDMENTS:

None.

BOARD POLICY BOOK IMPACT:

Board Policy Book, Tab 18 [Staffing], Article 1 [Executive Director]; Article 3 [Lines of Authority] are amended as forth above.

RECOMMENDATION

It is recommended that the proposed revisions to board policy regarding the Lines of Authority of the General Counsel be made as described above.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board of Trustees concur with the recommendation, the following resolution is in order:

RESOLVED, that the Board of Trustees of the State Bar of California hereby adopts the proposed revisions to board policy regarding the Lines of Authority of the General Counsel as discussed in this item this date to be affective on adoption.

ATTACHMENTS

1. Board Policy Book, Tab 18 [Staffing]
2. Rule 3-600, Rules of Professional Conduct