

AGENDA ITEM

122 MARCH 2015

DATE: February 20, 2015

TO: Members, Regulation and Discipline Committee
Members, Board of Trustees

FROM: Colin Wong, Chief Administrative Officer, State Bar Court

SUBJECT: Appointment of Pro Tempore Judge of the State Bar Court

EXECUTIVE SUMMARY

The State Bar Court is currently without one Hearing Judge in its Los Angeles venue. The Supreme Court's Applicant Evaluation and Nomination Committee is presently engaged in a recruitment, evaluation and recommendation process to fill this position. In order to facilitate the ability of the Court to schedule and conduct early neutral evaluation conferences and settlement conferences on a timely basis, the Presiding Judge has recommended that Chief Assistant Court Counsel, Rebecca M. Rosenberg be appointed as a Judge Pro Tempore of the State Bar Court.

BACKGROUND

The State Bar Court is comprised of 5 hearing judges and 3 review judges. In June, 2014, former Presiding Judge Jodi Remke left the court to become Chair of the FPPC. Pursuant to the State Bar Court appointment process, Review Judge Catherine Purcell was appointed to the Presiding Judge position and Hearing Judge Richard Honn was elevated to the Review Department. As a result of these appointments, Judge Honn's hearing department position became vacant.

The Supreme Court's Applicant Evaluation and Nomination Committee is currently conducting a recruitment to fill Judge Honn's vacated position. It is expected that the recruitment will be concluded at the end of March.

As part of the disciplinary process, members under investigation are entitled to request an Early Neutral Evaluation Conference prior to the filing of disciplinary charges. Generally, these conferences are conducted by the hearing judges. In addition, hearing judges conduct settlement conferences in an effort to reach a compromise with the parties without a trial. Due to the fact that the hearing department has only 4 judges instead of 5, current Chief Court Counsel, George Scott has been holding both of these types of conferences as a Judge Pro Tempore pursuant to a Board of Trustees

appointment in 2006. Since the current vacancy will probably not be filled by the Supreme Court until April, 2015, an additional Judge Pro Tempore is necessary to ensure that members can receive these conferences within the allowed time.

ISSUE

Whether the Board of Trustees should appoint Chief Assistant Court Counsel Rebecca M. Rosenberg as a Judge Pro Tempore of the State Bar court to ensure that settlement conferences and early neutral evaluation conferences can be scheduled and conducted pending the appointment of a State Bar Court Hearing Judge in Los Angeles.

RECOMMENDATION

Pursuant to the provisions of Business and Professions Code section 6079.1(e) and rule 5.7 of the Rules of Procedure of the State Bar of California, it is recommended that Presiding Judge Catherine Purcell's request to appoint Chief Assistant Court Counsel, Rebecca M. Rosenberg as a Judge Pro Tempore be approved.

DISCUSSION

Business and Professions Code section 6079.1(e) provides that either the Supreme Court or the Board of Trustees may appoint pro tempore judges to hear and decide matters in the State Bar Court Hearing Department when a judge of the State Bar Court is unavailable to serve without undue delay to the proceeding. Rule 5.7 of the Rules of Procedure provides that judges pro tempore may be assigned to adjudicate State Bar Court proceedings in the Hearing Department when, in the discretion of the Presiding Judge, it has been determined that a hearing judge is unavailable to serve without undue delay to the proceeding.

In June, 2014, former Presiding Judge Jodi Remke left the court to become Chair of the FPPC. Pursuant to the State Bar Court appointment process, Review Judge Catherine Purcell was appointed to the Presiding Judge position and Hearing Judge Richard Honn was elevated to the Review Department. As a result of these appointments, Judge Honn's hearing department position became vacant.

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appointment in 2006. Since the current vacancy will probably not be filled by the Supreme Court until April, 2015, an additional Judge Pro Tempore is necessary to ensure that members can receive these conferences within the allowed time.¹

In order to facilitate the ability of the Court to schedule and conduct settlement conferences and early neutral evaluation conferences on a timely basis and to relieve the State Bar Court Hearing Judges of some of the burden of conducting such proceedings, the Presiding Judge recommends that Chief Assistant Court Counsel Rebecca M. Rosenberg be appointed as Judge Pro Tempore of the State Bar Court.²

It is anticipated that Ms. Rosenberg will be used exclusively for settlement conferences and early neutral evaluation conferences. Further, pursuant to rule 5.7 of the Rules of Procedure, the appointment of Ms. Rosenberg to any particular case will be at the discretion of the Presiding Judge based upon the determination that a Hearing Judge is unavailable to serve without undue delay to the proceeding.

Consistent with the provisions of rule 5.30 of the Rules of Procedure [regarding early neutral evaluation conferences], if a Judge Pro Tempore is assigned to conduct a settlement conference or early neutral evaluation conference and is unable to resolve the matter, that Judge Pro Tempore will have no further involvement in that case and will not provide any legal advice or assistance to the assigned judge in the matter.

FISCAL / PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK IMPACT

None

PROPOSED BOARD COMMITTEE RESOLUTION:

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

RESOLVED, that the Regulation and Discipline Committee recommends that the Board of Trustees hereby appoints Rebecca M. Rosenberg as a judge pro tempore of the State Bar Court; and it is

¹ Early neutral evaluation conferences must be held within 15 days of the request of either party. (Rule 5.30(a), Rules Proc. of State Bar.)

² Rebecca M. Rosenberg has been admitted to the practice of law since 1986 and has been employed by the State Bar of California for approximately 25 years, including 24 years with the State Bar Court.

FURTHER RESOLVED, that the assignment of the above-referenced pro tempore judge to adjudicate or conduct particular proceedings shall be subject to the discretion of the Presiding Judge of the State Bar Court pursuant to rule 5.7 of the Rules of Procedure of the State Bar of California.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Regulation and Discipline Committee's recommendation, the following resolutions would be in order:

RESOLVED, that upon the recommendation of the Regulation and Discipline Committee, the Board hereby appoints Rebecca M. Rosenberg as a judge pro tempore of the State Bar Court; and it is

FURTHER RESOLVED, that the assignment of the above-referenced pro tempore judge to adjudicate or conduct particular proceedings shall be subject to the discretion of the Presiding Judge of the State Bar Court pursuant to rule 5.7 of the Rules of Procedure of the State Bar of California.