

# **AGENDA ITEM**

**702 SEPT 2015**

**DATE:** September 21, 2015

**TO:** Members, Board of Trustees

**FROM:** Elizabeth Rindskopf Parker, Executive Director

**SUBJECT:** Exception to the CalPERS 180 Day Wait Period to Contract with Retiree

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## **EXECUTIVE SUMMARY**

To comply with California Public Employee Retirement System (CalPERS) requirements, Board of Trustees action is required to authorize the State Bar to contract with a former employee retired under CalPERS, within six (6) months of retirement. In addition, to comply with the State Bar's Policy Restricting Former Members of the Board of Trustees and the Senior Managers Designated by the Executive Director from Doing Business with the State Bar, a waiver under the terms of that policy is also necessary from the Board. Robert A. Hawley (Hawley), Deputy Executive Director, former Acting Executive Director and Acting Secretary, is leaving the State Bar and retiring under CalPERS September 30, 2015. His departure creates the need to replace the duties he performed for the State Bar. A new Executive Director and Chief Operations Officer have been selected and are starting their employment with the State Bar. The Board and they seek interim short term assistance from Hawley after his departure and during their transition into their management positions. This item authorizes the State Bar to contract for these skills after Hawley's departure and CalPERS retirement to assist with the transition and oversight the State Bar.

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## **BACKGROUND**

The State Bar of California participates in CalPERS retirement system. A CalPERS retiree can contract to work for the former employer as a retired annuitant. However, under pension reform standards (see Government Code section 7522.56 and 21224), the retired individual to be contracted with must meet the following standards:

1. The individual must have specialized skills needed to perform work of limited duration;
2. The individual cannot work more than 960 hours in a fiscal year (July 1 – June 30);
3. The contracted compensation rate cannot be less than the minimum nor exceed the maximum paid to other employees, if any, performing comparable duties;
4. Compensation must be limited to maximum rates set forth above and not take the form of other benefits not captured in the compensation rates;

5. The individual cannot have received unemployment insurance benefits for prior retired annuitant work;
6. The individual cannot be employed as a retired annuitant within six (6) months following retirement unless the governing Board of the contracting entity certifies as set forth in the proposed resolution, which must be filed with CalPERS;
7. The individual must be the normal retirement age or older at the time of retirement.

Hawley has served as Deputy Executive Director since June, 2000. He served as Chief Assistant General Counsel and chief labor counsel from 1993 to 2000. He served the Office of Disciplinary Enforcement as a disciplinary prosecutor from 1978 to 1981. His career at the State Bar has involved legal advice to and executive oversight of State Bar operations. He is leaving the State Bar and retiring with CalPERS September 30, 2015. His Deputy Executive Director position will be replaced by the Chief Operations Officer. After his departure, his unique knowledge and skills regarding the State Bar will continue to be in demand to assist the new Executive Director and Chief Operations Officer transition into State Bar management.

Hawley is the most qualified to assist with the transition of the State Bar to new management on an interim basis. The State Bar seeks to contract with Hawley after his departure to provide "extra work" assistance to the State Bar on transition issues. Because of CalPERS restrictions on contracting with a CalPERS retiree, the Executive Director is seeking the Board's authority, as required by CalPERS, to contract with Hawley as a retired CalPERS annuitant.

Hawley has specialized skills necessary to the successful transition to new management. The terms of retention to perform these duties are as set forth in Attachment A. The resolution recommended for this Board is set forth in Attachment B.

Additionally, the State Bar seeks from the Board of Trustees a waiver of Section 6 [Policy Restricting Former Members of the Board of Trustees and the Senior Managers Designated by the Executive Director from Doing Business with the State Bar]; Article 3 [Contracts]; Tab 17 [Control Policies & Procedures]. Section 6 states:

Policy Restricting Former Members of the Board of Trustees and the Senior Managers Designated by the Executive Director from Doing Business with the State Bar

Members of the Board of Trustees and Senior Managers designated by the Executive Director, for a period of twelve months following expiration of their term of office or termination of employment, shall not:

- (a) Seek to do, or do, business with the State Bar for monetary gain, or
- (b) Act as agent or attorney for, or otherwise represent any person, for compensation by making any formal or informal appearance, or any oral or written communication before the State Bar, or any officer or employee or agent thereof, if the appearance or communication is for the purpose of influencing official State Bar action, including the awarding or revocation of services, contracts, or the sale or purchase of goods or property.

The board, or its designee, may waive the requirements of this policy for good cause.

## **DISCUSSION**

As noted above, Hawley is uniquely qualified to contract with the State Bar after his departure to assist with the State Bar's transition to new management. In the event that Hawley is selected for this purpose, the Board needs to authorize the State Bar to do so, in accordance with CalPERS requirements. This item seeks that authority.

Hawley has individualized specialized skills relevant to the State Bar, which are of limited duration. It is not anticipated that this work will exceed 960 hours for the fiscal year. The contract rate is \$110.00/hour. This rate, annualized at the State Bar 36.25 hour work week is less than the salary rate that Hawley had in his Deputy Executive Director position prior to his departure. This is within the range of the Grade 59, Deputy Executive Director (\$154,082 - \$226,811) which is the appropriate skill level for this position.

If Hawley contracts with the State Bar as here anticipated, the employment would occur within six (6) months following CalPERS retirement and therefore requires the governing Board of the contracting entity to certify as set forth in the resolution that the Board is requested to adopt. Hawley will be at the fully qualified normal retirement age at the time of retirement therefore further requirements that address the situation where someone is under the normal retirement age do not apply.

The form agreement that will be used to retain Hawley is Attachment A. The resolution that the Board is requested to adopt is set forth in the recommended resolution below.

The Board is also requested to waive its Policy Restricting Former Members of the Board of Trustees and the Senior Managers Designated by the Executive Director from Doing Business with the State Bar, consistent with the terms of the policy. [Section 6 (Policy Restricting Former Members of the Board of Trustees and the Senior Managers Designated by the Executive Director from Doing Business with the State Bar); Article 3 (Contracts); Tab 17 (Control Policies & Procedures)].

## **FISCAL/PERSONNEL IMPACT**

Within existing budget.

## **RULE AMENDMENTS**

None.

## **BOARD BOOK IMPACT**

None.

## **BOARD COMMITTEE RECOMMENDATIONS**

It is recommended that the Board of Trustees approve the following resolution:

**RESOLVED**, that the Board of Trustees adopts the resolution set forth in Attachment B; and it is

**FURTHER RESOLVED**, that the Board of Trustees waives Section 6 (Policy Restricting Former Members of the Board of Trustees and the Senior Managers Designated by the Executive Director from Doing Business with the State Bar); Article 3 (Contracts); Tab 17 (Control Policies & Procedures), as applied to Robert A. Hawley for good cause, as discussed this date.

**ATTACHMENT(S) LIST**

- A. Proposed Standard Limited Term Employment Terms
- B. CalPERS Resolution