

## REDLINE OF REVISED RULE 2201

### CHAPTER 2. SPECIAL DEPUTY TRIAL COUNSEL

#### Rule 2201. APPOINTMENT AND AUTHORITY

- (a) The Chief Trial Counsel or designee ~~may appoint one or more Special Deputy Trial Counsel when the Office of the Chief Trial Counsel receives an inquiry or complaint regarding the followings~~ shall recuse herself or himself when :

(1) Any inquiry or complaint is about:

- i. The Chief Trial Counsel or designee:
- ~~(1)-ii.~~ ii. A member employed by the State Bar of California;
- ~~(2)-iii.~~ iii. An attorney member of the Board of Trustees;
- ~~(3)-iv.~~ iv. An attorney member of the ~~governing board~~ executive committee of any ~~other entity of the~~ State Bar section, committee or commission; or
- v. A member who has a current or recent personal, financial, or professional relationship to the Office of the Chief Trial Counsel or its employees ; or,

(2) The Chief Trial Counsel or designee believes:

- i. That his or her recusal would further the interests of justice; or,
- ii. There is a substantial doubt as to his or her capacity to be impartial; or

(3) A person aware of the facts might reasonably entertain a doubt that the Chief Trial Counsel or designee would be able to be impartial.

(b) The Chief Trial Counsel may recuse herself or himself:

- (1) ~~A~~If she or he receives an inquiry or complaint concerning a member who has a current or recent personal, financial, or professional relationship to the State Bar, its employees, ~~or a~~ other than those employees referenced in subsection (a)(1)(v), above or a non-attorney member of the Board of Trustees; ~~;~~ or

~~(4)~~ (2) in other appropriate circumstances to avoid the appearance of any impropriety-  
when it appears that the member who is the subject of the inquiry or complaint will  
not receive fair treatment.

(c) Duties of the Special Deputy Trial Counsel Administrator

(1) In the event of the Chief Trial Counsel's recusal, the inquiry or complaint shall be  
referred to the Special Deputy Trial Counsel Administrator or delegee  
("Administrator").

(2) The Administrator shall conduct a preliminary review of the inquiry or complaint  
which includes reasonable and limited outside inquiries.

~~(b) A Special Deputy Trial Counsel shall have all of the powers and duties of the Chief Trial  
Counsel and shall act entirely in his or her place or stead with regard to such an inquiry or  
complaint and any resulting investigation. A Special Deputy Trial Counsel may be  
removed by the Chief Trial Counsel only for good cause or any other condition that  
substantially impairs the performance of such Special Deputy Trial Counsel's duties.~~

~~(c) A Special Deputy Trial Counsel must be an active member of the State Bar, but may not  
be an employee of the State Bar, a member of the Board of Trustees, or a Judge Pro  
Tempore of the State Bar Court.~~

~~(d) A Special Deputy Trial Counsel shall not receive compensation for services unless the  
Chief Trial Counsel has contracted in advance with that Special Deputy Trial Counsel to  
receive compensation.~~

~~(e) A Special Deputy Trial Counsel shall comply with the written or other established  
policies of the State Bar of California and the Office of the Chief Trial Counsel, except to  
the extent that compliance would be inconsistent with the purposes of this rule.~~

~~(f) A Special Deputy Trial Counsel may request that the Chief Trial Counsel or designee  
authorize the payment of reasonable expenses and for investigative, administrative and  
legal support. The Chief Trial Counsel or designee shall have discretion to determine the  
amount of financial, investigative, administrative and legal assistance to be provided.~~

~~(g) The Chief Trial Counsel or designee shall conduct a preliminary review of an inquiry  
regarding a member described in paragraph (a) to determine whether to appoint a Special  
Deputy Trial Counsel to investigate the matter.~~

~~(1)-(3)~~ If the ~~Chief Trial Counsel or designee~~Administrator determines that the factual allegations of the inquiry or complaint are not sufficiently specific, ~~that the inquiry is not from a credible source~~ or that the factual allegations contained therein, if proven, would not result in discipline of the member, the ~~Chief Trial Counsel or designee~~Administrator shall close the matter.

~~(2)~~ ~~In all other cases, including where the Administrator is If the Chief Trial Counsel or designee determines that the factual allegations of the inquiry are sufficiently specific, that the inquiry is from a credible source and that the factual allegations contained therein, if proven, may result in discipline of the member, the Chief Trial Counsel or designee shall appoint a Special Deputy Trial Counsel to conduct an investigation and such other proceedings as necessary or appropriate with respect to the inquiry.~~

~~(3)~~ ~~If the Chief Trial Counsel or designee is unable to determine whether the factual allegations of the inquiry are sufficiently specific and from a credible source, or that the factual allegations of the inquiry, if proven, may~~would ~~result in discipline of the member, the Chief Trial Counsel or designee shall appoint~~Administrator shall refer the matter to a Special Deputy Trial Counsel ~~to make those determinations and, as warranted, to conduct an~~for investigation ~~and such other proceedings as necessary or appropriate.~~

~~(h)-(4)~~ The preliminary review required by ~~paragraph~~section ~~(gc)~~(2-3) shall be completed within sixty (60) days after the written inquiry or complaint is first received; provided, however, that such time limit is not jurisdictional. ~~The Chief Trial Counsel shall recuse himself or herself with respect to an inquiry received by the Office~~

(5) A complainant may request review of a decision by an Administrator to close a complaint or inquiry. The Administrator shall refer such a request for review to a Special Deputy Trial Counsel.

~~(i) of the Chief~~(d) Duties of Special Deputy Trial Counsel ~~if:~~

(1) Upon receipt of a referral by the Administrator, the Special Deputy Trial Counsel shall conduct an investigation and all such other proceedings as necessary and appropriate.

(2) A complainant may request review of a decision by a Special Deputy Trial Counsel to close a complaint or inquiry. The Administrator shall refer such a request for review to a different Special Deputy Trial Counsel than was originally assigned to

## ATTACHMENT B

complainant's case. Upon receipt of a referral by the Administrator to perform a review of a closed disciplinary complaint, the Special Deputy Trial Counsel will determine whether to recommend to the Administrator that the complaint should be reopened for investigation.

(e) The Administrator and Special Deputy Trial Counsel:

- (1) Shall have all the powers and duties of the Chief Trial Counsel and shall act entirely in her or his place with regard to an inquiry or complaint and any resulting investigation or prosecution.
- (2) Must be active members in good standing of the State Bar of California, but may not be employees of the State Bar, members of the Board of Trustees, or Judges Pro Tempore of the State Bar Court.
- (3) May receive compensation for services and reimbursement of reasonable expenses for investigative, administrative and legal support.
- (4) Shall comply with the written or other established policies of the State Bar of California and the Office of the Chief Trial Counsel, except to the extent that compliance would be inconsistent with the purposes of this rule.
- (5) May be removed by the Chairperson of the Regulation and Discipline Committee or designee only for good cause, including any condition that impedes the timely performance of their duties.

(f) The State Bar's Office of General Counsel may be designated by the Chairperson of the Board's Regulation and Discipline Committee to monitor all referrals to the Administrator and Special Deputy Trial Counsel in a manner that maintains the required impartiality and confidentiality. The State Bar's Office of General Counsel may also be designated by the Chairperson of the Board's Regulation and Disciplinary Committee to remove the Administrator or Special Deputy Trial Counsel as provided in section (e)(5) of this rule.

~~(1) The inquiry involves the Chief Trial Counsel;~~

~~(2) The Chief Trial Counsel believes, for any reason, that his or her recusal would further the interests of justice;~~

## **ATTACHMENT B**

~~(3) The Chief Trial Counsel believes there is a substantial doubt as to his or her capacity to be impartial; or~~

~~(4) A person aware of the facts might reasonably entertain a doubt that the Chief Trial Counsel would be able to be impartial.~~

~~In the event of the Chief Trial Counsel's recusal, the inquiry shall be referred to the Chair of the Board's Committee on Regulation, Admissions and Discipline Oversight, who shall appoint a Special Deputy Trial Counsel to determine whether the factual allegations of the inquiry are sufficiently specific, from a credible source and whether, if the factual allegations contained therein, if proven, may result in discipline of the member. If the Special Deputy Trial Counsel determines that the factual allegations of the inquiry are sufficiently specific and from a credible source and that the allegations, if proven, may result in discipline of the member, the Special Deputy Trial Counsel shall conduct an investigation and such other proceedings as necessary and appropriate.~~

~~(g)~~ (g) Upon the request of the Chairperson of the Board's Committee on Regulation, Admissions and Discipline Oversight, the Chief Trial Committee, but no less than twice a year, the Administrator and/or the Office of General Counsel shall submit a full report to the Committee in ~~closed~~ the appropriate session ~~regarding the number, nature and disposition of~~ its meeting about the processing of all inquiries, and complaints ~~or investigations involving the members described in paragraph (a), other than the Chief Trial Counsel.~~ in a manner that maintains the necessary impartiality and confidentiality of the matters under review pursuant to this rule. .