

## **CLEAN VERSION OF REVISED RULE 2201**

### **CHAPTER 2. SPECIAL DEPUTY TRIAL COUNSEL**

#### **Rule 2201. APPOINTMENT AND AUTHORITY**

(a) The Chief Trial Counsel or designee shall recuse herself or himself when:

(1) Any inquiry or complaint is about:

- i. The Chief Trial Counsel or designee;
- ii. A member employed by the State Bar of California;
- iii. An attorney member of the Board of Trustees;
- iv. An attorney member of the executive committee of any 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) 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, other than those employees referenced in subsection (a)(1)(v), above or a non-attorney member of the Board of Trustees; or

(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 delegate ("Administrator").

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

(3) If the Administrator determines that the factual allegations of the inquiry or complaint are not sufficiently specific, or that the factual allegations contained therein, if proven, would not result in discipline of the member, the Administrator shall close the matter. In all other cases, including where the Administrator is unable to determine whether the factual allegations, if proven, would result in discipline of the member, the Administrator shall refer the matter to a Special Deputy Trial Counsel for investigation.

(4) The preliminary review required by section (c)(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.

(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.

(d) Duties of Special Deputy Trial Counsel

(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 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.

## **ATTACHMENT C**

(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 Discipline Committee to remove the Administrator or Special Deputy Trial Counsel as provided in section (e)(5) of this rule.

(g) Upon the request of the Chairperson of the Board's Regulation and Discipline 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 the appropriate session of its meeting about the processing of all inquiries and complaints in a manner that maintains the necessary impartiality and confidentiality of the matters under review pursuant to this rule.