

AGENDA ITEM

708 SEPT 2017

DATE: September 6, 2017

TO: Members, Board of Trustees

FROM: Elizabeth Rindskopf Parker, Executive Director

SUBJECT: Exception to the CalPERS 180 Day Wait Period to Appoint a Retired Annuitant; Waiver of Board Rule Barring Former Executives from Doing Business with the State Bar

EXECUTIVE SUMMARY

To comply with California Public Employee Retirement System (CalPERS) requirements, Board of Trustees action is required to authorize the State Bar to appoint as a retired annuitant a former employee retired under CalPERS, within six (6) months of that individual's retirement date. 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. Colin Wong, the Chief Court Counsel/Chief Court Administrator for the State Bar Court, is leaving the State Bar and retiring under CalPERS, effective September 8, 2017. His departure creates a critical need to replace the duties he performed for the State Bar, while it is recruiting for a new Chief Court Counsel/Chief Court Administrator to assume Mr. Wong's responsibilities. The State Bar seeks interim short-term assistance from Mr. Wong immediately after his retirement while it is recruiting and bringing on board his replacement. This item authorizes Mr. Wong's appointment by certifying the State Bar's critical need for his unique skills immediately after his retirement.

The State Bar of California participates in the CalPERS retirement system. A CalPERS retiree can be appointed 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 appointed 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 wage rates set forth above and not take the form of other non-wage benefits;
5. The individual cannot have received unemployment insurance benefits for prior retired annuitant work;

6. The individual cannot work as a retired annuitant within six (6) months following his or her retirement date unless the governing Board of the contracting entity certifies to a critical need for the individual's skills within this six month period, as set forth in the resolution passed during public session, which must then be filed with CalPERS;
7. The individual must be the normal retirement age or older at the time of retirement.

Mr. Wong has served as Chief Court Counsel/Chief Court Administrator with the State Bar Court since June 2007. In this dual capacity, Mr. Wong has provided legal advice and analysis to State Bar Court judges and overseen the work of the State Bar Court's legal staff. He has also been responsible for overall case processing and operations of the State Bar Court system. As such, he is familiar with not only the full continuum of functions that need to be performed to ensure timely and accurate case adjudication, but also the rule and statutory framework that is the foundation of State Bar Court proceedings. In addition to this breadth of knowledge, which does not exist in any other individual within the State Bar, Mr. Wong has a deep understanding of critical initiatives currently pending in the State Bar Court, including the development of the Odyssey case management system, the implementation of workforce planning reforms, and revisions to State Bar Court rules.

As a result of Mr. Wong's highly specialized and relevant set of skills and experience, he is the most qualified to assist the State Bar while it is recruiting, hiring, and transitioning to a new Chief Court Counsel/Chief Court Administrator for its State Bar Court system. The State Bar seeks to appoint Mr. Wong immediately upon his retirement to ensure continuity in the administration and management of the State Bar Court system during this recruitment, hiring and transition period.

Because of CalPERS restrictions on contracting with a CalPERS retiree, the Executive Director is seeking a Board resolution certifying the critical need to appoint Mr. Wong as a retired annuitant within six months of his retirement date, as required by CalPERS. The terms of Mr. Wong's appointment as a retired annuitant 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.

FISCAL/PERSONNEL IMPACT

Within existing budget.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

RECOMMENDED BOARD ACTION

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 Colin Wong for good cause, as discussed this date.

ATTACHMENT(S) LIST

- A.** Proposed Limited Term Appointment as a Retired Annuitant
- B.** CalPERS Resolution

Attachment A

September 6, 2017

Colin Wong
210 San Carlos Avenue
Piedmont, CA 94611

RE: The State Bar of California
Limited Term Appointment as a Retired Annuitant

Dear Mr. Wong:

This confirms your limited term appointment as a retired annuitant by the State Bar of California, for six months or less, commencing on September 9, 2017, and ending no later than March 9, 2018. This term may only be extended in writing, signed by both parties. The following terms govern your appointment as a retired annuitant:

1. Your appointment is for the time period set forth above, subject to adjustments made in writing and signed by the parties. This term may be ended earlier by either party, with or without cause, upon fifteen (15) calendar days advance notice.
2. You are appointed on a casual basis at the rate of \$97.24 per hour. You will report your hours on a time card each pay period. For this rate, the State Bar will have the right to your exclusive services during the appointment period and you will set such time aside to be available as needed by the State Bar.
3. You will adhere to State Bar policies and procedures.
4. You will be paid by State Bar check on regular State Bar paydays for time worked and reported to the State Bar for the previous pay period (i.e., you will be paid for time worked two weeks in arrears).
5. You will receive no regular employment benefits, and only the hourly compensation benefits set forth here.
6. You will provide guidance and assistance in the administration of the State Bar Court System.
7. You will take direction from the Executive Director and/or the Chief Judge of the State Bar Court.

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8. Necessary travel will be reimbursed in accordance with the State Bar's Travel and Business-Related Expense Reimbursement Policies (attached).
9. You are a retired CalPERS annuitant. Your employment in this capacity is terminable at will by either party and will not exceed 960 hours per fiscal year.
10. You will continue to be retired under CalPERS. You will not be re-enrolled in CalPERS. CalPERS contributions will not be made from your wages or made on your behalf. A Notice of Exclusion from CalPERS Membership is attached. Please complete and return this form.
11. You understand that you may come into contact with information of a confidential nature and you agree to maintain the State Bar's confidential, privileged and proprietary information in strict confidence and not disclose them without the express authorization of the Executive Director or the Board of Trustees of the State Bar.

Assuming these terms are acceptable to you, please complete the acknowledgment below and return this document to me.

By executing below, you are also certifying to the State Bar that you have not applied for or received any unemployment insurance benefits as a result of your retirement from the State Bar.

If you have any questions, please feel free to contact me.

Very truly yours,

Elizabeth R. Parker
Executive Director

ACKNOWLEDGED AND ACCEPTED:

By: _____

Dated: _____

cc: Gilda Munoz, Director Human Resources

Attachment B
RESOLUTION
September 6, 2017

RESOLUTION FOR EXCEPTION TO THE 180-DAY WAIT PERIOD
GC sections 7522.56 and 21224

WHEREAS, in compliance with Government Code sections 7522.56 and 21224, The State Bar of California Board of Trustees must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since his or her retirement date; and

WHEREAS, Colin Wong (CalPERS ID #xxxxxx2560) is leaving The State Bar of California in the position of Chief Court Counsel/Chief Court Administrator and is retiring under CalPERS effective September 8, 2017; and

WHEREAS, Government Code sections 7522.56 and 21224 prohibit the appointment of a CalPERS retiree as a retired annuitant earlier than 180 days after his or her retirement date without a certification resolution, such as this; and

WHEREAS, Government Code sections 7522.56 and 21224 provide that a certification resolution will not waive the 180 day wait period if the retiree has received any unemployment insurance benefits; and

WHEREAS, Colin Wong certifies that he has not and will not receive any unemployment insurance benefits; and

WHEREAS, The State Bar of California Board of Trustees and The State Bar of California certify that there is a critical need to hire Colin Wong as a retired annuitant within 180 days of his September 8, 2017, retirement date; and

WHEREAS, the document containing the entire terms governing Colin Wong's appointment as a retired annuitant has been reviewed by this body and is attached herein as Attachment A; and

WHEREAS, no matters, issues, terms or conditions related to this appointment as a retired annuitant have been or will be placed on a consent calendar; and

WHEREAS, the appointment as a retired annuitant shall be limited to 960 hours per fiscal year; and

WHEREAS, the compensation paid to the retiree is not less than the minimum (\$14,931) nor exceeds the maximum (\$22,424) monthly base salary paid to State Bar employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the maximum hourly rate for the classification of Chief Court Counsel/Chief Court Administrator is \$129.37 and the minimum hourly rate for this classification is \$86.14; and,

WHEREAS, the hourly rate paid to Colin Wong for his work as a retired annuitant will be \$97.24 per hour; and

WHEREAS, Colin Wong has not and will not receive any other benefit, incentive, or compensation in lieu of benefits or other form of compensation in addition to this hourly pay rate; and

THEREFORE, BE IT RESOLVED THAT The State Bar of California Board of Trustees hereby certifies the nature of the appointment as described herein and detailed in the attached retired annuitant appointment document as Attachment A, and that this appointment is necessary to perform critically needed duties for The State Bar of California beginning September 8, 2017.