

Per California Code of Regulations, title 2, section 548.5, the following information will be posted to CalHR's Career Executive Assignment Action Proposals website for 30 calendar days when departments propose new CEA concepts or major revisions to existing CEA concepts. Presence of the department-submitted CEA Action Proposal information on CalHR's website does not indicate CalHR support for the proposal.

**A. GENERAL INFORMATION**

1. Date

9/29/16

2. Department

Justice

3. Organizational Placement (Division/Branch/Office Name)

Executive Office / Office of the Solicitor General

4. CEA Position Title

Principal Deputy Solicitor General

5. Summary of proposed position description and how it relates to the program's mission or purpose. (2-3 sentences)

The Solicitor General's Office oversees all civil and criminal appeals handled by the Department of Justice. It directly handles or actively participates in the most sensitive, complex appeals, including in the US Supreme Court, the California Supreme Court, and the Ninth Circuit Court of Appeals. The Principal Deputy Solicitor General, among other duties, exercises delegated authority on behalf of the Solicitor General; develops and implements Department-wide policies relating to appellate litigation; is part of and advises the Department's Executive Management team; and coordinates the handling of especially complex and sensitive matters with senior leadership of the Department, client agencies, and the Governor's Office of Legal Affairs.

6. Reports to: (Class Title/Level)

Solicitor General (Exempt Entitlement)

7. Relationship with Department Director (Select one)

- Member of department's Executive Management Team, and has frequent contact with director on a wide range of department-wide issues.
- Not a member of department's Executive Management Team but has frequent contact with the Executive Management Team on policy issues.

(Explain):

8. Organizational Level (Select one)

- 1st
- 2nd
- 3rd
- 4th
- 5th (mega departments only - 17,001+ allocated positions)

## B. SUMMARY OF REQUEST

### 9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

The Solicitor General's Office (OSG) oversees all civil and criminal appeals handled by the Department of Justice. It directly handles or actively participates in the most sensitive and complex appeals, including in the US Supreme Court, the California Supreme Court, and the Ninth Circuit Court of Appeals. The Principal Deputy Solicitor General (PDSG), among other duties, will exercise delegated authority on behalf of the Solicitor General; develop and implement Department-wide policies relating to appellate litigation; and will be part of and advise the Department's Executive Management team. An example is work developing extensive guidance for attorneys throughout the Department concerning policies and procedures relating to the new OSG structure implemented by the Attorney General beginning in 2014. The PDSG will have principal responsibility for continuously interpreting and applying this guidance to specific situations and leading the process for producing periodic updates and revisions.

The PDSG will regularly coordinate complex and sensitive appellate matters and related legal issues with senior lawyers and managers both within and outside the Department, including identifying and coordinating positions on recurrent legal issues of importance to many state stakeholders. Within the Department this consultation and coordination will frequently involve the Chief Deputy Attorney General, Special Assistant Attorneys General, the Chief Assistants for the Department's three litigating divisions, and/or the Senior Assistants for the various Sections within those Divisions. All of these are CEA or Exempt entitlement positions. Outside the Department it will often include the General Counsel or other senior lawyers at state agencies and/or the Governor's Legal Advisor and other lawyers in the Governor's Office of Legal Affairs. An example would be coordinating with senior Department of Justice lawyers, the Legal Advisor, and senior agency counsel to respond to a request from the California Supreme Court for a brief expressing a position on behalf of the State on an issue in a pending case. Another example would be coordinating extensive discussions among senior lawyers within and outside the Department to develop a consistent position on a cross-cutting legal issue affecting numerous state agencies or programs with potentially different interests or perspectives, such as certain questions involving federal preemption.

The PDSG will participate personally and substantially in the briefing and/or oral argument of especially complex or sensitive appellate cases, and in high-level consultations on similarly complex, sensitive, and broadly significant legal and policy issues. Examples include cases involving broadly significant issues of state or federal constitutional or administrative law, where the positions adopted must take account of interests ranging far beyond the specifics of any particular case. The PDSG will also review and provide leadership and direction for a broad range of other appellate litigation handled by Sections throughout the Department of Justice, including advising on or making final decisions involving the content of especially important or sensitive filings or arguments, the staffing and review process for significant briefing projects, and the assignment of oral arguments in significant cases. The PDSG will also take a leadership role in developing and implementing best practices for appellate litigation and providing related development and enrichment programs for attorneys and others throughout the Department. Examples include leading the development and implementation of Department-wide litigation templates, guidance documents, and training programs.

In all these activities, the PDSG will regularly be required to lead consultations or processes involving, and otherwise interact on an equal basis with, senior lawyers both within and outside the Department of Justice with positions at the CEA or Exempt entitlement level.

**B. SUMMARY OF REQUEST (continued)**

10. How critical is the program's mission or purpose to the department's mission as a whole? Include a description of the degree to which the program is critical to the department's mission.

- Program is directly related to department's primary mission and is critical to achieving the department's goals.
- Program is indirectly related to department's primary mission.
- Program plays a supporting role in achieving department's mission (i.e., budget, personnel, other admin functions).

Description: The Attorney General represents the People of California in civil and criminal matters before trial courts, appellate courts and the supreme courts of California and the United States.

The Solicitor General's Office oversees all civil and criminal appeals handled by the Department of Justice. It directly handles or actively participates in the most sensitive and complex appeals, including in the US Supreme Court, the California Supreme Court, and the Ninth Circuit Court of Appeals. It coordinates positions on issues of broad legal or policy significance to promote consistency and high-quality advice and representation, working with lawyers throughout the Department, at senior levels of client agencies, and in the Governor's Office of Legal Affairs. It promotes excellence in all aspects of the Department's appellate practice, including by leading the development and use of best practices and supporting the development, maintenance, and improvement of appellate practice skills throughout the Department. These activities are integral to the Department's mission.

## **B. SUMMARY OF REQUEST (continued)**

11. Describe what has changed that makes this request necessary. Explain how the change justifies the current request. Be specific and provide examples.

The Department of Justice first created a Solicitor General position in 2002. Until 2014, however, the program was very small. The SG and one or two other lawyers were involved in the internal approval process for certain matters, reviewed and revised some briefs, and undertook other activities as resources allowed.

In 2013, the Attorney General decided to expand the size and role of the Solicitor General's Office, giving it much broader oversight and operational roles. After a national search, a new Solicitor General was appointed at the beginning of 2014 in an Exempt entitlement position. The OSG now includes the Solicitor General; a Supervising Deputy Attorney General (SDAG); three Deputy Attorneys General permanently assigned to the Office; three Deputies on two-year assignments, one from each of the Department's major litigating Divisions (Criminal, Civil, and Public Rights); a part-time Deputy who is a retired annuitant; two Deputy Attorneys General who have joined the Department through the Attorney General's Honors Program and are assigned to OSG for two-year terms, after which they will join a Section in one of the litigating Divisions; and two Legal Analysts. With this new staffing, OSG assumed the much wider responsibilities outlined above.

Two-plus years of experience have made clear the need for a CEA-level PDSG position. While a single SDAG position within OSG was a practical starting point for the 2014 expansion, both the program and the nature of the principal deputy position have evolved substantially. In particular, it is now clear how important that role is in influencing policy for the entire Department. As described above, OSG becomes involved in (i) complex and sensitive appeals (or cases expected to generate appeals) that may arise from any of the Department's functionally-specialized litigating Sections and Divisions and (ii) general issues of appellate practice (such as policies, standards, and training) that again cut broadly across internal organizational lines. The second-ranking OSG position must be able to operate and lead effectively at this Department-wide level, with personal involvement in particular cases or issues at critical junctures. The expertise and leadership required are beyond the scope of the SDAG classification.

The cases and issues that receive personal focus from OSG leadership often are ones pending before the state or federal Supreme Court, involving issues of significance for more than one agency or area of the law, and/or affecting major state programs. A few recent examples include cases involving the constitutionality of several state education statutes, federal preemption issues in the context of state environmental laws and the State's high-speed rail project, and how to determine when commercial enterprises related to Indian tribal governments are immune from state enforcement jurisdiction. In these matters the incumbent SDAG has not simply been engaging in day-to-day litigation or performing normal supervision of other lawyers typical of an SDAG position. Rather, the SDAG has often become engaged when a matter involves more than applying existing precedent to particular facts, but rather seeks or could lead to, for example, a change or evolution in decisional law based on broad legal principles or public policy. Such matters may require, among other things, special consultation across functional lines within the Department, or with outside stakeholders such as state agencies with potentially disparate perspectives and/or the Governor's Office of Legal Affairs. The OSG SDAG has been required to lead cross-functional processes for reaching decisions on critical legal, policy, or litigation decisions, including making or proposing final decisions if consensus cannot be reached. In these and other functions the incumbent has routinely been required to interact as a professional and leadership peer with Exempt appointees or CEAs within the Department, including the Executive Management Team, and with individuals in positions at an equivalent level outside the Department.

Having a deputy who can perform these functions has proven critical to OSG's ability to perform its expanded functions. At the same time, these CEA-level leadership duties fall well outside the normal, and also critical, SDAG roles of direct supervision, training, and mentoring of lawyers within OSG itself. Having only one SDAG position seeking to fulfill both sets of functions has compromised OSG's ability to move forward on important fronts, such as the implementation of Department-wide guidelines, standards, and training.

### C. ROLE IN POLICY INFLUENCE

12. Provide 3-5 specific examples of policy areas over which the CEA position will be the principle policy maker. Each example should cite a policy that would have an identifiable impact. Include a description of the statewide impact of the assigned program.

The PDSG will have significant policy influence and involvement at the Department's executive and senior management level. The PDSG will make, lead, or recommend decisions on strategic, legal, and policy issues that arise in significant appellate litigation, including litigation before the state and federal Supreme Courts. An example would be coordinating discussions among stakeholders (inside the Department and in state agencies and the Governor's Office) and helping formulate and refine decisions, including resolving conflicts, concerning positions to be adopted in litigation before the state Supreme Court. These positions often involve statutory or other legal issues that affect not only the case before the court but also the future application of a statute or legal principle to thousands of other projects statewide. Agreed positions can help define consistent approaches to be advanced by Department lawyers when the same issues arise in different litigation contexts and can have important effects in shaping the development of the law.

The PDSG will often be the senior Department official most directly familiar with the work being done on particular significant cases, while at the same time having a Department-wide perspective on both the issues being litigated and the appropriate allocation of staff resources, and an executive-level perspective on legal policy issues and how they relate to the program and priorities of the Attorney General. The PDSG will be centrally involved in decisions involving, for example, the final editing of significant appellate briefs and the assignment of oral argument responsibilities to attorneys from the Solicitor General's Office or elsewhere in the Department. These decisions help ensure that the Department provides high-quality, legally sound, and carefully considered representation in its most broadly important, often precedent-setting litigation on behalf of the People, the State, the Attorney General in her independent capacity, and other public agencies and officials.

The PDSG will also lead the adoption and implementation of Department-wide policies relating to appellate litigation in general. These include, for example, processes for the identification, coordination, and review of non-routine appellate matters, and for the consideration and approval or disapproval of optional litigation such as petitions for discretionary review in the state or federal Supreme Courts, intervention in third-party litigation, or the filing of amicus curiae briefs. Through implementation of these policies the PDSG will be personally and substantially involved in important decisions relating to these matters, including making decisions in some matters and in others making recommendations for actions by Division or Section Chiefs, the Solicitor General, the Chief Deputy, or the Attorney General. Because of the nature of the non-routine matters in which the Solicitor General's Office typically becomes involved, these decisions will often have significant effects on important litigation with statewide (or even nationwide) implications. In one recent case, for example, the current SDAG was heavily involved in the approval process for, and was the Acting Solicitor General on, a petition to the United States Supreme Court seeking review of a Ninth Circuit decision in a case involving important issues arising out of a tribal-state gaming Compact. That case was of significant financial importance to the State and involved issues of state sovereign immunity that are both broadly important and of considerable sensitivity as a policy matter.

**C. ROLE IN POLICY INFLUENCE (continued)**

**13. What is the CEA position's scope and nature of decision-making authority?**

The PDSG will have decision-making authority with respect to professional staff in the OSG and their areas of assignment. The PDSG will often exercise final delegated authority over the content of briefs or other materials drafted or reviewed by OSG in significant cases or as to organizational actions, policies, or procedures. The PDSG will make decisions or provide perspectives and counsel to the Solicitor General and other members of the Executive Management Team on Department-wide policies or on legal issues that arise in especially significant cases or that have implications for more than one Section, Division, client agency, or set of agencies or programs. These include internal policies, positions adopted in litigation, and decisions on whether to authorize discretionary litigation actions such as interventions, petitions for discretionary review, or amicus briefs. The PDSG will frequently coordinate consultation processes, and lead or actively participate in consideration and decisions with senior lawyers and policymakers, including other CEAs and Exempt appointees, both within the Department and in other agencies or offices. For example, the PDSG will often be called upon to interpret how the Department's general policies should be applied or adapted in unusual circumstances, working with Chief Assistants or other Department leaders in deciding how best to proceed. The PDSG will also often serve as a liaison between the Executive Management team and the leadership of particular litigating Sections in high-profile cases, ensuring that the Section understands and implements executive direction and that the Management team is kept apprised of significant developments.

**14. Will the CEA position be developing and implementing new policy, or interpreting and implementing existing policy? How?**

The PDSG will be centrally involved in both the development and the implementation of new Department-wide policies relating to appellate litigation, including the evolution and institutionalization of the Solicitor General's Office as reorganized and substantially expanded by the Attorney General beginning in 2014. The PDSG will also be centrally involved in the development and interpretation of policy, and the implementation of existing policies, in the context of developing and articulating Department, client agency, or consensus positions in especially complex, sensitive, and broadly significant litigation, as discussed in response to other questions.