

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

2020-01-27

2. Department

Justice

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

Directorate, Office of the Solicitor General

4. CEA Position Title

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 is appointed by the Attorney General and serves as the chief appellate attorney for the Department of Justice (Department). Under the general direction of the Attorney General, the Chief Deputy to the Attorney General, and the Chief of the Division of Legal Affairs, leads, directs, and selectively reviews the work of other attorneys and staff in the Office of the Solicitor General (OSG), the Opinion Unit, and of others in the Department working on appellate or related matters.

6. Reports to: (Class Title/Level)

Attorney General

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 OSG oversees all civil and criminal appeals handled by the Department. It directly handles or actively participates in the most sensitive and complex appeals in the US Supreme Court, the California Supreme Court, the Ninth Circuit Court of Appeals, or other appellate courts.

The Solicitor General participates personally and substantially in the briefing of especially complex or sensitive appellate matters; provides personal leadership, guidance, and review of varying degrees for other appellate litigation handled by attorneys in the OSG or elsewhere in the Department; assists other attorneys prepare for oral argument in significant matters; consults with other Department leaders; and exercises discretion concerning when and how to determine the staffing, direct the briefing process, and assign the oral argument for any matter in any appellate court.

The Solicitor General leads and participates in the OSG's involvement in discretionary appellate litigation decisions, including whether to seek review by the US or California Supreme Court, whether to file or join amicus curiae briefs, and what legal arguments to advance in matters handled by the Department; participates personally in other work of OSG, including advising on, or coordinating the development of, Department positions on broadly significant or frequently recurring issues; coordinates the handling of especially complex or sensitive legal matters with other Department leaders, client agencies, and the Governor's Office of Legal Affairs.

The Solicitor General serves as part of the Department's Executive Management Team; works with other Department leaders, including the Chief Assistants of the Legal Divisions, to foster communication and good relationships, maintain and enhance quality in the litigation of appellate matters throughout the Department, discuss staffing and management for particular appellate matters, and address other organizational matters affecting the work of the OSG or the Opinion Unit.

The Solicitor General oversees the development of appropriate templates, styles, forms, training materials, and other resources for appellate litigation for use by the OSG and throughout the Department; leads the establishment and operation of department-wide systems for overseeing appellate matters; ensures that the OSG functions as an effective resource for attorneys throughout the Department on matters of appellate practice and procedure, including through participation in moot courts; attends meetings, participates in presentations, develops relationships, and engages in other appropriate activities involving appellate courts, the appellate bar, or outside groups such as the National Association of Attorneys General.

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 US.

The OSG oversees all civil and criminal appeals handled by the Department. 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 attorneys 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 first created the Solicitor General position in 2002. At that point in time, the Attorney General looked outside of State Service for the most qualified candidate to establish and run the OSG. The program remained very small until 2014. The Solicitor General and one or two other attorneys were involved in the internal approval process for certain matters, reviewed and revised some briefs, and undertook other activities as resources allowed.

Currently, the OSG has approximately 24 staff, the majority of which are attorneys. The current Solicitor General functions are being completed by an Exempt appointee. The Department is now requesting to establish a CEA in place of the Exempt. It is critical the Attorney General is allowed to find and appoint the most qualified candidate to run the OSG. Once the proposed CEA is established, the Exempt entitlement will be used for another function within the Department.

The OSG has authority and responsibility for ensuring the excellence of the Attorney General's appellate practice. The OSG participates in discretionary appellate litigation decisions, such as whether to seek review by the US or California Supreme Court; prepares or oversees the preparation of petitions, briefs, and other papers filed in the supreme courts and other appellate courts. The OSG also functions as a consultant fostering consistency and excellence for all legal issues and appellate practice throughout the Department. This change will allow the Attorney General to maintain flexibility as an "at will" appointment. In addition, the CEA classification is anticipated to produce a larger and more experienced candidate pool compared to other classification levels. No other changes in organizational structure, reporting relationships, or duties and responsibilities will take place as a result of this request. The CEA will report to the Attorney General and will assume the duties and responsibilities of the current Exempt entitlement.

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 Solicitor General has significant policy influence and involvement with the Attorney General, Chief Deputy to the Attorney General, and the Chief of the Division of Legal Affairs. The Solicitor General will make policy decisions on strategic, legal, and policy issues in the area of appellate litigation. This includes the most complex 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 formulate and refine decisions, including resolving conflicts, concerning positions to be adopted in litigation before the 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 help define consistent approaches to be advanced by Department attorneys when the same issues arise in different litigation contexts and can have important effects in shaping the development of the law.

The Solicitor General will be involved in decisions involving the final editing of significant appellate briefs and the assignment of oral argument responsibilities to attorneys from the OSG or elsewhere in the Department. These decisions help ensure 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, and other public agencies and officials.

The Solicitor General will also set 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 and processes, the Solicitor General will be personally and substantially involved in decisions relating to these matters for actions by Division or Section Chiefs, the Principal Solicitor General, the Chief Deputy to the Attorney General, or the Attorney General. Due to the nature of the non-routine matters in which the OSG typically becomes involved, these decisions will often have significant effects on important litigation with statewide (or even nationwide) implications.

The cases and issues that receive personal focus from the Solicitor General 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 federal preemption issues in the context of state environmental laws, immigration laws, and how to determine when commercial enterprises related to Indian tribal governments are immune from state enforcement jurisdiction. The Solicitor General has become engaged when a matter involves more than applying existing precedent to particular facts but rather seeks or could lead to 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 Solicitor General 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.

C. ROLE IN POLICY INFLUENCE (continued)

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

The Solicitor General will have decision-making authority for the content of briefs or other materials drafted or reviewed by the OSG in significant cases or as to organizational actions, policies, or procedures. The Solicitor General will make decisions or provide perspectives and counsel to the Attorney 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. For example, the Solicitor General will be called upon to interpret how the Department's general policies should be applied or adapted in unusual circumstances. The Solicitor General will work with Executive Management and the leadership of particular litigating sections in high-profile cases, ensuring that the section understands and implements executive direction.

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

The Solicitor General will develop and implement new department-wide policies relating to appellate litigation, including the evolution and institutionalization of the OSG. The Solicitor General 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.