



**Contra
Costa
County**

To: Board of Supervisors
From: David Twa, County Administrator
Date: June 23, 2017

Subject: RECRUITMENT FOR DISTRICT ATTORNEY

RECOMMENDATION(S):

CONSIDER options for a process to fill the vacant office of District Attorney and PROVIDE direction to staff.

FISCAL IMPACT:

No fiscal impact. This is an informational report.

BACKGROUND:

With the resignation of Mark Peterson on June 14, there is a vacancy in the Office of the District Attorney. The office of district attorney is an elective county office (Cal. Const., art XI § 1(b); Gov. Code, § 24009(a); County Ord. Code, § 530-2.210). Elected county officials are regularly chosen by the people every four years, at the same time as governors, unless otherwise provided in the Government Code (Elec. Code, § 1300; Gov. Code, § 24200). When a vacancy occurs in an elective county office, the county board of supervisors must appoint a successor to fill that vacancy (Gov. Code, § 25304; 99 Ops. Cal.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **06/23/2017** ☐ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: June 23, 2017

Contact: David Twa
(925) 335-1080

, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

cc:

Atty. Gen. 94, 96-98 (2016)). This appointment does not change the term of office (Gov. Code, § 25304; 99 Ops. Cal. Atty. Gen. 94, 96-98 (2016)). The person appointed to fill the vacancy will hold the office for the unexpired term; i.e., until noon on the first Monday after January 1st succeeding the next general election (Gov. Code, § 25304). In this case, that date is January 7, 2019.

BACKGROUND: (CONT'D)

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The District Attorney, in addition to being the Public Prosecutor, also conducts Victim/Witness Assistance, Rape Crisis Services, Battered Women Alternatives, and Adult Pretrial Diversion Programs, and anti-truancy, cease fire and safe streets initiatives. The District Attorney manages a department consisting of approximately 205 employees of whom 103 are attorneys. The Department's operating budget for Fiscal Year 2017/18 is \$19.5 million. In addition to offices in Martinez, the County seat, branches are located in the cities of Concord and Richmond. The District Attorney attends the courts and conducts prosecutions for public offenses. Included in public offenses is the prosecution of all felonies, misdemeanors, juvenile criminal offenses and certain civil offenses including consumer fraud and violations of the Political Reform Act and the investigation of such offenses in order that they may be presented to the court in the interest of public protection. The District Attorney's Office also cooperates with State and other local agencies in the detection, suppression, and prevention of crime, and in the enforcement of regulatory laws as well as handling fugitive warrants, extradition, and writs.

Effective July 1, 2017, the salary of the District Attorney is scheduled to increase to \$21,515 monthly (\$258,181 annually). In addition to a competitive salary, health and dental benefits, and a defined pension benefit, the appointed District Attorney is eligible for benefits which include: \$600 monthly auto allowance with use of personal vehicle; \$12,000 annual County contribution to deferred compensation plan; based on County hire date, eligibility for \$85 plus an additional \$150 per month County contribution upon qualifying employee contributions to deferred compensation plan; \$60,000 executive group term life insurance; \$700 annual executive professional development reimbursement; long-term disability insurance; reimbursement of State Bar membership dues; and participation in Social Security.

To qualify for appointment to the office of district attorney, the appointee must be at least 18 years of age, a citizen of California, a registered voter of this County, and admitted to practice in the California Supreme Court (Gov. Code, §§ 1020, 24001, and 24002). These requirements may not be waived (80 Ops. Cal. Atty. Gen. 332 (1997)). The legislature has not specified a deadline for making this appointment. According to the California Attorney General, the appointment should be made within a "reasonable time" (99 Ops. Cal. Atty. Gen., *supra*, at 98). Until an appointment is made, the duties of the office may temporarily be discharged by a chief deputy, assistant or deputy next in authority (Gov. Code, §§ 26542 and 24105). The class specification for the position of Chief Assistant District Attorney - Exempt states that the Chief Assistant District Attorney "acts as the District Attorney in his absence." The current Chief Assistant District Attorney, Doug MacMaster, has assumed this temporary role until the Board fills the vacancy.

The law does not specify a process for appointing someone to the office of district attorney. To fill past mid-term vacancies in elective offices, the Board has used different processes that suited the specific circumstances that created the vacancy. For example, in

December 2012, when Clerk-Recorder Steve Weir announced in early December 2012 that he would retire in late March 2013, the Board decided to recruit only from County residents, review all applications in public, publicly identify the applicants that the Board wished to interview, and thereafter conduct public interviews. The application period was three weeks, with interviews scheduled the following month and the appointment made the day following Weir's retirement, thereby averting a vacancy altogether.

In the summer of 1984, when District Attorney William O'Malley was elected to the Superior Court and slated to take office the following January, the six-month lead time permitted the search to be extended to the major metropolitan areas throughout the state. The application period was four weeks. Applicants were asked to provide a written description of their experience in the practice of criminal law and their organizational and management experience. They were also asked to discuss what major issues or problems they perceived in the administration of criminal law and justice in the State of California and explain why they wanted to serve as District Attorney. The applications were screened and ranked by an independent screening committee consisting of a retired judge, an active district attorney, a retired district attorney, a present or former president of the state bar, and a county administrator or city manager. The top eight candidates were interviewed by the Board of Supervisors in public session and appointment was, again, made prior to the vacancy date.

It has been the practice in this County to obtain criminal history information, under the authority of Penal Code section 11105 (b) (11), before filling a vacancy in an elected office. This allows the County to verify that the person selected is not disqualified from holding office by the Constitution or state statute¹. The Board must take formal action to authorize the County Administrator to obtain a criminal background check. Before appointing Joseph Canciamilla to the office of county clerk-recorder in 2013, the Board of Supervisors directed the County Administrator to request a check of his criminal background. Mr. Canciamilla was also asked to provide an economic disclosure statement (Form 700). In 1984, the Board of Supervisors directed the County Administrator to obtain the criminal history of the eight finalists for the position of district attorney. Presumably the intent was to avoid delay after a candidate was chosen to fill the office.

Considering that the office of district attorney is currently vacant and the reasons therefor, and also considering that the officeholder will be re-determined by election in June or November 2018, the Board members should decide what kind of recruitment process will be appropriate to select the appointee for the approximate 16 intervening months. Factors to consider include:

- **Recruitment population:** Contra Costa County, greater Bay Area, or major California metropolitan areas; note that Government Code section 24001 doesn't require the person selected to be a registered voter in this County until the time of appointment.
- **Recruitment schedule:** Application period, evaluation period, interviews, background checks, appointment; note that there is no specific deadline for the

appointment, only the appointment should be made within a “reasonable time”

- **Application requirements:** Minimum statutory requirements or additional requirements, application and resumes only or supplemental questionnaire
- **Evaluation process:** Administrative screening for eligibility, one or more screenings to determine who is best qualified, and by whom screenings will be performed
- **Interviews:** Size of finalist pool, e.g. fewer than five?, interview format, to be conducted at a regularly scheduled Board meeting or a special meeting?
- **Background/criminal history checks:** for all candidates to be screened by the Board, for only the finalists, or for only the selected candidate?

Following is a relatively condensed recruitment process for the Board's consideration:

1. The Chairman of the Board of Supervisors will issue a press release covering the following points:

- a. The Board will make an appointment to the position of District Attorney.
- b. For an individual to qualify as a candidate, he or she must be:

- A resident of Contra Costa County at the time of appointment.
- A registered voter in Contra Costa County at the time of the appointment .
- Admitted to the practice of law before the California Supreme Court.

c. It is desirable that candidates be experienced in the practice of criminal law, have demonstrated organization and management ability, and possess good interpersonal communication skills.

d. Qualified, interested persons are invited to submit an application and supplemental questionnaire to the Human Resources Department and may file for the position of District Attorney by a specified deadline.

2. Staff will distribute the press release to all newspapers which publish or distribute in Contra Costa County, to the Contra Costa County Bar Association, and other news organizations should the Board decide to recruit more broadly.

3. The application will consist of the County's regular employment application form and a supplemental questionnaire which will ask the following:

- a. Are you a resident of, and registered voter in, Contra Costa County?
- b. Are you admitted to the practice of law before the Supreme Court of the State of California?
- c. Describe your experience in the practice of criminal law.
- d. Describe your organizational and management experience.
- e. What do you believe are the major issues or problems in the administration of criminal law and justice in the State of California?
- f. Why do you want to serve as District Attorney for Contra Costa County?
- g. As an attorney, have you ever been sued by a client and/or disciplined or cited for a

breach of ethics or unprofessional conduct, or been the subject of a complaint to any court, administrative agency, bar association, disciplinary committee, or other professional group? If yes, please provide the details.

- h. Please describe a difficult situation you encountered in your role as an attorney. Include details about how you resolved the situation and any lessons learned.
- i. Please describe the most significant and complex legal matter you have handled, your role in the process, and the outcome.
- j. What is the size of the client base served by your current employer?
- k. To whom do you currently report, by title?
 - l. What number of staff are employed by current employer?
- m. What number of staff do you currently oversee (direct and indirect)?
- n. What is the largest number of staff you have overseen, and where?
- o. What is your current employer's operating budget, in dollars?
- p. For what portion of budget are you responsible, in dollars?
- q. What is the largest budget you have ever been responsible for, and where?

The supplemental application will also indicate that finalists will be interviewed by the Board of Supervisors in public session and that the final candidates' State Summary Criminal History Information may be available for review by the Board.

4. The County Administrator will prepare a summary of each eligible candidate's qualifications (see attached fictional sample).

5. After the final filing date, the Board of Supervisors will convene a public meeting the review the applications and select candidates for an interview. The Board should authorize reimbursement of candidates for any necessary and reasonable travel and lodging expenses for interviews. The Board should also authorize the County Administrator to conduct criminal history checks of candidates to be interviewed, and ask candidates to provide an economic disclosure statement (FPPC Form 700).

6. The County Administrator will conduct a criminal history and background check of the candidates to be interviewed, and report to the Board at the time they interview the candidates. If the Board wishes to narrow the group to the top candidates and re-interview them, the Board can do this at the next regular meeting or convene a special meeting to do so.

7. The Board will announce its tentative decision.

The following time frame is suggested:

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| Issue press release and open four-week application period (draft attached hereto) | June 23, 2017 |
| Final filing deadline | By 5:00 p.m. on July 21, 2017 |

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| Staff screening of applications for eligibility | July 24-31, 2017 |
| Board review of applications and selection of candidates to interview | August 1, 2017 |
| Background checks on final candidates | August 2 - 10, 2017 |
| Board interview of candidates | August 15, 2017 |
| Additional interviews, if desired, to be conducted, and announcement of selection | On or before September 12, 2017 |
| Appointment and swearing in of District Attorney | September 19, 2017 |

It is my recommendation that the Board approve this process and authorize my office to take the steps necessary to carry it out in a timely manner including preparation of the press release, application brochure and related documents.

The conviction of certain crimes will disqualify a person from holding public office. Gov. Code, § 1021. See, e.g., Penal Code §§ 67, 68, 74, 85, 86, 88, 92-100 and 165; Gov. Code, §§1097, 9050-9056 and 9412; and Elec. Code, § 18501. Government Code section 3000 provides that an officer forfeits his office upon conviction of designated crimes as specified in the Constitution and laws of the State. Elections Code section 20 prohibits anyone who has been convicted of a felony involving accepting or giving, or offering to give, any bribe, the embezzlement of public money, extortion or theft of public money, perjury or conspiracy to commit any of those crimes from holding state or local elective office. Under Gov. Code § 1770(h), an office becomes vacant when the incumbent is convicted of a felony or other offense involving a violation of official duties, even if the incumbent's term has not expired.

CLERK'S ADDENDUM

Speakers: Mariana Moore, Doug McMaster, Chief Assistant District Attorney; Cheryl Hudduth, Black Women Organized for Political Action; Mariana Moore, Ensuring Opportunity Campaign; R. Mercy Garetz, resident of Hercules. 1. The Chairman of the Board of Supervisors will issue a press release June 23, 2017 2. Staff will distribute the press release to all newspapers which publish or distribute in Contra Costa County, to the Contra Costa County Bar Association 3. The application will consist of the County's regular employment application form and a supplemental questionnaire (with some additional questions suggested today) 4. The County Administrator will prepare a summary of each eligible candidate's qualifications 5. The Board will review applications and select candidates to interview August 1, 2017 6. County Administrator will perform background checks on the final

candidates August 2-10, 2017 7. The Board will host a moderated community forum for public input and questions of candidates on August 15, 2017 at 6:00 p.m. in the Board Chambers, 651 Pine St. Martinez, Rm 106 8. The Board will interview candidates and make an appointment on September 12, 2017.

ATTACHMENTS

Sample Fictional Candidate Summary Sheet