



SPECIAL INVESTIGATION

CALIFORNIA DEPARTMENT OF JUSTICE

Compliance Review Unit
State Personnel Board
July 28, 2015

TABLE OF CONTENTS

Introduction	1
Executive Summary	1
Background	2
Scope and Methodology.....	2
Findings and Recommendations.....	3
Appointments	3
Departmental Response.....	10
SPB Reply	11

INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in four areas: examinations, appointments, equal employment opportunity (EEO), and personal services contracts (PSC's) to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

In response to the SPB Appeals Division (AD) merit issue determination in *David Carrillo, Jill Harvey, Luanne Schuler, and Audrey Uratani v. Department of Justice* (Case No. 14-1031N, 14-1032N, 14-0133N, and 14-0134N) (Carrillo), the CRU conducted a special investigation into California Department of Justice (DOJ), personnel practices related to appointments made from July 1, 2011, to December 5, 2014. Specifically, the special investigation focused on appointments subsequent to the Governor's Reorganization Plan # 2, which involved merging the California Gambling Commission (CGC) into the DOJ's Bureau of Gambling Control (BGC). Based upon the review of the information contained in DOJ appointment files and other relevant materials, the CRU found records retention deficiencies; but no evidence of illegal hiring practices. The following table summarizes the compliance review findings.

Area	Finding	Severity
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time	Serious
Appointments	Probationary Evaluations Were Not Provided for All Appointments	Serious

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

BACKGROUND

The DOJ provides leadership, information and education to ensure justice, safety, and liberty are available for all Californians. In doing so, the DOJ provides legal counsel to state officers, aids agencies in the administration of justice, and represents the people of California in civil and criminal matters. The DOJ also establishes and operates projects and programs that are dedicated to upholding California’s integrity and safeguarding California's human, natural, and financial resources for this and future generations.

Furthermore, the DOJ employs approximately 4,398 employees in the following 7 statewide divisions: Directorate (67), Administrative Support (824), Law Enforcement (926), California Justice Information Services (1,004), Civil Law (602), Criminal Law (617), and Public Rights (358).

SCOPE AND METHODOLOGY

The AD merit issue determination in *Carillo* found that the issues raised by the complainants warranted a focused review of the DOJ’s BGC appointments. Specifically, the AD found that the complainants alleged that the DOJ had conducted improper hiring practices related to illegal hires, promotions, nepotism, cronyism, favoritism, and that the DOJ had violated California Constitution, Article VII, section 1(b); Government Code section 19050; California Code of Regulations, title 2, sections 50, 250 subdivision (a), and 599.854.4 subdivision (a)(6). The scope of the compliance review included appointments from July 1, 2011, through December 5, 2014, subsequent to the Governor’s Reorganization Plan #2. The primary objective of the review was to

determine if there were any violations of civil service rules pertaining to DOJ's practices relating to appointments and to recommend corrective action where deficiencies were identified

The DOJ indicated that it did not maintain records beyond the minimum time period required by California Code of Regulations, title 2, sections 174 and 548.40, which provide as follows:

All applications for a state civil service position must be maintained and preserved on file for at least two years. (Cal. Code Reg., tit. 2, §174.)

The appointing power must maintain a CEA examination file for a period of three years that includes, but is not limited to, the specific job-related evaluation criteria and selection procedures that were used in the examination; documentation on how those criteria were applied to the candidates and the competitiveness of the candidates qualifications relative to each other; and the appointing power's rationale for selecting the successful candidate. (Cal. Code Regs., tit. 2, § 548.40 [Rule 548.40].)

The CRU examined the documentation that DOJ provided, which included notice of personnel action forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The DOJ declined an exit conference. The DOJ was given until July 24, 2015, to submit a written response to the CRU's draft report. On July 24, 2015, the CRU received and carefully reviewed the response, which is attached to this final compliance report.

FINDINGS AND RECOMMENDATIONS

Appointments

During the period of review, DOJ made 136 appointments. The CRU reviewed 84 of these appointments for which DOJ retained records:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Assistant Bureau Chief, Div. of Law Enforcement, Department of Justice	Certification List	Permanent	Full Time	1
Assistant Information Systems Analyst	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	9
Auditor I	Certification List	Permanent	Full Time	3
Criminal Intelligence Specialist I	Certification List	Permanent	Full Time	1
Criminal Intelligence Specialist II	Certification List	Permanent	Full Time	1
Department of Justice Administrator I	Certification List	Permanent	Full Time	5
Department of Justice Administrator II	Certification List	Permanent	Full Time	3
Investigative Auditor III	Certification List	Permanent	Full Time	1
Investigative Auditor IV (Supervisor)	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Special Agent-in-Charge, Department of Justice	Certification List	Permanent	Full Time	1
Staff Management Auditor	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	7
Staff Services Manager I	Certification List	Permanent	Full Time	1
Supervising Management Auditor	Certification List	Permanent	Full Time	1
Auditor I	Transfer	Permanent	Full Time	1
Special Agent, Department of Justice	Transfer	Permanent	Full Time	1
Assistant Information Systems Analyst	Transfer	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	3
Department of Justice Administrator I	Transfer	Permanent	Full Time	1
Investigative Auditor IV (Specialist)	Transfer	Permanent	Full Time	1
Office Assistant (Typing)	Transfer	Permanent	Full Time	1
Staff Management Auditor	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	11
Special Agent Supervisor	Demotion	Permanent	Full Time	1
Criminal Intelligence Specialist I	Reinstatement	Permanent	Full Time	1
Office Technician (Typing)	Reinstatement	Permanent	Full Time	1
Special Agent-In-Charge, Department of Justice	Reinstatement	Permanent	Full Time	1
Staff Services Analyst (General)	Reinstatement	Permanent	Full Time	1
Associate Governmental Program Analyst	Reorganization	Permanent	Full Time	2
Associate Information Systems Analyst (Specialist)	Reorganization	Permanent	Full Time	1
Associate Management Auditor	Reorganization	Permanent	Full Time	4
Associate Management Auditor	Reorganization	Permanent	Full Time	3
Management Services Technician	Reorganization	Permanent	Full Time	1
Special Agent, Department of Justice	Reorganization	Permanent	Full Time	1
Staff Services Analyst (General)	Reorganization	Permanent	Full Time	3
Staff Services Management Auditor	Reorganization	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Staff Services Manager I	Reorganization	Permanent	Full Time	1
Systems Software Specialist I (Technical)	Reorganization	Permanent	Full Time	1
Systems Software Specialist II (Technical)	Reorganization	Permanent	Full Time	2

Departments must have recruitment strategies designed to be “as broad and inclusive as necessary to ensure the identification of an appropriate candidate group.” (Merit Selection Manual [MSM], § 1100, p. 1100.2 (Oct. 2003); Cal. Code Reg., tit. 2, § 50.) Generally, the typical steps a department takes in making a civil service appointment include: determining whether there is an eligible list for the classification in which the vacancy exists; determining whether an eligible list is necessary to fill the vacancy; advertise the vacancy, which may include certifying the eligible list; receive applications, and if no applications are received, re-advertise the position with increased recruitment efforts; screen applications to determine which candidates meet minimum qualification requirements and are eligible for appointment; and conduct hiring interviews. (MSM, § 1200, pp. 1200.7-1200.8; Cal. Code Reg., tit. 2, § 50.)

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Except as provided by law, appointments to vacant positions shall be made from employment lists. (*Ibid.*) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual’s job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

Through the use of a sound, job-related selection process, a department can identify and select individuals based upon their job related qualifications to perform successfully in a given job. The increased effectiveness and productivity of a qualified workforce, selected on the basis of fair, objective, job-related criteria, make it advantageous to a department to conduct selection processes that are merit-based and job-related. (MSM, § 1200, pp. 1200.2)

While the DOJ did not retain some documentation prudent to the merit selection process, the documentation provided indicates that the merit principle was followed in the majority of the 84 appointments reviewed by the CRU. The DOJ's selection process included advertising for open positions, assessing candidate qualifications using job related screening and rating criteria, interviewing qualified candidates, selecting a suitable candidate, and completing probationary evaluations during the prescribed probationary period. Of the 84 appointment files reviewed, the CRU discovered incomplete personnel records for 31 appointments that fell within the two-year minimum record keeping requirement.

FINDING NO.1– Appointment Documentation Was Not Kept for the Appropriate Amount Of Time.

Summary: The DOJ failed to retain records documenting the various steps in the hiring process. (MSM, § 1200, pp. 1200.7-1200.8; Cal. Code Reg., tit. 2, § 50.) Specifically, of the 84 appointments reviewed, the DOJ did not retain applications for 8 appointments and NOPAs for 30 appointments.

Of the 8 appointments, 3 were transfers missing all applications including appointee's application, 3 were transfers missing all applications except for the appointee's application, and 2 were permissive reinstatements missing all applications including the appointee's application.

Criteria: In relevant part, civil service laws require that the employment procedures of each state agency shall conform to the federal and state laws governing employment practices. (Gov. Code, § 18720.) State agencies are required to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received. (Gov. Code, §12946.) State agencies are also required to retain personnel files of applicants or terminated employees for a minimum period of two years after the date the employment action is taken. (Ibid.)

Severity: Serious. Without documentation, CRU could not verify if all appointments were properly conducted.

Cause: The DOJ was unable to locate a portion of the required supporting appointment documentation, likely due to filing errors/backlog caused by a shortage of administrative staff, and/or on a few occasions, possibly not retaining the documentation for the entire retention period.

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the DOJ submit to the CRU a written corrective action plan that the department will implement to ensure conformity with maintaining personnel records of incumbents for a minimum of two year.

FINDING NO. 2 – Probationary Evaluations Were Not Provided for All Appointments

Summary: The DOJ did not prepare, complete, and/or retain required probationary appraisals of performance for 11 of the 84 appointments reviewed by the CRU.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Associate Governmental Program Analyst	Certification List	2	4
Criminal Intelligence Specialist I	Certification List	1	2
Criminal Intelligence Specialist II	Certification List	1	1
Office Technician (Typing)	Certification List	1	2
Special Agent In Charge, DOJ	Certification List	1	1
Staff Management Auditor	Certification List	1	1
Staff Services Analyst	Certification List	1	1
Assistant Information Systems Analyst	Transfer	1	1
Staff Services Analyst	Transfer	2	5
Total		11	18

Criteria: A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: Some of the missing probation reports were unable to be located due to filing errors/backlog caused by a shortage in administrative staff, whereas a few of the reports may not have been completed at all.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DOJ submit to the CRU a written corrective action plan that addresses how the

DOJ will ensure full compliance from supervisory/managerial staff to meet with the probationary requirements of Government Code section 19172.

DEPARTMENTAL RESPONSE

The DOJ has reviewed the compliance review report and does not dispute the findings. The DOJ takes the findings very seriously and will be implementing necessary changes as a result of the final findings.

The DOJ changes are as follows:

Finding #1

A) Missing 8 Job Applications: The DOJ recently reminded their managers and supervisors that all applications should be retained for a minimum of 2 years. Furthermore, the DOJ requires all new managers and supervisors attend a mandatory 6 day Basic Supervision training in which one of the days focuses solely on employee hiring and discusses the department's retention policy. The importance of this policy will be emphasized heavily during the training.

B) Missing 30 NOPAs: As previously mentioned, this was an issue caused by filing errors, likely due to budget cuts leading to the loss of staff in the Office of Human Resources (OHR). The OHR has recently been able to fill a few of those vacancies with staff whose essential duties are filing and maintaining the DOJ's Official Personnel Files room.

Finding #2

Missing 18 Total Probationary Reports: The DOJ believes that the majority of these probationary reports were complete, however may have been filed incorrectly. As mentioned above, with the hiring of recent administrative staff, we anticipate timely and accurate filing in the future. Furthermore, the importance of completing all probationary reports is a topic discussed during the mandatory 6 day Basic Supervision training, and will continue to be heavily emphasized during the training.

SPB REPLY

Based upon the DOJ's written response, the DOJ will comply with the CRU recommendations and findings and provide the CRU a corrective action plan.

It is further recommended that the DOJ comply with the afore-stated recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.