



**CALIFORNIA
HISPANIC**
CHAMBERS OF COMMERCE

TO: CHCC Governance Committee

FROM: Julian Canete, President & CEO

SUBJECT: Legal Counsel

PURPOSE

CHCC Governance Committee instructed CHCC staff to research how other chambers and organizations select, and the role and utilization of legal counsel within their organization. Staff was also instructed to present to the committee recommendations for a policy and procedure in reference to the selection of legal counsel, the duties and responsibilities of such individual.

BACKGROUND & ANALYSIS

Currently there exists no policy or procedure that addresses the process for selection of CHCC Legal Counsel, or the individual's duties and responsibilities. CHCC bylaws only have the following reference to legal counsel from Article IV, Section 8 - Duties of the Parliamentarian which states the following;

"The Parliamentarian shall assist the Chair or presiding officer in maintaining order and interpreting the Bylaws, Articles of Incorporation or any other official CHCC written form, regulation, or resolution in accordance with Robert's Rules of Order-Newly Revised by Gen. Henry M. Robert, revised by Sarah Corbin Robert. The Parliamentarian shall have the authority to appoint a sergeant-at-arms and to seek advice from the Legal Counsel, as he/she deems appropriate."

Lacking any reference to legal counsel, staff researched previous records and bylaws of the CHCC and found no reference to the selection of, or the duties and responsibilities of legal counsel. Staff also studied other organization's bylaws to see if there is any reference to legal counsel and their role within the respective organization. Staff reviewed the following organization's bylaws;

- United States Hispanic Chamber of Commerce – No reference
- San Joaquin County Hispanic Chamber of Commerce – No Reference
- Hispanic Chamber of Commerce of Orange County – No Reference
- Sacramento Hispanic Chamber of Commerce
 - "The General Counsel shall be the Chief Legal Officer for the corporation and shall be responsible for providing advice and counsel to the board and the President & CEO in providing advice and counsel for the administration of the affairs of the corporation."
 - The above reference is under "Officers and Duties, in their bylaws."
- Kern County Hispanic Chamber of Commerce – No Reference

- Other organizations. We also found the following General Counsel description for a local chamber of commerce (Dayton Chamber)

General Counsel

Reports to: President & CEO and Chairman

Summary: The General Counsel represents the Chamber as a general legal counsel. Duties and Responsibilities:

- 1. The Legal Counsel advises and gives general legal counsel regarding issues and situations affecting the Chamber's policy.*

Staff found the following information in reference to an attorney's role as advisor, and potential conflict is also a board member: ABA Section of Litigation & Professionalism, Ethics Consideration for Attorneys Serving on Nonprofit Boards, ABA Model Rule 2.1 requires an attorney to "exercise independent professional judgment and render candid advice" when representing a client. When an attorney is both a board member and legal counsel for a nonprofit, the attorney should be careful to consider whether the attorney's ability to give "independent professional advice" on legal topics has been compromised by the attorney's role as a board member. For example, if the attorney, acting as counsel, is asked to give an opinion about the legality of a board decision, the independence of that opinion could be compromised if the attorney was a member of the board when the board decision was made.

Information on the "Role of Legal Counsel for a Chamber Nonprofit was almost non-existent. Staff also checked on the National and State Non-profit resource organizations, which had no information or definition on what the role should be of Legal/General Counsel for a non-profit/chamber. Staff also researched several scholarly articles which discussed the potential conflict or avoidance of conflict when serving as counsel for a nonprofit.

RECOMMENDATIONS:

It is recommended that the Governance Committee approve a policy in regards to the role of CHCC Legal/General Counsel, such policy should include, but not limited to the following:

- Counsel shall report to the President & CEO with direct access to the Chairman and the CHCC/CHCCF Board of Directors.
- Counsel shall provide legal representation to CHCC Management and the CHCC Board of directors.
- Counsel shall provide advice on legal matters and performs legal research for the benefit the CHCC.
- Counsel may offer advice on issues like contracts, property interests, collective bargaining `agreements, government regulations, and patents, that may have a direct impact on the CHCC.
- Counsel may represent the CHCC in court, in the case of a lawsuit or other legal proceedings. They may also be requested to take part in settlement negotiations or depose witnesses if needed.
- Counsel may be asked to attend the CHCC Board meeting on an as-needed basis.
- Counsel shall engage as requested by CHCC President, Chairman or Parliamentarian.
- Legal Counsel shall not be listed as a member of the Board of Directors.