

# OFFICE OF THE COUNTY COUNSEL

## COUNTY OF NEVADA

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## NEVADA COUNTY BOARD OF SUPERVISORS

### Board Agenda Memo

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**MEETING DATE:** June 8, 2021

**TO:** Nevada County Board of Supervisors

**FROM:** Katharine L. Elliott, County Counsel

**SUBJECT:** Board's authority to fill the vacated position of District Attorney and interview process scheduled for June 8, 2021

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### **BACKGROUND:**

District Attorney Cliff Newell is retiring effective July 10, 2021. D.A. Newell served three full four-year terms as District Attorney; he is currently serving his fourth term. When he retires, there will be approximately 18 months remaining of his term. This will leave the position of District Attorney vacant and will require the Board of Supervisors ("Board") to act to fill that vacancy.

### **The Board's Duty to Appoint a New District Attorney**

The District Attorney is an elected office.<sup>1</sup> When a vacancy occurs in an elected office, the Board must appoint a successor to fill that vacancy.<sup>2</sup> The Board may not call for a special election.<sup>3</sup> The Board's appointment does not change the District Attorney's term of office.<sup>4</sup> Whomever the Board appoints to fill the vacancy will be the Appointed District Attorney for the unexpired term, which in this case will be until January 2, 2023. If the Appointed District Attorney wishes to remain in office past that date, they must run for and win, the District Attorney election in 2022.

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<sup>1</sup> Cal. Const., Art XI § 1(b); Cal. Gov. Code, § 24009(a).

<sup>2</sup> Cal. Gov. Code, § 25304.

<sup>3</sup> 57 Ops. Cal. Atty. Gen. 149 (1974); 99 Ops. Cal. Atty. Gen. 94 (2016).

<sup>4</sup> Cal. Gov. Code, § 25304; 99 Ops. Cal. Atty. Gen. 94.

While there is no specific timeframe in which the Board must make its appointment, they must act within a reasonable time.<sup>5</sup> If the Board does not act before July 11, 2021, the current Assistant District Attorney, Chris Walsh, will discharge the duties of the District Attorney until the Board makes its appointment.<sup>6</sup>

**The Board's Interview Process:**

In consultation with the Chief Executive Officer, the Human Resources Department conducted a formal recruitment process of applicants and oversaw the initial phase of the interview process.

On June 8, 2021, the Board will interview three applicants who are seeking to be appointed as the District Attorney. This process will be different from other interview processes involving the Board, wherein employment interviews occur in Closed Session. Under the Brown Act, employment interviews for employees may occur in Closed Session. This exception, however, does not apply to elective positions. Therefore, the interviews for the District Attorney position must be held before the Board in open session.<sup>7</sup>

**Requirements to be Appointed District Attorney:**

To qualify for an appointment, the applicant must meet all requirements as if they had been elected. The applicant must therefore 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, at the time of their appointment.<sup>8</sup>

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<sup>5</sup> 99 Ops. Cal. Atty. Gen. 94.

<sup>6</sup> Cal. Gov. Code § 24105.

<sup>7</sup> See e.g. 61 Ops. Cal. Atty. Gen. 10 (1978).

<sup>8</sup> Cal. Gov. Code §§ 1020, 24001, 24002.