

**DUTY STATEMENT**

DGS OHR 907 (Rev. 09/2018)

☐ Current☒ Proposed

RPA NUMBER <b>28996</b>	DGS OFFICE or CLIENT AGENCY <b>Office of Administrative Law</b>	
UNIT NAME <b>Legal Division</b>	REPORTING LOCATION <b>Sacramento</b>	
SCHEDULE (DAYS / HOURS) <b>M - F / 8:00 am - 5:00 pm</b>	POSITION NUMBER <b>305-010-5795-012</b>	CBID <b>R02</b>
CLASS TITLE <b>Attorney III</b>	WORKING TITLE <b>Attorney III</b>	
PROPOSED INCUMBENT (IF KNOWN)	EFFECTIVE DATE	

**CORE VALUES / MISSION** ☐ Rank and File ☐ Supervisor ☐ Specialist ☐ Office of Administrative Hearings ☒ Client Agency

The Office of Administrative Law:

- Ensures public access to current and proposed state regulations by publishing the official California Code of Regulations (CCR) and the California Regulatory Notice Register (CRNR) and making them both available online without any charge to the user.
- Improves the quality of regulations by reviewing proposed regulations and approving only those that are legally valid, clear, and supported by an adequate record.
- Ensures that the public has a meaningful opportunity to comment and that an agency considers those comments when it develops regulations.
- Protects the public from illegal rules by issuing legal opinions (called “determinations”) concerning alleged “underground regulations.”

Fosters increased awareness of the rulemaking process.

**POSITION CONCEPT**

Under the direction of the Director of the Office of Administrative Law (OAL), the Attorney III will review and analyze state agency rulemaking files for compliance with procedures and standards set forth in the Administrative Procedure Act (Gov. Code, sec. 11340 et seq.).

**SPECIAL REQUIREMENTS** ☒ Conflict of Interest ☐ Medical Evaluation ☐ Background Evaluation ☐ Background Evaluation FTB ☐ Office Technician (Typing)

**Conflict of Interest**

This position is designated under the Conflict of Interest Code. The position is responsible for making or participating in the making of governmental decisions that may potentially have a material effect on personal financial interests. The appointee is required to complete Form 700 within 30 days of appointment. Failure to comply with the Conflict of Interest Code requirements may void the appointment.

**ESSENTIAL FUNCTIONS**

PERCENTAGE	DESCRIPTION
20%	In performing the Essential Functions of OAL, an Attorney III will be expected to perform a more difficult level of assignments, and with more expertise, than that expected of an Attorney. An Attorney III will be expected to work with broad discretion and independence with minimum supervision and be expected to become an expert in the most complex areas of the APA.

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	<p><b>Review of Rulemaking Files:</b></p> <p>It is OAL's statutory responsibility to ensure that proposed regulations are based on statutory authority, necessary to implement that authority, consistent with law, and are clear and unambiguous. In order to perform this legal review of administrative rulemaking actions, submitted by various state agencies to OAL for its review in accordance with the requirements and procedures of the Administrative Procedure Act (APA), an Attorney III will:</p> <p>Review and analyze regulation text proposed by other state agencies for compliance with the Clarity standard of the APA by determining whether the regulation text is written or displayed so that the meaning of the regulation will be easily understood by those persons directly affected by the regulation, does the text use terms generally familiar to those directly affected by the regulation, and upon review of the rulemaking record, determine whether the regulation conflicts with the agency's intended effect of the regulation as described in the rulemaking record.</p>
20%	Using legal research skills, review and analyze proposed regulation text for compliance with the Consistency standard of the APA by determining whether the text is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, regulations, or other provisions of law.
20%	Review the rulemaking record and determine whether it contains all documentation required in accordance with the APA to ensure that the agency complied with the procedural requirements of the APA rulemaking process. This includes reviewing petitions, notices, informative digests, statement of reasons, supporting data, factual information, studies, or reports, fiscal impact statements, written comments, agency's summary and response to comments, transcripts, recordings, or minutes of public hearings, and any other material the agency is required by law to consider or prepare in connection with the adoption, amendment, or repeal of a regulation. Determine whether the proposed regulation meets the Necessity standard by reviewing the rulemaking record and determining whether the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific. The reviewing attorney III will take into account the totality of the rulemaking record and consider such evidence as facts, studies, and expert opinion.
20%	Confer and meet with Attorneys of all levels, deputy attorney generals, executive officers or directors, and other state agency personnel on legal issues and procedures involving the adoption process of regulations concerning that agency's specific rulemaking action. Respond orally or in writing, and provide the service where appropriate, to telephone, email or in-person inquiries from 1) state agencies requesting consultation and technical assistance regarding the regulatory process for adopting regulations pursuant to the APA, and 2) private and public attorneys, and the public in general, concerning the APA rulemaking process, or the status or history of regulations. These tasks involve in-depth knowledge of the APA, searching the office data base for information and researching regulatory law using the California Code of Regulations history notes, the California Regulatory Code Supplement and the California Regulatory Notice Register for answers to such

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PERCENTAGE	DESCRIPTION
	questions.
10%	<p>Review of Requests for Determinations and Issuing Determinations:</p> <p>Pursuant to Government Code section 11340.5, subdivision (b), OAL may issue a determination as to whether a state agency's guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule ("challenged rule"), is a regulation as defined in Government Code section 11342.600, that has been issued, used, or enforced in violation of the Administrative Procedure Act. In order to make this determination, a Attorney III will:</p> <p>Review the petition submitted to OAL for a determination, and analyze the challenged rule to determine whether it is a rule or standard of general application. Using legal research skills, review and analyze statutory, decisional, and regulatory law (both state and federal), as well as prior CAL determinations, to determine if the challenged rule implements, interprets, or makes specific the law enforced or administered by a state agency or governs a state agency's procedures, and whether it falls within an exception to the APA rulemaking process.</p> <p>Draft a determination pursuant to Government Code section 11340.5, subdivision (b), and prepare a written recommendation to the CAL Director. Confer and meet with Attorneys of all levels, deputy attorney generals, executive officers or directors, and other state agency personnel on legal issues involving the issuance, use, or enforcement of rules, policies or procedures that meet the definition of regulation that have not been adopted pursuant to the Administrative Procedure Act.</p>
10%	<p>Determine whether the proposed regulation meets the Authority standard by reviewing the statutory and case law provided by the agency that permits or obligates the agency to adopt, amend or repeal a regulation, and determining whether the proposed regulatory action is within the scope of the agency's Authority.</p> <p>Review the regulatory text and determine whether the agency cites to the appropriate statute, court decision, or other provision of law that the agency's regulation is intended to implement, interpret, or make specific, and therefore, meets the Reference standard. Ensure that the regulation does not serve the same purpose as a state or federal statute or another regulation, thereby meeting the Nonduplication standard, unless the duplication is justified by the agency in the rulemaking record, to prevent the indiscriminate incorporation of statutory language in a regulation.</p> <p>Draft legal opinions, and prepare a written recommendation to the OAL Director for approval or disapproval of proposed regulations.</p>

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☐ Current☒ Proposed**MARGINAL FUNCTIONS**

PERCENTAGE	DESCRIPTION
	<p>Knowledge of:</p> <ul style="list-style-type: none"> <li>• California rulemaking law</li> <li>• Legal research methods</li> <li>• Legal principles and their application</li> <li>• Scope and character of California statutory law and provisions of the California Constitution</li> <li>• Principles of administrative and constitutional law</li> <li>• Trial and hearing procedures and rules of evidence.</li> </ul> <p>Ability to:</p> <ul style="list-style-type: none"> <li>• Develop legal analytical and research skills for reviewing difficult, complex, and sensitive rulemaking actions by state agencies and quickly master large volumes of materials</li> <li>• Develop the expertise in the area of law that is being implemented by the rulemaking agency</li> <li>• Analyze, appraise, and apply legal principles, facts, and precedents to legal problems</li> <li>• Present statements of fact, law, and argument clearly and logically</li> <li>• Prepare correspondence involving the explanation of legal matters</li> <li>• Analyze situations accurately and adopt an effective course of action.</li> </ul> <p><b>SPECIAL PERSONAL CHARACTERISTICS</b></p> <p>The Attorney III will be required to work closely with a state agency's contact person, thus, excellent communication skills are desirable.</p>

**WORK ENVIRONMENT AND PHYSICAL REQUIREMENTS**

Able to perform difficult and complex legal research, in both state and federal statutes and case law, and effectively meet statutory deadlines.

You are a valued member of the department's team. You are expected to work cooperatively with team members and others to enable the department to provide the highest level of service possible. Your creativity and productivity are encouraged. Your efforts to treat others fairly, honestly and with respect are important to everyone who works with you.

*I have discussed with my supervisor and understand the duties of the position and have received a copy of the duty statement.*

EMPLOYEE NAME	EMPLOYEE SIGNATURE	DATE SIGNED
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*I have discussed the duties of the position with the employee and certify the duty statement is an accurate description of the essential functions of the position.*

SUPERVISOR NAME	SUPERVISOR SIGNATURE	DATE SIGNED
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