

ACTIVITY REPORTING AND PROPOSAL FORM

JUDICIAL COUNCIL DIRECTIVES AOC RESTRUCTURING

DATE	1/29/2013
PREPARED BY	Mary M. Roberts
OFFICE NAME	<u>Legal Services Office</u>
JUDICIAL COUNCIL DIRECTIVE NUMBER	118
JUDICIAL COUNCIL DIRECTIVE	E&P recommends that the Judicial Council direct the Administrative Director of the Courts that the Office of the General Counsel service model should emphasize that time is of the essence when it comes to delivering advice and opinions to the courts; that recommendations and advice to courts should include a full range of options available to the courts; and that there must be a greater recognition that the AOC's interests may conflict with the specific interests of the courts. Clearer procedures should be put in place to safeguard the interests of individual courts in those instances when legitimate conflicts arise.
SEC RECOMMENDATION	This office must place greater emphasis on being a service provider and in improving how it provides services, including as follows: The service model should emphasize that time is of the essence when it comes to delivering advice and opinions to the courts; that recommendations and advice to courts should include a full range of options available to the courts; and that there must be a greater recognition that the AOC's interests may conflict with the specific interests of the courts. Clearer procedures should be put in place to safeguard the interests of individual courts in those instances when legitimate conflicts arise.
RESPONSE (check applicable boxes)	

This directive has been completed and implemented:

Responses to directives 108 and 116 set forth steps taken by the Legal Services Office to speed delivery of requested legal advice and opinions to the courts, based on the client service principle that time is of the essence. Those steps include developing and implementing a Matter Tracking System as a single method to track legal services office-wide, and closely monitoring and providing updates to clients on the status and response time of all requests for legal opinions and advice.

With respect to the direction that recommendations and advice to courts should include a full range of options available to courts, LSO will continue to consider, research, and provide available options to clients. When responding to requests for advice, to determine options for courts, LSO regularly consults with the courts and other AOC divisions. For example, when conclusions on legal requirements will entail administrative or financial burdens for court clients, LSO routinely interfaces with the AOC's Office of Governmental Affairs to ascertain whether legislation is possible to address court concerns. If policy issues are raised, LSO interfaces with other AOC divisions to discuss the policy and whether a change of policy might be proposed. LSO also regularly interfaces with executive branch agencies to promote its clients' interests in delivery of justice (e.g., coordinating with the Secretary of State with respect to election day issues and judicial elections) and also regularly interfaces with other governmental entities to address concerns of judicial officers (e.g., working with FPPC staff to address security concerns associated with FPPC posting of Statements

of Economic Interests).

With respect to the direction that there must be a greater recognition that the AOC's interests may conflict with the specific interests of the courts and that clearer procedures should be put in place to safeguard the interests of individual courts in those instances when legitimate conflicts arise, LSO relies upon the process set forth in rule of court to address conflicts that may arise over the handling or resolution of litigation.

By statute, the Judicial Council is required to provide for the representation, defense, and indemnification of the courts. (Gov. Code, § 811.9.) By rule of court, courts must use LSO services for claims and litigation management. (Cal. Rules of Court, Rule 10.202 (c) (requiring the trial and appellate courts to notify LSO promptly on receipt of a claim or lawsuit and to forward the claim or lawsuit to LSO for handling.) Because the use of LSO in litigation is mandatory, a process is in place to handle any potential conflicts over the handling or resolution of the litigation. Rule 10.202(d) provides for the resolution of any such dispute. Rule 10.202(d) states that if a court disagrees with a decision of LSO about major strategic decisions, the court may deliver a written objection to LSO and the same will be delivered to the Litigation Management Committee. The Committee will then resolve the dispute. This resolution process is also outlined in the Litigation Management Program Resource Manual, the internal handling guideline used by LSO attorneys, at section 4.3.1, concerning the selection of counsel, and 4.7.1 concerning settlements. The manual is intended to provide guidance and direction to LSO attorneys in achieving the program objectives. In every instance where a court has expressed concern about a proposed decision of the LSO in litigation, court leaders are reminded of the process for addressing concerns with the Litigation Management committee as provided by rule of court.



Attachment to Response
to JC Directive 118.pdf
Adobe Acrobat Document
77.3 KB



Attachment 2 to
Response to JC Directive
118.pdf
Adobe Acrobat Document
85.8 KB

This directive is forwarded to the Judicial Council with options for consideration:

File Attachment

Other:

File Attachment

TIMELINE AND RESOURCES FOR IMPLEMENTATION

**IMPLEMENTATION
DATE OR
PROJECTED**

Ongoing.

IMPLEMENTATION DATE	
RESOURCES REQUIRED FOR IMPLEMENTATION	
ADDITIONAL IMPLEMENTATION INFORMATION (complete only applicable sections)	
<input checked="" type="checkbox"/> PROCEDURES/ POLICIES UPDATED OR DEVELOPED	Litigation Management Resource Manual, sections 4.3.1 and 4.7.1 <input type="button" value="File Attachment"/>
<input type="checkbox"/> TRAINING UPDATED OR DEVELOPED	
<input type="checkbox"/> SAVINGS	
<input type="checkbox"/> COST	
<input type="checkbox"/> EFFICIENCIES	
<input type="checkbox"/> SERVICE LEVEL IMPACT	
<input type="checkbox"/> OTHER	
ADMINISTRATIVE DIRECTOR OF THE COURTS (ADOC) REVIEW AND APPROVAL	
ADOC REVIEW	Administrative Director of the Courts Review Date: 2/7/2013
EXECUTIVE AND PLANNING (E&P) COMMITTEE REVIEW	
E&P REVIEW	Executive and Planning Review Date: 2/14/2013

4.3 Defense Counsel

4.3.1 SELECTION

In addition, the OGC attorney also should discuss with a supervising attorney any disagreement by court defendants about the counsel proposed by OGC. If the court's objection cannot be resolved after discussions between the court and OGC, rule 6.202 [now rule 10.202] allows the Presiding Judge to present to OGC a written statement of the objection, which OGC will present to the Litigation Management Committee for resolution.¹

¹ Excerpt from Litigation Management Program Resource Manual (2003 edition).

4.7 Settlement

4.7.1 GENERAL GUIDELINES

Pursuant to rule 6.202 [now rule 10.202], the OGC makes settlement decisions or recommendations after consultation with the affected court and any individual court defendant being provided representation under the program. The OGC attorney managing a case should discuss settlement alternatives with court defendants when considering a settlement recommendation. If a court defendant disagrees with a proposed settlement plan, and the disagreement cannot be resolved, the court may present a written objection to the Litigation Management Committee, through the OGC. (See rules 6.202 and 6.14 [now rules 10.202 and 10.14].)¹

¹ Excerpt from Litigation Management Program Resource Manual (2003 edition).