

## ACTIVITY REPORTING AND PROPOSAL FORM

### JUDICIAL COUNCIL DIRECTIVES AOC RESTRUCTURING

<b>DATE</b>	4/2/2013
<b>PREPARED BY</b>	Patrick Farrales
<b>OFFICE NAME</b>	<u>Human Resources Services Office</u>
<b>JUDICIAL COUNCIL DIRECTIVE NUMBER</b>	27
<b>JUDICIAL COUNCIL DIRECTIVE</b>	E&P recommends that the Judicial Council direct the Administrative Director of the Courts to ensure that, with an appropriate individual employee performance planning and appraisal system in place, the AOC utilizes the flexibility provided by its at-will employment policy to address employee performance issues. The AOC's at-will employment policy provides management with maximum hiring and firing flexibility, and should be exercised when appropriate.
<b>SEC RECOMMENDATION</b>	6-4. With an appropriate individual employee performance planning and appraisal system in place, the AOC must utilize the flexibility provided by its at-will employment policy to address serious employee performance issues.  7-36. The AOC's at-will employment policy provides management with maximum hiring and firing flexibility, and should be exercised when appropriate.
<b>RESPONSE (check applicable boxes)</b>	
<input checked="" type="checkbox"/> This directive has been completed and implemented:	
<p>The AOC has continued to exercise Policy 2.1, Employment At Will, when appropriate and warranted. It is important to note that while the existence of the at-will employment policy provides flexibility, it is the goal of the AOC to encourage quality communications in a rich and supportive working environment.</p> <p>In February 2012, after a series of investigations concerning serious performance issues and violations of policy, the Human Resources Services Office worked with the Office of Legal Services to draft a number of Performance Improvement Plans (PIP) to provide employees with opportunities for improvement and guidance to meet expected performance levels. In some cases, employees improved performance levels and remained on the job. In others, the AOC utilized its at-will employment policy to terminate individuals from employment for performance-related issues or serious violations of policy. Since February 2012, the AOC has terminated a number of individuals for reasons stated above.</p> <p>Furthermore the at-will policy shaped the development of Policy 2.9, Reductions in Staffing (Layoffs). On May 8, 2012, the Interim Administrative Director approved Policy 2.9, which provides guidance to implement staffing reductions based on non-discriminatory, business-related criteria. In June 2012, the AOC implemented a layoff to achieve cost savings, resulting in the termination of 40 employees.</p>	



JC Directive 27  
Report\_Final.docx  
Microsoft Office Word  
Document  
18.9 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  
IMPLEMENTATION  
DATE**

Ongoing activities related to utilization of the at-will policy. Formal training on the at-will policy begins May 1, 2013 to June 20, 2013.

**RESOURCES  
REQUIRED FOR  
IMPLEMENTATION**

CJER, HRSO, and Legal Services staff will serve as faculty for the course.

**ADDITIONAL IMPLEMENTATION INFORMATION (complete only applicable sections)**

**PROCEDURES/  
POLICIES UPDATED  
OR DEVELOPED**

The current AOC policy will remain in place; however the training will focus on the legal definitions of at-will and the applicability of the law to common workplace situations.



Policy 2.1 - Employment  
At Will.pdf  
Adobe Acrobat Document  
10.5 KB

**TRAINING  
UPDATED OR  
DEVELOPED**

From January 2013 to December 2013, the AOC will be holding a series of management courses aimed at teaching managers and supervisors various leadership development topics. One of the topics focuses on "The At-Will Environment and Other Legal Issues." The AOC will conduct eight sessions on this topic between May 1, 2013 and June 20, 2013.

	 Course Description.docx Microsoft Office Word Document 12.2 KB
<input type="checkbox"/> SAVINGS	<input type="text"/> <input type="button" value="File Attachment"/>
<input type="checkbox"/> COST	<input type="text"/> <input type="button" value="File Attachment"/>
<input type="checkbox"/> EFFICIENCIES	<input type="text"/> <input type="button" value="File Attachment"/>
<input type="checkbox"/> SERVICE LEVEL IMPACT	<input type="text"/> <input type="button" value="File Attachment"/>
<input checked="" type="checkbox"/> OTHER	<p>The at-will policy is the guiding force behind several Judicial Council directives dealing with performance management and the disciplinary process. In June 2013, the AOC will present a report to the Judicial Council that outlines the steps for an organization-wide performance management program. The program will be introduced in July 2013, with the plan for a full implementation beginning in January 2014.</p> <p>Additionally, the AOC will also amend Policy 8.1, Standards of Conduct, to clearly express the disciplinary process as well as the conduct expectations of AOC employees. As part of the amended Policy 8.1, the AOC will introduce a formal Performance Improvement Plan (PIP) process. This process represents the first in a series of steps to address an employee's performance and conduct prior to termination from employment.</p> <p>To strengthen the process, the AOC, through the classification and compensation study, will be updating job descriptions for all employees, which will ensure the program accurately accounts for employee performance and makes it easier for managers and supervisors to identify areas for improvement.</p> <input type="button" value="File Attachment"/>
<b>ADMINISTRATIVE DIRECTOR OF THE COURTS (ADOC) REVIEW AND APPROVAL</b>	
<b>ADOC REVIEW</b>	Administrative Director of the Courts Review Date: <input type="text" value="4/10/2013"/>
<b>EXECUTIVE AND PLANNING (E&amp;P) COMMITTEE REVIEW</b>	
<b>E&amp;P REVIEW</b>	Executive and Planning Review Date: <input type="text" value="4/17/2013"/>

## **AOC Utilization of the At-Will Employment Policy**

The Administrative Office of the Courts (AOC) adopted a new *AOC Personnel Policies and Procedures Manual* in July 2011. Chapter 2, General Employment Policies begins with Policy 2.1, Employment At Will. This policy clearly states that the AOC is an at-will employer. This means that both the employees and the AOC have the right to terminate employment at any time, with or without cause. Although this policy provides the AOC with the ability to terminate employment with or without cause, the reason for termination must be a lawful reason. Employees who are terminated from the AOC retain the right to file complaints with the Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC) and potentially litigate damages against the AOC.

### **Recent Use of the At-Will Employment Policy**

In February 2012 the AOC Human Resources Services Office (HRSO) investigated a number of serious employee-related issues. At the time the Interim Administrative Director of the Courts and the Interim Chief Deputy Director instructed the HRSO team to work collaboratively with the Legal Services Office (LSO) to address any serious performance issues or violations of policy. During this time HRSO staff drafted a number of Performance Improvement Plans (PIP) to provide opportunities for improvement and appropriate guidance to employees who had fallen below the expected performance levels.

Throughout this period the AOC continued to exercise the at-will policy when appropriate, and terminated individuals who did not demonstrate improved performance or seriously violated policies, procedures or ethical standards.

Since February 2012, the AOC has exercised the at-will policy and has terminated a number of individuals from employment for performance-related issues or for serious violations of policy or procedure. Although the AOC is an at-will employer, it has, at its discretion, provided the terminated employee with a written reason or rationale for the determination. The AOC generally provides written justification to the Employment Development Department (EDD) when considering claims for unemployment.

### **Reductions in Staffing Policy and AOC Layoffs**

On May 18, 2012, the Interim Administrative Director approved Policy 2.9, Reductions in Staffing (Layoffs). This policy provides guidance, based on non-discriminatory, business-related criteria, to implement staffing reductions and achieve necessary cost savings. The at-will employment policy provided leadership the flexibility to develop the policy which met the needs of the AOC.

In June 2012 the AOC implemented its first round of layoffs. At the completion of the layoff process **40** individuals were separated from employment with the AOC.

## **Next Steps**

While the existence of the at-will employment policy provides flexibility when making employment decisions, it is the goal of the AOC to encourage quality communications in a rich and supportive working environment. In order to achieve this goal the Administrative Director has directed the Human Resources Services Office to fully implement Policy 3.9, Performance Management Program, of the AOC *Personnel Policies and Procedures Manual*.

In order to properly institute a quality and meaningful program a number of steps need to occur to create a foundation for true performance management. The AOC will outline these steps in a report to the Judicial Council in June 2013, with a plan for full implementation beginning January 2014. The AOC will implement a uniform performance management program throughout the AOC.

Additionally, the AOC will review Policy 8.1, Standards of Conduct, and amend it to clearly express the conduct expectations of AOC employees and the disciplinary process for issues related to performance or misconduct. Specifically, the AOC will add an official Performance Improvement Plan (PIP) process to the disciplinary process, which will highlight to employees that communication is the most effective method of initiating growth and change. To strengthen the process, the AOC, through the classification and compensation study, will be updating job descriptions for all employees, which will ensure the program accurately accounts for employee performance and makes it easier for managers and supervisors to identify areas for improvement.

Furthermore, the supervisor/manager training program, initiated in January 2013, will provide direct guidance to managers and supervisors on identifying performance gaps and effective methods of performance management as well as outlining the challenges of managing employees in an at-will environment.

The first set of courses focus on “The At-Will Environment and Other Legal Issues.” The AOC will conduct eight sessions on this topic between May 1, 2013 and June 20, 2013. The training continues throughout the year, with culminating sessions, which highlight performance management, in November and December 2013. After the training, the utilization of a uniform performance management program, combined with clear discipline procedures, the at-will policy and accurate job descriptions, will provide the AOC with a flexible and responsible approach to address and resolve any performance or conduct concerns.

**Policy Number:** 2.1

**Title:** Employment At Will

**Contact:** Human Resources Division, Policy Development Unit

**Policy Statement:** The AOC is an at-will employer.

All employment at the AOC is "at will." This means that both employees and the AOC have the right to terminate employment at any time, with or without advance notice, and with or without cause. No one other than the Administrative Director of the Courts has the authority to alter this arrangement, to enter into an agreement for employment for a specified period of time, or to make any agreement contrary to this at-will policy. Any such agreement must be in writing, signed by the Administrative Director of the Courts, in order to be effective.

## **MAY-JUNE**

The At-Will Environment and Other Legal Issues – This course is designed to cover basic employment law issues including the “at will environment” that supervisors face on a day to day basis. The course will include:

### **Employee Status**

1. Define At Will vs. For Cause.
2. Define Exempt vs. Non Exempt.

### **Harassment and Discrimination**

3. Describe protected classes and related instances of discrimination in the workplace.

### **Accommodation**

4. Respond to formal and informal requests for accommodation.

### **Leaves of Absence**

5. Define rights of employees related to leave
6. Responding to requests for leave, e.g. FMLA/CFRA, Pregnancy/Childbirth, Parental, Jury, Military, Election, School Activities.

### **Privacy**

7. Distinguish between the employer’s rights and the employee’s right to privacy.
8. Distinguish between Personnel and Supervisor files and employee right to access.

### **Liability**

9. Identify supervisor’s personal liability exposure in the workplace.