

**2006 NASPE ROONEY AWARDS
– N O M I N A T I O N P R O P O S A L –
Commonwealth of Pennsylvania
Attorney Performance Evaluation and Compensation System (APECS)**

The “Attorney Performance Evaluation and Compensation System” (APECS) is the Commonwealth of Pennsylvania’s initial pay for performance evaluation system and provides the foundation for an innovative evaluation and compensation program. Developed in 2004 through a collaborative initiative between the Office of General Counsel (OGC) and the Governor’s Office of Administration, the focus of APECS is to ensure the highest quality legal services to the Governor and agencies under the jurisdiction of OGC¹. The following principles guided the development of APECS:

- To provide the highest quality legal services to clients.
- To provide a work environment where attorneys are informed of specific, measurable, and achievable performance factors, standards, and objectives.
- To encourage regular feedback regarding attorney performance.
- To ensure an objective and comprehensive evaluation of performance by the supervising attorney, with feedback at all levels.
- To provide the necessary flexibility for a performance-based compensation system.
- To eliminate automatic pay increases.

Based on the first year cycle, the system is achieving the desired results and its concept will be used as a model for subsequent pay for performance systems in Pennsylvania state government.

¹ OGC employs over 400 attorneys in 32 executive and independent agencies across the Commonwealth. The General Counsel is appointed by the Governor to serve as his chief legal advisor and has the responsibility for appointing deputy general counsel, executive agency chief counsel, and assistant counsel, and to supervise, coordinate, and administer legal services throughout the Executive Branch. The legal work the attorneys perform is sophisticated and professionally challenging, diverse, and demanding, requiring a full range of legal skills to represent the Governor, his staff, the Cabinet, and agencies. OGC employs attorneys with a variety of educational backgrounds, legal disciplines, and expertise. Many OGC attorneys begin their careers with OGC and over the years develop experience and expertise in representing the Commonwealth and its agencies.

1. Please provide a brief description of this program. OGC and the Governor's Office of Administration developed APECS in 2004. The system was designed to: a) promote timely and meaningful communication at all management levels, b) ensure that performance criteria and expectations were established and communicated to attorneys, c) provide a consistent approach for evaluating the quality of work performed, d) provide a comprehensive tool to evaluate and measure the quality of work performed, e) offer variable salary increases based on performance rather than standard entitlements, and f) provide greater reward to those whose performance exceeds expectations. APECS requires a clear definition of performance factors, standards, and expectations and promotes an exchange of timely and meaningful performance information through clear communication among the various parties, e.g., staff attorneys, their supervisors, chief counsels, and clients. The two primary components of APECS include (1) Performance Evaluation and (2) Merit-Based Compensation. The Performance Evaluation component of APECS is based on clear factors and standards that relate specifically to attorney work performance and a system of measurable criteria used to evaluate performance in accordance with established expectations. All attorneys must be evaluated annually and that task is made easier by use of a web-enabled, automated form that tabulates the overall evaluation results on-line. The evaluation process begins by meeting with the attorney, establishing performance expectations, and setting category weightings for each of the five Evaluation Categories. Throughout the calendar year, the supervising attorney tracks the attorney's performance using the Employee Performance Log and also conducts a mid-cycle review. At the time of completion of the year-end evaluation, additional feedback is gathered from clients with whom the attorney interacts using the automated Client Feedback Form. If the attorney had supervisory duties, feedback is also gathered from those reporting to him/her using the automated Supervisor Feedback Form. The supervisor then completes the web-enabled performance evaluation form on-line, and the system automatically calculates and assigns the appropriate ratings based on a prescribed weighting pattern.

The Compensation component of the system is dependent on the rating received on the Performance Evaluation Form. Unlike the majority of Commonwealth employees, OGC attorneys no longer receive automatic increases, such as the general pay increases and longevity steps. Attorneys may receive percentage increases in pay based on their performance ratings. There is no pay disparity among agencies; all attorneys under the jurisdiction of OGC receive the same pay increases for the same performance evaluation ratings. Attorneys who receive a rating of "Meets Expectations" receive, at a minimum, an increase equivalent to the amount they would have received through longevity steps and general pay increases had they been on the Standard Pay Schedule. Attorneys who receive a rating higher than "Meets Expectations" receive an increase greater than this, attorneys who are rated as "Improvement Needed to Meet Expectations" receive a lesser increase, and attorneys who receive a rating of "Performance is Below Established Standards" do not receive a pay increase.

- 2. How long has this program been operational (month and year)?** APECS commenced with evaluations for calendar year 2004; wherein, 407 attorneys were evaluated and compensated, based on their performance ratings, for pay increases effective July 1, 2005.
- 3. Why was this program created?** The previously available method of evaluation did not adequately explore the performance criteria unique to attorneys and, consequently, failed to adequately convey expectations regarding job performance. Due in part to these shortcomings, the previous evaluation process often times was not used. The result was that many attorneys went years without any evaluation of performance. APECS permits the same method of evaluation to be used on all OGC attorneys within and across agencies, while establishing consistently applied factors, standards, and expectations regardless of the nature of work performed. APECS was created to ensure the highest quality of legal services to the Governor, agency heads, and other clients, and to better evaluate, document, and recognize the quality of work being performed by OGC attorneys. The pay for performance component works in tandem

with the evaluation tool to base salary increases on the level of performance, rather than automatic increases based on service. With the goal of providing exemplary legal services, it also became imperative to create a compensation system that would assist in the recruitment and retention of professional staff. This system also allows OGC greater discretion in recognizing and rewarding performance through pay increases, and greater flexibility in other types of pay adjustments because the pay schedule has open ranges with only minimum and maximum rates of pay in the five grade levels, thus avoiding the rigidity of step in grade pay structures.

4. Why is this program a new and creative method? APECS is the first pay for performance evaluation system for employees under the Governor's jurisdiction. With 83% of state employees unionized, it is the Commonwealth's intent to implement additional pay for performance programs for other management employees, and promote those successes in discussions with the unions in order to adopt similar programs for employees whom they represent. This program is new and creative because it eliminates the culture of pay entitlement through the elimination of automatic pay increases as a result of across the board increases and service increments. It also achieves maximum pay flexibility through open ranges on the pay schedule so that pay increases of any percentage can be granted for a variety of reasons beyond performance, such as retention, job expansion, acquisition of special skills, pay relationship adjustments, or any other compelling reasons. The evaluation component is new and creative as all rating categories contain several elements that reflect work behaviors normally found in most, if not all, attorney positions. These elements require an evaluator to consider all aspects of work and ensure a consistent approach to the evaluation. The web-enabled, on-line completion and automatic calculation, applications of the evaluation are also new and progressive. All of these enhanced components represent a vast improvement over the previous pen-and-ink evaluation tool, which was narrative-based and produced results that varied greatly among evaluators. The automation of the tool has made the evaluation experience very user-friendly.

5. What was the program's start up costs? NONE

- 6. What are the program's operational costs?** NONE
- 7. How is this program funded?** Salary costs are absorbed in each agency's budget based on the general pattern of salary increases for the vast majority of state employees as authorized by the Governor's Budget Office.
- 8. Did this program originate in your state?** Yes. Other pay for performance programs for management employees are likely to be designed after the APECS model since this program has widespread support. It is the Commonwealth's goal to leverage the success of management pay for performance programs in negotiating similar programs with our various unions.
- 9. Are you aware of similar programs in other states? If yes, how does this program differ?**
No. This may be the first public sector attempt at an attorney pay for performance program.
- 10. How do you measure the success of this program?** The program is monitored by OGC and the Governor's Office of Administration through feedback from staff attorneys, supervisory attorneys, chief counsels, and clients. The ultimate success of the program will be a recognition by OGC, the Governor's Office, and agencies that legal services are of the highest quality and that OGC is able to attract and, more importantly, retain attorneys who perform in accordance with the highest standards of practice and professionalism. The first cycle of evaluations resulted in 32% of attorneys in the highest category, 67% in the middle category, and less than 1% in the lowest rating category. These results do not demonstrate an inclination to over-value performance. Note that OGC does not establish percentage increases for the categories until the evaluations are completed in order to avoid the re-engineering of ratings to achieve a salary result.
- 11. How has the program grown and/or changed since its inception?** The initial rating system included three categories and was changed to five categories in the second year. New benchmarks were written for each of the five categories, and the automatically calculated weighting system to assign the ratings was modified to better correspond to the five-category rating system.