

## **Performance Based Pay for Attorneys in the Public Sector**

By: James C. Backstrom, Dakota County Attorney

Unlike private business, the public sector has been slow to abandon salary structures based in whole or in part on standard cost of living adjustments and/or step increases granted each year regardless of the level of performance of the employee. However, there are many reasons to consider changing such systems - not the least of which is increasing the morale of employees. It is easy to understand the frustration of a star performer who puts in hundreds of extra non-compensated hours of work each year but receives the same salary increase as a mediocre performer who does enough to get by, but no more. The public also has a right to demand more accountability from their government's pay structure than a system based on longevity and standard adjustments, regardless of a public employee's level of performance.

In the Dakota County Attorney's Office, in Hastings, Minnesota, performance based pay has become a reality. Dakota County, Minnesota is a rapidly growing suburban County located just south of Minneapolis and St. Paul and is currently the third largest county in the State of Minnesota, with a population of slightly more than 300,000. The Dakota County Attorney's Office has a staff of 68 persons, including 28 assistant county attorneys. The office has a Chief Deputy plus three Division Heads, who supervise attorneys working in the areas of adult criminal prosecution, civil legal matters, and juvenile prosecution/family services issues. All assistant Dakota County Attorneys, except for the three division heads and the Chief Deputy are members of a collective bargaining organization and negotiate with the County Board and County Attorney for their salaries and other benefits. Because of this, implementation of a performance based pay system required negotiation with the assistant county attorney's union.

When this topic first came up for discussion within our office several years ago, it was met with an understandable amount of skepticism. Change is never easy - especially when it directly affects your level of pay. We worked hard to develop fair and understandable performance review standards as this is the cornerstone upon which a performance based pay system hinges. The bottom line, however, in securing the union's acceptance of this system within our office, was our ability to develop a level of confidence among the line attorneys that the office's supervisors would fairly administer it.

The performance based pay system within the Dakota County Attorney's Office has several guiding principles:

Each year stands alone. Performance appraisal is designed to evaluate an attorney's job performance for the immediate preceding year. Each year's performance appraisal is done without consideration of previous annual performance appraisals.

No forced distribution. There is no forced distribution of performance ratings, nor are ratings based upon the office budget.

Caseload and position are considered. Performance appraisal takes into account an attorney's case load, the attorney's position description, and any relevant development or training plans.

Performance appraisal is a shared responsibility. While management bears the ultimate responsibility for ensuring that performance appraisals are conducted fairly and in a timely manner, attorney's are encouraged to do self-appraisals to assist in the process. Self-appraisal promotes self-knowledge, assists supervisors, and increases the accuracy and validity of the rating.

The final overall rating is a composite of individual ratings and level of importance. Certain skills are more important or less important depending on the duties of the attorney. Therefore, the rater gives more weight to certain skills and less to others depending upon the job responsibilities. The overall rating is not determined simply by adding up the ratings on individuals skills, but is a composite of all individual ratings and their level of importance.

The Dakota County Attorney's Office performance based pay system utilizes five performance levels which are defined as follows:

1. Greatly Exceeds Standards:

Work product is consistently of very high quality. Exceeds all job requirements. Willing and able to meet demanding and/or extraordinary objectives. Performance is clearly exceptional.

2. Exceeds Standards:

Meets job requirements and exceeds some. Overall performance is above satisfactory level. Work product is very thorough and well done. Able to meet challenging objectives. Performance is clearly above expected level.

3. Fully Meets Standards:

Work product is competently done. Meets job requirements and realistic objectives. Performance is fully satisfactory.

4. Minimally Meets Standards:

Work is generally acceptable but needs improvement in certain areas. Overall performance is not fully satisfactory. Performance is adequate but at minimum acceptable level.

5. Does Not Meet Standards:

Work product is not acceptable and is poorly done. Job requirements are not met. Overall performance is clearly below acceptable level. Significant improvement is necessary to achieve acceptable performance.

The Dakota County Attorney's Office performance based pay system rates an attorney's performance on various fundamental skills, developmental skills and personal/motivation factors. All attorneys are expected to possess and demonstrate fundamental skills. These include:

Conducts legal research thoroughly and accurately.  
Conduct conforms to Office guidelines and procedures.  
Conduct conforms to Code of Professional Responsibility.  
Works with the appropriate level of supervision.  
Keeps supervisor appropriately informed of developments.  
Meets imposed and agreed-upon deadlines.  
Responds to inquiries in a timely manner.  
Organizes files and documents action taken.  
Keeps victims/witnesses and/or clients, as well as support staff, informed of developments in a timely manner.  
Generally works well with victims/witnesses/clients, peers, support staff, outside counsel, court/agency/law enforcement personnel and the public.  
Since these fundamental skills either exist or not, the highest rating possible in each of these skill areas is level 3 (fully meets standards).  
Attorneys are also expected to possess and demonstrate developmental skills appropriate to the job duties. Unlike fundamental skills, developmental skills are expected to improve with experience and responsibility. Developmental skills under our system include:  
Possesses appropriate legal knowledge for current position.  
Uses legal knowledge to articulate key legal issues.  
Identifies non-legal issues and appropriately takes them into consideration.  
Develops practical, creative, and prudent solution/options to resolve legal issues.  
Conducts legal research efficiently and effectively.  
Demonstrates effective writing skills.  
Clear/well-organized  
Concise/appropriately thorough  
Accurate  
Appropriate for audience Practical and/or creative  
Demonstrates effective oral skills.  
Clear  
Concise  
Persuasive/confident  
Accurate  
Practical  
Demonstrates effective courtroom skills.  
Adequately prepares and understands and uses Rules of Evidence and Procedure  
Uses effective advocacy skills  
Courtroom communication is direct, concise and confident  
Demonstrates effective negotiating skills.  
Adequately prepares  
Recognizes strengths/weaknesses  
Uses strengths/weaknesses to achieve results  
Understands and applies statutes, rules and county policies  
Demonstrates effective meeting skills.  
Adequately prepares, understands and applies statutes, rules and county policies  
Communicates advice effectively  
Interacts with meeting participants efficiently and effectively

Works efficiently.

Sets priorities appropriately

Organizes complex problems/cases

Handles an acceptable volume of cases/files

Attorneys are rated as either a level 1, 2, 3, 4 or 5 in each of these developmental skill areas.

The following personal and motivational factors are also included within our performance based pay system:

Demonstrates interest in improving legal knowledge and skills.

Demonstrates initiative and creativity.

Is willing to accept/volunteer for additional cases/files/projects.

Actively and effectively participates as part of work groups or teams to meet Division/Office needs.

Unlike fundamental and developmental skills, these factors do not receive a numerical rating, but are rather evaluated narratively in an attorney's written performance review. The existence of these factors may enhance the overall rating given to an attorney, but their absence does not detract from the overall rating.

The attorney's overall rating of level 1 through 5 is determined by their Division Head upon the evaluation of all applicable performance criteria and review of any personal/motivational factors. To insure that the same level of performance is rated similarly by different supervisors, the evaluation is reviewed by the Chief Deputy to ensure equitable ratings throughout the office. Appeals can ultimately be made to the County Attorney.

In reference to the overall rating, it is also important to note that our review system takes into consideration the expectations associated with the position. In other words, we do not directly compare the performance of a senior attorney with that of an entry level attorney in establishing performance ratings. We have three main levels of experience and salary levels within our office into which assistant county attorneys fall:

Attorney I	0-2 years experience
Attorney II	2-5 years experience
Attorney III	5 or more years of experience

We expect greater performance from an Attorney III than an Attorney II, for example, and consequently an attorney who was rated as a level 1 performer (greatly exceeds standards) as an Attorney II might well be rated as a level 2 or level 3 performer as an Attorney III for the same level of performance. Attorney's are eligible for promotion from one attorney classification to another if they have the requisite years of experience and have demonstrated the ability to meet the general expectations of the higher classification. All promotions are within the discretion of the County Attorney.

Once an assistant county attorney's overall rating has been determined, this rating level is applied to a merit matrix to determine the annual salary increase. The merit matrix has different salary adjustment percentages applicable to overall ratings of levels 1, 2 and 3. The higher the rating the

greater the salary increase. No increase would be given to an attorney rated below level 3. The percentage increase is adjusted annually through collective bargaining between the attorneys' union and the County. Under our salary system, all performance based salary adjustments are calculated as a percentage of the mid-point of the salary range. No separate cost of living adjustment is given.

A very similar performance based pay system has been implemented for all support staff and management level attorneys within the Dakota County Attorney's Office. This system has worked well within our office, improving both morale and productivity. Performance reviews are taken seriously by both the person being reviewed and the supervisor. The adoption of this performance based pay system has resulted in more effort being put into the performance review process.

You may wish to consider a similar system within your office. For more information about our system, contact: James C. Backstrom, Dakota County Attorney, Dakota County Judicial Center, 1560 Hwy. 55, Hastings, MN 55033 (Telephone: 651-438-4438).