

Be prepared to back up group firing decision

Does your organization make important hiring and firing decisions by committee? That's one way to counter possible bias by one individual. But be prepared to document how the group made the decision.

Written notes are one way. If an employee challenges the group's decision in court, those notes will help everyone remember the process. Plus, it will be a lot easier for the committee to provide consistent, sworn testimony outlining its decision-making. More is better when it comes to justifying a termination.

Recent case: Willena Nanton, who is black, was hired as an attorney for the New York Civil Service Commission. Four years later, the commission—with many of the same members still in place—fired her.

Nanton sued, alleging race discrimination and retaliation for an internal complaint she had made. The court heard one member's sworn testimony that the commission decided to fire Nanton *before* she filed the complaint, and therefore it couldn't have been retaliation. The commission asked the court to dismiss the case.

But the court refused and ordered a trial. It wondered why, when presumably many commissioners were in on the decision, just one provided an affidavit. Plus, why didn't the commission have any contemporaneous notes?

Now the answers to the court's vexing questions will come during trial. (*Nanton v. City of New York, et al.*, No. 05-Civ-8989, SD NY, 2007)

Final tip: Juries are by nature suspicious. When employers come to court without solid evidence, jurors tend to be skeptical. Don't feed that inner skepticism—document your decisions.