



Colorado Commissions on Judicial Performance

2016 Training



Image courtesy of Bryan Lopez

Office of Judicial Performance Evaluation

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SECTION 1: COLORADO JUDICIAL BRANCH

Court Facts

Organization of the Judicial Branch

The [Colorado Supreme Court](#) is the state's court of last resort. Requests to review decisions of the Colorado Court of Appeals constitute a majority of the Supreme Court's filings.

The [Colorado Court of Appeals](#) is the state's intermediate appellate court. The Court of Appeals has jurisdiction, with exceptions, over appeals from the Colorado District Courts.

There are [22 Judicial Districts](#) within the state of Colorado as established by the [state Legislature](#) in 1963. The last major revision was November 2001 with the consolidation of Broomfield in the 17th Judicial District. Changes in district boundaries require a two-thirds vote of each house of the Legislature.

[District Court](#) is a court of general jurisdiction, handling criminal, civil, domestic relations, juvenile, probate, and mental health cases.

[County Court](#) is a court of limited jurisdiction, handling misdemeanors, criminal traffic violations, civil traffic infractions, small claims, felony complaints (which may be sent to District Court), and civil cases of under \$15,000.

There are seven [water courts](#), one in each of the major river basins ([South Platte](#), [Arkansas](#), [Rio Grande](#), [Gunnison](#), [Colorado](#), [White](#), and [San Juan](#) rivers). They are divisions of the district court in that basin.

[Probation](#) is also the responsibility of the Colorado Judicial Branch. Managed by the chief probation officer in each judicial district, probation employees prepare assessments and pre-sentence information for the courts, supervise the offenders sentenced to community programs, give notification and support services to victims, and provide special program services. As of July 1, 2015, there were 56,432 adults and juveniles on probation. In addition, 21,484 adults were on private probation or DUI monitoring.

Personnel

The head of the Colorado Judicial Branch is the [chief justice](#) of the [Supreme Court](#), who is elected to the position by the justices of the Court. The justices select a [state court administrator](#) to oversee the daily administration of the branch.

As of July 1, 2015, the Colorado Judicial Branch had 324 authorized positions for justices and judges: [seven Supreme Court justices](#), [22 Court of Appeals judges](#), [181 District Court judges](#), and [114 County Court judgeships](#). This excludes [Denver County Court judges](#) (17), who are appointed by the mayor of Denver. The Branch also had 74 full- and part-time magistrates.

As of July 1, 2015, justices and judges are paid: chief justice of the Supreme Court, \$176,799; associate Supreme Court justices, \$173,024; chief judge of the Court of Appeals, \$169,977;

Court of Appeals judges, \$166,170; District Court judges, \$159,320; County Court judges, \$152,466; Magistrates \$136,320.

Forty-three senior judges, who are retired from the bench, each hear cases approximately 60 days per year in districts where there are vacancies, a backlog of cases, conflicts of interest, etc.

Business

In Fiscal Year 2015, [county court](#) filings decreased 1.03 percent, with the greatest area of decrease in civil filings. In the same period, [district court](#) filings increased by 3.94 percent, with the greatest area of increase in criminal filings.

In Fiscal Year 2015, there were 425,947 cases filed statewide at the County Court level, 224,591 cases filed in District Court, 2,413 in the Court of Appeals, and 1,549 in the Supreme Court. There were 847 cases filed in the water courts.

Courts funded by the state's General Fund include: [Supreme Court](#), [Court of Appeals](#), [District Courts](#), and [County Courts](#). Municipal and Denver County courts are funded by their respective local governments.

https://www.courts.state.co.us/Courts/Education/Court_Facts.cfm

Colorado Courts At A Glance



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A Message from the Chief Justice of the Colorado Supreme Court

Thank you for your interest in the Colorado Judicial Branch, one of the three branches of government working independently for a common goal: to protect the rule of law, the ideal that our country's founders worked so hard to reach.

The Colorado Judicial Branch is charged with two responsibilities: resolving disputes and supervising offenders on probation. By resolving disputes according to the rule of law, the judiciary furthers the founders' paramount principal that we are a government of laws and not people. No one is above the law; our courts protect individual rights and are open to all.

Our busy state court system has four levels of courts: county courts, district courts, the Court of Appeals and the Supreme Court. County courts handle about 450,000 case filings per year, and the district courts – including our seven specially designated water courts – handle about 235,000 cases per year. The 22 judges of the Court of Appeals, sitting in panels of three, handle about 2,500 cases annually, and the seven-member Supreme Court, in which all justices hear each case, receive about 1,500 case filings each year.

This document provides an overview of Colorado's state courts and the justice system in order to help you better understand how the courts function and what rights you have in the courts. We believe a more complete understanding of the justice system also will help all citizens appreciate the important role an independent judiciary plays in protecting their constitutional rights. We hope you find this document useful and informative.

We also invite you to visit the Branch's headquarters in downtown Denver to view beautiful artwork and learn more about the courts and the rule of law in the Judicial Learning Center, which is open Monday-Friday, 8 a.m. to 5 p.m. Admission is always free of charge.

Nancy E. Rice
Colorado Supreme Court Chief Justice

Introduction

Colorado's courts play important roles in your life. When you buy or sell goods or property, get married or divorced, have children, work, retire, drive a car, and even after you die, your state courts can protect your rights and enforce your responsibilities. If you are the victim of a crime, are accused of committing a crime, or witness a crime, you may be required to appear in a Colorado court. You may also be called upon to serve as a juror, one of the most important privileges we all share as citizens.

In addition to state courts, there are federal courts in Colorado that deal with federal laws, such as bankruptcies and matters involving the United States Constitution. This document does not discuss federal courts. They are part of a parallel but entirely different judicial system.

This booklet is designed to answer questions that you, the people of Colorado, may have about your state judicial branch. The following few pages present an overview of the Colorado Judicial Branch – how it works and how it affects you. A glossary containing legal terms is provided beginning on page 12.

Your rights in court

If you are arrested or charged with a crime, even some types of traffic violations, you have certain constitutional rights. It is wise to exercise these rights even if you later decide to plead guilty to the charges.

What are these rights?

- You have the right to remain silent and to refuse to answer any questions asked by police officers and other officials about the event. Anything you say may be used against you.
- You have the right to have a lawyer represent you. If you cannot afford to pay for a lawyer, you can ask the judge to appoint one for you.
- You have the right to a public and speedy trial, either by a jury or a judge only.
- You are not required to prove your innocence; instead, you are presumed innocent of any crime unless the district attorney (city attorney in a municipal court) presents sufficient evidence to prove your guilt beyond a reasonable doubt.
- You are entitled to testify in your own defense if you want to, but you cannot be forced to testify.
- You or your attorney may cross-examine any person who testifies against you.
- You are allowed to bring in witnesses, and the judge can order any person you want as a witness to appear in court.

If you are found guilty, you have the right to appeal. You also have the right to make a statement or present additional information to the judge at the time of sentencing. The judge decides the sentence unless the death penalty is a possibility, in which case the jury decides.

Violations of private rights and duties are considered civil cases. Suits can be brought for such matters as the recovery of damages from negligence, breach of contract, or violation of civil rights. The court does not appoint attorneys in civil cases; however, legal aid services may be available for people who cannot afford a lawyer to represent them in civil matters.

Family law cases – involving such matters as dissolution of marriage (divorce), child support, allocation of parental responsibility, and dependency and neglect – also are considered civil cases. People who cannot afford legal representation for family law cases also may qualify for legal aid services or for court-appointed counsel.

For more information on our courts, please [click here](#).

Types of courts

Several different courts in Colorado handle various kinds of cases. These courts are:

MUNICIPAL COURTS

Municipal (city) courts deal with violations of city laws committed within the city limits. Generally, these laws involve traffic, shoplifting, and minor offenses such as dog leash-law violations and disturbances. For some cases, you may have the right to a jury trial and to tell your side of the story in municipal court. Municipal courts are not state courts; however, you may appeal a municipal court decision to a state court.

COUNTY COURTS

Every county in the state has a county court, with at least one county judge. These courts handle traffic cases and minor criminal matters, as well as civil actions involving no more than \$15,000. You may have a jury trial in many types of county court cases. An appeal from a county court decision may be made to the district court.

SMALL-CLAIMS COURTS

Small-claims courts are divisions of county court. Individuals are allowed to argue their own cases and to have speedy decisions on civil matters involving no more than \$7,500. Court sessions are held during the day or evening to accommodate the public. There are no jury trials in small claims courts, and sometimes a magistrate hears the cases instead of a judge. Normally, neither side may be represented by an attorney. No plaintiff may file more than two claims per month or 18 claims per year in small-claims court.

DENVER COURTS

Denver's court system differs from those in the rest of the state, in part because Denver is both a city and a county.

The Denver County Court functions as a municipal as well as a county court and is paid for entirely by Denver taxes rather than by state taxes.

Denver County Court judges are appointed by the mayor of the city of Denver. Denver has the only separate juvenile court and separate probate court in the state. In other parts of Colorado, district courts handle juvenile and probate matters. The Denver juvenile and probate courts are state courts, along with Denver District Court.

DISTRICT COURTS

Each county in the state is served by a district court. Colorado is divided into 22 judicial districts, many encompassing more than one county. Unlike county courts, where there is at least one judge per county, district judges are assigned to the judicial district and may serve more than one county within that judicial district, particularly in rural areas of the state, where as many as seven counties may be included in a district.

District courts have authority to handle many types of cases, including dissolution of marriage (divorce), civil claims in any amount, juvenile matters, probate (estates), mental health, and criminal matters. You may appeal a district court decision to the Colorado Court of Appeals and/or to the Colorado Supreme Court.

WATER COURTS

Colorado has seven water courts, one in each of the major river basins (South Platte, Arkansas, Rio Grande, Gunnison, Colorado, White, and San Juan rivers). Water court is a division of district court, and the Supreme Court appoints a district court judge from within each river basin to act as water judge. Other personnel include the clerk of the water court and a water referee, who investigates applications for water rights and has the authority – under a water judge's supervision – to rule on such applications and other related matters. Water courts have exclusive jurisdiction over water rights. Cases relating to the determination of water rights and the uses and administration of water resources are determined by water judges. There are no jury trials in water courts, and all appeals from water courts' decisions are filed directly with the Colorado Supreme Court.

PROBATE COURT

Probate courts oversee the distribution of estates after deaths. They also appoint guardians and

conservators to oversee the affairs of living persons who have been declared incapacitated. Probate courts also handle all involuntary mental health and substance-abuse commitments.

JUVENILE COURT

Juvenile courts handle matters of juvenile delinquency, dependency and neglect, paternity, adoption and relinquishment. All cases in juvenile court are civil actions.

Delinquency cases involve allegations that a juvenile has broken criminal laws. The parents of the juvenile also are named in a delinquency petition. If a juvenile is found to have broken criminal laws, the court's options range from ordering special schooling or treatment for the juvenile to incarceration of the juvenile.

Dependency and neglect cases involve allegations of abuse or neglect of children by their parents or legal guardians. If a child is found to be dependent and neglected, the juvenile court will order a treatment plan for the adult involved if possible or, as a last resort, if a treatment plan is unsuccessful, may terminate parental rights.

PROBLEM-SOLVING COURTS

Colorado also has adopted problem-solving courts in all 22 judicial districts. Problem-solving courts offer a sentencing alternative to incarceration for eligible offenders.

Court participants accepted into the voluntary programs are placed under intensive court supervision and receive treatment specific to their needs. These courts rely on close collaboration by members such as probation officers, prosecutors, defense attorneys, treatment providers and mental health professionals. Such courts exist in all 50 states and have proved to reduce substance abuse and recidivism.

Colorado has six types of problem-solving courts: adult drug courts, juvenile drug courts, DUI courts, adult and juvenile mental health courts, family and dependency/neglect courts, and veterans treatment courts.

For more information on problem-solving courts, please [click here](#).

COURT OF APPEALS

The Colorado Court of Appeals, located in Denver, has 22 judges. One is appointed by the Colorado Supreme Court chief justice as chief judge. The court sits in divisions, each consisting of three judges.

Unlike the other courts discussed above, the Court of Appeals is not a trial court. The Court of Appeals usually is the first court to hear appeals of decisions made by Colorado district courts and Denver's probate and juvenile courts. In addition, it is responsible for reviewing the decisions of several state administrative agencies. Its determination of an appeal is final unless, upon petition of a party, the Colorado Supreme Court agrees to review the matter.

SUPREME COURT

The Colorado Supreme Court has seven justices. A chief justice is elected by the court from its membership. The chief justice is the chief executive officer of the judicial branch of state government.

The Supreme Court is the court of last resort or the final court in the Colorado court system. An individual who has appealed to the Court of Appeals and is still dissatisfied with the outcome may ask the Supreme Court to review the case. In most situations, the Supreme Court has a right to refuse to do so. In some instances, such as water-rights or election-related cases, individuals can petition the Supreme Court directly regarding an administrative body's or lower court's decision.

In addition to its legal duties, the Supreme Court has supervisory and administrative responsibilities. The Supreme Court has supervisory power over all other state courts and over all attorneys practicing law in Colorado. The following bodies assist the Supreme Court in its duties:

For more information on our courts, please [click here](#).

PRO SE SELF HELP

To help the growing number of people representing themselves in civil cases navigate the sometimes complicated court system, the Colorado Judicial Branch has created self-help centers in many court locations around the state.

Staff at these centers can't provide legal advice, but they can help steer people toward court forms they need, to community resources, and sometimes provide legal clinics offering the services of volunteer lawyers.

[Click here](#) for an up-to-date list of staff at self-help centers and much more information designed to help people representing themselves in civil matters.

COURTS IN THE COMMUNITY

Both the Supreme Court and the Court of Appeals travel around the state several times per year to hear arguments in real cases at high schools.

The visits are part of the Courts in the Community program, which the courts created in 1986 to help improve students' civic knowledge of the courts and appellate process.

During these visits, students get the opportunity to ask questions of the attorneys who argue cases before the appellate courts, and of the judges or justices.

For more information on Courts in the Community, please [click here](#).

Judges

Colorado's population increases every year. As a result, the number of cases filed in the courts increases every year. Colorado judges work hard to cope with the increasing number of cases so individuals may have prompt court hearings. This is not an easy task.

Judges do their best to move cases through their courts as fast as possible while still making certain that everyone has a fair hearing. The sheer number of cases sometimes makes this difficult. With the approval of the chief justice, judges who retire from service may assist local courts with case backlogs and fill in for judges during vacations and emergencies.

Trial judges have many responsibilities in addition to presiding over trials. The judges frequently must hold hearings where they listen to evidence and arguments and decide questions of law that are involved in a case. Judges spend considerable time researching legal matters and writing orders and opinions. Trial judges also have the responsibility of advising people of their constitutional rights when they are charged with a crime.

To ensure there is an adequate number of judges to handle cases in a timely manner, the state court system will occasionally request the addition of new judgeships to the Court of Appeals and the trial courts in the districts where they are most needed. Only the Legislature has authority to add new judgeships to the state system.

Judges on the Court of Appeals and justices on the Supreme Court do not handle trials. They decide an appealed case by reading the printed record of the trial and by considering written briefs and hearing the arguments of the lawyers on both sides. They research and review the law involved in the case and then write opinions, some of which are published and become part of the law of Colorado.

HOW DOES A JUDGE BECOME A JUDGE?

A judge must be a special person: fair, just and knowledgeable in the law. How do judges attain their places on the bench?

The people of Colorado passed a constitutional amendment in 1966 which provides that state judges be appointed rather than elected on a political ticket. This is called a merit selection system. When a vacancy occurs in a state court, a judicial nominating commission interviews applicants and recommends two or three individuals to the governor for consideration. The governor then appoints one of them as a judge to fill the vacancy.

Every judicial district has a nominating commission. Each judicial district nominating commission consists of three attorney members and four non-attorney members. The non-attorneys are appointed by the governor, and the attorneys are appointed jointly by the governor, Supreme Court chief justice and the attorney general. Every nominating commission has one more non-lawyer than there are lawyers, and no political party may have a majority of more than one on a commission. A separate state commission recommends individuals for vacancies on the the Court of Appeals and Supreme Court. The state commission is composed of one lawyer and one non-lawyer from each of Colorado's seven congressional districts, plus a non-lawyer member-at-large.

The Colorado Constitution requires each judge wishing to remain in office to stand for retention after serving a full term. Voters select "yes" if they wish to grant the judge another term in office or "no" if they think the judge should not be retained in office.

Initially, a judge serves a two-year provisional term before standing for retention and then serves a full term. A county judge serves a four-year term; a district judge, six years; a Court of Appeals judge, eight years; and a Supreme Court justice, 10 years. All judges must retire by age 72.

Our courts also benefit from the service of retired judges, who may be appointed at the request of trial courts, to hear cases in which judges have recused themselves or to fill in when a judge is absent or when there is a judicial vacancy or an overscheduled docket. Senior judges contract to provide 60 or 90 days of service per year. In return, the judge's retirement benefit is temporarily increased.

For more information on judicial nominating commissions, please [click here](#).

JUDICIAL PERFORMANCE

In 1988, the Colorado General Assembly created judicial performance commissions for the purpose of providing voters with fair, responsible, and constructive evaluations of trial and appellate judges and justices. The evaluations enable voters to make informed decisions in judicial retention elections, and also provide judges with information that can be used to improve their professional skills.

The State Commission on Judicial Performance develops evaluation techniques for district and county judges, judges of the Court of Appeals, and justices of the Supreme Court. Criteria include integrity; knowledge and understanding of substantive, procedural, and evidentiary law; communication skills; preparation for, attentiveness to, and control over judicial proceedings; sentencing practices; docket management and prompt case disposition; administrative skills; punctuality; effectiveness in working with participants in the judicial process; and services to the legal profession and the public.

Each judicial district has its own 10-member Judicial Performance Commission. The governor and chief justice each appoint one attorney and two non-attorneys. The president of the Senate and speaker of the House each appoint one attorney and one non-attorney.

The state commission is responsible for evaluating the performance of judges of the Court of Appeals and of the justices of the Supreme Court. Its members are appointed in a similar manner.

Narrative profiles and recommendations concerning judicial retention are made available at least 45 days before each general election for those judges subject to that year's retention vote. The information is available on the Internet and is published in the Colorado Legislature's Blue Book of Ballot Issues, which is mailed to each voter household prior to the election.

For more information on the commissions, please [click here](#).

COMMISSION ON JUDICIAL DISCIPLINE

The Colorado Commission on Judicial Discipline oversees the ethical conduct and behavior of state court judges, justices, and senior judges. Created in 1966, the commission is composed of 10 members: four citizens, two attorneys, two district court judges, and two county court judges. The citizen and attorney members are appointed by the governor and must be approved by the Colorado Senate. The judge members are appointed by the Colorado Supreme Court. Commission members serve staggered four-year terms.

The commission does not have jurisdiction over Denver County Court or municipal court judges. Complaints against these judges go to the mayors of the respective cities.

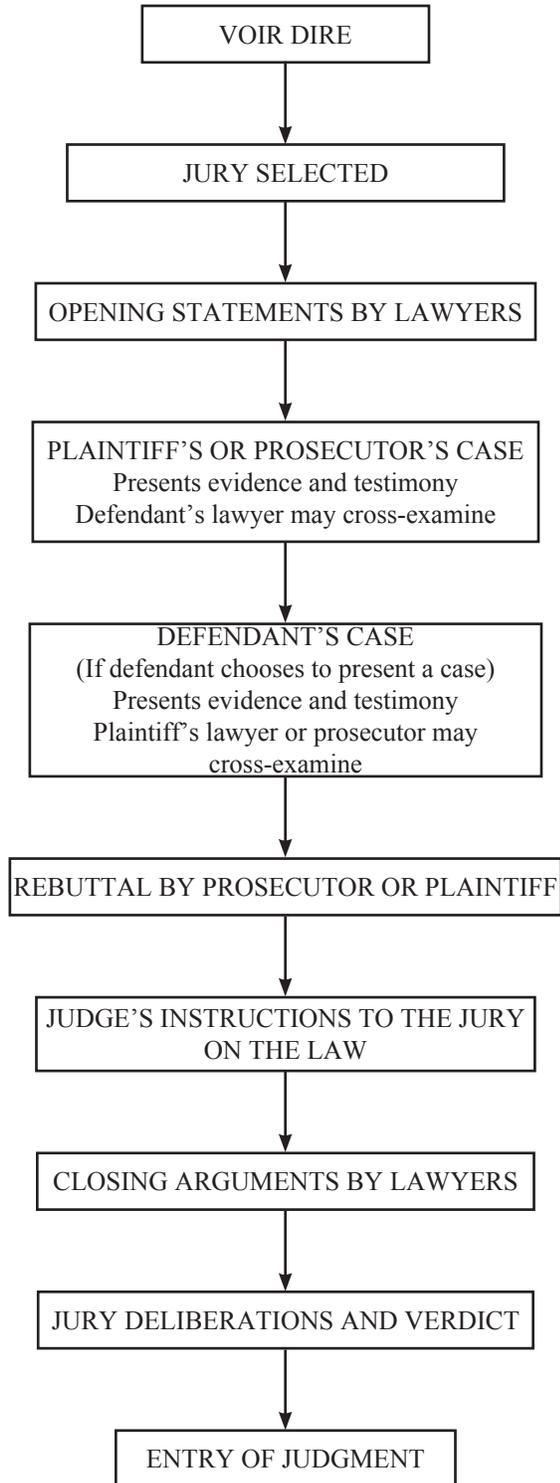
The commission has the constitutional authority to investigate allegations of any of the following acts:

- Willful misconduct by a judge, including misconduct which, although not related to judicial duties, brings the judicial office into disrepute or is prejudicial to the administration of justice;
- Willful or persistent failure of a judge to perform judicial duties, including the incompetent performance of judicial duties;
- Intemperance, including extreme or immoderate personal conduct, recurring loss of temper or control, abuse of alcohol, or the use of illegal narcotics or dangerous drugs;
- Any conduct on the part of a judge that constitutes a violation of the Colorado Code of Judicial Conduct; or
- A disability, which is or is likely to become permanent, that interferes with the performance of judicial duties.

For more information on the commission, please [click here](#).

The jury system

Anatomy of a Colorado jury trial



The jury system is an important part of the court process in Colorado. Persons accused of crimes have a right to trial by jury. Parties to a civil suit also may choose to have their case decided by a jury.

Jurors are selected at random from a computerized list of names taken from voter registration and driver's license records, and Department of Revenue lists. Juror summonses are then sent to the people selected, informing them when and where they are to appear for jury service.

About 95 percent of all jury trials in the world take place in the United States. Those who have served as jurors often express a feeling of pride in and respect for our system of justice and an appreciation for the opportunity to be part of the judicial process.

Efforts to streamline the jury system and make it more effective are continuing. Jurors in Colorado serve for only one day or one trial in any calendar year.

Colorado jurors may take notes during trials and submit written questions to be posed to witnesses by the judge if the judge approves. Jurors also are given notebooks containing pertinent information about the case such as the judge's instructions, a glossary of terms used during the trial and information about witnesses and exhibits. If the parties agree, jurors also may discuss the case with each other before the trial is complete. Parties are encouraged to use technology to speed the presentation of evidence.

Employers must pay regular employees who are serving as jurors their regular wages (or up to \$50 per day) for the first three days of the trial. Unemployed jurors may claim a reimbursement for expenses. The state pays \$50 per day to all jurors after the third day.

The opportunity to serve on a jury allows you to become a better informed and more responsible citizen and to learn more about your courts and the law.

For more information on jury service, please [click here](#) and be sure to click on the "Colorado Jury Service Video" link.

The legal system

Like the United States, the State of Colorado has three branches of government: Executive, Legislative, and Judicial. The Colorado Constitution defines each branch's responsibilities. The Constitution also guarantees many specific legal rights to all Coloradans and provides for the establishment of state courts. Courts are part of the Judicial Branch of government, and their major function is to resolve disputes.

CIVIL DISPUTES

Colorado's courts have power (called jurisdiction) to decide two kinds of disputes – civil and criminal. Civil cases usually involve conflicts between private citizens, such as disputes over contracts, wills, personal injuries, or family law matters. Government departments, agencies, and officials may also be involved in civil cases. In deciding civil cases, judges often must interpret laws made by the Legislative Branch or rules made by government departments or agencies that are part of the Executive Branch.

Court proceedings, however, provide only one way to resolve legal disputes; other methods are called alternative dispute resolution, or ADR. There are two basic types of ADR: negotiation, in which the parties have control of the decision making; and adjudication, in which a neutral person makes the decision.

Mediation is the most commonly used type of negotiation-based ADR. In mediation, a trained neutral third party helps the parties reach a resolution, but the parties make the actual decision. Arbitration is the most common type of adjudication-based ADR. Arbitration is like an informal trial where a neutral third party hears evidence and arguments from the parties and then makes a binding decision (called an award). An award made through binding arbitration may be appealed to the courts only for very limited reasons.

CRIMINAL CASES

Criminal cases in state trial courts involve charges of violations of certain laws enacted by the Colorado General Assembly, the Legislative Branch. Criminal charges are filed by government attorneys, called district attorneys, on behalf of the people of the State of Colorado. Some criminal charges – called indictments – are filed by grand juries, but this procedure is rarely used in Colorado state courts.

The Colorado General Assembly establishes the definition of crimes and sets the ranges of penalties that trial judges may impose on convicted criminals. The Judicial Branch is responsible for the state courts and probation services. The Colorado Department of Corrections – a department of the Executive Branch – is responsible for the state prison system and community corrections facilities. Parole – also under the Department of Corrections – is the supervision of convicted criminals after they are released from the state prison system. The governor has constitutional power to change the sentences of convicted criminals.

City (also called municipal) governments are similar in organization to the state government. City councils pass ordinances that control the behavior of individuals within the city limits. City attorneys may file charges when certain ordinances have been violated, and trials on such charges are held in a municipal court before a municipal judge. Municipal courts are not part of the state court system, but the procedures are very similar to those followed in state courts.

CRIMINAL SENTENCES

Whenever a defendant in a criminal case pleads guilty to or is found guilty of a criminal charge, the judge must sentence the defendant according to the law. Before any defendant is sentenced (except in traffic or other less serious criminal matters), the judge is given a report from the probation department. This report contains information about the defendant and recommendations from the probation department and other professionals involved in the case as to the sentence that should be imposed.

A defendant may be sentenced to serve a stated period of time in a correctional facility. The Department of Corrections decides in which institution the defendant will serve the sentence.

Upon the recommendation of a district attorney, the judge may postpone sentencing a defendant for

a stated period of time after the defendant enters a plea of guilty. If the defendant is a law-abiding citizen for that time, the judge may dismiss the case and the criminal record of the defendant may be erased. This is called a deferred sentence.

A defendant may be granted probation. If this is done, the judge places the defendant under the supervision of the probation department instead of imposing a sentence to a correctional institution. Most defendants who receive probation are first-time offenders involved in nonviolent crimes. Payment to the victim for any losses (called restitution) is usually a requirement of probation. A defendant who violates probation or a deferred sentence may be sent to a correctional facility.

Defendants who are sent to a correctional facility may be released before their sentence is fully served by being granted parole by the State Board of Parole. Defendants on parole must keep a parole officer advised of all their activities for the time required by the board. Defendants who violate conditions of parole may be returned to a correctional facility.

For more information on our court system, please [click here](#).

Probation

Each judicial district has a probation department that is managed by a chief probation officer who is appointed by the judges of the district, with the approval of the chief judge.

The mission of probation is to protect the community while holding offenders accountable. Probation does this by:

- Providing the judge with information on the offender to help the judge fashion the most appropriate sentence;
- Providing support to victims; and
- Ensuring convicted offenders pay restitution to the victim, comply with conditions of the court, and complete community service as ordered.

Information provided to the judge prior to sentencing is based on details of the current offense and the offender's criminal and social history; circumstances of the victim, such as restitution needed; and recommendations for sentencing. If the offender is granted probation, these reports are helpful to the supervising probation officer for case planning. If the offender is to be incarcerated, the report is forwarded to the Department of Corrections, where it is used in the diagnostic and placement process. Eventually, it may be reviewed by the parole board if the offender applies for parole.

For those granted probation, supervision may include counseling, referral to treatment facilities, collection of restitution, drug and alcohol testing, and home detention. Personalized case management plans are developed through evidence-based assessment tools that are used to determine risk and need to help ensure efficient and effective use of resources. Special-needs offenders are referred to specialized programs. These programs are designed for sex offenders, drunk drivers and drug offenders. Evaluators work to refer offenders to programs that best address their needs. These referrals are often to weekly outpatient groups, individual therapy, or daily outpatient sessions. Certain high-risk offenders are referred to intensive supervision probation programs, which may include home monitoring. Defendants who fail to comply with conditions of probation can be returned to court and may subsequently be incarcerated or at least have their conditions of probation increased.

The probation department's post-sentence victim services program is charged with the responsibility of notifying qualifying victims of crime about changes in the probation status of the person convicted of committing a crime against them. Victims who have asked for the service are told about numerous points of information, such as whether the offender has asked for early termination of probation, whether the offender's probation may be revoked or whether the offender's probation has been modified. Referrals to service agencies are also made for victims in need.

For more information on probation, please [click here](#).

Education

The Colorado Judicial Branch puts significant effort toward educating the public about courts and legal matters.

Besides formal programs such as Courts in the Community (see the Supreme Court section) and programs designed for adults and high school students run by judges in some parts of the state, the Branch invites everybody to visit its headquarters in downtown Denver. The Ralph L. Carr Colorado Judicial Center features not only numerous beautiful pieces of art, but also a state-of-the-art interactive Judicial Learning Center for youth and adults.

Admission to the Learning Center, open Monday through Friday from 8 a.m. to 5 p.m., is always free. At the Learning Center, people can learn about the American justice system and its history, how judges do their work, the U.S. and Colorado Constitutions, and the importance of the rule of law. For more information, please [click here](#).

Administration

The Colorado Judicial Branch is centrally administered by the chief justice of the Supreme Court. To assist the chief justice, the Supreme Court appoints the state court administrator. Judicial districts are supervised by chief judges, who are appointed by the chief justice. The chief judge within each district appoints a district administrator, a chief probation officer, and clerks of court to assist in the management of the district.

Innovative business techniques and new procedures are constantly under evaluation for possible introduction throughout the branch at all levels in order to improve efficiency and to make the courts more accessible to the citizens of Colorado.

USEFUL LINKS

Colorado Judicial Branch: www.courts.state.co.us

Colorado Court Facts: www.courts.state.co.us/Courts/Education/Court_Facts.cfm

Colorado State Government: www.colorado.gov

Colorado Constitution: www.courts.state.co.us/Courts/Education/Constitution.cfm

Court Case Information: www.cocourts.com or <http://www.bisi.com/dataservices.php>

INDEX OF LINKS PROVIDED

Educational resources: www.courts.state.co.us/Courts/Education/Index.cfm

Problem-Solving Courts: www.courts.state.co.us/Administration/Unit.cfm?Unit=prbsolcrt

Courts in the Community: www.courts.state.co.us/Courts/Education/Community.cfm

Nominating Commissions: www.courts.state.co.us/Courts/Supreme_Court/Nominating.cfm

Judicial Performance: www.coloradojudicialperformance.gov

Judicial Discipline: www.coloradojudicialdiscipline.com

Jury Information: www.courts.state.co.us/Jury/Index.cfm

Courts Overview: www.courts.state.co.us/Courts/Index.cfm

Probation: www.courts.state.co.us/Administration/Division.cfm?Division=prob

Learning Center: www.colorado.gov/pacific/cjlc/learning-center

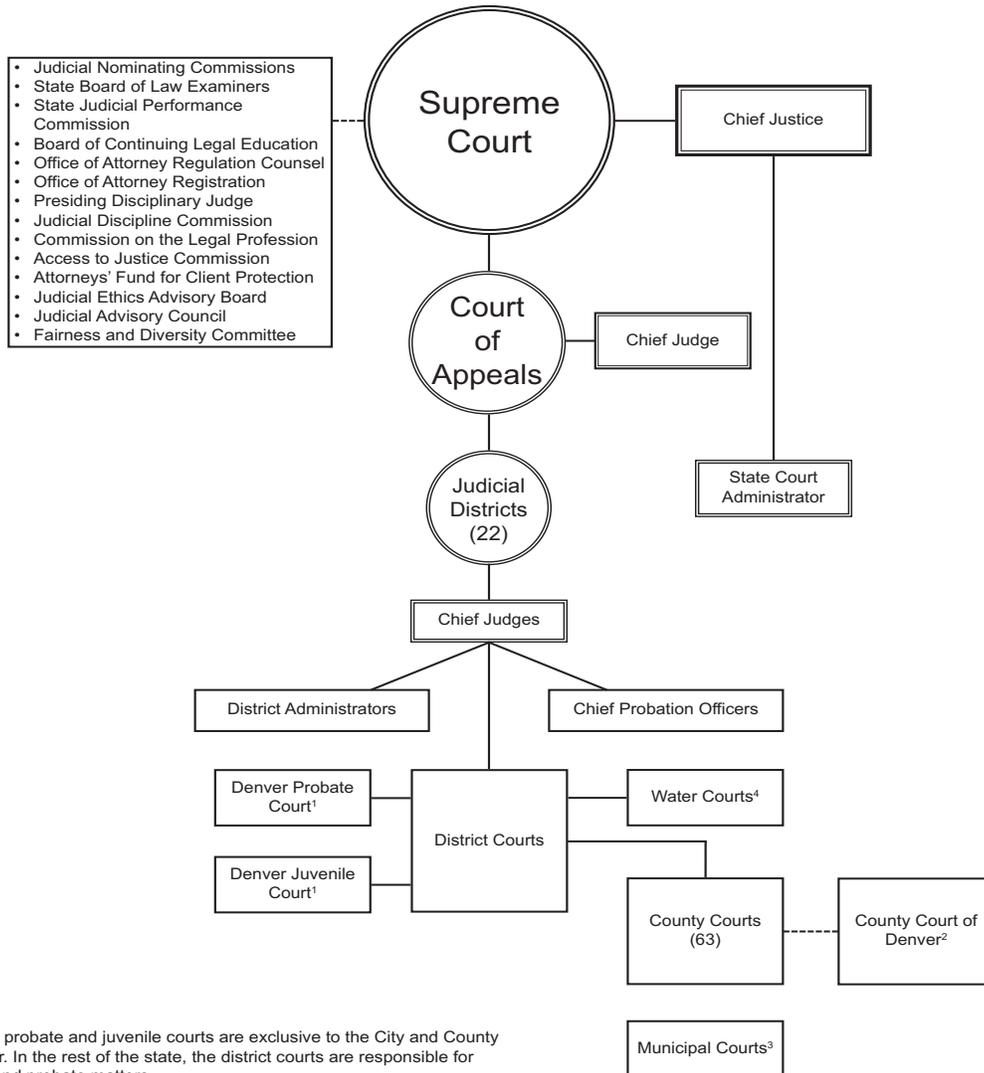
The Colorado court system consists of the Supreme Court, an intermediate Court of Appeals, district courts and county courts.

Each county has both a district court and a county court. Special probate and juvenile courts created by the Colorado Constitution exist in the City and County of Denver.

Colorado statutes also authorize locally funded municipal courts with jurisdiction limited to municipal ordinance violations.

Colorado Judicial Department Organizational Chart

The Colorado court system consists of the Supreme Court, an intermediate Court of Appeals, district courts and county courts. Each county is served both by a district court and a county court. Special probate and juvenile courts exist in the City and County of Denver. Colorado statutes also authorize locally funded municipal courts with jurisdiction limited to municipal ordinance violations.



- 1 – Separate probate and juvenile courts are exclusive to the City and County of Denver. In the rest of the state, the district courts are responsible for juvenile and probate matters.
- 2 – The Denver County Court functions as a municipal as well as a county court and is separate from the state court system.
- 3 – Created and maintained by local government but subject to Supreme Court rules and procedures.
- 4 – There are seven water courts, one for each of Colorado's major river basins, which are divisions of District Court.

Glossary

Law has a special language. Some familiar words have a different meaning when used in connection with our courts. This list will help you understand them.

ALTERNATIVE DISPUTE RESOLUTION (ADR) A way to resolve legal disputes that involves such methods as mediation or arbitration, as a way to avoid litigation in court. ADR is generally less expensive and less time-consuming and can be less adversarial than litigation.

APPEAL A request to take a case to a higher court for review. No new evidence may be introduced during the appellate process; the reviewing court considers whether errors occurred during prior proceedings.

APPELLATE JURISDICTION The power of a court to review a case that has already been tried by a lower court.

BRIEF A written document presented to the court by a lawyer to serve as the basis for argument.

CAPITAL CASE A criminal case in which the death sentence may be imposed.

CIVIL MATTERS Matters or cases pertaining to the private rights of individuals.

COMMON LAW The law of a country based on custom, usage, and the decisions of courts.

CONTEMPT OF COURT The punishable act of showing disrespect for the authority or dignity of a court.

CONVICTION The finding that a person is guilty beyond a reasonable doubt of committing a crime.

COUNSEL A lawyer or a group of lawyers.

COURT OF RECORD A court in which a permanent record of proceedings is made.

CRIMINAL MATTERS Matters or cases concerned with acts considered harmful to the general public that are forbidden by law and are punishable by fine, imprisonment, or death.

DAMAGES Money claimed by, or ordered paid to, a person who has suffered injury due to the fault of someone else.

DEFENDANT A person sued or accused.

DISTRICT ATTORNEY A lawyer elected or appointed in a specified judicial district to serve as a prosecutor for the state in criminal cases.

DOCKET A list of cases to be heard by a court.

DOMESTIC RELATIONS Refers to dissolution of marriage (divorce), parenting time and parenting responsibilities, child support, maintenance (alimony), and property division.

EVIDENCE Anything presented to the judge or jury to prove or disprove a fact. Evidence can be witness testimony, statements, writings, recordings, or objects. Statements by lawyers are not evidence.

FELONY A crime punishable by death or by imprisonment in a state penal institution.

GRAND JURY A jury of 12 to 23 citizens that investigates accusations concerning crimes. If there is sufficient evidence, the jury may return an indictment. Used more often in federal court than in state courts.

INDICTMENT A formal accusation against a person by a grand jury, based upon probable cause that the person committed a crime.

INFORMATION A formal accusation of crime, based on an affidavit of a person allegedly having knowledge of the offense.

JEOPARDY Exposure to possible conviction, such as being on trial in court.

JURISDICTION The legal power to hear and decide cases; the territorial range of such power.

JURY A group of people who swear or affirm to hear evidence, to inquire into the facts in a case, and to give a decision in accordance with their findings.

JUVENILE CASES Cases involving delinquent children (under 18 years of age), children needing oversight, and dependent or neglected children (including abused children).

MENTAL HEALTH CASES Cases involving actions in which a mentally ill person is committed to a hospital or other institution for treatment. A guardian may be appointed to handle the person's affairs.

MISDEMEANOR A less serious criminal offense punishable by a sentence of two years or less.

OPINION A formal statement by a judge or justice hearing a case.

ORDINANCE A law passed by a city or town legislative body.

PLAINTIFF A person who brings a suit in a court of law.

PRE-SENTENCE INVESTIGATION REPORTS Reports by probation officers that present information necessary for the judge to sentence the offender.

PROBATE MATTERS Matters or cases having to do with wills or estates.

PROBATION An alternative form of sentencing for one convicted of a crime. After the convicted person agrees to behave properly, the person is placed under the supervision of a probation officer, rather than being put in jail or prison.

PROSECUTOR A lawyer who represents the government in bringing legal proceedings against an alleged wrongdoer.

PUBLIC DEFENDER A lawyer employed by the government to represent an accused person who cannot afford to hire a lawyer.

RESTITUTION The act of making good or of giving the equivalent for any loss, damage or injury.

SENTENCING When the defendant is brought before the court for imposition of punishment such as fines and costs, time in jail or prison, or probation.

SUBPOENA A written legal order directing a person to appear in court.

SUMMONS An official order to appear in court in a criminal case. In civil cases, it is a notice that a case has been filed and that an answer is required.

TESTIMONY A statement made under oath by a witness or a party to establish a fact.

WARRANT A writ or order authorizing an officer to make an arrest, search, or to perform some other designated act.



Updated 2015

SECTION 2: JUDICIAL PERFORMANCE MATERIALS



OFFICE OF JUDICIAL PERFORMANCE EVALUATION

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www.coloradojudicialperformance.gov

JUDICIAL PERFORMANCE FACT SHEET

PURPOSE

- Commissions on Judicial Performance were created in 1988 by the Colorado General Assembly for the purpose of providing voters with fair, responsible and constructive evaluations of judges and justices seeking retention. The results also provide judges with information to help improve their professional skills as judicial officers.

AUTHORITY

- Article VI, Colorado Constitution
- C.R.S. 13-5.5-101 *et seq.*
- Supreme Court Rules Governing the Commissions on Judicial Performance (Volume 12, Chapter 37, C.R.S.)

COMMISSIONS

- Colorado has 230 volunteer citizen commissioners providing judicial performance evaluations for State Judges. There is one commission in each of the 22 judicial districts and one state commission. Each commission consists of 10 volunteer citizen members: six non-attorneys and four attorneys. Appointments to the commission are made by the Chief Justice, Governor, Speaker of the House and President of the Senate as follows:

Chief Justice:	one attorney and two non-attorneys
Governor:	one attorney and two non-attorneys
Speaker of the House:	one attorney and one non-attorney
President of the Senate:	one attorney and one non-attorney

- Commissioners serve a four-year term with a maximum of two terms served within the judicial district. If the initial appointment is to fill a vacancy, the commissioner is eligible to serve the balance of that term plus two full terms within the judicial district.

- The State Commission promulgates the Rules Governing Commissions on Judicial Performance and evaluates the performance of Supreme Court justices and Court of Appeals judges.
- District Commissions evaluate the performance of county and district court judges in their local judicial districts.

PROCESS

- **Trial Judge Performance Criteria**

- Integrity – including but not limited to whether the judge:
 - Avoids impropriety or the appearance of impropriety
 - Displays fairness and impartiality toward all participants; and
 - Avoids ex parte communications
- Legal Knowledge – including but not limited to whether the judge:
 - Demonstrates an understanding of substantive law and the relevant rules of procedure and evidence
 - Demonstrates awareness of and attentiveness to factual and legal issues before the court; and
 - Appropriately applies statutes, judicial precedent, and other sources of legal authority
- Communication Skills – including but not limited to whether:
 - The judge’s finding of fact, conclusions of law, and orders are clearly written and understandable;
 - The judge’s oral presentations are clearly stated and understandable and the judge clearly explains all oral decisions; and
 - The judge clearly presents information to the jury
- Judicial Temperament – Including but not limited to whether the judge:
 - Demonstrates courtesy toward attorneys, litigants, court staff, and others in the courtroom
 - Maintains and requires order, punctuality, and decorum in the courtroom; and
 - Demonstrates appropriate demeanor on the bench
- Administrative Performance – Including but not limited to whether the judge:
 - Demonstrates preparation for all hearings and trials
 - Uses court time efficiently
 - Issues findings of fact, conclusions of law, and orders without unnecessary delay
 - Effectively manages cases
 - Takes responsibility for more than his or her own caseload and is willing to assist other judges; and
 - Understands and complies with the directives of the Colorado Supreme Court

- Service to the Legal Profession and the public
 - By participating in service-oriented efforts designed to educate the public about the legal system and to improve the legal system
- **Appellate Judge Performance Criteria**
 - Integrity – including but not limited to whether the justice or judge:
 - Avoids impropriety or the appearance of impropriety
 - Displays fairness and impartiality toward all participants; and
 - Avoids ex parte communications
 - Legal Knowledge – including, but not limited to whether the justice’s or judge’s opinions:
 - Are well-reasoned and demonstrate an understanding of substantive law and the relevant rules of procedure and evidence
 - Demonstrate attentiveness to factual and legal issues before the court; and
 - Adhere to precedent or clearly explain the legal basis for departure from precedent
 - Communication Skills – including, but not limited to whether the justice’s or judge’s:
 - Opinions are clearly written and understandable; and
 - Questions or statements during oral arguments are clearly stated and understandable
 - Judicial Temperament – including but not limited to whether the justice or judge:
 - Demonstrates courtesy toward attorneys, litigants, court staff, and others in the courtroom; and
 - Maintains appropriate decorum in the courtroom
 - Administrative Performance – including but not limited to whether the justice or judge:
 - Demonstrates preparation for oral argument, attentiveness, and appropriate control over judicial proceedings
 - Manages workload effectively
 - Issues opinions in a timely manner and without unnecessary delay; and
 - Participates in a proportionate share of the court’s workload
 - Service to the Legal Profession and the Public
 - By participating in service-oriented efforts designed to educate the public about the legal system and to improve the legal system

- Commissions must use the following information in order to make recommendations to the voters regarding the retention of an individual judge:
 - Survey results
 - Trial Judge

Surveys are sent to attorneys (including prosecutors, public defenders, and private attorneys), jurors, litigants, law enforcement personnel, court employees, court interpreters, probation office employees, social services employees, crime victims, and appellate judges
 - Appellate Judge

Surveys are sent to attorneys (including prosecutors, public defenders, and private attorneys), other appellate judges, appellate staff attorneys, and district judges
 - Information from observing the judge in the courtroom
 - Information furnished by the judge in a self-evaluation
 - Review of decisions/opinions
 - Review of individual judge statistics, including caseload information, and open case reports.
 - Information from meetings held with a representative of the District Attorney’s Office and/or a representative of the Public Defender’s Office, when requested
 - Interview with the judge
- In addition, commissions may use the following information in order to make recommendations to the voters regarding the retention of an individual judge:
 - Information and documentation from interested persons
 - Information from interviews with justices and appellate judges and other persons
 - Information from public hearings

Any information the commission uses must be made available to the judge being evaluated.

All commission interviews and deliberations concerning the retention of the judge are confidential.

- Commissions must meet with the chief justice or judge prior to initiating the evaluation process for an informational briefing and overview of the court.
- Commissions complete a written narrative for each judge standing for retention, which must include a retention recommendation of “Retain”, “Do Not Retain”, or “No Opinion”, and the number of commissioners who voted for and against retention.

- If a commission identifies one or more areas of significantly poor performance of a judge, it may recommend that the judge be placed on an improvement plan.

PUBLICATION

- Narratives, recommendations, and survey reports are released to the public on the first day following the deadline for judges to declare their intent to stand for retention at www.coloradojudicialperformance.gov and www.courts.state.co.us.
- Results are linked to www.coloradobluebook.com, www.leg.state.co.us, and www.cobar.org/.
- Results are published in the Legislative Council’s Blue Book (Voter Guide).

STATISTICS

Dating back to the first retention election with commission input held in 1990, 1,323 judicial officers have stood for retention in 13 election cycles. During this time, Commissions recommended to retain 1,290 judicial officers (97.5%), while recommending 20 (1.5%) not be retained. Commissions offered no opinion on 13 judicial officers (1%) during this period.

Colorado voters elected to retain 1,312 of the 1,323 (99.2%) judicial officers standing for retention since 1990. As shown in Table B, Colorado voters retained 99.7% of the judges receiving retain recommendations, 65% of those receiving do not retain recommendations, and retained all judicial officers where commissions offered no opinion.

Commission Recommendation	Total Number	Election Results			
		Retained	Retained %	Not Retained	Not Retained %
To Retain	1,290	1,286	99.7%	4	0.3%
Do Not Retain	20	13	65.0%	7	35.0%
No Opinion	13	13	100.0%	0	0.0%
TOTALS	1,323	1,312	99.2%	11	0.8%

Revised: 12/09/2015



COLORADO

Office of Judicial Performance Evaluation

Judicial Branch

Frequently Asked Questions

[What is merit selection and retention of judges?](#)

In 1966, Colorado voters passed a constitutional amendment that *abolished partisan elections for state court judges* and established a new merit selection system for the nomination, appointment, and retention of state court judges. The constitutional amendment provides that state court judges be appointed rather than elected on a political ticket. The system eliminates the influence of partisan politics, striking a balance between an independent judiciary, while maintaining public accountability.

Each time a vacancy occurs, the Governor selects a new judge from a list of two or three highly qualified nominees chosen by a judicial nominating commission. The judge serves a two-year provisional term before his or her name is on the ballot for retention. Once retained, the judge serves a fixed term - four years for county court judges, six years for district court judges, eight years for Court of Appeals judges, and ten years for Supreme Court justices - before his or her name is on a retention ballot again. There is no limit on the number of terms a judge may serve, but the mandatory retirement age is 72.

[What judges are state court judges and what judges are not state court judges?](#)

State court judges are county court judges, district court judges, Court of Appeals judges, and Supreme Court justices.

The following judges are not state court judges: Denver County judges (appointed by the Mayor of Denver); municipal court judges serving the cities and towns throughout the state of Colorado; administrative law judges located in the executive branch of government; federal judges and magistrates; and state court magistrates.

Although the Denver County judges are not state court judges, the local district judicial performance commission also evaluates the Denver County judges.

[How often do judges stand for retention election?](#)

All judges stand for retention election after serving a two-year provisional term. County court judges then stand every four years, district court judges every six years, Court of Appeals judges every eight years, and Supreme Court justices every ten years.

[What are commissions on judicial performance?](#)

Commissions on judicial performance provide voters with fair, responsible, and constructive evaluations of judges and justices seeking retention in general elections. The results of the evaluations also provide judges with information that can be used to improve their professional skills as judicial officers.

There is one commission in each of the 22 judicial districts and one state commission.

District commissions evaluate the county and district judges in the judicial district. A state commission evaluates the justices of the Supreme Court and judges of the Court of Appeals.

[What is the composition of the commissions?](#)

Each commission consists of 10 volunteer citizen commissioners: four attorneys and six non-attorneys.

[Who makes appointments to the commissions?](#)

Appointments are made by the Chief Justice of the Colorado Supreme Court, the Governor of Colorado, the Colorado Speaker of the House, and Colorado President of the Senate.

The Chief Justice and the Governor appoint one attorney and two non-attorneys; the Speaker of the House and the President of the Senate appoint one attorney and one non-attorney.

[How are judges evaluated?](#)

Commissions prepare a narrative that includes the recommendation to voters on the retention of the judge. To evaluate the *overall performance* of a judge, commissions are required to use the following information:

- Results from surveys sent to persons who have sufficient experience with a judge: attorneys (including prosecutors, public defenders, and private attorneys), jurors, litigants, law enforcement personnel, employees of the court, court interpreters, employees of probation offices, employees of local departments of social services, victims of crime, and other judges and justices.
- Information from observing the judge in the courtroom
- Information furnished by the judge in a self-evaluation
- Review of decisions/opinions
- Review of individual judge statistics
- Interview with the judge
- In addition, commissions may use the following information:
 - Information and documentation from interested persons
 - Information from interviews with justices and judges and other persons (if the District Attorney and/or Public Defender request to meet with the commission prior to April 1 of a retention year the commission must meet with a representative of the requesting office.)
 - Information from public hearings

[Who gets to fill out a survey questionnaire?](#)

The state commission contracts with an independent research company to develop a survey process and identify individuals to be sent judicial performance surveys. When people are involved in a case in a state court, their names are entered into the court's case management system. From the courts data individuals are identified who's case has been closed and had an event that would likely have provided an opportunity observe and interact with the judge assigned their case. These individuals are eligible to receive performance surveys for judges able to stand for retention election in the next general election. In some areas a random sample of individuals

are selected for surveying, in cases where a small number of individuals are identified, all identified individuals will be sent a survey.

[What happens after the survey questionnaires are completed and returned?](#)

The completed surveys are returned to the independent research company conducting the survey. That company compiles the results of all the completed surveys it receives into a composite report. The final report is supplied to the commissions on judicial performance and each judge eligible to stand for retention that year. Individual survey responses, including written comments, remain confidential. Judges and commissioners do not know the names of the people who make comments or what ratings specific individuals give the judges.

[Will judges and commissioners see any completed surveys?](#)

No. Judges and commissioners will not see individual survey responses. They will only be able to see the combined results of the received surveys reported in a final report. That report will include written comments provided by people being surveyed. Those comments confidential and only made available to commissioners and the judge being evaluated. Those comments are not released to the public, but may be summarized in the narrative by the commission when relied on as part of their evaluation and retention recommendation.

[Are the overall results of the judicial performance surveys available to the public? How can I see them?](#)

Yes. Final judicial performance evaluation reports and commission narratives and recommendations are available on the Office of Judicial Performance Evaluation's website at www.ojpe.org.

[I would like to evaluate a judge. Can I do that?](#)

Since the survey is based on a sample file of people who have appeared before a judge eligible to stand for retention election in the next general election those individuals include in the sample file and fielded by the independent research firm will be able to complete the anonymous survey. However, any individual can respond to survey questions or make written comments about a judge, by completing the

appropriate form on the ojpe.org website. Written submissions outlining performance feedback on a judge may also be mail to the Office of Judicial Performance Evaluation, Ralph L. Carr Judicial Center, c/o Kent J. Wagner, Executive Director, 1300 Broadway, Suite 220, Denver, CO 80203, at any time. The letter must include the senders name and address and the judge will receive a copy of the letter.

[Do judicial performance commissions review individual cases of judges?](#)

Commissions do review some decisions of the judge as part of the overall evaluation of the judge's legal knowledge, reasoning, and communication skills. However, commissions have no authority to second guess, change, or reverse any judge's decision in any case.

[Why doesn't the narrative include the judge's party affiliation?](#)

In 1966, the people of Colorado passed a constitutional amendment that *abolished partisan elections of state court judges* and established a new merit selection system for the nomination, appointment, and retention of judges. Colorado's merit selection system provides that judges are selected based on their judicial qualifications. Once appointed by the Governor and at the end of each term of office voters decide whether each judge should continue to serve, unless the judge steps down or is required to retire at the age of 72.

[Why doesn't the judge run against anyone?](#)

In a merit selection and retention system, judges stand for retention election and therefore do not run against an opponent. The question on the ballot is: "Shall Judge (Justice) be retained in office?" Yes/No.

In fact, under the Code of Judicial Conduct, judges are prohibited from campaign activity unless there is active opposition to retention in office. This removes partisan politics and political campaigns from the retention process.

[What if I think a judge has done something illegal or unethical? Does the commission investigate complaints against a judge?](#)

No. The commission on judicial performance evaluates the overall performance of a judge.

The Commission on Judicial Discipline has separate responsibility for judicial disciplinary matters.

[Does the commission evaluate the performance of state court magistrates?](#)

No. Since, state court magistrates are employees of the judicial district; they are evaluated yearly along with all other employees. Complaints about the job performance of a magistrate may be made to the district administrator.

[What if I think a magistrate has done something illegal or unethical?](#)

Since magistrates are attorneys, complaints should be directed to the Office of Attorney Regulation Counsel.

ARTICLE 5.5
COMMISSIONS ON JUDICIAL
PERFORMANCE

Section

[13-5.5-101. Legislative declaration.](#)

[13-5.5-101.5. Office of judicial performance evaluation.](#)

[13-5.5-102. State commission on judicial performance - repeal.](#)

[13-5.5-103. Powers and duties of the state commission.](#)

[13-5.5-104. District commission on judicial performance - repeal.](#)

[13-5.5-105. Powers and duties of district commissions.](#)

[13-5.5-105.5. Judicial performance criteria.](#)

[13-5.5-106. Evaluation in retention election years.](#)

[13-5.5-106.3. Interim evaluations.](#)

[13-5.5-106.4. Recusal.](#)

[13-5.5-106.5. Confidentiality.](#)

[13-5.5-107. Acceptance of private or federal grants - general appropriations.](#)

[13-5.5-108. Implementation of article. \(Repealed\)](#)

[13-5.5-109. Repeal of article.](#)

13-5.5-101. Legislative declaration.

(1) The general assembly hereby finds and declares that it is in the public interest to establish a system of evaluating judicial performance to provide persons voting on the retention of justices and judges with fair, responsible, and constructive information about judicial performance and to provide justices and judges with useful information concerning their own performances. The general assembly further finds and declares that the evaluation of judicial performance should be conducted statewide and within each judicial district using uniform criteria and procedures pursuant to the provisions of this article.

(2) The general assembly further finds and declares that it is in the public interest to establish an office of judicial performance evaluation within the judicial department of the state to implement the provisions of this article.

Source: L. 88: Entire article added, p. 596, § 1, effective May 12. **L. 97:** Entire section amended, p. 1647, § 1, effective June 5. **L. 2008:** Entire section amended, p. 1271, § 1, effective July 1.

13-5.5-101.5. Office of judicial performance evaluation.

(1) There is hereby established in the judicial department the office of judicial performance evaluation, referred to in this article as the "office". The state commission on judicial performance established pursuant to section [13-5.5-102](#) shall oversee the office.

(2) The state commission shall appoint an executive director of the office who shall serve at the pleasure of the state commission. The compensation of the executive director shall be the same as the general assembly establishes for a judge of the district court. The compensation paid to the executive director shall not be reduced during the time that a person serves as executive director. The executive director shall hire additional staff for the office as necessary and as approved by the state commission.

(3) Subject to the supervision of the state commission, the office shall:

(a) Staff the state and district commissions when directed to do so by the state commission;

(b) Train members of the state and district commissions;

(c) Collect and disseminate data on judicial performance evaluations;

(d) Conduct public education efforts concerning the judicial performance evaluation process and retention recommendations of the state and district commissions;

(e) Measure public awareness of the judicial performance evaluation process through regular polling; and

(f) Complete other duties as assigned by the state commission.

(4) Expenses of the office shall be paid for from the state commission on judicial performance cash fund created pursuant to section [13-5.5-107](#).

Source: L. 2008: Entire section added, p. 1271, § 2, effective July 1.

[13-5.5-102. State commission on judicial performance - repeal.](#)

(1) (a) (I) (A) There is hereby established the state commission on judicial performance, referred to in this article as the "state commission". The state commission shall consist of ten members. The speaker of the house of representatives and the president of the senate shall each appoint one attorney and one nonattorney. The governor and the chief justice of the supreme court shall each appoint one attorney and two nonattorneys.

(B) For purposes of this subsection (1), "attorney" means a person admitted to practice law before the courts of this state.

(II) (A) All members of the state commission shall serve terms of four years. The term of each member of the state commission shall expire on November 30 of an odd-numbered year, and the term of a member appointed to replace a member at the end of the member's term shall commence on December 1 of the year in which the previous member's term expires.

(B) The term of each member serving as of January 1, 2009, shall be extended until November 30 of the odd-numbered year following the completion of that member's term. This sub-subparagraph (B) is repealed, effective July 1, 2014.

(b) (I) Any vacancy on the state commission shall be filled by the original appointing authority, but a member shall not serve more than two full terms plus any balance remaining on an

unexpired term if the initial appointment was to fill a vacancy. Within five days after a vacancy arises on the state commission, the state commission shall notify the appointing authority of the vacancy, and the appointing authority shall make an appointment within forty-five days after the date of the vacancy. If the original appointing authority fails to make the appointment within forty-five days after the date of the vacancy, the state commission shall make the appointment.

(II) Justices and judges actively performing judicial duties may not be appointed to serve on the state commission. Former justices and judges are eligible to be appointed as attorney members; except that a former justice or judge may not be assigned or appointed to perform judicial duties while serving on the state commission.

(c) The chair of the state commission shall be elected by its members every two years.

(2) Members and employees of the state commission shall be immune from suit in any action, civil or criminal, based upon official acts performed in good faith as members of the state commission.

(3) A member of the state commission shall recuse himself or herself from any evaluation of the person who appointed the member to the commission.

Source: L. 88: Entire article added, p. 596, § 1, effective May 12. **L. 93:** (1)(a) and (1)(b) amended, p. 658, § 1, effective April 30. **L. 97:** (1)(a) and (1)(b) amended, p. 1647, § 2, effective June 5. **L. 2008:** (1)(a) and (1)(b) amended and (3) added, p. 1272, § 3, effective July 1.

ANNOTATION

Effect of 1997 amendment was to establish that terms of all members expire on November 30 of even-numbered years. Romanoff v. State Comm'n on Judicial Performance, 126 P.3d 182 (Colo. 2006).

A member may serve past the expiration of the member's term until a successor is appointed. Romanoff v. State Comm'n on Judicial Performance, 126 P.3d 182 (Colo. 2006).

Original appointing official may not appoint a successor more than 45 days after the expiration of a member's term. The state commission is authorized to appoint a successor when the original appointing official fails to make the appointment within 45 days after the expiration of a member's term. Romanoff v. State Comm'n on Judicial Performance, 126 P.3d 182 (Colo. 2006).

[13-5.5-103. Powers and duties of the state commission.](#)

(1) In addition to other powers conferred and duties imposed upon the state commission by this article, the state commission has the following powers and duties:

(a) To appoint and supervise a person to serve as the executive director of the office of judicial performance evaluation;

(b) To assist the executive director in managing the office and providing fiscal oversight of the operating budget of the office;

(c) To develop uniform procedures and techniques for evaluating district and county judges, justices of the Colorado supreme court, and judges of the court of appeals based on performance

criteria provided in section 13-5.5-105.5;

(d) To develop guidelines and procedures for the continuous collection of data for use in the evaluation process;

(e) To develop surveys for persons affected by justices and judges, including but not limited to attorneys, jurors, litigants, law enforcement personnel, attorneys within the district attorneys' and public defender's offices, employees of the court, court interpreters, employees of probation offices, employees of local departments of social services, and victims of crimes, as defined in section [24-4.1-302](#) (5), C.R.S.;

(f) To determine the statistical validity of completed surveys, report to the district commissions on the statistical validity of the surveys for their districts, and specify when and how statistically invalid surveys may be used;

(g) To prepare alternatives to surveys where sample populations are inadequate to produce valid results;

(h) To produce and distribute narratives and survey reports;

(i) To review case management data and statistics for individual appellate justices and judges provided by the state court administrator;

(j) To review written judicial opinions;

(k) To collect information from direct courtroom observation;

(l) To interview justices and appellate judges and other persons and accept information and documentation from interested persons;

(m) To draft narratives that reflect the results of judicial performance evaluations of justices and appellate judges;

(n) To distribute to the public narratives that reflect the results of each judicial performance evaluation of each appellate justice or judge;

(o) (I) Subject to approval by the Colorado supreme court, to promulgate rules necessary to implement and effectuate the provisions of this article, including rules to be followed by the district commissions.

(II) Prior to the final promulgation of any rule pursuant to this paragraph (o), the state commission shall post a notice of the proposed rule, allow for a period for public comment, and give the public an opportunity to address the commission concerning the proposed rule at a public hearing.

(III) The state commission may adopt rules or standards that provide guidance to members of the state commission or members of district commissions regarding the review or interpretation of information obtained as a result of the evaluation process and the criteria contained in section 13-5.5-105.5. Any such rules or standards shall:

(A) Be consistent with paragraphs (e), (f), and (g) of this subsection (1), in that the rules or

standards and the application thereof shall take into consideration the statistical reliability of survey data; and

(B) Not divest any member of the state commission or a district commission of his or her ultimate authority to decide whether to vote for or against recommending retention of a justice or judge and be consistent with subsection (2) of this section and section [13-5.5-105](#) (2).

(p) To develop procedures for the review of the deliberation procedures established by the district commissions. However, the state commission shall not have the power or duty to review actual determinations made by the district commissions.

(q) To gather and maintain statewide statistical data and post a statistical report of the statewide data on its web site no later than thirty days prior to each retention election. The statistical report shall specify:

(I) The total number of justices and judges who were eligible to stand for retention;

(II) The total number of evaluations of justices and judges performed by the state and district commissions;

(III) The total number of justices and judges who were evaluated but did not stand for retention; and

(IV) The total number of justices and judges recommended as "retain", "do not retain", or "no opinion", respectively.

(2) Unless recused pursuant to a provision of this article, each member of the state commission shall have the discretion to vote for or against retention of a justice or judge based upon his or her review of all information before the state commission.

Source: L. 88: Entire article added, p. 597, § 1, effective May 12. **L. 93:** (1)(k) amended and (1)(l) added, p. 659, § 2, effective April 30. **L. 97:** (1)(g) repealed, p. 1482, § 39, effective June 3; (1)(b), (1)(c), (1)(e), and (1)(i) amended and (1)(d.5) and (1)(m) added, p. 1648, § 3, effective June 5. **L. 2008:** Entire section R&RE, p. 1273, § 4, effective July 1.

[13-5.5-104. District commission on judicial performance - repeal.](#)

(1) (a) (I) (A) There is hereby established in each judicial district a district commission on judicial performance, referred to in this article as the "district commission". The district commission shall consist of ten members. The speaker of the house of representatives and the president of the senate shall each appoint one attorney and one nonattorney. The governor and the chief justice of the supreme court shall each appoint one attorney and two nonattorneys.

(B) For purposes of this subsection (1), "attorney" means a person admitted to practice law before the courts of this state.

(II) All members of the district commission shall serve terms of four years. The term of each member of a district commission shall expire on November 30 of an odd-numbered year, and the term of any member appointed to replace a member at the end of the member's term shall commence on December 1 of the year when the previous member's term expires.

(III) The appointing authority may remove members of the district commissions for cause.

(b) (I) Any vacancy on the district commission shall be filled by the original appointing authority, but a member shall not serve more than two full terms plus any balance remaining on an unexpired term if the initial appointment was to fill a vacancy. Within five days after a vacancy arises on a district commission, the district commission shall notify the appointing authority and the state commission of the vacancy, and the appointing authority shall make an appointment within forty-five days after the date of the vacancy. If the original appointing authority fails to make the appointment within forty-five days after the date of the vacancy, the state commission shall make the appointment.

(II) Justices and judges actively performing judicial duties may not be appointed to serve on the district commission. Former justices and judges are eligible to be appointed as attorney members; except that a former justice or judge may not be assigned or appointed to perform judicial duties while serving on the district commission.

(c) The chair of the district commission shall be elected by its members every two years.

(2) The district administrator of each judicial district and his or her staff shall serve as the staff for the district commission.

(3) Members and employees of a district commission shall be immune from suit in any action, civil or criminal, based upon official acts performed in good faith as members of the district commission.

(4) A member of a district commission shall recuse himself or herself from an evaluation of the person who appointed the member to the commission.

Source: L. 88: Entire article added, p. 598, § 1, effective May 12. **L. 93:** (1)(a) and (1)(b) amended, p. 659, § 3, effective April 30. **L. 97:** (1)(a) and (1)(b) amended, p. 1649, § 4, effective June 5. **L. 2008:** (1)(a), (1)(b), and (2) amended and (4) added, p. 1275, § 5, effective July 1.

13-5.5-105. Powers and duties of district commissions.

(1) In addition to other powers conferred and duties imposed upon a district commission by this article, in conformity with the rules, guidelines, and procedures adopted by the state commission pursuant to section [13-5.5-103](#) (1) (f) and the state commission's review of the deliberation procedures pursuant to section [13-5.5-103](#) (1) (p), a district commission has the following powers and duties:

(a) To review case management statistics and data for individual district and county court judges provided by the state court administrator;

(b) To review written judicial opinions and orders of district and county court judges within the judicial district;

(c) To collect information from direct courtroom observation of district and county court judges within the judicial district;

- (d) To interview district and county court judges and other persons and accept information and documentation from interested persons;
 - (e) To obtain information from parties and attorneys regarding district and county court judges' handling of domestic relations and family law cases with respect to the judges' fairness, patience with pro se parties, gender neutrality, and handling of emotional parties; and
 - (f) To draft narratives that reflect the results of judicial performance evaluations of district and county court judges.
- (2) Unless recused pursuant to a provision of this article, each member of a district commission shall have the discretion to vote for or against retention of a district or county judge based upon his or her review of all information before the district commission.
- (3) Upon completing its required recommendations and narratives, each district commission shall collect all documents and other information, including all copies, received regarding the justices or judges evaluated. Each district commission shall forward the documents and other information, including all copies, to the state commission within thirty days following submission of the district commission's recommendations and narratives to the state commission. The state commission shall adopt rules regarding retention of evaluation information, which shall be made available to district commissions for subsequent evaluations of the justices or judges.

Source: L. 88: Entire article added, p. 598, § 1, effective May 12. **L. 93:** Entire section amended, p. 660, § 4, effective April 30. **L. 97:** Entire section amended, p. 1650, § 5, effective June 5. **L. 2008:** Entire section R&RE, p. 1276, § 6, effective July 1.

13-5.5-105.5. Judicial performance criteria.

- (1) The state commission shall evaluate each justice of the Colorado supreme court and each judge of the Colorado court of appeals based on the following performance criteria:
- (a) Integrity, including but not limited to whether:
 - (I) The justice or judge avoids impropriety or the appearance of impropriety;
 - (II) The justice or judge displays fairness and impartiality toward all participants; and
 - (III) The justice or judge avoids ex parte communications;
 - (b) Legal knowledge, including but not limited to whether:
 - (I) The justice's or judge's opinions are well-reasoned and demonstrate an understanding of substantive law and the relevant rules of procedure and evidence;
 - (II) The justice's or judge's opinions demonstrate attentiveness to factual and legal issues before the court; and
 - (III) The justice's or judge's opinions adhere to precedent or clearly explain the legal basis for departure from precedent;

- (c) Communication skills, including but not limited to whether:
 - (I) The justice's or judge's opinions are clearly written and understandable; and
 - (II) The justice's or judge's questions or statements during oral arguments are clearly stated and understandable;
 - (d) Judicial temperament, including but not limited to whether:
 - (I) The justice or judge demonstrates courtesy toward attorneys, litigants, court staff, and others in the courtroom; and
 - (II) The justice or judge maintains appropriate decorum in the courtroom;
 - (e) Administrative performance, including but not limited to whether:
 - (I) The justice or judge demonstrates preparation for oral argument, attentiveness, and appropriate control over judicial proceedings;
 - (II) The justice or judge manages workload effectively;
 - (III) The justice or judge issues opinions in a timely manner and without unnecessary delay; and
 - (IV) The justice or judge participates in a proportionate share of the court's workload; and
 - (f) Service to the legal profession and the public by participating in service-oriented efforts designed to educate the public about the legal system and to improve the legal system.
- (2) The district commissions shall evaluate district and county judges based on the following criteria:
- (a) Integrity, including but not limited to whether:
 - (I) The judge avoids impropriety or the appearance of impropriety;
 - (II) The judge displays fairness and impartiality toward all participants; and
 - (III) The judge avoids ex parte communications;
 - (b) Legal knowledge, including but not limited to whether:
 - (I) The judge demonstrates an understanding of substantive law and relevant rules of procedure and evidence;
 - (II) The judge demonstrates awareness of and attentiveness to factual and legal issues before the court; and
 - (III) The judge appropriately applies statutes, judicial precedent, and other sources of legal authority;
 - (c) Communication skills, including but not limited to whether:
 - (I) The judge's findings of fact, conclusions of law, and orders are clearly written and

understandable;

(II) The judge's oral presentations are clearly stated and understandable and the judge clearly explains all oral decisions; and

(III) The judge clearly presents information to the jury;

(d) Judicial temperament, including but not limited to whether:

(I) The judge demonstrates courtesy toward attorneys, litigants, court staff, and others in the courtroom;

(II) The judge maintains and requires order, punctuality, and decorum in the courtroom; and

(III) The judge demonstrates appropriate demeanor on the bench;

(e) Administrative performance, including but not limited to whether:

(I) The judge demonstrates preparation for all hearings and trials;

(II) The judge uses court time efficiently;

(III) The judge issues findings of fact, conclusions of law, and orders without unnecessary delay;

(IV) The judge effectively manages cases;

(V) The judge takes responsibility for more than his or her own caseload and is willing to assist other judges; and

(VI) The judge understands and complies with directives of the Colorado supreme court; and

(f) Service to the legal profession and the public by participating in service-oriented efforts designed to educate the public about the legal system and to improve the legal system.

Source: L. 2008: Entire section added, p. 1277, § 7, effective July 1.

13-5.5-106. Evaluation in retention election years.

(1) (a) (I) The state commission shall conduct an evaluation of each justice of the supreme court and each judge of the court of appeals whose term is to expire and who must stand for retention election. The evaluations shall be referred to in this subsection (1) as "retention year evaluations".

(II) Retention year evaluations shall be completed and the narrative prepared and communicated to the appellate justice or judge no later than forty-five days prior to the last day available for the appellate justice or judge to declare such justice's or judge's intent to stand for retention.

(III) Prior to the completion of the narratives for retention year evaluations, and following at least ten days' notice to the public and the appellate justices and judges, it is highly recommended that the state commission hold a public hearing regarding all appellate justices and judges who are subject to retention year evaluations. The state commission shall arrange to

have the public hearing electronically recorded and shall make copies of the recording available to members of the public. The state commission shall supply a copy of the recording at no cost to any justice or judge who is the subject of the hearing.

(IV) The narrative prepared for a retention year evaluation shall include an assessment of the appellate justice's or judge's strengths and weaknesses with respect to the judicial performance criteria contained in section 13-5.5-105.5 (1), a discussion regarding any deficiency identified in the interim evaluation prepared pursuant to section 13-5.5-106.3, and a statement of whether the state commission concludes that any deficiency identified has been satisfactorily addressed by the justice or judge.

(V) Each appellate justice or judge who receives a retention year evaluation shall have the opportunity to meet with the state commission or otherwise respond to the evaluation no later than ten days following the justice's or judge's receipt of the evaluation. If the meeting is held or response is made, the state commission may revise its evaluation.

(b) After the requirements of paragraph (a) of this subsection (1) are met, the state commission shall make a recommendation regarding the retention of each appellate justice or judge who declares his or her intent to stand for retention, which recommendation shall be stated as "retain", "do not retain", or "no opinion". A "no opinion" recommendation shall be made only when the state commission concludes that results are not sufficiently clear to make a firm recommendation and shall be accompanied by a detailed explanation. The narrative shall include the number of commission members who voted for and against the recommendation.

(c) The state commission shall release the narrative, the recommendation, and any other relevant information related to a retention year evaluation to the public no later than forty-five days prior to the retention election. The state commission shall arrange to have the narrative and recommendation printed in the ballot information booklet prepared pursuant to section [1-40-124.5](#), C.R.S., and mailed to electors pursuant to section [1-40-125](#), C.R.S.

(2) (a) (I) The district commission shall conduct an evaluation of each district and county judge whose term is to expire and who must stand for retention election. The evaluations shall be referred to in this subsection (2) as "retention year evaluations".

(II) Retention year evaluations shall be completed and the narrative communicated to each judge no later than forty-five days prior to the last day available for the judge to declare the judge's intent to stand for retention.

(III) Prior to the completion of narratives for retention year evaluations, and following at least ten days' notice to the public and the district and county judges, it is highly recommended that the district commission conduct a public hearing regarding all district and county judges who are subject to retention year evaluations. The district commission shall arrange to have the public hearing electronically recorded and shall make copies of the recording available to members of the public. The district commission shall supply a copy of the recording at no cost to any judge who is the subject of the hearing.

(IV) The narrative prepared for a retention year evaluation shall include an assessment of the district or county judge's strengths and weaknesses with respect to the judicial performance criteria contained in section 13-5.5-105.5 (2), a discussion regarding any deficiency identified in

the interim evaluation prepared pursuant to section 13-5.5-106.3, and a statement of whether the district commission concludes that any deficiency identified has been satisfactorily addressed by the judge.

(V) Each judge who receives a retention year evaluation shall have the opportunity to meet with the district commission or otherwise respond to the evaluation no later than ten days following the judge's receipt of the evaluation. If the meeting is held or response is made, the district commission may revise its evaluation.

(b) After the requirements of paragraph (a) of this subsection (2) are met, the district commission shall make a recommendation regarding the retention of each district or county judge who declares his or her intent to stand for retention, which recommendation shall be stated as "retain", "do not retain", or "no opinion". A "no opinion" recommendation shall be made only when the district commission concludes that results are not sufficiently clear to make a firm recommendation and shall be accompanied by a detailed explanation. The narrative shall include the number of commission members who voted for and against the recommendation.

(c) The state commission shall release the narrative, the recommendation, and any other relevant information to the public no later than forty-five days prior to the retention election. The state commission shall arrange to have a summary of the narrative and recommendation printed in the ballot information booklet prepared pursuant to section [1-40-124.5](#), C.R.S., and mailed to electors within the judicial district pursuant to section [1-40-125](#), C.R.S.

(3) Repealed.

Source: L. 88: Entire article added, p. 598, § 1, effective May 12. **L. 93:** (1)(a), (1)(c), (2)(a), and (2)(c) amended, p. 660, § 5, effective April 30. **L. 97:** (1)(c) and (2)(c) amended and (3) added, p. 1650, § 6, effective June 5. **L. 2008:** (1) and (2) amended and (3) repealed, pp. 1280, 1282, §§ 8, 9, effective July 1.

[13-5.5-106.3. Interim evaluations.](#)

(1) (a) During each full term of office of each Colorado supreme court justice and each judge of the court of appeals, the state commission shall conduct at least one interim evaluation of each justice and each judge. The evaluations shall be referred to in this subsection (1) as "interim evaluations".

(b) Interim evaluations shall be completed and communicated to the chief justice of the Colorado supreme court or the chief judge of the court of appeals and the appellate justice or judge being evaluated.

(c) Each appellate justice or judge who receives an interim evaluation shall have the opportunity to meet with the state commission or otherwise respond to the evaluation no later than ten days following the justice's or judge's receipt of the evaluation. If the meeting is held or response is made, the state commission may revise its evaluation.

(d) The state commission shall release the survey evaluations related to interim evaluations to the public simultaneously with, and no earlier than, the release of the retention year evaluations pursuant to section [13-5.5-106](#) (1) (c) prepared for that year.

(2) (a) During each full term of office of each district judge and county judge, the district commission shall conduct at least one interim evaluation of each district judge and county judge. The evaluations shall be referred to in this subsection (2) as "interim evaluations".

(b) Interim evaluations shall be completed and communicated to the chief judge of the district and to the district or county judge being evaluated.

(c) Each district or county judge who receives an interim evaluation shall have the opportunity to meet with the district commission or otherwise respond to the evaluation no later than ten days following the judge's receipt of the evaluation. If the meeting is held or response is made, the district commission may revise its evaluation.

(d) The state commission shall release the survey evaluations related to interim evaluations to the public simultaneously with, and no earlier than, the release of the retention year evaluations prepared for that year.

Source: L. 2008: Entire section added, p. 1282, § 10, effective July 1.

13-5.5-106.4. Recusal.

(1) A member of the state commission or a district commission shall disclose to the commission any professional or personal relationship with a justice or judge that may affect an unbiased evaluation of the justice or judge, including involvement with any litigation involving the justice or judge and the member, the member's family, or the member's financial interests. The state commission or a district commission may require the recusal of one of its members on account of a relationship with a justice or judge upon a two-thirds vote of the other members of the commission.

(2) A member of the state commission or a district commission shall recuse himself or herself from participating in the consideration and vote on any matter involving the evaluation of a justice or judge for failure to meet the training, courtroom observation, interview, or opinion review responsibilities provided by rule, unless excused by a two-thirds vote of the other members of the commission.

(3) An attorney serving as a member of the state commission or a district commission shall not request that a justice or judge being evaluated by the commission be recused from hearing a case in which the attorney appears as counsel of record, or request permission to withdraw from a case pending before a justice or judge being evaluated, solely on the basis that the attorney is serving as a member of a commission.

(4) An attorney who appears in a matter where opposing counsel or a witness serves as a member of the state commission or a district commission that is evaluating the justice or judge before whom the matter is set may not seek withdrawal of the attorney, exclusion of the witness, or recusal of the justice or judge solely on the basis that the opposing counsel or witness is serving as a member of a commission.

(5) A justice or judge being evaluated by the state commission or a district commission may not recuse himself or herself from a case solely on the basis that an attorney, party, or witness is a

member of the commission, nor should a justice or judge grant an attorney's request to withdraw from a case, solely on the basis that the attorney, party, or witness is serving as a member of a commission.

Source: L. 2008: Entire section added, p. 1283, § 10, effective July 1.

13-5.5-106.5. Confidentiality.

(1) Except as provided in subsection (3) of this section, all comments in survey reports, self-evaluations, personal information protected under section [24-72-204](#) (3) (a) (II), C.R.S., additional oral or written information, content of improvement plans, and any matter discussed in executive session shall remain confidential except as otherwise specifically provided by rule. Comments in survey reports may be summarized for use in a narrative. A member of a commission shall not publicly discuss the evaluation of any particular justice or judge.

(2) Except as provided in subsection (3) of this section, all recommendations, narratives, and survey reports are confidential until released to the public on the first day following the deadline for justices and judges to declare their intent to stand for retention. Any comments included in the report shall be made available only to members of the commissions, the justice or judge being evaluated, and the chief justice or chief judge.

(3) Information required to be kept confidential pursuant to this article may be released only under the following circumstances:

- (a) To the supreme court attorney regulation committee, as provided by rule of the state commission;
- (b) To the commission on judicial discipline, as provided by rule of the state commission; or
- (c) With the consent of the justice or judge being evaluated.

Source: L. 2008: Entire section added, p. 1284, § 10, effective July 1.

13-5.5-107. Acceptance of private or federal grants - general appropriations.

The state commission is authorized to accept any grants of federal or private funds made available for any purpose consistent with the provisions of this article. Any funds received pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the state commission on judicial performance cash fund, which is hereby created and referred to in this section as the "fund". The fund shall also include the amount of the increases in docket fees collected pursuant to sections [13-32-105](#) (1) and 42-4-1710 (4) (a), C.R.S. Any interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund. Moneys in the fund may be expended by the state commission, subject to annual appropriation by the general assembly, for the purposes of this article. In addition, the general assembly may make annual appropriations from the general fund for the purposes of this article.

Source: L. 88: Entire article added, p. 598, § 1, effective May 12. **L. 99:** Entire section

amended, p. 167, § 2, effective March 25. **L. 2003:** Entire section amended, p. 2672, § 3, effective June 6.

13-5.5-108. Implementation of article. (Repealed)

Source: L. 88: Entire article added, p. 599, § 1, effective May 12. **L. 90:** Entire section amended, p. 860, § 1, effective May 23. **L. 2008:** Entire section repealed, p. 1284, § 11, effective July 1.

13-5.5-109. Repeal of article.

(1) This article is repealed, effective June 30, 2019.

(2) Repealed.

Source: L. 88: Entire article added, p. 600, § 1, effective May 12. **L. 93:** Entire section amended, p. 661, § 6, effective April 30. **L. 97:** (2) repealed, p. 1482, § 40, effective June 3. **L. 99:** (1) amended, p. 167, § 1, effective March 25. **L. 2008:** (1) amended, p. 1284, § 12, effective July 1.

RULE CHANGE 2014(04)

CHAPTER 37

**RULES GOVERNING THE COMMISSIONS
ON JUDICIAL PERFORMANCE**

The State Commission on Judicial Performance
with the approval of the Supreme Court
Repeals and Readopts the following rules
pursuant to section 13-5.5-103(1)(o)(I), C.R.S.

ANALYSIS BY RULE

Rule 1	Appointments
Rule 2	Officers
Rule 3	Procedures
Rule 4	Meetings
Rule 5	Executive Sessions
Rule 6	Recusal
Rule 7	Staff
Rule 8	Chief Justice or Chief Judge
Rule 9	Training
Rule 10	Trial Judge Evaluations
Rule 11	Appellate Judge and Justice Evaluations
Rule 12	Recommendations
Rule 13	Narratives
Rule 14	Confidentiality
Rule 15	Records
Rule 16	Complaints

Rule 1. Appointments.

(a) State and district commissioners shall be appointed to four-year terms, expiring on November 30 in odd-numbered years. A commissioner who resigns or moves out of the district or state shall advise the chair of the commission, the appointing authority, and the state commission. The chair of a commission shall advise the appointing authority and the state commission of any vacancy, and the date of the vacancy, if known. The executive director of the Office of Judicial Performance Evaluation shall within five days, in writing, advise the appropriate appointing authority of the vacancy, whether the vacancy must be filled with an attorney or a non-attorney, and that if no appointment is made within forty-five days of the vacancy, the state commission shall make the appointment.

(b) The executive director of the Office of Judicial Performance Evaluation shall cause to be published and posted at all times on the office's web site the names of the state and district commissioners and the name, address, telephone number, and e-mail address of the executive director of the Office of Judicial Performance Evaluation and each district administrator.

(c) The state commission may recommend to the appointing authority that a member of any commission be removed for cause pursuant to section 13-5.5-104, C.R.S. "Cause" means any malfeasance or nonfeasance in carrying out the commissioner's official duties and responsibilities, including improper disclosure of confidential information, failure to disclose any basis for recusal or to recuse when appropriate, advocating for or against the retention of any particular justice or judge, and failure to participate in three consecutive meetings.

Rule 2. Officers.

Commissions shall elect a chair and a vice-chair, one of whom should be an attorney, and one of whom should not be an attorney, to serve two-year terms. The terms of the chairs and vice-chairs of the commissions shall expire on November 30 of each even-numbered year.

Rule 3. Procedures.

(a) A majority of the total number of appointed members of a commission shall constitute a quorum. The procedures adopted by the state commission shall be used for the conduct of all meetings, evaluations, and other business, except as otherwise provided by these rules or statute.

(b) The state commission shall, prior to final promulgation of any proposed rule, post a notice of the proposed rule, allow for a period of public comment, and give the public an opportunity to address the commission concerning the proposed rule at a public hearing.

Rule 4. Meetings.

(a) Although judicial performance commissions are not subject to the Colorado open meetings law, section 24-6-402, C.R.S., they should attempt to comply as fully as practicable with the spirit of that law.

(b) The state commission should post a notice on its web site, including specific agenda information where possible, not less than twenty-four hours prior to the holding of any meeting at which a quorum of the state commission is expected to be in attendance.

(c) The state commission shall conduct all business publicly, unless it has decided to proceed in executive session in accordance with these rules. No adoption of any proposed policy, position, resolution, rule, regulation, or formal action shall occur at any executive session.

Rule 5. Executive Sessions.

A motion to go into executive session must be approved by a two-thirds vote of the commissioners, and for only the following purposes:

- (a) Consideration of confidential materials as part of an evaluation of a justice or judge, including deliberations. Members of other commissions and staff may not be present during such consideration;
- (b) Conferences with an attorney representing the commission concerning disputes involving the commission;
- (c) Investigation of charges or complaints against an employee or consideration of dismissal, discipline, promotion, demotion, or compensation of the employee;
- (d) Specialized details of security arrangements or investigations, including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law; or
- (e) Any other matter required to be kept confidential by state or federal statutes or rules, including these rules.

Rule 6. Recusal.

- (a) A commissioner shall:
 - (i) Disclose to the commission any professional or personal relationship or interest with respect to a justice or judge that may affect an unbiased evaluation of the justice or judge, including any litigation involving the justice or judge and the commissioner, the commissioner's family, or the commissioner's financial interest. A commission may require recusal of one of its members on account of such relationship upon a two-thirds vote of the other commissioners;
 - (ii) Recuse himself or herself from any evaluation of the person who appointed the commissioner;
 - (iii) Recuse himself or herself from participating in the consideration and vote on any matter involving the evaluation of a justice or judge for failure of a commissioner to meet the training, courtroom observation, interview, or opinion review responsibilities provided by these rules, unless excused by a two-thirds vote of the other commissioners;
 - (iv) Once recused, not be present during any part of the evaluation of the justice or judge.
- (b) An attorney serving as a commissioner shall not request that a justice or judge being evaluated by the commission be recused from hearing a case in which the attorney appears as counsel of record, or request permission to withdraw from a case pending before a justice or judge being evaluated, solely on the basis that the attorney is serving as a judicial performance commissioner.
- (c) An attorney who appears in a matter where opposing counsel or a witness serves as a member of a judicial performance commission which is evaluating the justice or judge before

whom the matter is set, may not seek withdrawal of the attorney, exclusion of the witness, or recusal of the justice or judge solely on the basis that the opposing counsel or witness is serving as a judicial performance commissioner.

(d) A justice or judge being evaluated by a judicial performance commission may not recuse himself or herself from a case in which an attorney, party, or witness is a judicial performance commissioner, nor should a justice or judge grant an attorney's request to withdraw from a case, solely on the basis that the attorney, party, or witness is serving as a judicial performance commissioner.

Rule 7. Staff.

The executive director of the Office of Judicial Performance Evaluation, district administrators, and their staffs shall assist their respective commissions in the performance of their duties, including meeting and interview arrangements, obtaining and distributing information, and posting notices. Staff shall not participate in interviews or deliberations conducted by the commission concerning the evaluation of any justice or judge nor the drafting of narratives.

Rule 8. Chief Justice or Chief Judge.

Prior to beginning any evaluations, each commission shall meet with the chief justice or chief judge of the court for which there is a justice or judge to be evaluated that year. The meeting is to allow the chief justice or chief judge to provide an overview of the court, and shall not concern the evaluation of any justice or judge's performance, unless the commission had previously made a recommendation for improvement for a justice or judge being evaluated that year.

Rule 9. Training.

The state commission shall provide training bi-annually that is reasonably accessible and convenient to all commissioners. Each commissioner shall attend one training session, or an appropriate alternative as determined by the state commission, each year in which the commissioner is to evaluate a justice or judge.

Rule 10. Trial Judge Evaluations.

(a) The state commission shall develop three separate survey questionnaires: one shall be for appellate judges and justices concerning each trial judge being evaluated; one shall be for attorneys, including prosecutors, public defenders, and private attorneys, who have appeared before the trial judge; and one shall be for non-attorneys, including jurors, litigants, law enforcement personnel, employees of the court, court interpreters, employees of probation offices, employees of local departments of social services, and victims of crimes, who have appeared before each trial judge being evaluated. Surveys shall be conducted on a continuing basis, and results provided to the district commission and the trial judge. To ensure the anonymity of respondents, a district commission shall not receive completed questionnaires, and all reports of the results shall be based on aggregate data. Comments shall be separated from completed questionnaires before the comments are forwarded to the trial judge being evaluated.

(b) The district commission shall ensure that each trial judge being evaluated receives adequate observation.

(c) The district administrator shall provide the district commission with information concerning the caseload, case types, open case reports, and case aging reports for each trial judge during the current term, to the extent possible.

(d) The state commission shall develop self-evaluation forms that shall be completed by each trial judge being evaluated.

(e) Each district judge shall submit to the district commission not less than three decisions he or she issued, including, if applicable, one of which was reversed on appeal, together with the reversing opinion, if applicable. Each county judge shall submit to the district commission transcripts of three findings of fact, conclusions of law, and orders, one of which was reversed on appeal, together with the reversing decision, if applicable. Each district commission shall review the three decisions or transcripts and any others authored by the trial judge that the commission in its discretion may select for compliance with the statutory criteria for legal knowledge, thoroughness of findings, clarity of expression, logical reasoning, and application of the law to the facts presented. All decisions and opinions submitted or reviewed shall have been issued during the judge's current term.

(f) A district commission may interview district court judges, and county court judges, and other interested persons. The commission shall agree to meet with a representative of the District Attorney and a representative of the Public Defender when a request is made, provided that the request is made no later than the first day of April of the relevant retention year. The commission shall provide adequate notice and work with the representatives to schedule a convenient date and time for the meeting. In addition, the commission shall accept information and documentation from any interested person, provided the person (i) submits his or her name and address, and (ii) submits the information and/or documentation to the commission by the first day of April of the relevant retention year. The district commission shall provide the trial judge with a written summary of any oral information, and a copy of any written information, no later than ten days prior to the interview with the commission. The trial judge also may submit additional written information to the commission prior to or after the interview.

(g) The district commission shall interview each trial judge being evaluated following its initial review of information.

Rule 11. Appellate Judge and Justice Evaluations.

(a) The state commission shall develop three separate survey questionnaires: one shall be for trial judges concerning each appellate judge or justice being evaluated; one shall be for attorneys, including prosecutors, public defenders, and private attorneys, who have appeared before the appellate judge or justice; and one shall be for other appellate judges and justices, and staff attorneys. Surveys shall be conducted on a continuing basis, and results provided to the state commission and the appellate judge or justice. To ensure the anonymity of respondents, the state commission shall not receive completed questionnaires, and all reports of the results shall be based on aggregate data. Comments shall be separated from completed questionnaires before the comments are forwarded to the appellate judge or justice.

(b) The state commission shall ensure that each appellate judge or justice being evaluated receives adequate observation through visits to the courtroom.

(c) The clerk of the supreme court and the court of appeals shall provide the state commission with information concerning opinions authored, including concurrences and dissents, and cases on desk reports, excluding case names, for each appellate judge or justice during the current term, to the extent possible.

(d) The state commission shall develop self-evaluation forms that shall be completed by each appellate judge or justice being evaluated.

(e) Each appellate judge or justice shall submit to the state commission five opinions he or she authored, including both civil and criminal cases. These opinions shall include, if applicable, at least one separate concurrence or dissent, at least one unpublished opinion, and at least one opinion which was reversed on appeal, together with the reversing opinion. The state commission shall review the five opinions and any others authored by the appellate judge or justice that the commission in its discretion may select for compliance with the statutory criteria for legal knowledge, adherence to the record, clarity of expression, logical reasoning, and application of the law to the facts presented. All opinions submitted or reviewed shall have been issued during the appellate judge or justice's current term.

(f) The state commission may interview other persons, including judges and justices and accept information and documentation from interested persons, if the person provides his or her name and address. The state commission shall provide the appellate judge or justice with a written summary of any oral information, and a copy of any written information, no later than ten days prior to the interview with the commission. The appellate judge or justice also may submit additional written information to the commission prior to or after the interview.

(g) The state commission shall interview each appellate judge or justice being evaluated following its initial review of information.

Rule 12. Recommendations.

(a) Following the evaluation based upon the survey data, courtroom observations, case information, self-evaluations, review of decisions, interviews, and any other written or oral information received, a commission shall prepare a recommendation regarding the retention of each justice or judge. The recommendation shall be "retain," "do not retain," or "no opinion." The recommendation of "no opinion" shall be given only when the commission is equally divided, and as such shall not be counted for or against retention. Individual commissioners may not vote "no opinion," but shall vote to retain, or to not retain, or shall recuse themselves.

(b) A commission shall consider a recommendation of "retain" for any justice or judge who receives an average of at least 3.0 on a 4.0 scale for the questionnaire responses, and issued no decision or opinion more than 180 days after a matter was briefed, argued, or otherwise submitted to the court for decision, whichever is latest, unless the other evaluation information indicates a significant performance problem, such as poor judicial temperament.

(c) A commission shall consider a recommendation of "do not retain" for any justice or judge who receives less than an average of 3.0 on a 4.0 scale for the questionnaire responses, unless:

(i) The nature or high number of cases of a justice or judge's docket or caseload is such that it cannot appropriately be managed in a timely manner. This may be particularly true for a provisional justice or judge, who when appointed may inherit a significantly high number of cases that cannot be managed quickly; or

(ii) The commission believes that with additional experience on the bench and a commitment to improve his or her judicial skills, the justice or judge should be given more time to develop his or her judicial skills. The justice or judge must agree to the recommendations contained in a performance plan that identifies areas of significantly poor performance and makes specific recommendations for improvement.

Rule 13. Narratives.

(a) Within ten days following the interview, a commission shall provide the justice or judge a complete written draft of the narrative supporting the recommendation. A narrative shall consist of four short paragraphs totaling not more than 500 words, as follows:

(i) The retention recommendation, including the number of commissioners who voted for and against retention;

(ii) Undergraduate and law schools attended, previous substantial legal or public employment, relevant professional activities or awards, and volunteer or other community work;

(iii) Evaluation methods used by the commission, whether any of the groups surveyed had an insufficient response rate, and the percentages of responses from each surveyed group recommending that a justice or judge be retained or not be retained, or making no recommendation that a justice or judge be retained; and

(iv) A description of the performance of the justice or judge over the past term, including any areas of notably strong or weak performance with respect to the judicial performance criteria contained in 13-5.5-105.5(1) and (2), any deficiencies reflected in the interim evaluation, the extent to which such deficiency has been satisfactorily addressed, and any additional information that the commission believes may be of assistance to the public in making an informed voting decision;

(b) The justice or judge being evaluated may respond in writing to the draft narrative, and request an additional interview, within ten days of receipt of the draft. Any additional interview shall be held within ten days of the request. The commission may revise the draft narrative, and shall provide the justice or judge with the final narrative within ten days following the additional interview.

(c) Any commission issuing a "do not retain" or "no opinion" recommendation shall, at the justice or judge's request, include a response from the justice or judge of not more than 100 words. The commission may then change its vote count or revise the draft narrative, and shall provide the justice or judge with the final narrative within ten days following the receipt of the response.

(d) If the commission has identified one or more areas of significantly poor performance, it may recommend to the chief justice or chief judge that the justice or judge be placed on an improvement plan.

Rule 14. Confidentiality.

(a) All comments in survey reports, self-evaluations, personal information protected under section 24-72-204(3)(a)(II), C.R.S., additional oral or written information under rules 10(f) and 11(f), content of improvement plans, any matter discussed in executive session under rule 5, and complaints, responses and decisions under rule 16, shall remain confidential except as otherwise specifically provided in these rules. Information from comments in survey reports, self-evaluations, and additional oral or written information under rules 10(f) and (g) and 11(f) and (g), may be summarized for use in a narrative. No commissioner may publicly discuss the substance of the evaluation of any particular justice or judge. Each commission may designate a sole or primary spokesperson to publicly discuss, between July 1 and December 31 of an election year, the process of evaluating the justices and judges.

(b) All recommendations, narratives, and survey reports are confidential until released to the public on the first day following the deadline for judges to declare their intent to stand for retention. Any comments included in the report shall be made available only to commissioners, the justice or judge being evaluated, and the chief justice or chief judge.

(c) Otherwise confidential information may be released only under the following circumstances:

(i) To the supreme court attorney regulation committee, if an allegation is made against a justice or judge in the course of the evaluation process which, if true, would constitute a violation of the Colorado rules of professional conduct, on the same basis as that body provides confidential information to the state commission;

(ii) To the commission on judicial discipline, if an allegation is made against a justice or judge in the course of the evaluation process, which, if true, would constitute a violation of the code of judicial conduct, or which would constitute extra-judicial conduct that reflects adversely on the judiciary, on the same basis as that body provides confidential information to the state commission; or

(iii) With the consent of the justice or judge. A justice or judge disclosing otherwise confidential information shall be deemed to have consented to the release of related confidential information.

Rule 15. Records.

Upon completing its required recommendations and narratives, each commission shall collect all documents and other information, including all copies, received regarding the justices or judges evaluated. Each commission shall forward the documents and other information, including all copies, to the state commission within 30 days following submission of their recommendations and narratives to the state commission. The state commission shall establish guidelines regarding retention of evaluation information, which shall be made available to commissions in subsequent judicial performance evaluation cycles.

Rule 16. Complaints.

(a) Any commissioner, justice or judge may file a written complaint with the state commission regarding any alleged violation of these rules or the statutes governing judicial performance commissions. The state commission shall provide a copy to the chair of the

particular district commission, who shall provide a written response. The state commission shall make an independent review and provide its decision to the district commission along with any remedial instructions. The state commission may not reverse any retention recommendation, but may cause a rebuttal to be published with the district commission's recommendation or direct a district commission to revise a narrative within ten days. Should the district commission fail to satisfactorily comply, the state commission may, in its discretion, rewrite the narrative.

(b) The state commission may, following the redaction of confidential information, publically disclose a complaint, response, and the state commission's decision.

Amended and Adopted by the Court, En Banc, March 17, 2014, effective immediately.

By the Court:

**Nancy E. Rice
Chief Justice, Colorado Supreme Court**

RULE CHANGE ~~2014(04)2016()~~

CHAPTER 37

**RULES GOVERNING THE COMMISSIONS
ON JUDICIAL PERFORMANCE**

The State Commission on Judicial Performance
with the approval of the Supreme Court
Repeals and Readopts the following rules
pursuant to section 13-5.5-103(1)(o)(I), C.R.S.

ANALYSIS BY RULE

Rule 1	Appointments
Rule 2	Officers
Rule 3	Procedures
Rule 4	Meetings
Rule 5	Executive Sessions
Rule 6	Recusal
Rule 7	Staff
Rule 8	Chief Justice or Chief Judge
Rule 9	Training
Rule 10	Trial Judge Evaluations
Rule 11	Appellate Judge and Justice Evaluations
Rule 12	Recommendations
Rule 13	Narratives
Rule 14	Confidentiality
Rule 15	Records
Rule 16	Complaints

Rule 1. Appointments.

(a) State and district commissioners shall be appointed to four-year terms, expiring on November 30 in odd-numbered years. A commissioner who resigns or moves out of the district or state shall advise the chair of the commission, the appointing authority, and the ~~state commission~~executive director of the Office of Judicial Performance Evaluation. The chair of a commission shall advise the appointing authority and the ~~state commission~~executive director of the Office of Judicial Performance Evaluation of any vacancy, and the date of the vacancy, if known. The executive director of the Office of Judicial Performance Evaluation shall within five days, in writing, advise the appropriate appointing authority of the vacancy, whether the vacancy must be filled with an attorney or a non-attorney, and that if no appointment is made within forty-five days of the vacancy, the state commission shall make the appointment.

(b) The executive director of the Office of Judicial Performance Evaluation shall cause to be published and posted at all times on the office's web site the names of the state and district commissioners and the name, address, telephone number, and e-mail address of the executive director of the Office of Judicial Performance Evaluation and each district administrator.

(c) The state commission may recommend to the appointing authority that a member of any commission be removed for cause pursuant to section 13-5.5-104, C.R.S. "Cause" means any malfeasance or nonfeasance in carrying out the commissioner's official duties and responsibilities, including improper disclosure of confidential information, failure to disclose any basis for recusal or to recuse when appropriate, publicly advocating for or against the retention of any particular justice or judge, and failure to participate in three consecutive meetings.

Rule 2. Officers.

Commissions shall elect a chair and a vice-chair, one of whom should be an attorney, and one of whom should not be an attorney, to serve two-year terms. The terms of the chairs and vice-chairs of the commissions shall expire on November 30 of each even-numbered year.

Rule 3. Procedures.

(a) A majority of the total number of appointed members of a commission shall constitute a quorum. The procedures adopted by the state commission shall be used for the conduct of all meetings, evaluations, and other business, except as otherwise provided by these rules or statute.

(b) The state commission shall, prior to final promulgation of any proposed rule, post a notice of the proposed rule, allow for a period of public comment, and give the public an opportunity to address the commission concerning the proposed rule at a public hearing.

Rule 4. Meetings.

(a) Although judicial performance commissions are not subject to the Colorado open meetings law, section 24-6-402, C.R.S., they should attempt to comply as fully as practicable with the spirit of that law.

(b) The state commission should post a notice on its web site, including specific agenda information where possible, not less than twenty-four hours prior to the holding of any meeting at which a quorum of the state commission is expected to be in attendance.

(c) The state commission shall conduct all business publicly, unless it has decided to proceed in executive session in accordance with these rules. No ~~adoption of any~~ proposed policy, position, resolution, rule, regulation, or formal action shall ~~occur~~ be adopted at any executive session.

Rule 5. Executive Sessions.

A motion to go into executive session must be approved by a two-thirds vote of the commissioners, and for only the following purposes:

- (a) Consideration of confidential materials as part of an evaluation of a judge or justice ~~or judge~~, including deliberations. Members of other commissions and staff may not be present during such consideration;
- (b) Conferences with an attorney representing the commission concerning disputes involving the commission;
- (c) Investigation of charges or complaints against an employee or consideration of dismissal, discipline, promotion, demotion, or compensation of ~~the an~~ employee;
- (d) Specialized details of security arrangements or investigations, including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law; or
- (e) Any other matter required to be kept confidential by state or federal statutes or rules, including these rules.

Rule 6. Recusal.

- (a) A commissioner shall:
 - (i) Disclose to the commission any professional or personal relationship or interest with respect to a judge or justice ~~or judge~~ that may affect an unbiased evaluation of the judge or justice ~~or judge~~, including any litigation involving the judge or justice ~~or judge~~ and the commissioner, the commissioner's family, or the commissioner's financial interest. A commission may require recusal of one of its members on account of such relationship or interest upon a two-thirds vote of the other commissioners;
 - (ii) Recuse himself or herself from any evaluation of the person who appointed the commissioner;
 - (iii) Recuse himself or herself from participating in the consideration and vote on any matter involving the evaluation of a judge or justice ~~or judge~~ for failure of a commissioner to meet the training, courtroom observation, interview, or opinion review responsibilities provided by these rules, unless excused by a two-thirds vote of the other commissioners; and
 - (iv) ~~Once recused, not be present during any part of the evaluation of the~~ judge or justice ~~or judge~~.
- (b) An attorney serving as a commissioner shall not request that a judge or justice ~~or judge~~ being evaluated by the commission be recused from hearing a case in which the attorney appears as counsel of record, or request permission to withdraw from a case pending before a judge or justice ~~or judge~~ being evaluated, solely on the basis that the attorney is serving as a judicial performance commissioner.

(c) An attorney who appears in a matter where opposing counsel or a witness serves as a member of a judicial performance commission which is evaluating the judge or justice ~~or judge~~ before whom the matter is set, may not seek withdrawal of the attorney, exclusion of the witness, or recusal of the judge or justice ~~or judge~~ solely on the basis that the opposing counsel or witness is serving as a judicial performance commissioner.

(d) A judge or justice ~~or judge~~ being evaluated by a judicial performance commission may not recuse himself or herself from a case in which an attorney, party, or witness is a judicial performance commissioner, nor should a judge or justice ~~or judge~~ grant an attorney's request to withdraw from a case, solely on the basis that the attorney, party, or witness is serving as a judicial performance commissioner.

Rule 7. Staff.

(a) The executive director of the Office of Judicial Performance Evaluation, district administrators, and their staffs shall assist their respective commissions in the performance of their duties, including making meeting and interview arrangements, obtaining and distributing information, and posting notices. ~~Staff shall not~~ Neither district administrators nor their staff shall participate in interviews or deliberations conducted by the commission concerning the evaluation of any judge or justice or ~~judge~~ nor assist in the drafting of narratives.

(b) The executive director of the Office of Judicial Performance Evaluation may attend meetings, interviews, and deliberations in an advisory capacity when requested or agreed to by a commission. The executive director shall not vote on the recommendation of a judge or justice, or participate in the initial drafting of a narrative. The executive director may edit narratives and make factual, grammatical, and format changes to narratives for consistency and accuracy prior to the narratives being published for public access.

Rule 8. Chief Justice or Chief Judge.

Prior to beginning any evaluations, each commission shall meet with the chief justice or chief judge of the court for which there is a judge or justice ~~or judge~~ to be evaluated that year. The meeting is to allow the chief justice or chief judge to provide an overview of the court, ~~and shall not concern the evaluation of any justice or judge's performance, unless the commission had previously made a recommendation for improvement for a justice or judge being evaluated that year.~~

Rule 9. Training.

The ~~state commission~~ Office of Judicial Performance Evaluation shall provide training ~~bi-annually~~ each retention year that is reasonably accessible and convenient to all commissioners. Each commissioner shall attend one training session, or an appropriate alternative as ~~determined~~ developed by the ~~state commission~~ Office of Judicial Performance Evaluation, each year in which the commissioner is to evaluate a judge or justice ~~or judge~~.

Rule 10. Trial Judge Evaluations.

(a) The state commission shall develop three separate survey questionnaires: one shall be for appellate judges and justices concerning each trial judge being evaluated; one shall be for

attorneys, including prosecutors, public defenders, and private attorneys, who have appeared before the trial judge; and one shall be for non-attorneys, including jurors, litigants, law enforcement personnel, employees of the court, court interpreters, employees of probation offices, employees of local departments of social services, and victims of crimes, who have appeared before each trial judge being evaluated. Surveys shall be conducted on a continuing basis, and results provided to the district commission and the trial judge. To ensure the anonymity of respondents, a district commission shall not receive completed questionnaires, and all reports of the results shall be based on aggregate data. Comments shall be separated from completed questionnaires before the comments are forwarded to the trial judge being evaluated.

(b) The district commission shall ensure that each trial judge being evaluated receives adequate observation.

(c) ~~The~~ To the extent possible, the district administrator shall provide the district commission with information ~~concerning the~~ from the current term of office for each trial judge being evaluated, including the judge's caseload, ease the types, of cases, an open case ~~reports~~ report, and a case aging reports for each trial judge during the current term, to the extent possible ~~report~~.

(d) The state commission shall develop self-evaluation forms that shall be completed by each trial judge being evaluated.

(e) Each ~~district~~ trial judge being evaluated shall submit to the district commission not less than three decisions he or she issued, including, if applicable, one of which was reversed on appeal, together with the reversing opinion, if applicable. ~~Each county judge shall submit to the district commission transcripts of three findings of fact, conclusions of law, and orders, one of which was reversed on appeal, together with the reversing decision, if applicable. The judge may choose written or transcribed decisions for submission.~~ Each district commission shall review the three decisions or transcripts and any others authored by the trial judge that the commission in its discretion may select for compliance with the statutory criteria for legal knowledge, thoroughness of findings, clarity of expression, logical reasoning, and application of the law to the facts presented. All decisions and opinions submitted or reviewed shall have been issued during the judge's current term.

(f) ~~A~~ The district commission may interview ~~district court~~ judges, and county court judges, justices, other than the judge being evaluated, and other interested persons. The commission shall agree to meet with a representative of the District Attorney and a representative of the Public Defender when a request is made, provided that the request is made no later than the first day of April of the relevant retention year. The commission shall provide adequate notice and work with the representatives to schedule a convenient date and time for ~~the~~ meeting. In addition, the commission shall accept information and documentation from any interested person, provided the person (i) submits his or her name and address, and (ii) submits the information and/or documentation to the commission by the first day of April of the relevant retention year. The district commission shall provide the trial judge being evaluated with a written summary of any oral information, and a copy of any written information, no later than ten days prior to ~~the~~ his or her interview with the commission. The trial judge also may submit additional written information to the commission prior to or after the interview.

(g) The district commission shall interview each trial judge being evaluated following its initial review of information.

Rule 11. Appellate Judge and Justice Evaluations.

(a) The state commission shall develop three separate survey questionnaires: one shall be for trial judges concerning each appellate judge or justice being evaluated; one shall be for attorneys, including prosecutors, public defenders, and private attorneys, who have appeared before the appellate judge or justice; and one shall be for other appellate judges and justices, and staff attorneys. Surveys shall be conducted on a continuing basis, and results provided to the state commission and the appellate judge or justice. To ensure the anonymity of respondents, the state commission shall not receive completed questionnaires, and all reports of the results shall be based on aggregate data. Comments shall be separated from completed questionnaires before the comments are forwarded to the appellate judge or justice.

(b) The state commission shall ensure that each appellate judge or justice being evaluated receives adequate observation through visits to the courtroom.

(c) ~~The~~To the extent possible, the clerk of the supreme court and the court of appeals shall provide the state commission with information ~~concerning from the current term of office for each appellate judge or justice being evaluated, including a list of all~~ opinions authored, ~~including concurrences and dissents, and~~ cases on desk ~~reports, excluding case names, for each appellate judge or justice during the current term, to the extent possible~~ report.

(d) The state commission shall develop self-evaluation forms that shall be completed by each appellate judge or justice being evaluated.

(e) Each appellate judge or justice shall submit to the state commission five opinions he or she authored, ~~including in~~ both civil and criminal cases. These opinions shall include, if applicable, at least one separate concurrence or dissent, at least one unpublished opinion, and at least one opinion which was reversed on appeal, together with the reversing opinion. The state commission shall review the five opinions and any others authored by the appellate judge or justice that the commission in its discretion may select for compliance with the statutory criteria for legal knowledge, adherence to the record, clarity of expression, logical reasoning, and application of the law to the facts presented. All opinions submitted or reviewed shall have been issued during the appellate judge or justice's current term.

(f) The state commission may interview ~~other persons, including~~ judges and justices, ~~other than the judge or justice being evaluated,~~ and ~~other interested persons, and shall~~ accept information and documentation from any interested ~~persons, if the person provides, provided the person (i) submits~~ his or her name and address, ~~and (ii) submits the information and/or documentation to the commission by the first day of April of the relevant retention year.~~ The state commission shall provide the appellate judge or justice being evaluated with a written summary of any oral information, and a copy of any written information, no later than ten days prior to ~~the~~his or her interview with the commission. The appellate judge or justice also may submit additional written information to the commission prior to or after the interview.

(g) The state commission shall interview each appellate judge or justice being evaluated following its initial review of information.

Rule 12. Recommendations.

(a) ~~Following~~ A commission shall consider the ~~evaluation based upon the final~~ survey data report, courtroom observations, case information, self-~~evaluation~~ evaluation, review of decisions, interviews, and any other written or oral information received, ~~a commission and then~~ shall prepare a recommendation regarding the retention of each judge or justice ~~or judge being~~ evaluated. The recommendation shall be “retain,” “do not retain,” or “no opinion.” The recommendation of “no opinion” shall be given only when the commission is equally divided, and as such shall not be counted for or against retention. Individual commissioners may not vote “no opinion,” but shall vote to retain, or to not retain, or shall recuse themselves.

(b) ~~—If a commission shall consider a recommendation of “retain” for any justice has identified one or judge who receives an average of at least 3.0 on a 4.0 scale for the questionnaire responses, and issued no decision or opinion more than 180 days after a matter was briefed, argued, or otherwise submitted to the court for decision, whichever is latest, unless the other evaluation information indicates a significant performance problem, such as poor judicial temperament.~~

(c) ~~—A commission shall consider a recommendation of “do not retain” for any justice or judge who receives less than an average of 3.0 on a 4.0 scale for the questionnaire responses, unless:~~

~~—(i) The nature or high number of cases of a justice or judge’s docket or caseload is such that it cannot appropriately be managed in a timely manner. This may be particularly true for a provisional justice or judge, who when appointed may inherit a significantly high number of cases that cannot be managed quickly; or~~

~~—(ii) The commission believes that with additional experience on the bench and a commitment to improve his or her judicial skills, the justice or judge should be given more time to develop his or her judicial skills. The justice or judge must agree to the recommendations contained in a performance plan that identifies areas of significantly poor performance and makes specific recommendations for, regardless of its recommendation regarding retention, it may recommend that the judge or justice participate in a performance improvement plan.~~

Rule 13. Narratives.

(a) Within ten days following the interview, a commission shall provide the judge or justice ~~or judge~~ a ~~complete~~ written draft of the narrative supporting the recommendation. A narrative shall consist of four short paragraphs totaling not more than 500 words, as follows:

(i) The retention recommendation, including the number of commissioners who voted for and against retention;

(ii) Undergraduate and law schools attended, previous substantial legal or public employment, relevant professional activities or awards, ~~and~~ volunteer or other community work, and any other relevant biographical information the commission believes may be of assistance to the public in making an informed voting decision;

(iii) Evaluation methods used by the commission, ~~whether any of the groups surveyed had an insufficient response rate,~~ and the percentages of responses from each surveyed group recommending that a judge or justice ~~or judge~~ be retained or not be retained, or making no recommendation that a judge or justice ~~or judge~~ be retained. A commission may report the

number of survey respondents from each surveyed group, if the commission believes the information may be of assistance to the public in making an informed voting decision; and

(iv) A description of the performance of the judge or justice ~~or judge~~ over the past term, including any areas of notably strong or weak performance with respect to the judicial performance criteria contained in section 13-5.5-105.5(1) and (2), C.R.S., any deficiencies reflected in the interim evaluation, the extent to which such deficiency has been satisfactorily addressed, and any additional information that the commission believes may be of assistance to the public in making an informed voting decision;

(b) The judge or justice ~~or judge~~ being evaluated may respond in writing to the draft narrative, ~~and request an additional interview,~~ within seven ~~ten~~ days of receipt of the draft. The judge or justice may provide feedback on or corrections to the draft narrative language, and may request an additional interview. Any additional interview shall be held within fourteen ~~ten~~ days of the request. The commission may revise the draft narrative, and shall provide the judge or justice ~~or judge~~ with the final narrative within fourteen ~~ten~~ days following the written response or additional interview.

(c) Any commission issuing a “do not retain” or “no opinion” recommendation shall, at the justice ~~judge~~ or judge’s ~~justice’s~~ request, include a response from the judge or justice ~~or judge~~ of not more than 100 words. The judge or justice shall have seven days from receipt of the commission’s final recommendation and narrative to submit the 100 word response to the chair of the commission or the executive director of the Office of Judicial Performance Evaluation, who will forward the response to the commission. The commission may then change its vote count or revise the ~~draft~~ narrative, and shall provide the judge or justice ~~or judge~~ with the final narrative within seven ~~ten~~ days following the receipt of the response.

(d) ~~If the commission has identified one or more areas of significantly poor performance, it may recommend to the chief justice or chief judge~~ Regardless of its recommendation regarding retention, a commission may, in its narrative, inform the voters that the commission has recommended that the judge or justice or judge be placed on a performance improvement plan.

Rule 14. Confidentiality.

(a) ~~All~~ Individual survey responses, all comments in survey reports, self-evaluations, personal information protected under section 24-72-204(3)(a)(II), C.R.S., additional oral or written information under ~~rules~~ Rules 10(f) and 10(g) and 11(f) and 11(g), content of performance improvement plans, any matter discussed in executive session under ~~rule~~ Rule 5, and complaints, responses, and decisions under ~~rule~~ Rule 16; shall remain confidential except as otherwise specifically provided in these rules. Information from comments in survey reports, self-evaluations, and additional oral or written information under ~~rules~~ Rules 10(f) and 10(g) and 11(f) and 11(g) may be summarized for use in a narrative. No commissioner may publicly discuss the substance of the evaluation of any particular judge or justice ~~or judge~~. Each commission may designate a sole or primary spokesperson to publicly discuss, between July 1

and December 31 of an election year, the process of evaluating the judges and justices ~~and judges.~~

(b) All recommendations, narratives, and survey reports are confidential until released to the public on the first day following the deadline for judges to declare their intent to stand for retention. Any comments included in the survey report shall be made available only to the commissioners, the judge or justice ~~or judge~~ being evaluated, ~~and~~ the chief justice or chief judge, and the staff development administrator responsible for judicial education when assisting a judge or justice participating in a performance improvement plan.

(c) Otherwise confidential information may be released only ~~under the following circumstances:~~

(i) To the ~~supreme court attorney regulation committee~~ Supreme Court Office of Attorney Regulation, if an allegation is made against a judge or justice ~~or judge~~ in the course of the evaluation process which, if true, would constitute a violation of the Colorado Rules of Professional Conduct;

(ii) To the Supreme Court Commission on Judicial Discipline, if an allegation is made against a judge or justice in the course of the evaluation process which, if true, would constitute a violation of the Colorado rules of professional conduct, on the same basis as that body provides confidential information to the state commission; Code of Judicial Conduct.

~~(ii) To the commission on judicial discipline, if an allegation is made against a justice or judge in the course of the evaluation process, which, if true, would constitute a violation of the code of judicial conduct, or which would constitute extra-judicial conduct that reflects adversely on the judiciary, on the same basis as that body provides confidential information to the state commission; or~~

~~(iii) With the consent of the justice or judge. A justice or judge~~ (d) A judge or justice disclosing otherwise confidential information shall be deemed to have consented to the release of related confidential information.

Rule 15. Records.

~~Upon~~ Within 30 days of a commission completing its required and submitting recommendations and narratives to the Office of Judicial Performance Evaluation, each commission commissioner shall ~~collect all documents and other information, including all copies, received regarding the justices or judges evaluated. Each commission shall forward~~ insure the destruction of all confidential documents and other information, including all ~~copies, to the state commission within 30 days following submission of their recommendations and narratives to~~ personal notes, emails and received documents (paper or electronic), regarding the judges or justices evaluated during the state commission. The state commission shall establish guidelines regarding retention of evaluation information, which shall be made available to commissions in subsequent process. Commissioners, if they have access to a secure document destruction service, may destroy documents directly; those that do not have a secure document destruction service may deliver documents to their judicial performance evaluation eyes-district court administrator for collection and destruction. Alternatively, materials can be shipped or delivered to the Office of Judicial Performance Evaluation for destruction.

Rule 16. Complaints.

(a) Any commissioner, ~~judge, or justice~~ ~~or judge~~ may file a written complaint with the state commission regarding any alleged violation of these rules or the statutes governing judicial performance commissions. The state commission shall provide a copy to the chair of the particular district commission, who shall provide a written response. The state commission shall make an independent review and provide its decision to the district commission along with any remedial instructions. The state commission may not reverse any retention recommendation, but may cause a rebuttal to be published with the district commission's recommendation or direct a district commission to revise a narrative within ten days. Should the district commission fail to satisfactorily comply, the state commission may, in its discretion, rewrite the narrative.

(b) The state commission may, following the redaction of confidential information, publically disclose a complaint, response, and the state commission's decision.

Amended and Adopted by the Court, En Banc, ~~March 17, 2014~~ January, 2016, effective immediately.

By the Court:

**Nancy E. Rice
Chief Justice, Colorado Supreme Court**

SECTION 3: EVALUATION PROCESS

2016 Timeline

Saturdays Jan. - March	Commissioners shall attend training sessions within the assigned dates. Commissions conduct organizational meetings to elect chairs, vice-chairs, and public information liaisons within this timeframe, and provide the Office of Judicial Performance Evaluation (OJPE) with the names of the designated officers. Commissions will want to schedule a meeting with Chief Judges for overview of the court <i>prior to beginning any evaluations</i> .
Friday, Apr. 1	Surveyor delivers retention survey reports to Commissioners, retention judges and Chief Judges by this date .
Apr. 1 – June 1	Commissioners conduct courtroom observations, review written decisions/opinions, review judicial statistics, review judges’ self-evaluations, review survey reports, interview retention judges, and prepare draft narratives with retention recommendations. Commissions may choose to conduct public hearings and interview other judges and/or other persons (optional) if they feel a need for more information regarding a judge’s performance.
Thu. June 2	Commissions <i>must</i> provide draft narratives to retention judges by this date . Commissions must consider this date when scheduling retention judge interviews, as by rule, the draft narratives must be delivered to the judges <i>within 10 days</i> following the interview. (<i>See Rule 13</i>)
Thu. June 2 – Fri., July 1	Judges may submit written responses and/or request additional interviews. Judges receiving “do not retain” or “no opinion” recommendations may submit 100 word responses to Commissions to be incorporated into narratives. (<i>See Rule 13</i>)
Fri., July 1	Commissions must submit final narratives to retention judges and OJPE by this date .
Wed., July 20	OJPE submits final narratives to Legislative Council for publication in the Blue Book.
Mon., Aug. 8¹	Judicial candidates must declare their intent to stand for retention with the Secretary of State by this date .
Tues., Aug. 8	OJPE posts final narratives and survey reports to website and issues press releases statewide.
Tues., Nov. 8	Election Day

¹ Pursuant to Article VI, sec. 25 of the Colorado Constitution, judges must declare intent to stand for retention not more than six months nor less than three months prior to the General Election.

STATE COMMISSION(ER) RESPONSIBILITIES

- Promulgate (subject to the approval of the Supreme Court) rules necessary to implement and effectuate the provisions of § 13-5.5-101, *et seq.*, C.R.S., including rules to be followed by the district commissions
- Adopt rules or standards that provide guidance to state and district commissioners regarding the review or interpretation of information obtained as a result of the evaluation process and criteria
- Develop uniform procedures and techniques for evaluating trial and appellate judges based on statutory performance criteria
- Develop guidelines and procedures for the continuous collection of data for use in the evaluation process
- Develop surveys for persons affected by justices and judges including attorneys (including district attorneys, public defenders, and private attorneys), jurors, litigants, law enforcement personnel, court and probation employees, court interpreters, social services employees, and crime victims
- Determine the statistical validity of completed surveys, report to the district commissions on the statistical validity of the surveys for their respective judicial districts and specify when and how statistically invalid surveys may be used
- Develop procedures for the review of the deliberation procedures established by district commissions
- Evaluate the performance of Supreme Court justices and court of appeals judges
 - Act pursuant to Title 13, Article 5.5 of the Colorado Revised Statutes and abide by the Rules Governing the Commissions on Judicial Performance
 - Attend one training session every two years
 - Elect a chair, vice-chair, and public information liaison
 - Meet with the Chief Justice of the Supreme Court and Chief Judge of the Court of Appeals before conducting evaluations
 - Follow recusal requirements
 - Prepare a narrative and recommendation for each judge or justice being evaluated
 - May recommend that a judge or justice be placed on an improvement plan
 - Comply with all statutory and rule confidentiality requirements
- Publish narratives and survey reports (without confidential comments) of all justices and judges standing for retention
- Investigate complaints by commissioners or judges who believe there has been a violation of the rules or statute

RESPONSIBILITIES

District Commission(er)

- Act pursuant to Title 13, Article 5.5 of the Colorado Revised Statutes and abide by the Rules Governing the Commissions on Judicial Performance
- Attend one training session every two years
- Elect a chair, vice-chair, and public information liaison
- Meet with the Chief Judge before conducting evaluations
- Follow recusal requirements
- Evaluate the performance county and district judges
- Prepare a narrative and recommendation for each judge being evaluated
- May recommend that a judge be placed on an improvement plan
- Comply with all statutory and rule confidentiality requirements

Chair

- Has primary contact with the District Administrator
- Contacts the members of the commission for meetings and works with the District Administrator to schedule meetings
- Ensures that commissioners who do not meet training, courtroom observation, interview, decision review, and statistics review responsibilities do not vote on any matter involving the evaluation of a judge, unless excused by a two-thirds vote of the other commissioners
- Organizes the public hearing, if one is held
- Notifies the Executive Director if a vacancy occurs on the commission

District Administrator

- Serves as the staff for the district commission
- Assists their respective commissions in the performance of their duties, including:
 - Meeting and interview arrangements, including commission meeting with the Chief Judge
 - Obtaining and distributing information
 - Posting notices
 - Providing statistical information on each judge
- Shall not be involved in the development or production of the narrative
- Shall not be present during interviews or deliberations conducted by the commission

Note: The District Administrator serves at the pleasure of the Chief Judge (not the commission)



STATE COMMISSION ON JUDICIAL PERFORMANCE

2016 Self-Evaluation Appellate Judge

Information on this Self-Evaluation form will not be quoted or reproduced in the narrative, but is intended for discussion with the State Commission and as a tool for professional growth. Please complete this form on or before March 1, 2016

Name:

Date:

Date Appointed:

Position before taking the bench:

In an effort to facilitate meaningful dialogue with the Commission, please respond to the following questions in narrative form.

Legal Ability

Please describe what you do to remain current in all the areas of the law, both substantive and procedural.

Please describe your approach to conducting legal research and writing your own opinions?

Integrity

Please describe how you ensure that your conduct is free from any appearance of impropriety.

Communication Skills

What do you think makes a clear written opinion?

Please explain why you choose the opinions that you submitted to the State Commission for evaluation?

Please describe how you approach communicating with counsel in oral argument.

Describe your approach to working collaboratively with other judges, law clerks, staff attorneys, and other personnel?

Judicial Temperament

Please describe what steps you take to promote public trust and confidence in the court.

What steps do you take to assure appropriate judicial demeanor?

Administrative Skills

Please describe how you manage your workload to ensure that opinions are issued promptly.

What steps do you take to work effectively with other judges and court personnel?

Community Service

Do you engage in community service activities? How important do you think community involvement is to your judicial role?

Philosophy

How would you best describe the judicial philosophy that guides you daily?

Other

What has been the greatest challenge during your term and how did you meet it?

Please describe your overall performance over the current term

After completing this form, please return to:



Kent J. Wagner, JD
Executive Director
Ralph L. Carr Judicial Center
1300 Broadway, Suite 220
Denver, CO 80203
303-928-7779(direct) / kent.wagner@judicial.state.co.us
www.ojpe.org



COLORADO

**Office of Judicial
Performance Evaluation**

Judicial Branch

COMMISSIONS ON JUDICIAL PERFORMANCE

2016 Self-Evaluation Trial Court Judge

Information on this Self-Evaluation form will not be quoted or reproduced in the narrative, but is intended for discussion with the District Commission and as a tool for professional growth.

Name:

Date:

Date Appointed:

Position before taking the bench:

Describe your workload during your current term:

% Civil

% Domestic Relations

% Juvenile

% Mental Health

% Probate

% Criminal

% Misdemeanor

% Traffic

% Small Claims

% Water

In an effort to facilitate meaningful dialogue with the Commission, please respond to the following questions in narrative form.

Legal Ability

Please describe what you do to remain current in all the areas of the law, substantive and procedural.

To what extent do you conduct your own legal research and write decisions, and to what extent do you rely on law clerks and other personnel for those tasks?

Integrity

Please describe your efforts to ensure equal treatment of all persons in your courtroom.

Please describe how you ensure that your conduct is free from any appearance of impropriety.

Communication Skills

What do you think makes a clear written decision?

Please describe how you approach communicating both oral and written decisions to parties and counsel.

Judicial Temperament

Please describe what steps you take to promote public confidence in the court.

What steps do you take to assure appropriate judicial demeanor?

Administrative Skills

Please describe how you manage your workload to ensure decisions are made promptly.

What steps do you take to work effectively with other judges and court personnel?

Settlement Activities

Please describe steps you take to appropriately encourage settlement negotiations.

Community Service

Do you engage in community service activities? How important do you think community involvement is to your judicial role?

Philosophy

How would you best describe the judicial philosophy that guides you daily?

Other

What has been the greatest challenge during your term and how did you meet it?

Please describe your overall performance over the current term.

After completing this form, please give it to your **district administrator** in a sealed envelope **on or before February 26, 2016**. The district administrator will deliver it to the chair of your commission.

Intro



COLORADO

Office of Judicial Performance Evaluation

Judicial Branch

Evaluation of Judge Nathaniel Mildner

If we have made a mistake and you either were not in Judge Mildner's courtroom or you feel that you do not have sufficient experience with Judge Mildner to have an opinion on the judge's judicial performance, please respond "no" to the question below to stop any further requests to evaluate the judge.

Have you worked with Nathaniel Mildner enough to feel qualified to evaluate his or her performance?

- Yes
- No

Case Type

Which of the following types of cases have you observed Judge Mildner's performance? Please check all that apply.

- Civil
- Criminal other than traffic
- Traffic
- Domestic
- Juvenile
- Probate
- Other (Please specify)

Case Management

Case Management:

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge [Last Name] on the following. If, for a specific question you feel that you do not have enough information to grade the judge, please check DK/NA for Don't Know/Not Applicable.

	A	B	C	D	F	DK/NA
Promptly issuing a decision on the case after trial.	<input type="radio"/>					
Maintaining appropriate control over proceedings	<input type="radio"/>					
Promptly ruling on pre-trial motions.	<input type="radio"/>					
Setting reasonable schedules for cases.	<input type="radio"/>					

If you have any comments about Judge Mildner's case management, please enter them in the box below.

Application and Knowledge of Law

Application and Knowledge of Law:

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge [Last Name] on the following. If, for a specific question you feel that you do not have enough information to grade the judge, please check DK/NA for Don't Know/Not Applicable.

	A	B	C	D	F	DK/NA
Being able to identify and analyze relevant facts.	<input type="radio"/>					
Basing decisions on evidence and arguments.	<input type="radio"/>					
Issuing consistent sentences when the circumstances are similar.	<input type="radio"/>					
Being fair and impartial to both sides of the case.	<input type="radio"/>					
Consistently applying laws and rules.	<input type="radio"/>					

If you have any comments about Judge Mildner's application and knowledge of law, please enter them in the box below.

Communications

Communications:

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge [Last Name] on the following. If, for a specific question you feel that you do not have enough information to grade the judge, please check DK/NA for Don't Know/Not Applicable.

	A	B	C	D	F	DK/NA
Making sure all participants understand the proceedings.	<input type="radio"/>					
Providing written communications that are clear, thorough and well reasoned.	<input type="radio"/>					

If you have any comments about Judge Mildner's communications, please enter them in the box below.

Demeanor

Demeanor:

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge [Last Name] on the following. If, for a specific question you feel that you do not have enough information to grade the judge, please check DK/NA for Don't Know/Not Applicable.

	A	B	C	D	F	DK/NA
Giving proceedings a sense of dignity.	<input type="radio"/>					
Treating participants with respect.	<input type="radio"/>					
Conducting his/her courtroom in a neutral manner.	<input type="radio"/>					

If you have any comments about Judge Mildner's demeanor, please enter them in the box below.

Diligence

Diligence:

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge [Last Name] on the following. If, for a specific question you feel that you do not have enough information to grade the judge, please check DK/NA for Don't Know/Not Applicable.

	A	B	C	D	F	DK/NA
Using good judgment in application of relevant law and rules.	<input type="radio"/>					
Doing the necessary "homework" and being prepared for his/her cases.	<input type="radio"/>					
Being willing to handle cases on the docket even when they are complicated and time consuming.	<input type="radio"/>					

If you have any comments about Judge Mildner's diligence, please enter them in the box below.

Bias

Having observed Judge Mildner in a criminal case, would you say the judge is:

- Very biased in favor of the prosecution
- Somewhat biased in favor of the prosecution
- Completely neutral
- Somewhat biased in favor of the defense
- Very biased in favor of the defense
- Don't know/not sure

Block 8

What would you say are Judge Mildner's strengths?

What would you say are Judge Mildner's weaknesses?

Keeping in mind your responses to each of the previous questions, how strongly do you recommend that Judge Mildner be retained in office, or not be retained in office?

- Strongly recommend that he or she be retained in office
- Somewhat recommend he or she be retained in office
- Undecided or don't know enough to make a recommendation
- Somewhat recommend he or she not be retained in office
- Strongly recommend he or she not be retained in office

If you have any comments about why you feel Judge Mildner should or should not be retained, please enter them in the box below.

Intro



COLORADO

Office of Judicial Performance Evaluation

Judicial Branch

Evaluation of Judge Nathaniel Mildner

If we have made a mistake and you either were not in Mildner's courtroom or you feel that you do not have sufficient experience with Judge Mildner to have an opinion on the judge's judicial performance, please respond "no" to the question below to stop any further requests to evaluate the judge.

Do you have sufficient experience with Nathaniel Mildner to feel qualified to evaluate his or her performance?

- Yes
- No

Case Type

Which of the following types of cases have you appealed to the {Court of Appeals/Supreme Court} in which Mildner authored the decision, concurred or dissented? Please check all that apply.

- Civil
- Criminal other than traffic
- Domestic
- Juvenile
- Other (Please specify)

Grade 1

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Mildner on the following. If, for a specific question you feel that you do not have enough information to grade the judge, please check DK/NA for Don't Know/Not Applicable.

	A	B	C	D	F	DK/NA
Being fair and impartial toward each side of the case	<input type="radio"/>					
Allowing parties to present their arguments and answer questions.	<input type="radio"/>					
Treating parties equally regardless of race, sex, or economic status.	<input type="radio"/>					
Being courteous toward attorneys.	<input type="radio"/>					
Not engaging in ex parte communications.	<input type="radio"/>					
Being prepared for oral argument.	<input type="radio"/>					

If you have any comments about Judge Mildner regarding the topics above, please enter them in the box below.

Writing Opt out

Would you say you are sufficiently knowledgeable about Mildner's legal writings to have an informed opinion about them?

- Yes
- No
- I don't know

Writing

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Mildner on the following. If, for a specific question you feel that you do not have enough information to grade the judge, please check DK/NA for Don't Know/Not Applicable.

	A	B	C	D	F	DK/NA
Writing opinions that are clear.	<input type="radio"/>					
Writing opinions that adequately explain the basis of the courts decision.	<input type="radio"/>					
Issuing opinions in a timely manner.	<input type="radio"/>					
Making decisions without regard to possible criticism.	<input type="radio"/>					
Making reasoned decisions basted upon the law and facts.	<input type="radio"/>					
Refraining from reaching issues that need not be decided.	<input type="radio"/>					

If you have any comments about Mildner regarding the topics above, please enter them in the box below.

Block 8

What would you say are Mildner's strengths?

What would you say are Mildner's weaknesses?

Keeping in mind your responses to each of the previous questions, how strongly do you recommend that Judge Mildner be retained in office, or not be retained in office?

- Strongly recommend that he or she be retained in office
- Somewhat recommend he or she be retained in office
- Undecided or don't know enough to make a recommendation
- Somewhat recommend he or she not be retained in office
- Strongly recommend he or she not be retained in office

If you have any comments about why you feel Mildner should or should not be retained, please enter them in the box below.

SUPREME COURT OF COLORADO
OFFICE OF THE CHIEF JUSTICE

**DIRECTIVE CONCERNING COLORADO STANDARDS FOR
CASE MANAGEMENT IN THE TRIAL COURTS**

PURPOSE

The purpose of this Chief Justice Directive (CJD) is to establish standards for timeliness of case processing in the Judicial Branch. The following standards replace those contained in Chief Justice Directive 89-01 and any subsequent modifications to those standards.

BACKGROUND

Standards for case management and delay reduction in the trial courts were first established in 1989 with the issuance of Chief Justice Directive 89-01: *Concerning Colorado Standards for Case Management in the Trial Courts* (CJD 89-01). CJD 89-01 was based on a comprehensive study by the Supreme Court Delay Reduction Committee and included the recommendations contained in their final report, “Colorado Standards for Case Management – Trial Courts.”

Since that time, societal, public policy and technological changes have significantly altered the business of the courts. The Branch has made informal adjustments to the standards over the years and introduced additional measures of timeliness in 2000 and 2006.

In 2000, the Branch submitted a request for twenty-four additional district court judges. As part of this request, the Branch committed to meeting updated timeliness goals when all the new judgeships and supporting positions were filled (these were known as the ZBB goals). In 2006, in response to a rule change requiring that specific individual caseload data be made available to judicial performance commissions, the Caseflow Leadership Task Force issued “Resource Realistic” goals. The timeliness goals issued for this purpose are somewhat less stringent than those already in existence for two reasons: first, because the courts had recently undergone severe budget reductions and staff layoffs, they needed to be reflective of the overall understaffing of the courts, and,

secondly, because these goals were to be used by the commissions when reviewing caseload data on individual judges rather than entire districts.

While these adjustments addressed short-term and specific needs, larger issues such as the appropriateness of measuring timeliness, how the various goals fit together, and how timeliness measures should be applied fell second to more immediate demands. Yet, the Branch recognizes that the courts and the public are better served by a comprehensive set of standards that take into account how the work of the courts is accomplished and that operate in concert with each other to measure the success of the organization as well as individual members of the bench. To that end, the Caseflow Leadership Task Force has examined case processing practices, timeliness goals and caseload data to create the following comprehensive measures of case processing timeliness for the Branch.

MEASURING TIMELINESS AND THE WORK OF THE COURTS

The work of the courts revolves around resolving issues of freedom and fairness. Whether it is a criminal case which may result in loss of liberty or a dissolution of marriage case in which parenting time will be determined, each case before the court is of extraordinary importance to the people involved in it. But the courts are not only responsible for achieving a just resolution for the individuals involved in the cases before them, each court must also operate within the expectations, resources and standards of the community in which it is located. As a result, courts must strive to balance fairness and justice with access and timeliness. Given these competing ideals, setting strict timelines for the resolution of all cases, regardless of location or resources, seems a particularly arbitrary and inadequate means for assessing whether a judge, the bench or the organization as a whole, is appropriately addressing the needs of each case. At the same time, it cannot be overlooked that the Branch is accountable to the public for hearing and resolving their disputes in as timely a manner as possible.

Measures of timeliness generally focus on individual judges. However, judges are just one part of a much larger whole. The Colorado trial courts see well over 700,000 new cases a year. These cases are not processed solely by judges but with the assistance of case processing, probation and administrative staff and numerous of other professionals who work in and around the court system. Obviously, the nature of the work before the courts differs between a large urban court and a small

rural one based simply on the volume of cases, availability of staff and the resources available in the community. However, there are also significant differences among urban courts and, similarly, among rural courts. No two locations face the same issues in carrying out the administration of justice. Whether it is a difference in the demographics of a community, the geography covered by a jurisdiction, or the presence of a state hospital, prison or major water basin, each court has a unique set of issues, obstacles and resources that affect how the court can and must operate. Therefore, evaluations of the timeliness with which cases are processed by individual judges are incomplete without taking a broader view of the system in which those individual judges operate.

While the organizational issues which form the foundation of the courts affect how the business of the courts is approached, it is only by combining this information with the manner in which the courts handle the individual cases before them that the effectiveness of the Judicial Branch can be assessed. Each case filed in the court has different requirements for time, services and other resources in achieving a just resolution. The management of individual cases reflects strongly on an individual judge's case processing timeliness; seeing the organization as a whole can provide a clearer picture of what is really happening with these cases. If a judge is assigned a complex civil case or a particularly egregious criminal case, it can delay the remainder of his or her entire caseload. As part of a larger organization, it is possible for other judges, either sitting in that district or from the senior judge program, to assist with the remainder of the docket. Where those resources are not available, the remaining caseload on the judge's docket must linger. A judge, and those who support the judge, must constantly strive to balance the needs of the cases on his or her docket and the needs and resources available to each judge, courtroom and the organization as a whole.

In reviewing the various standards operating in the Branch at the time this effort was undertaken, it became clear that each had their place. Creating one set of standards that can be used at all levels and for all purposes simply does not provide valid or useful evaluative information. One set of standards does not fit all levels of court business. While a district is made up of individual courtrooms and a separate clerk's office, it operates as a whole unit. How an individual judge manages his or her docket is one important measure of access and justice, but how the district as a whole functions is equally as important. Therefore, this CJD establishes two approaches to measuring the work of the courts: organizational goals and individual benchmarks. These goals and benchmarks are being issued as a means of measuring the goals to which the courts aspire, but with

the recognition that the time it takes to process a case is only one measure of whether justice was served in that case.

The organizational goals are rather stringent, aspirational timelines to be applied at the district-wide or higher level. These measures are intended to be used for management at the organizational level and for reporting to external bodies, such as the legislature, on the overall timeliness of case processing in the Branch. These goals are aspirational in that it is believed that, given full staffing and good management practices at all levels, they can be achieved by the organization. The organizational goals do not accommodate variation in case assignment practices or small caseloads and, as such, are not intended to be applied to individual judges. An individual judge is not expected to meet the organizational goals; individual benchmarks have been established for this purpose.

The individual benchmarks are established to provide a more realistic means of measuring the timeliness of case processing at the individual level. These benchmarks are intended to provide feedback to individual judges on their performance, to be used by the Chief Judge of a district in overseeing workload distribution in that particular district and to provide the information required by the Rules of the Commissions on Judicial Performance.

The benchmarks recognize that there are many practical issues outside the control of a judge that can affect the length of time a case remains open. These include, but are not limited to, when and how cases are assigned to judicial officers, the time cases spend with a magistrate, docket rotation, third-party assessments, pre-sentence investigations, transferring of cases to accommodate prolonged trials, and the time required for the filing and processing of paperwork. Further, they recognize the dramatic fluctuations in percentages that can occur when a pool of cases being analyzed is small.

The individual benchmarks go a long way in addressing the unique nature of individual case assignment; however, it is simply not possible for a number-based standard to provide a complete picture of the quality with which an individual judge manages his or her caseload. Therefore, while these individual benchmarks are established as a starting point for evaluating a judge's ability to

manage caseload, it is always recommended that qualitative information about the court and the caseload be obtained whenever the timeliness of an individual judge is being evaluated.

THE GOALS AND BENCHMARKS

The following standards are not being promulgated as mandatory rules but, rather, as goals and benchmarks that strive to balance the need for uniformity in expectations concerning timeliness with an acknowledgement that the diversity of case assignment, docket rotation and local judicial discretion in managing individual cases has a significant impact on timeliness statistics. All judges are encouraged to study these standards and to attempt their implementation in a manner consistent with the overriding goals of eliminating unnecessary delay in the judicial process, making more effective use of judicial resources in the resolution of disputes, and making the judicial process more accessible to litigants and the public.

ORGANIZATIONAL GOALS

District Court:

<i>Case Type</i>	<i>District Court Organizational Goals</i>
Criminal	No more than 5% of cases open more than 1 year
Civil	No more than 10% of cases open more than 1 year
Domestic Relations	No more than 5% of cases open more than 1 year
General Juvenile	No more than 5% of cases open more than 1 year
Juvenile Delinquency	No more than 5% of cases open more than 1 year
Dependency and Neglect	No more than 5% of cases open more than 18 months
Expedited Permanency Plan	No more than 10% of cases open more than 1 year

County Court:

<i>Case Type</i>	<i>County Court Organizational Goals</i>
Civil	No more than 5% of cases open more than six months
Misdemeanor	No more than 10% of cases open more than six months
Traffic	No more than 5% of cases open more than six months
DUI/DWAI	No more than 20% of cases open more than seven months
Small Claims	No more than 1% of cases open more than six months
Infractions	No more than 1% of cases open more than six months

BENCHMARKS FOR INDIVIDUAL JUDGES

District Court:

<i>Case Type</i>	<i>District Court Benchmarks for Individual Judges</i>
Criminal	No more than 10% of cases open more than 1 year
Civil	No more than 20% of cases open more than 18 months
Domestic Relations	No more than 10% of cases open more than 18 months
General Juvenile	No more than 10% of cases open more than 1 year
Juvenile Delinquency	No more than 5% of cases open more than 1 year
Dependency and Neglect	No more than 5% of cases open more than 18 months
Expedited Permanency Plan	No more than 10% of cases open more than 1 year

County Court:

<i>Case Type</i>	<i>County Court Benchmarks for Individual Judges</i>
Civil	No more than 20% of cases open more than six months
Misdemeanor	No more than 20% of cases open more than six months
Traffic	No more than 20% of cases open more than six months
DUI/DWAI	No more than 20% of cases open more than seven months
Small Claims	No more than 20% of cases open more than six months
Infractions	No more than 5% of cases open more than six months

LIMITATIONS

The data used to determine whether the organizational goals and/or the individual benchmarks are being met are taken from the Branch's ICON/Eclipse database. This is a working database that is used for all court business, such as docketing, electronic filing of paperwork, recording events in a case, entering orders, etc. While the information entered into ICON/Eclipse is used for day-to-day business operations, the Branch is also able to access the database to conduct research and analysis. The data in ICON/Eclipse is a valuable asset to the Branch. However, because it is an active database with thousands of users and hundreds of uses, there are some limitations to the data and its applications.

The data used for these measures are equivalent to a point-in-time snapshot of a judge's open caseload. For purposes of these measures, a judge's open cases are those that are actively managed by that judge at the time the data is extracted from the database. Cases with active bench warrants or mental health stays, cases in which a notice of appeal has been filed, and cases that have been reopened for post-judgment activity are excluded from the pool.

It is always recommended that input from the local Chief Judge regarding additional factors specific to districts or individual judges that may impact case management be obtained any time the organizational goals or individual benchmarks are being used. In addition to the local issues that may be explained during these discussions, the following general information should be taken into consideration when reviewing this type of data:

Case Timeliness May be Affected by Factors Outside of the Courtroom

Many factors outside of the direct control of the judge can affect case timeliness. For example, criminal cases are often dependent on production of various reports and evaluations, such as pre-sentence investigation reports, sex offender evaluations, and/or mental health evaluations. Juvenile case processing is directly affected by the availability of required treatment services. Domestic Relations cases may be delayed by parenting assessments or other necessary evaluations. Statutory deadlines may also influence case timeliness. For example, by law, divorce cases cannot be ruled on until at least 90 days have passed from the date the case is filed with the court.

Higher Numbers of “Complex” Cases have Increased Case Processing Time

Certain case types, such as business litigation, medical malpractice, homicide, and divorce cases with extensive assets, generally take longer to process due to their complexity. Additionally, district judges have indicated that civil litigation has become more complicated in recent years as the issues being brought before the court have increased in complexity, there are more issues to be ruled upon in each case, more motions are being filed, and more attorneys are participating in each case. A few high profile or highly-complex cases may result in longer average disposition times for the judges’ dockets as a whole.

Local Case Assignment Practices May Affect Performance Data

Local case assignment practices affect the case load and case types assigned to judges. In some jurisdictions, cases are processed by a magistrate or by a county court judge before being assigned to another judge or being bound over to district court. In certain county courts, cases are assigned to a magistrate or First Appearance Center before they are sent to a county judge. In many of the larger courts, judges rotate docket assignments on annual or biannual basis thereby inheriting the open caseload of the judge hearing that docket previous to the rotation. Since the Branch’s data management system does not track historical information on case assignments, the data provided shows only the number of days a case is open, but not the number of days a case is assigned to a specific judge. This may pose a challenge for evaluating a particular judge’s data because the amount of time the case spent under any one judicial officer cannot be isolated.

Case processing goals are measured in terms of the percent of cases meeting the goal (e.g., no more than 5 percent of criminal cases open more than one year.) Therefore, in addition to potentially providing a skewed picture of the time a judge has spent on a case, the aforementioned case assignment practices may also weaken the statistical reliability of the caseload data. In jurisdictions where judges manage a docket of mixed case types, the caseload data for judges with small case loads of a particular case type might not be a statistically valid or reliable indicator of performance because only slight changes in the data can move a judge in or out of compliance. For example, a judge with only twenty criminal cases on his or her docket would be considered in compliance with performance goals if he or she had only one case (5%) open longer than 12 months, but out of compliance if two cases (10%) were open longer than 12 months at the time the data was extracted.

Finally, the point-in-time data can present a narrow, and potentially misleading, picture of a judge's caseload. For example, a judge may manage his or her docket by resolving the simpler cases as quickly as possible so as to allow more time for the other, complex cases. An open caseload of primarily complex cases will most likely consist of cases that, due to their complexity, have been open longer. Without the simpler, shorter-lived cases to mitigate the overall length of open cases in the judge's caseload statistics, it would appear that a judge that handles his or her docket efficiently and conscientiously is instead allowing cases to remain open for an above-average amount of time.

Resource Constraints Force Courts to Prioritize

Budget constraints in recent years forced many courts to cut staff and reduce services. At the same time, court case load continued to grow, requiring many courts to focus limited resources on cases with a direct impact on public safety and child welfare. Civil cases, since they do not meet this criteria, are often given the lowest priority for case processing, which can, in turn, increase average case processing time and create a backlog of the civil caseload.

FUTURE REVIEW

These goals and benchmarks are based on the business of the courts as it exists today and the technology currently available to measure it. While these measures are seen as a reasonable means of assessing the timeliness of case processing in the Colorado courts, they do have their limitations. The Branch continually strives to improve on both business practices and the technology to support them. Therefore, the measures established here shall be reviewed and updated as technology allows for improved statistical information or as the business of the courts changes significantly.

Chief Justice Directive 89-01 is hereby repealed.

Done at Denver, Colorado this 15th day of July, 2008.

/s/
Mary J. Mullarkey, Chief Justice

**JUDICIAL PERFORMANCE DATA UNDER RULE 10(c)
OF THE RULES GOVERNING THE COMMISSIONS ON
JUDICIAL PERFORMANCE**

HON.



December 2, 2015

COLORADO JUDICIAL BRANCH

**OFFICE OF THE STATE COURT ADMINISTRATOR
1300 BROADWAY, SUITE 1200**

DENVER, CO 80203

Open Caseload Data -- General Caveats

Time Period Covered and Who is Included

The data represents open cases as of December 1, 2015. The open case report in Cognos was used to compile the data. Magistrates and senior judges were excluded from the data. County judges were removed from the district court data. District judges were removed from the county court data.

Certain Cases Removed

Reopened cases, cases with an active warrant, cases in which a Notice of Appeal has been filed, and cases in which a Mental Health Stay has been ordered were eliminated from the analysis.

Case Timeliness Affected by Factors Outside Courtroom

Many factors outside of the direct control of the judge can affect case timeliness. For example, criminal cases are often dependent on production of various reports and evaluations, such as pre-sentence investigation reports, sex offender evaluations, and/or mental health evaluations, and juvenile case processing is directly affected by the availability of required treatment services. Statutory deadlines may also influence case timeliness. For example, by law, divorce cases cannot be ruled on until at least 90 days have passed from the date the case is filed with the court.

Local Case Assignment Practices May Affect Performance Data

Local case assignment practices affect the caseload and case types assigned to judges. In some jurisdictions, cases are processed by a magistrate or by a county court judge before being assigned to another judge or bound over to district court. In certain county courts, cases are assigned to a magistrate or First Appearance Center before they are sent to a county judge. Since the judicial department's data management system does not track historical information on case assignments, the data provided shows only the number of days a case is open, but not the number of days a case is assigned to a specific judge. This may pose a challenge for evaluating a particular judge's data because the amount of time the case spent under the previous judicial officer is not discounted.

Case assignment practices might also weaken the statistical reliability of the caseload data. In jurisdictions where judges manage a mixed docket of various case types, the caseload data for judges with small case loads of a particular case type might not be statistically valid nor a reliable indicator of performance because only slight changes in the data can move a judge in or out of compliance.

Higher Numbers of "Complex" Cases have Increased Case Processing Time

Certain case types, such as business litigation, medical malpractice, homicide, and divorce cases with extensive assets, generally take longer to process due to their complexity. Additionally, judges have indicated that district civil litigation has become more complicated in recent years as the issues being brought before the court have increased in complexity, there are more issues to be ruled upon in each case, more motions are being filed, and more attorneys are participating in each case. High profile or highly complex cases may result in longer average disposition times for judges' dockets as a whole.

For 2016 Election

Open Cases as of: December 1, 2015

Hon.

District	Case Class	Case Type Group	Individual Goals	Cases Open Longer than Benchmark	Total Open Caseload	Percentage Open Longer than Time Benchmark
Judicial District	Civil (C)		80% within 6 months	-	1	0.00%
Judicial District	Juvenile Delinquency (JD)		95% within 12 months	-	88	0.00%
Judicial District	Juvenile (JV)	Juvenile (Other)	90% within 12 months	-	5	0.00%
Judicial District	Traffic (T)	Traffic (DU and DW)	80% within 7 months	-	1	0.00%
Judicial District	Traffic (T)	Traffic (Other)	80% within 6 months	1	2	50.00%

COURTROOM OBSERVATION

Commissioners are required to collect information from direct courtroom observation of judges being evaluated as part of the retention election evaluation process. Courtroom observation is valuable because it gives commissioners an opportunity to observe the judge's:

- Demeanor
- Control of judicial proceedings
- Timeliness
- Communication skills
- Preparation
- Docket management

Colorado Revised Statutes 13-5.5-105.5 defines the criteria to be used in evaluating judges by judicial performance commissions. We have prepared and attached a "Trial Judge Courtroom Observation Form" for your use during observations that is structured around the criteria in the statute. During your observation you may also want to consider whether the judge:

- displayed judicial fairness and impartiality toward all parties;
- acted in the interests of the parties without regard to personal prejudices;
- listened carefully and impartially;
- applied rules consistently across people and over cases;
- maintained a neutral demeanor or expression while in court;
- was open, clear, and transparent about how the rules of law were applied and how decisions were being made;
- consistently treated participants equally and displayed behavior appropriate for the situation;
- was unhurried, patient and careful
- provided participants with specific information about what to do, where to go, and when to appear;
- treated everyone with courtesy, dignity, and respect;
- maintained appropriate courtroom tone & atmosphere;
- demonstrated appropriate consideration for the rights of all persons in the court;
- demonstrated an intention to do what is right for everyone involved;
- helped interested parties understand decisions and what parties must do as a result;
- used clear language when speaking to jurors, litigants, witnesses, and attorneys;
- demonstrated respect for people's time and acknowledged their patience as needed;
- demonstrated interest in the needs, problems, and concerns of participants;
- seemed prepared for the proceedings;
- demonstrated appropriate body language (e.g., eye contact, facial expressions, posture, attire);
- demonstrated respectful voice quality (e.g., pitch, volume, tone);
- clearly articulated awareness of the practical impact on the parties of the judge's rulings, including the effect of delay and increased litigation expense;
- clearly explained the reasons for his/her decisions when appropriate.
- allowed participants to voice their perspectives/arguments;

- demonstrated to the parties that their story or perspective had been heard;
- behaved in a manner that showed the judge had fully considered the case as presented through witnesses, arguments, and documents before the court;
- attended, where appropriate, to the participants' comprehension of the proceedings

**JUDICIAL PERFORMANCE COMMISSION
 _____ JUDICIAL DISTRICT
 TRIAL JUDGE COURTROOM OBSERVATION**

Date: _____

Time: _____

Judge: _____

Division: _____

STRONGLY AGREE 4 • AGREE 3 • DISAGREE 2 • STRONGLY DISAGREE 1 • NOT OBSERVED N/O

SECTION A. INTEGRITY

1. Displays fairness and impartiality toward all participants.	4	3	2	1	N/O
2. Avoids impropriety, or the appearance of impropriety.	4	3	2	1	N/O
3. Applies rules consistently for all parties.	4	3	2	1	N/O

SECTION B. LEGAL KNOWLEDGE

4. Displays adequate knowledge of substantive law and relevant rules of procedure and evidence.	4	3	2	1	N/O
5. Displays awareness of and attentiveness to factual and legal issues before the court.	4	3	2	1	N/O
6. Appropriately applies statutes, judicial precedent, and other sources of legal authority.	4	3	2	1	N/O

SECTION C. COMMUNICATION SKILLS

7. Explains the reason for delays or interruptions of the proceedings.	4	3	2	1	N/O
8. Pays attention when participants speak.	4	3	2	1	N/O
9. Takes action to ensure his/her remarks are understood.	4	3	2	1	N/O
10. Ensures pro se defendants understand the sequence of the proceedings.	4	3	2	1	N/O
11. Provides participants with specific information about what to do, where to go, and when to appear.	4	3	2	1	N/O
12. Clearly explains all oral decisions and explains what parties must do as a result.	4	3	2	1	N/O

SECTION D. JUDICIAL TEMPERAMENT

13. Demonstrates an appropriate demeanor on the bench.	4	3	2	1	N/O
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Rubric: Courtroom Observation Rubric

Communication	Poor - 1 Pt	Fair - 2 Pts	Good - 3 Pts
<p>Speaking Voice The Judge spoke clearly during the proceeding.</p>	<p>Could not understand 3/4 of what the judge said in the courtroom. Voice didn't project, mumbled, and did not speak into the microphone.</p>	<p>Understood majority of what the judge said in the courtroom. Communication heard was clear and on point. I understood what the Judge was saying and its meaning.</p>	<p>The Judge's communication in court was easily understood.</p>
<p>Authority When issuing an oral decision, the Judge provided an explanation for the decision.</p>	<p>The Judge failed to provide an explanation for the decision.</p>	<p>The Judge explained why the decision was made, but did not provide legal authority or basis for the decision based on the evidence presented.</p>	<p>The Judge provided legal authority in explaining the basis of the decision.</p>
<p>Listening The Judge listened carefully during the court proceedings.</p>	<p>It appeared the Judge was not listening to argument during the proceedings; had eyes on computer screen, made little or no eye contact with other speakers. Interjections seemed not to track with what was being said by parties.</p>	<p>The Judge made occasional eye contact with parties while listening. Some activities seemed to be unrelated to the case as demonstrated by movement behind the bench, and facial expressions that didn't seem to track with what was occurring in courtroom.</p>	<p>The Judge made frequent eye contact. Body language demonstrated engagement and attention to arguments. The Judge made a statement at the beginning of the case regarding use of the computer for notes and review of documents. It was clear the Judge was using the computer for case related activities.</p>
<p>Neutrality The Judge made sure all parties (attorneys and the clients they represent) understood the court proceedings.</p>	<p>Spoke only to attorneys and not to the attorney's clients. Required attorneys to explain what would or had occurred in court proceeding to their clients. Seemed to favor one attorney over the other. Cut off one attorney arguments more than the other attorney. Spoke in legalese. Did not respond to parties questions - unless through attorneys.</p>	<p>Mostly spoke to attorneys but did acknowledge the parties by name occasionally. Asked if parties were ready to proceed, but did not explain what would happen or how they were to proceed. Asked if parties understood the decision and what to do next, but did not let parties ask questions, rather, the judge referred them to their attorneys. Used a fair amount of jargon and legalese in communication with parties.</p>	<p>Judge explained how the proceedings would be handled and asked parties if they understood what would occur. Answered party's questions about proceeding in plain language and allowed for follow-up questions and acknowledgement of understanding. Used very little legalese when addressing the courtroom. Ended proceeding by asking parties if they knew what would happen next in the case, or what they were supposed to do as a result of the ruling.</p>

Rubric: Courtroom Observation Rubric

Communication	Poor - 1 Pt	Fair - 2 Pts	Good - 3 Pts
Explains the reason for delays or interruptions of the proceedings?	The Judge was absent from the bench during court hours for an extended time. The Judge came onto the bench after the first case was scheduled to begin and did not provide any explanation for the delay. Rather, the Judge simply called the first case.	The Judge acknowledged the delay in starting the proceeding but gave no specifics for why the delays occurred. The judge simply said, "I'm Sorry for the delay" and began the docket.	The Judge stated in court why the delay had occurred, what the impact on the docket will be, and what is planned to make up time, if possible. The Judge acknowledged the delay will impact participants and apologized for the delay.

Integrity	Poor – 1Pt	Fair – 2Pts	Good – 3Pts
Fairness and Impartiality Displays fairness and impartiality toward all participants.	The Judge's conduct toward different people in the courtroom varies amongst all participants. The Judge shows clear favoritism and bias for one group or person over another.	Judge demonstrates familiarity with one party over the other, yet handles court proceeding in an unbiased and neutral manner. Prior to court the Judge exhibits familiarity with the District Attorney and/or Defense Attorney and carries on casual conversations. Once Court is in session there is no obvious favoritism or bias displayed between parties and/or counsel.	Judge displays fairness and impartiality toward all participants. The Judge treats everyone with courtesy, dignity, and respect regardless of their behavior or appearance. No evidence of bias or favoritism is displayed while in court chambers, or in the public.
Avoids Impropriety Avoids impropriety in conducting court business and in the role as a judge in community and privately.	Judge's actions are in violation of court rules, laws and the Code of Judicial Conduct. If observed report to the Colorado Commission on Judicial Discipline.	Observation of the Judge leaves you questioning whether the Judge's behavior or communication is in violation of laws, court rules, or the Code of Judicial Conduct. Such behavior if observed should be reported to the Colorado Commission on Judicial Discipline.	Avoids impropriety in conducting court business and in the role of judge in community and privately. The Judge's conduct is not in violation of the laws, court rules or Code of Judicial Conduct.

Rubric: Courtroom Observation Rubric

<p>Avoids the Appearance of Impropriety Avoids the appearance of impropriety in conducting court business and in the role as a judge in community and privately.</p>	<p>The Judge's behavior, communication, and conduct creates the perception the Judge is violating the Code of Judicial Conduct, or engaged in other conduct that reflects adversely on the Judge's honesty, impartiality, temperament, or fitness to serve as a judge. If this is the case report the conduct to the Commission on Judicial Discipline.</p>	<p>Judge's behavior, conduct and communication raise question in your mind as to the honesty, impartiality, temperament, or fitness to serve as a judge. While on its face the conduct does not violate the code, law or rules you are left wondering if it might.</p>	<p>Avoids the appearance of impropriety in conducting court business and in the role of judge in community and privately. The test for appearance of impropriety is whether the conduct would create in a reasonable mind a perception that the judge violated the Code of Judicial Conduct, or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.</p>
<p>Rules Applies rules consistently for all parties.</p>	<p>Judge's proceedings and sentencing vary greatly from case to case without justification or explanation</p>	<p>The Judge acknowledged that similar cases have different proceedings or outcomes, but does not identify why those differences are justified or required.</p>	<p>Applies rules consistently with all parties. When similar cases appear to be handled differently the Judge explains why the case, procedures, or outcome are handled differently.</p>

<p>Legal Knowledge Knowledge Displays adequate knowledge of substantive law and relevant rules of evidence and procedures?</p>	<p>Poor – 1Pt The Judge's rulings, decisions, and/or opinions make no reference to laws, rules of evidence, or procedure. There is no logical basis for the outcome given the argument, facts, and evidence presented.</p>	<p>Fair – 2Pts The Judge's rulings, decisions, and/or opinions make reference to laws, rules of evidence, and/or procedure. However, the decision does not logically flow from the argument, facts, or evidence presented and the laws and rules cited.</p>	<p>Good – 3Pts The Judge's rulings, decisions and/or opinions are well-reasoned and demonstrate an understanding of substantive law and relevant rules of procedure and evidence.</p>
<p>Awareness Displays awareness of and attentiveness to factual and legal issues before the court?</p>	<p>The Judge's opinions, decisions, or rulings, demonstrate inattentiveness to factual and legal issues before the court. There is a disconnection between the argument, facts, and evidence presented in court and the decision.</p>	<p>The Judge's opinions, decisions, or rulings, demonstrate some attentiveness to factual and legal issues before the court. There is a reference to the argument, evidence, and facts in the case but not necessarily presented logically for the conclusion drawn.</p>	<p>The Judge's opinions, decisions, or rulings, demonstrate attentiveness to factual and legal issues before the court</p>

Rubric: Courtroom Observation Rubric

<p>Applies Appropriately applies statutes, judicial precedent, and other sources of legal authority?</p>	<p>There is no reference to precedent, statute, or judicial authority, demonstrated in the Judge's opinion, order, or decision.</p>	<p>The Judge's decision adheres mostly to precedent and attempts to explain why. In explaining why the case justifies departing from precedent, the legal basis is not clearly explained the Judge's reasoning.</p>	<p>The Judge's opinion adheres to precedent and explains why or clearly explains the legal basis for departing from precedent.</p>
<p>Judicial Temperament</p>	<p>Poor – 1Pt The judge is discourteous toward attorneys, litigants, court staff, and others in the courtroom.</p>	<p>Fair – 2Pts The judge is courteous to attorneys, litigants, court staff and others in the courtroom inconsistently. The judge does not routinely acknowledge attorneys and litigants appearing before the court.</p>	<p>Good – 3Pts The judge demonstrates courtesy toward attorneys, litigants, court staff, and others in the courtroom.</p>
<p>Decorum The judge maintains and requires order, punctuality, and decorum in the courtroom.</p>	<p>The judge does not maintain order in the courtroom. Communication is disrespectful. Dockets are not started on time and it is unclear who is actually in charge of managing the docket.</p>	<p>The judge maintains and requires order, punctuality, and decorum in the courtroom inconsistently. There is not a demonstrated routine or order to the proceedings in the courtroom. Not all cases are handled with the same decorum and respectfulness.</p>	<p>The judge maintains and requires order, punctuality, and decorum in the courtroom.</p>
<p>Demeanor The judge demonstrates appropriate demeanor on the bench.</p>	<p>The judge seems impatient and is disrespect toward all attorneys, litigants, court staff, and others in the courtroom. The judge's communication is gruff, short and demeaning. The judge does not listen and cuts off attorneys and litigants without listening to their argument or story.</p>	<p>The judge demonstrates appropriate demeanor on the bench inconsistently. The judge's demeanor varies from case to case without apparent provocation for the response. Judges demeanor changes throughout the day, "good in the AM, poor in the PM".</p>	<p>The judge demonstrates appropriate demeanor on the bench.</p>

Rubric: Courtroom Observation Rubric

	Poor – 1Pt	Fair – 2Pts	Good – 3Pts
<p>Administrative Performance</p> <p>Preparation The judge demonstrates preparation for all hearings and trials.</p>	<p>The judge is unprepared for the matter, requiring delay to review case notes, asking attorneys or parties to refresh the courts memory of facts, prior hearings, and dispositions.</p>	<p>The judge demonstrates preparation for hearings and trials inconsistently. The judge demonstrates knowledge of some cases, parties, and case facts but not in every case. In matters where it appears the judge is not prepared, the judge does not provide an explanation for his or her lack of preparation.</p>	<p>The judge demonstrates preparation for all hearings and trials. The judge demonstrates knowledge of the parties, facts of the case, and prior proceedings, if any. If the judge is unfamiliar with the case they explain why in open court</p>
<p>Efficiency The judge uses court time efficiently</p>	<p>Docket does not start or end on time. Frequently interactions do not seem relevant to the case at hand delaying matters further. When scheduling next events, court staff and/or judge are inefficient in providing a clear decision of when the event will occur and what it is for.</p>	<p>The judge uses court time efficiently. Court dockets begin on time, however the docket progressively gets behind schedule and assigned case are carried over to another docket or day. The court is disorganized in calling cases and in scheduling next events. Attorneys and litigants seem unsure what will occur next in the courtroom and that uncertainty inhibits transitions from one case to the next.</p>	<p>The judge uses court time efficiently. Court dockets begin and end on time. Cases are provided adequate time for the matter, but time is not wasted on nonrelated matters. Court schedules next events quickly and provides information to parties/litigants in the courtroom</p>
<p>Delay The judge issues findings of facts, conclusions of law, and orders without unnecessary delay.</p>	<p>The judge is slow to issue findings of fact or conclusions of law, and orders. Takes many cases under advisement without clearly stating when the decision can be expected.</p>	<p>The judge issues findings of fact, conclusions of law, and orders with some unnecessary delay. The judge seems hesitant to issue orders or decisions without review. Takes matters under advisements unnecessarily and without timelines for handing down the decision.</p>	<p>The judge issues finding of fact, conclusions of law, orders, and decisions without unnecessary delay.</p>
<p>Case Management The Judge effectively manages cases</p>	<p>The judge is ineffective in managing cases. Cases are not completed at the scheduled hearing. Additionally events or hearings are not scheduled in the courtroom. It is unclear when</p>	<p>The judge is mostly effective in managing cases. The majority of cases are completed in not outstanding issues or next scheduled events (if appropriate). Some cases</p>	<p>The judge effectively manages cases. The case is completed with no outstanding issues at the conclusion of the scheduled event. If there are additional matters to be addressed,</p>

Rubric: Courtroom Observation Rubric

	or what will occur next as a result of the hearing.	are not concluded and the judge demonstrates an unwillingness to control the flow of the case and ends proceedings without a clear decision or understanding or what will occur next.	parties know what those are, what needs to be done, and when that will occur (scheduled in court during the proceedings, if possible).
Collaboration The judge takes responsibility for more than her or his own caseload and is willing to assist other judges.	The judge handles only their cases and when the docket is complete leaves the bench and in unavailable for other matters.	It is clear the judge is handling case other than ones on her or his docket. The judge references the case has been transferred or mentions the matter was scheduled in another judge who had a conflict. At the end of the docket the judge asks if there are other matters to be addressed in the courtroom.	The judge takes responsibility for more than her or his caseload and is willing to assist other judges.

Service to the Legal Profession Service The judge participates in service activities to the legal profession and the public.	Poor – 1Pt The judge rarely participates in service-oriented efforts designed to educate the public about the legal system and to improve the legal system.	Fair – 2Pts The judge occasionally participates in service-oriented efforts designed to educate the public about the legal system and to improve the legal system.	Good – 3Pts The judge frequently participates in service-oriented efforts designed to educate the public about the legal system and to improve the legal system.
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Comments:

DECISION/OPINION REVIEW

Trial Judges

District judges are required to submit to the commission three (3) written orders or rulings that he or she has prepared, including one which was reversed on appeal along with the reversing opinion, if applicable. Because county court rulings are often oral, county court judges may submit transcripts of three (3) findings of fact, conclusions of law, and orders, also including one which was reversed on appeal along with the reversing opinion, if applicable. County court judges may select written rulings, and submit those for commission review as well.

Trial court written orders and rulings may take one of many forms. For example, a *district judge* may enter oral findings of fact and conclusions of law and ask the parties to a dispute to prepare suggested findings and conclusions. The judge usually selects the findings and conclusions proposed by one side and makes necessary modifications. The changes typically remove adversarial rhetoric and state the findings and conclusions in neutral terms. The wholesale acceptance of one side's proposal – although not prohibited – may reflect the lack of a carefully considered impartial judgment and is therefore generally disfavored. A district judge may enter a written ruling granting or denying a motion on a question of law. Summary judgment rulings are the most likely source of rulings that reflect a district court judge's ability to analyze and resolve questions of law in writing. *County judge* rulings are often oral. (In all actions tried upon the facts without a jury, the county court shall orally announce its decision, including findings of fact and conclusions of law, and direct the entry of judgment. No written findings shall be required.) (R. 352, C.R.C.P.)

The rulings should be reviewed for clarity so that the parties receiving the ruling would understand the issue being resolved and the reasons for the court's decision. The commission is not to review a ruling to determine whether it is "correct" in the eyes of the commission -- an appellate court determines whether the substance of the legal ruling is correct. Each commissioner should review the decisions for thoroughness of findings, clarity of expression, logical reasoning, and application of the law to the facts presented. In other words, the rulings should contain enough information about factual allegations or procedural context and the applicable legal principles, along with an explanation of how the judge has applied the law to the facts, to justify the result. The rulings should acknowledge the losing party's arguments and explain why they were rejected.

Appellate Judges

Appellate justices and judges prepare opinions with the assistance of law clerks and staff attorneys. The justices or judges who join in an opinion are responsible for the entire content regardless of how much – or how little – he or she actually wrote.

Each justice or judge is required to submit five (5) opinions he or she has authored, including one concurrence or dissent, which are separate opinions by the justice or judge

disagreeing or further explaining a point of agreement or disagreement with the majority opinion. Each state commissioner should review the opinions, as well as any others authored by the appellate justice or judge that the commission in its discretion may select, for compliance with the statutory criteria, legal knowledge, adherence to the record, clarity of expression, logical reasoning, and application of the law to the facts presented. In other words, appellate decisions should be reviewed for clarity, persuasiveness, and tone. The opinions should contain a fair statement of the pertinent facts and a discussion of the applicable legal principles and case law. The opinions should acknowledge the losing party's arguments and explain why they were rejected. The application of the law to the facts of the case should justify the result, and the holding (the court's ruling) should be clear and concise.

Trial Judge Decision Review

District commissioners shall review 3¹ written decisions of district and county judges for:

- **Thoroughness of findings**
 - Does the judge explain how the testimony or evidence supports the facts?
 - Does the judge explain how he or she relied on one particular item of evidence over another?
 - Does the ruling contain enough information about the factual allegations or procedural context and the applicable legal standard to justify the result?
 - Does the judge explain how he or she applied the law to the facts?

 - **Clarity of expression**
 - Is the decision readily understandable or ambiguous?
 - Is there minimal legalese so that the average person can make sense of it?
 - Could the average person understand the reasons for the court's decision?
 - Is the ruling clear and concise?

 - **Logical reasoning**
 - Do the facts sequentially support the decision or are the facts randomly presented to achieve a desired result?
 - Does B follow from A, or does the judge assert something without explaining how he or she got there?

 - **Application of the law to the facts presented**
 - Does the judge thoroughly explain how he or she has applied the law to the facts to justify the result?
 - Does the justice or judge thoroughly explain how important facts relate to the law?
 - Does the application of the law to the facts of the case justify the result?
- Finally:**
- Does the decision acknowledge the losing party's arguments and explain why they were rejected?

¹ Not less than three decisions selected by the judge, one of which was reversed on appeal, together with the reversing opinion, if applicable.



COLORADO

**Office of Judicial
Performance Evaluation**

Judicial Branch

Methodology Brief

Conducted by:



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Survey of Attorneys

Methodology and How to Read Results

a. Response rates

During the 2015 administration, a total of 9,257 survey invitations were sent to 4,223 attorneys inviting them to evaluate judges and justices standing for retention in 2016. On average, each attorney was asked to evaluate 2.2 judges. To date, 2,724 surveys have been completed with an additional 1,363 responses where the attorney indicated that they did not have enough experience with the judge to be comfortable evaluating him or her. The current response rate for the survey is 47% and the survey completion rate (the number of those familiar enough to evaluate the judge divided by the total number of attorney responses including those indicating they did not have sufficient familiarity to evaluate the judge) is currently 67%.

b. Methodology

The 2015 attorney survey was conducted online beginning on September 16, 2015 and will be closed in late January 2016. Attorneys were first mailed a pre-notification letter sent on September 16, 2015 informing them about the survey and providing a link and login information to access the survey online. Next, a series of three email invitations were sent on September 24th, September 30th, and October 14th. Reminder calls were placed to the offices of selected attorneys in an attempt to increase response rates between November 12th and December 1st. Additional invitations were sent upon request during the reminder calls.

Appellate staff attorneys received the same survey as other attorneys, but were invited separately with a series of email invitations starting with the initial invite on October 5th, 2015 and followed with reminders on October 14th and 22nd.

An additional email follow-up and reminder calls will occur in January 2016.

c. Questions

In the core of the survey, attorneys evaluated district and county judges on 17 aspects of judicial performance and appellate judges on 12 aspects using a grade scale of A, B, C, D, or F. These aspects were grouped by topic into categories, five for district and county judges and two for appellate. The district and county categories were: case management, application and knowledge of law, communications, demeanor, and diligence. Questions regarding appellate judges were divided into two categories, one for general questions and one specific to their writing (which was only asked of those who indicated they had experience with the judge or justice's written opinions).

Respondents were also asked if they considered the judge biased toward the defense or prosecution in criminal cases. In a final question, respondents were asked to indicate how strongly they would recommend that the judge be retained or not retained in office. For this evaluation cycle, the “don’t know enough to make a recommendation” response category was excluded from the retention question.

While the formatting and structure of the survey was updated for 2015, the question wording was carried over from the 2014 administration and has remained consistent since 2013. The questions were originally developed in 1998 to meet the criteria outlined in statute 13-5.5-101 et seq.

Question Category Areas*

	Trial Judge: Attorney Survey	Appellate Judge/Justice Attorney Survey
<i>Question Categories</i>		
Appellate Judge General Questions		6
Application and Knowledge of Law	5	
Case Management	4	
Communications	2	
Demeanor	3	
Diligence	3	
Writing		6

Individual Questions

Bias	1	
Recommendation to Retain	1	1

****The numbers in the table refer to the number of questions asked in each category by survey group.***

d. Analysis and Reporting

Letter grades were converted to a numerical score where A = 4, B = 3, C = 2, D = 1 and Fail = 0 for analysis. The results include an overall grade, a grade for each category, as well as a grade for each question. The overall score is calculated by averaging the responses to all questions answered by the attorney. This score will have the same numerical range as the individual questions from zero to four.

Each category score is calculated by averaging the responses to all questions answered by the attorney with each category. This score will have the same numerical range as the individual questions from zero to four. Similarly, an average score is calculated for each individual question with the exception of the bias and retention questions.

The overall average and category scores will be reported for each judge along with the average scores for the judge's peers. The average score (with exceptions noted above) will also be reported for each question, along with the peer group score. In addition, the report will include the distribution of responses for each question. That is, the percentage of attorneys that assigned a rating of A, B, C, D, and F. The distribution of responses are also reported for the questions on bias and retention.

e. Comments

At the end of each group of questions, respondents had the option of leaving comments about the judge's performance in that area. Respondents were also asked what they considered to be the judge's strengths and weaknesses and were allowed to leave open-ended responses to each. By statute, these comments are confidential and only provided to the judge and the Commissions on Judicial Performance. They are not released to the public when the rest of the report is released.

Survey of Appellate Judges

Methodology and How to Read Results

a. Response rates

Invitations were sent via email to all 28 Supreme Court justices and Court of Appeals judges. Of these, 23 responded and 21 completed the survey. The response rate was 82% and the completion rate was 91%.

b. Methodology

Appellate judges were surveyed both to evaluate the performance of district judges and to evaluate the performance of fellow Court of Appeals judges and Supreme Court justices up for retention.

The evaluation of district judges was conducted via an online survey hosted in Qualtrics research suite survey software. The initial invitation was sent on November 4, 2015. A reminder email to those that had not already completed their evaluation was sent on November 16th.

The evaluation of appellate judges and justices standing for retention by their peers in the appellate courts will be conducted in January 2016.

c. Questions

Due to the large number of judges being evaluated, the district judge evaluation survey consisted of a single question pertaining to each judge. Appellate judges and justices were asked to evaluate the district judge's overall performance as a judge on a grade scale of A-F with A being "Excellent" and F being "Fail". In the survey, the district judges being evaluated were grouped by district, and the districts were presented in random order to reduce bias.

d. Analysis

Letter grades were then converted to a numerical score where A = 4, B = 3, C = 2, D = 1 and Fail = 0 for analysis. The overall score is calculated by averaging the responses to all questions answered. This score will have the same numerical range as the individual questions from zero to four.

The overall average will be reported for each judge along with the average scores for the judge's peers. In addition, the report will include the distribution of responses for each question. That is, the percentage of attorneys that assigned a rating of A, B, C, D, and F.

e. Comments

Respondents were given the option to leave supporting comments in a box next to where they graded each judge. By statute, these comments are confidential and only provided to the judge and the Commissions on Judicial Performance. They are not released to the public when the rest of the report is released.

Survey of Non-Attorneys

Methodology and How to Read Results

a. Response rates

So far during the 2015 administration, 1,799 survey invitations have been sent to court staff members and 33,839 to other non-attorneys. Among court staff, 713 complete surveys have been received and an additional 186 indicated that they did not have enough experience to evaluate the judge. The response rate among court staff is 50% and the completion rate is 79%.

Among other non-attorneys, 2,292 complete surveys have been received and an additional 474 indicated that they did not have enough experience to evaluate the judge. The response rate among other non-attorneys is 11% and the completion rate is 83%.

b. Methodology

The 2015 non-attorney survey was conducted via a mixed mode online and mail survey beginning September 24, 2015 and anticipated to end in early February 2016. Respondents were split into two groups for data collection: court staff and other non-attorneys, primarily due to the ability to contact court staff via email. The court staff group includes: staff members, interpreters and probation officers. The other non-attorney group includes: jurors, defendants, witnesses, litigants, and law enforcement personnel.

Court staff members were invited via emailed invitations sent on October 5th and a reminder sent on October 14th.

Other non-attorneys where no email addresses were available, were first mailed a pre-notification letter sent on September 24th informing them about the survey and providing a link and login information to access the survey online. This was followed up with a second mailing that also included the information to access the survey online, as well as a full printed survey booklet and postage-paid return envelope. This second mailing was sent on October 19, 2015.

The process for other non-attorneys will be repeated in January 2016 with a group of respondents who had experiences with the court system in the third and fourth quarters of 2015.

c. Questions:

Respondents evaluated judges on 19 aspects of judicial performance using a grade scale of A, B, C, D, or F. Respondents were also asked if they considered the judge biased toward the defense or prosecution in criminal cases. Non-attorneys were also asked to evaluate the appropriateness of the sentencing. In a final question, respondents were asked to indicate how strongly they would recommend that the judge be retained or not retained in office. For this

evaluation cycle, the “don’t know enough to make a recommendation” response category was excluded from the retention question.

Question Category Areas*

	Court Staff	Other Non-attorneys
<i>Question Categories</i>		
Application of Law	3	3
Communications	3	3
Demeanor	4	4
Diligence	5	5
Fairness	4	4

Individual Questions

Bias	1	1
Appropriateness of Sentence	1	1
Recommendation to Retain	1	1

****The numbers in the table refer to the number of questions asked in each category by survey group.***

d. Analysis and Reporting

Letter grades were then converted to a numerical score where A = 4, B = 3, C = 2, D = 1 and Fail = 0 for analysis. The results include an overall grade, a grade for each category, as well as a grade for each question. The overall score is calculated by averaging the responses to all questions answered. This score will have the same numerical range as the individual questions from zero to four.

Each category score is calculated by averaging the responses to all questions answered by the attorney with each category. This score will have the same numerical range as the individual questions from zero to four. Similarly, an average score is calculated for each individual question with the exception of the bias and retention questions.

The overall average and category scores will be reported for each judge along with the average scores for the judge’s peers. The average score (with exceptions noted above) will also be reported for each question, along with the peer group score. In addition, the report will include the distribution of responses for each question. That is, the percentage of attorneys that assigned a rating of A, B, C, D, and F. The distribution of responses are also reported for the questions on bias and retention as well as appropriateness of sentences.

e. Comments:

At the end of each group of questions, respondents had the option of leaving comments about the judge’s performance in that area. Respondents were also asked what they considered to be

the judge's strengths and weaknesses and allowed to leave open ended responses to each. By statute, these comments are confidential and only provided to the judge and the Commissions on Judicial Performance. They are not released to the public when the rest of the report is released.



CO L O R A D O

**Office of Judicial
Performance Evaluation**

Judicial Branch

The Honorable Test Judge 1
2016 Judicial Performance Survey Report
District Court

Conducted by:



75 Washington Ave. Ste. 206
Portland, ME 04101
www.marketdecisions.com

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Summary of Results

For Judge Test Judge 1, 50% of qualified survey respondents submitted surveys. Of those who responded, 46 agreed they had worked with Judge Test 1 enough to evaluate his performance. This report reflects these 46 responses.

Respondents rated judges on various questions using an A to F scale, in which the grades were then converted to numerical scores: A= 4, B=3, C=2, D=1 and F=0. An average score of 4.0 is the highest possible score and a 0.0 is the lowest possible score.

Overall Score

Figure 1

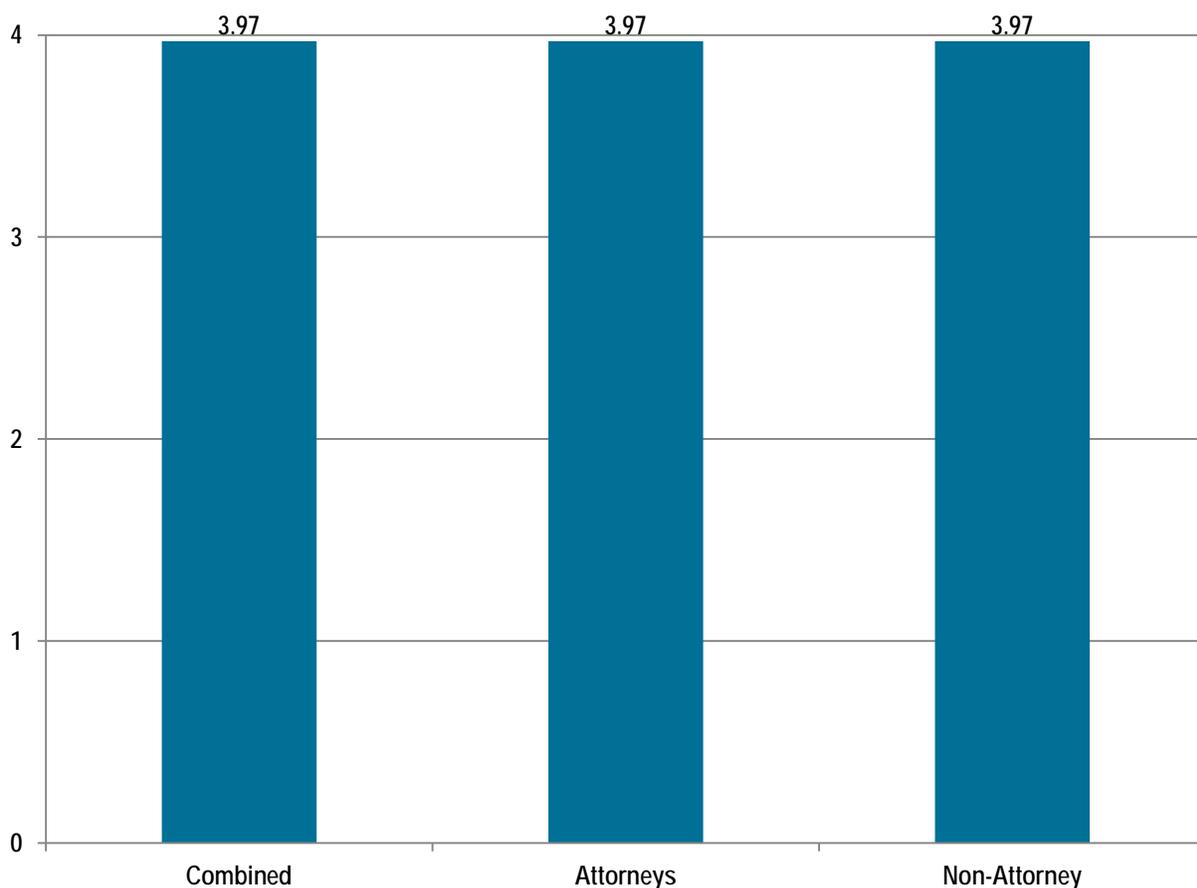


Table 1

Judge Test Judge 1 Overall Scores			
	Combined	Attorneys	Non-Attorney
Overall Grade	3.97	3.97	3.97
Sample Size	0		

Retention Scores

Figure 2

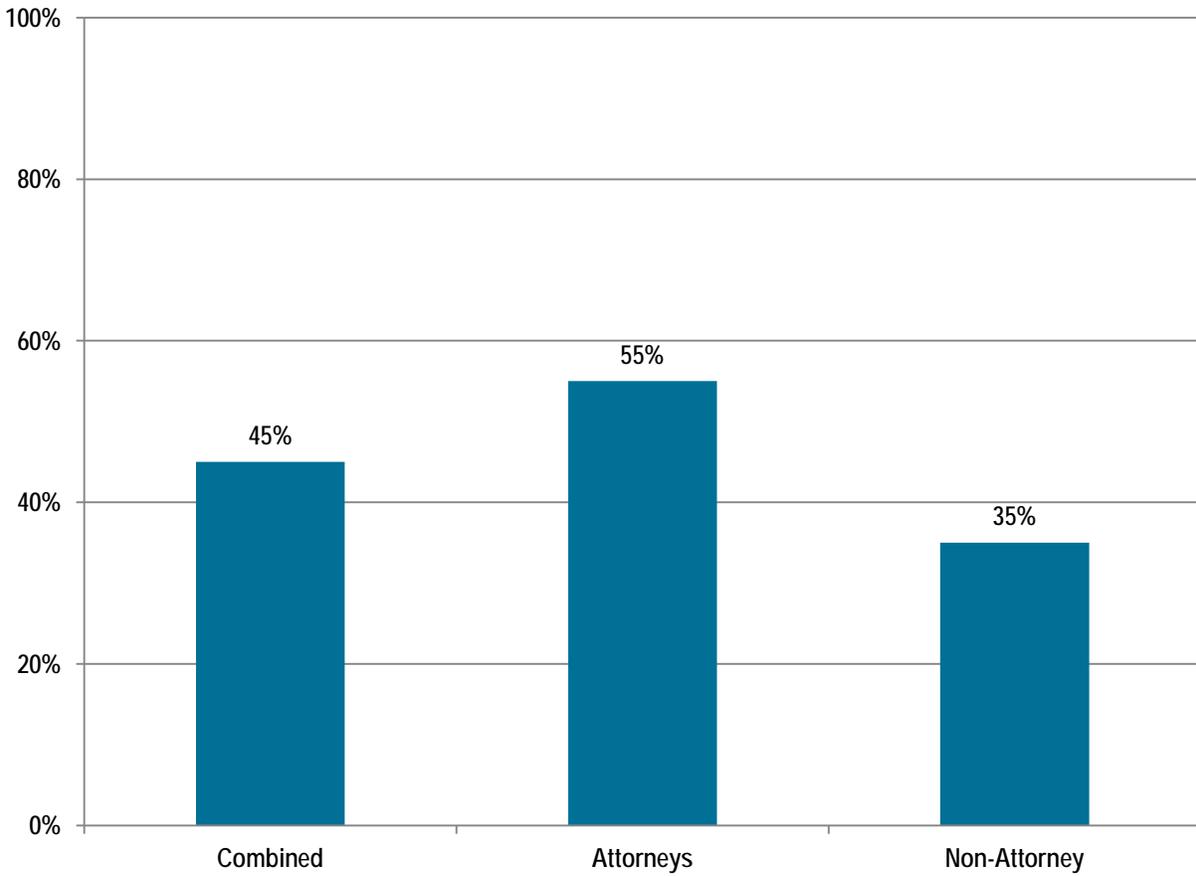


Table 2

Judge Test Judge 1 Overall Retention Scores			
	Combined	Attorneys	Non-Attorney
% Recommending Retention	45%	55%	35%
Sample Size			

Individual Category Scores

Table 3

Judge Test Judge 1 Overall Category Scores		
Area	Attorney	Non Attorney
Case Management	4	N/A
Application and Knowledge of Law	3.95	3.95
Communications	3.97	3.97
Diligence	3.94	3.94
Demeanor	4	4
Fairness	N/A	4

Respondent Characteristics

Table 4

Judge Test Judge 1 Overall Respondent Demographics
Area

Survey of Attorneys

Methodology and How to Read Results

For Judge Test Judge 1, 50% of qualified survey respondents submitted surveys. Of those who responded, 46 agreed they had worked with Judge Test 1 enough to evaluate his performance. This report reflects these 46 responses. The survey results are divided into nine sections: Retention, Case Management, Application and Knowledge of law, Communications, Demeanor, Diligence, Bias, Strengths, and Weaknesses.

The results are shown in both graphs and tables. Each judge's scores are shown along with a comparison to other judges who serve at the same court level. The comparison group is called "District Judges" on the charts.

a. Response rates

During the 2015 administration, a total of 9,257 survey invitations were sent to 4,223 attorneys inviting them to evaluate judges and justices standing for retention in 2016. On average, each attorney was asked to evaluate 2.2 judges. To date, 2,724 surveys have been completed with an additional 1,363 responses where the attorney indicated that they did not have enough experience with the judge to be comfortable evaluating him or her. The current response rate for the survey is 47% and the survey completion rate (the number of those familiar enough to evaluate the judge divided by the total number of attorney responses including those indicating they did not have sufficient familiarity to evaluate the judge) is currently 67%.

b. Methodology

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An additional email follow-up and reminder calls will occur in January 2016.

c. Questions:

In the core of the survey, attorneys evaluated district and county judges on 17 aspects of judicial performance and appellate judges on 12 aspects using a grade scale of A, B, C, D, or F. These aspects were grouped by topic into categories, five for district and county judges and two for appellate. The district and county categories were: case management, application and

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Respondents were also asked if they considered the judge biased toward the defense or prosecution in criminal cases. In a final question, respondents were asked to indicate how strongly they would recommend that the judge be retained or not retained in office. For this evaluation cycle, the “don’t know enough to make a recommendation” response category was excluded from the retention question.

While the formatting and structure of the survey was updated for 2015, the question wording was carried over from the 2014 administration and has remained consistent since 2013. The questions were originally developed in 1998 to meet the criteria outlined in statute 13-5.5-101 et seq.

Question Category Areas*

	Trial Judge: Attorney Survey	Appellate Judge/Justice Attorney Survey
<i>Question Categories</i>		
Appellate Judge General Questions		6
Application and Knowledge of Law	5	
Case Management	4	
Communications	2	
Demeanor	3	
Diligence	3	
Writing		6
<i>Individual Questions</i>		
Bias	1	
Recommendation to Retain	1	1

****The numbers in the table refer to the number of questions asked in each category by survey group.***

d. Analysis and Reporting

Letter grades were converted to a numerical score where A = 4, B = 3, C = 2, D = 1 and Fail = 0 for analysis. The results include an overall grade, a grade for each category, as well as a grade for each question. The overall score is calculated by averaging the responses to all questions answered by the attorney. This score will have the same numerical range as the individual questions from zero to four.

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e. Comments

At the end of each group of questions, respondents had the option of leaving comments about the judge's performance in that area. Respondents were also asked what they considered to be the judge's strengths and weaknesses and were allowed to leave open-ended responses to each. By statute, these comments are confidential and only provided to the judge and the District Commission on Judicial Performance. They are not released to the public when the rest of the report is released.

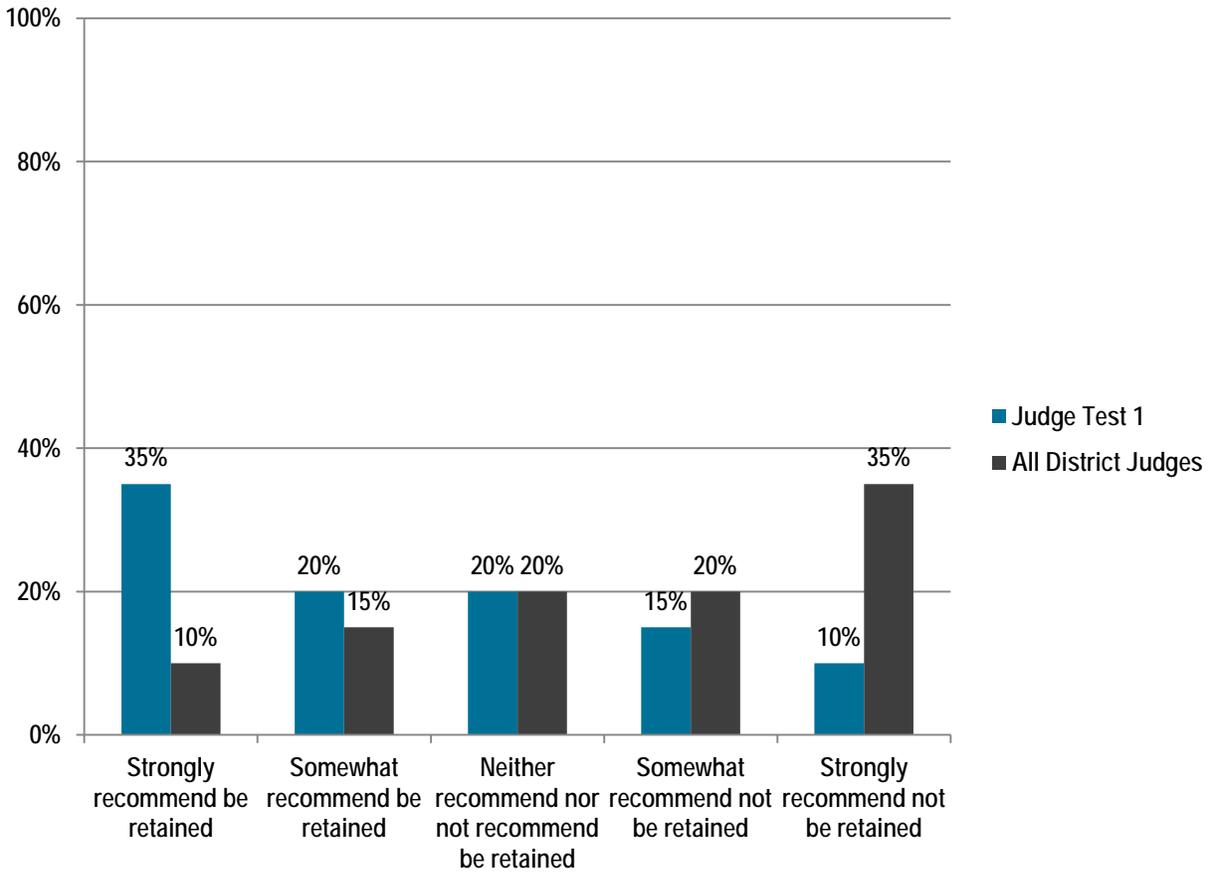
Retention

Keeping in mind your responses to each of the previous questions, how strongly do you recommend that Judge Test Judge 1 be retained in office, or not be retained in office?

Table 4

Judge Test Judge 1	
Total Retain	55%
Neither	20%
Total Not Retain	25%

Figure 3



If you have any comments about why you feel Judge Test 1 should or should not be retained, please enter them in the box below.

Table 5

<u>Respondent</u>	<u>Comment</u>
1	test
2	test

Case Management

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge Test 1 on the following. If, for a specific question you feel that you do not have enough information to grade the judge, please check DK/NA for Don't Know/Not Applicable.

Figure 4

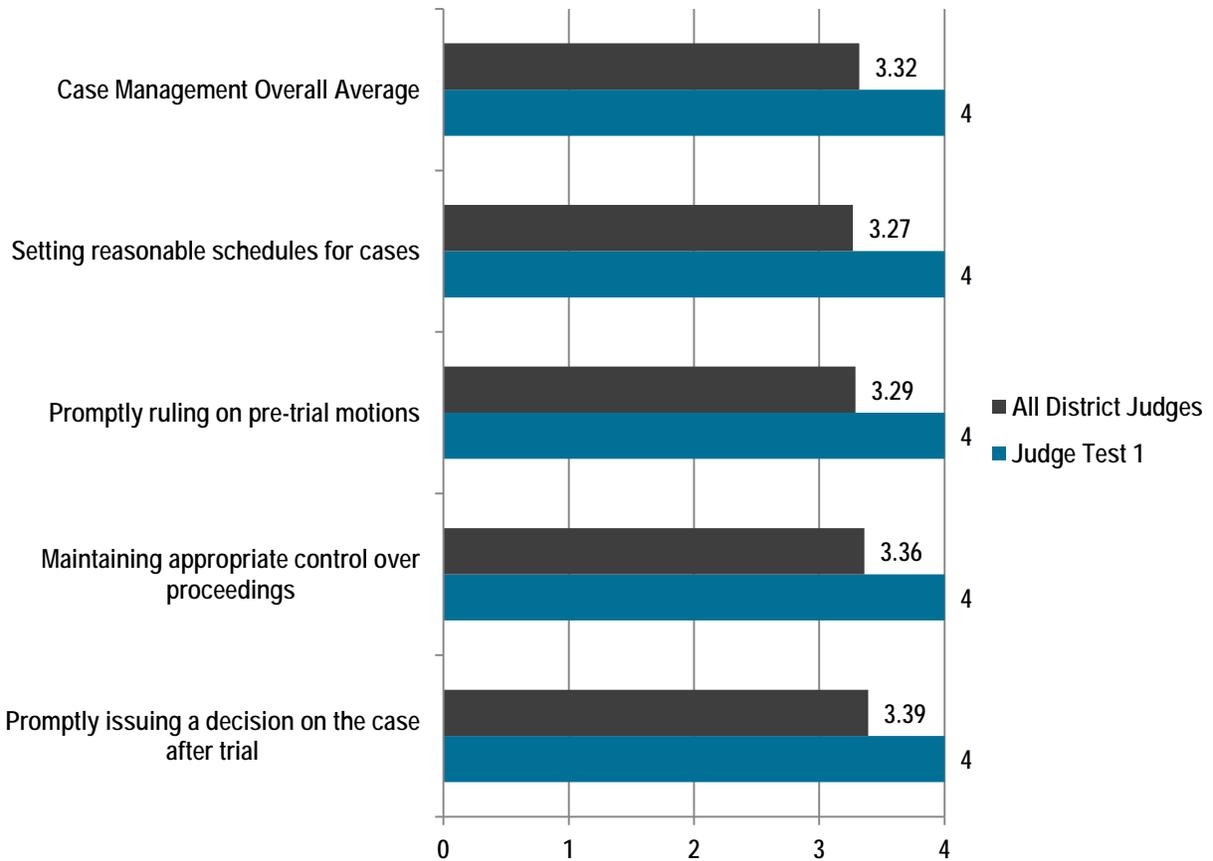


Table 6

Case Management									
Judge Test Judge 1 Sample Size: 2	A	B	C	D	Fail	DK/NA	Judge Test 1	All District Judges	
Promptly issuing a decision on the case after trial	50%	20%	10%	10%	10%		4	3.39	
Maintaining appropriate control over proceedings	71%	17%	4%	4%	4%		4	3.36	
Promptly ruling on pre-trial motions	44%	22%	25%	6%	3%		4	3.29	
Setting reasonable schedules for cases	45%	29%	13%	11%	3%		4	3.27	
Case Management Overall Average								4	3.32

If you have any comments about Judge Test 1's case management, please enter them in the box below.

Table 7

<u>Respondent</u>	<u>Comment</u>
2	test
1	test
1	test

Application and Knowledge of Law

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge Test 1 on the following. If, for a specific question you feel that you do not have enough information to grade the judge, please check DK/NA for Don't Know/Not Applicable.

Figure 5

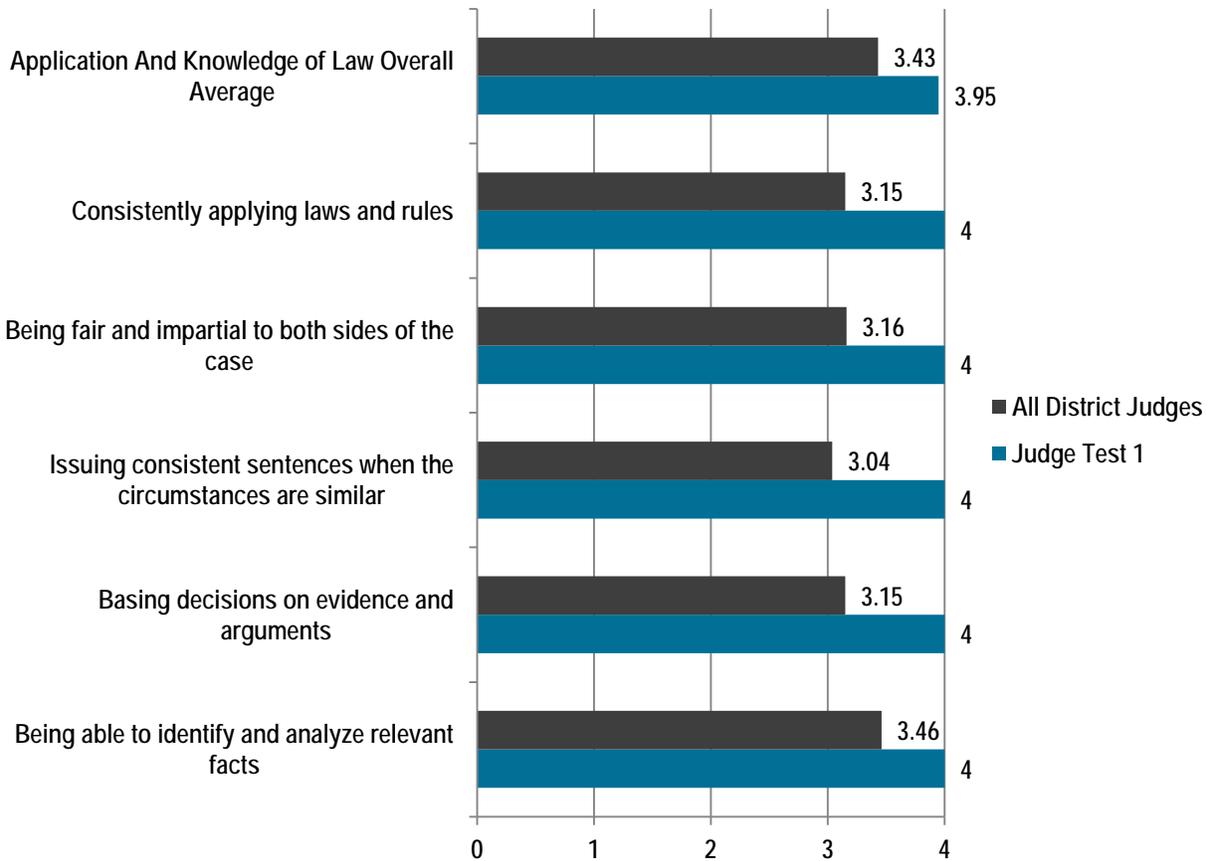


Table 8

Application and Knowledge of Law								
Judge Test Judge 1 Sample Size: 19	A	B	C	D	Fail	DK/NA	Judge Test 1	All District Judges
Being able to identify and analyze relevant facts	62%	26%	8%	3%	3%		4	3.46
Basing decisions on evidence and arguments	46%	15%	18%	10%	10%		4	3.15
Issuing consistent sentences when the circumstances are similar	56%	6%	19%	13%	6%		4	3.04
Being fair and impartial to both sides of the case	63%	17%	4%	8%	8%		4	3.16
Consistently applying laws and rules	45%	15%	13%	13%	15%		4	3.15
Application And Knowledge of Law Overall Average							3.95	3.43

If you have any comments about Judge Test 1's application and knowledge of law, please enter them in the box below.

Table 9

<u>Respondent</u>	<u>Comment</u>
2	test

Communications

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge Test 1 on the following. If, for a specific question you feel that you do not have enough information to grade the judge, please check DK/NA for Don't Know/Not Applicable.

Figure 6

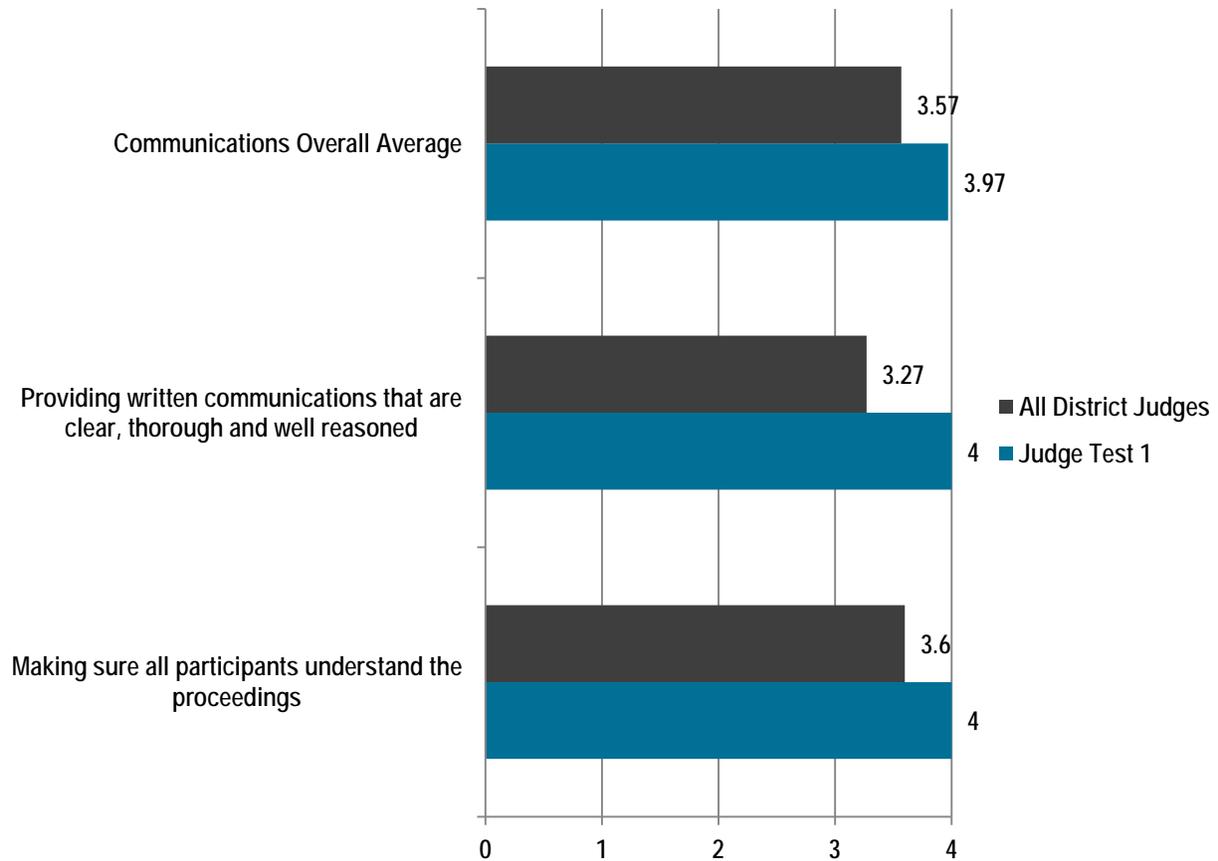


Table 10

Communications								
Judge Test Judge 1 Sample Size: 21	A	B	C	D	Fail	DK/NA	Judge Test 1	All District Judges
Making sure all participants understand the proceedings	66%	17%	11%	3%	3%		4	3.6
Providing written communications that are clear, thorough and well reasoned	53%	14%	19%	8%	6%		4	3.27
Communications Overall Average							3.97	3.57

If you have any comments about Judge Test 1's communications, please enter them in the box below.

Table 11

<u>Respondent</u>	<u>Comment</u>
2	test
3	test

Demeanor

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge Test 1 on the following. If, for a specific question you feel that you do not have enough information to grade the judge, please check DK/NA for Don't Know/Not Applicable.

Figure 7

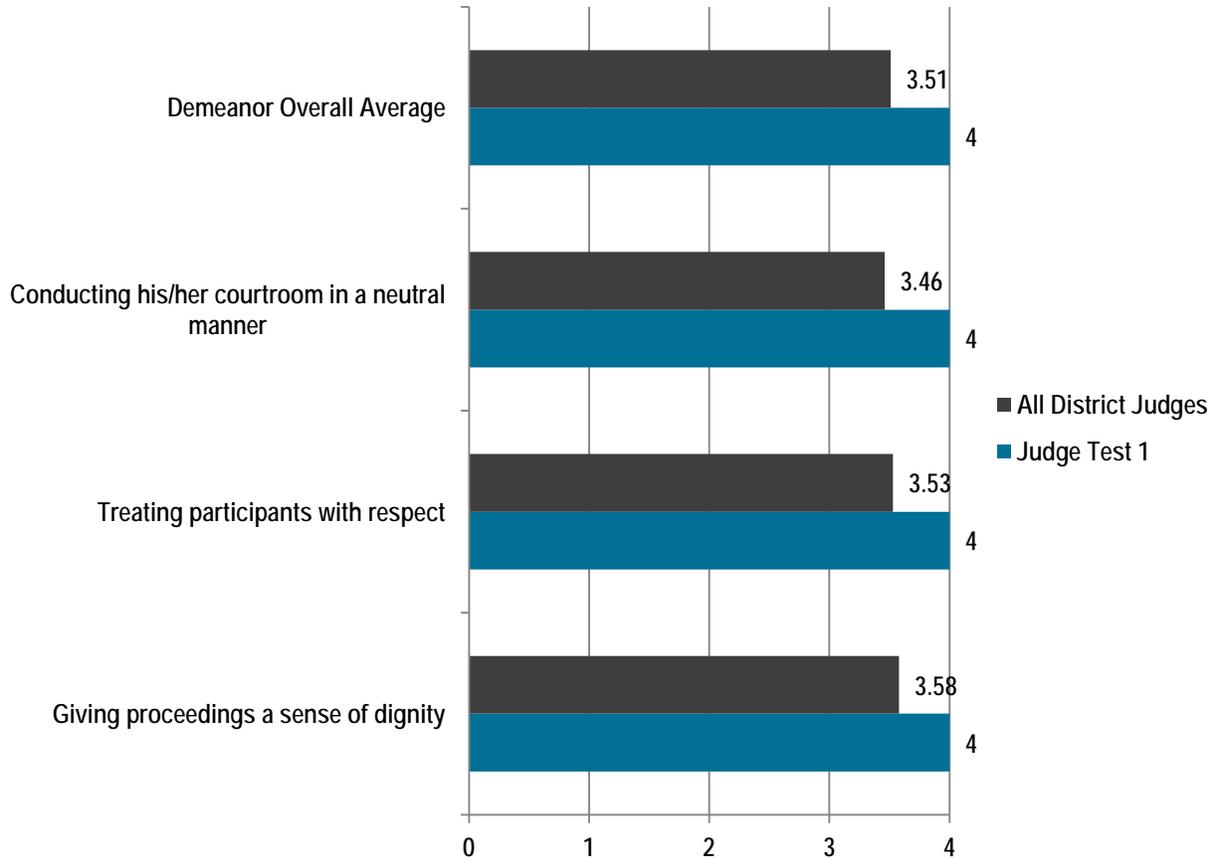


Table 12

Demeanor								
Judge Test Judge 1 Sample Size: 21	A	B	C	D	Fail	DK/NA	Judge Test 1	All District Judges
Giving proceedings a sense of dignity	71%	17%	3%	6%	3%		4	3.58
Treating participants with respect	71%	17%	3%	6%	3%		4	3.53
Conducting his/her courtroom in a neutral manner	65%	10%	10%	2%	12%		4	3.46
Demeanor Overall Average							4	3.51

If you have any comments about Judge Test 1's demeanor, please enter them in the box below.

Table 13

<u>Respondent</u>	<u>Comment</u>
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Diligence

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge Test 1 on the following. If, for a specific question you feel that you do not have enough information to grade the judge, please check DK/NA for Don't Know/Not Applicable.

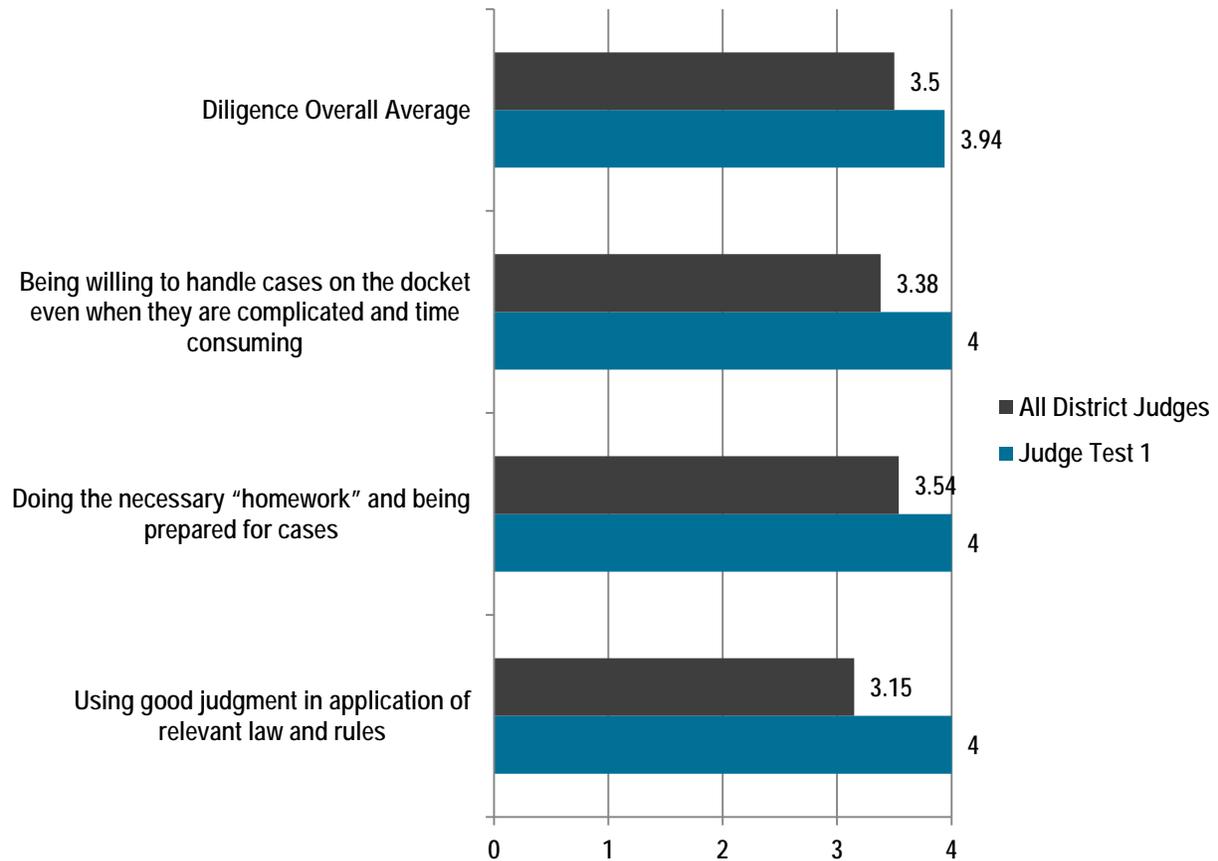


Table 14

Diligence								
Judge Test Judge 1 Sample Size: 20	A	B	C	D	Fail	DK/NA	Judge Test 1	All District Judges
Using good judgment in application of relevant law and rules	52%	17%	17%	7%	7%		4	3.15
Doing the necessary "homework" and being prepared for cases	38%	31%	15%	8%	8%		4	3.54
Being willing to handle cases on the docket even when they are complicated and time consuming	65%	20%	5%	5%	5%		4	3.38
Diligence Overall Average							3.94	3.5

If you have any comments about Judge Test 1's diligence, please enter them in the box below.

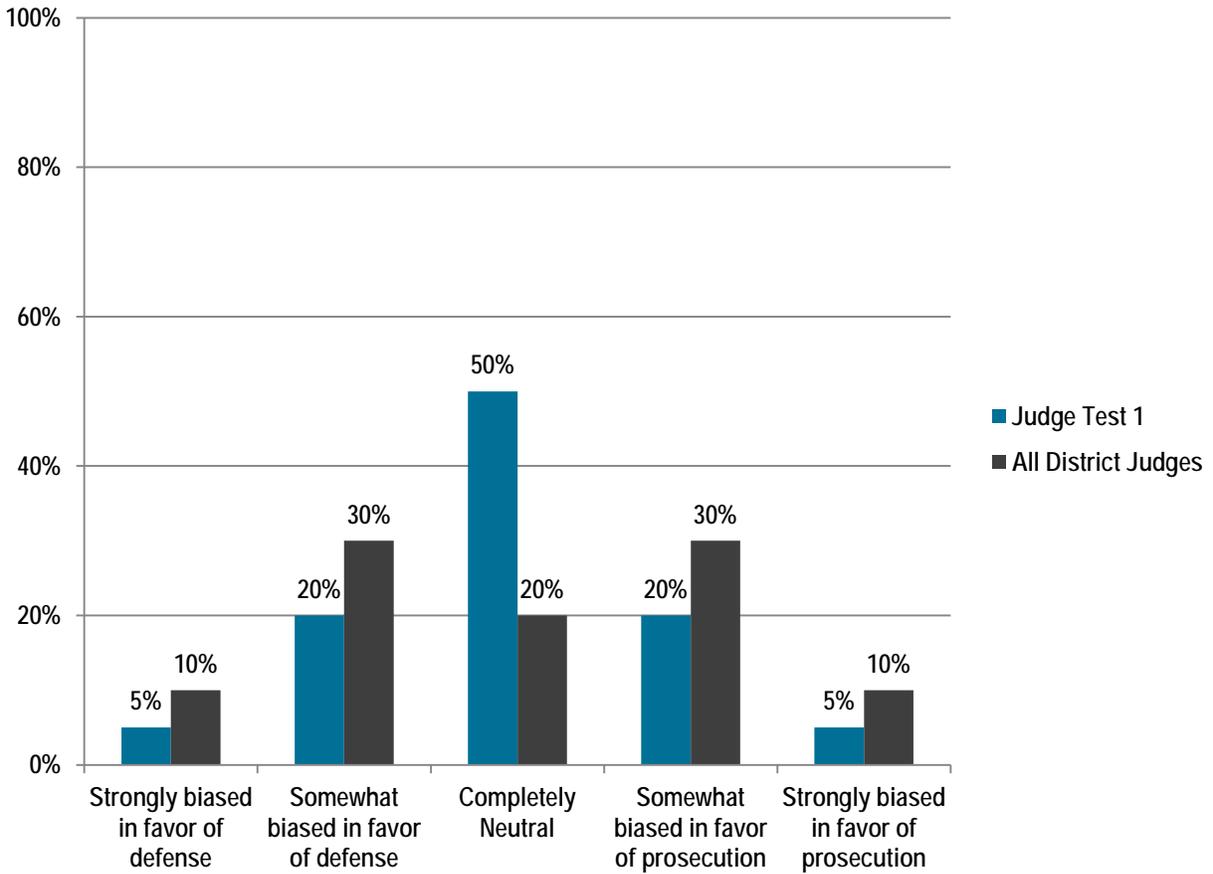
Table 15

<u>Respondent</u>	<u>Comment</u>
1	test
2	test

Bias

Having observed Judge Test 1 in a criminal case, would you say the judge is:

Figure 8



Strengths

What would you say are Judge Test 1's strengths?

Table 16

<u>Respondent</u>	<u>Comment</u>
-------------------	----------------

Weaknesses

What would you say are Judge Test 1's weaknesses?

Table 17

<u>Respondent</u>	<u>Comment</u>
1	test

Survey of Appellate Judges

Methodology and How to Read Results

For Judge Test 1, 20 of qualified survey respondents submitted surveys. Of those who responded, 18 agreed they had worked with Judge Test 1 enough to evaluate his performance. This report reflects these 18 responses.

a. Response rates

Invitations were sent via email to all 28 Supreme Court justices and Court of Appeals judges. Of these, 23 responded and 21 completed the survey. The response rate was 82% and the completion rate was 91%.

b. Methodology

Appellate judges were surveyed both to evaluate the performance of district judges and to evaluate the performance of fellow Court of Appeals judges and Supreme Court justices up for retention.

The evaluation of district judges was conducted via an online survey hosted in Qualtrics research suite survey software. The initial invitation was sent on November 4, 2015. A reminder email to those that had not already completed their evaluation was sent on November 16th.

The evaluation of appellate judges and justices standing for retention by their peers in the appellate courts will be conducted in January 2016.

c. Questions

Due to the large number of judges being evaluated, the district judge evaluation survey consisted of a single question pertaining to each judge. Appellate judges and justices were asked to evaluate the district judge's overall performance as a judge on a grade scale of A-F with A being "Excellent" and F being "Fail". In the survey, the district judges being evaluated were grouped by district, and the districts were presented in random order to reduce bias.

d. Analysis

Letter grades were then converted to a numerical score where A = 4, B = 3, C = 2, D = 1 and Fail = 0 for analysis. The overall score is calculated by averaging the responses to all questions answered. This score will have the same numerical range as the individual questions from zero to four.

The overall average will be reported for each judge along with the average scores for the judge's peers. In addition, the report will include the distribution of responses for each question. That is, the percentage of attorneys that assigned a rating of A, B, C, D, and F.

e. Comments

Respondents were given the option to leave supporting comments in a box next to where they graded each judge. By statute, these comments are confidential and only provided to the judge and the District Commission on Judicial Performance. They are not released to the public when the rest of the report is released.

Results

Using a grade scale, where "A" is excellent along with B,C,D, or F for fail, please grade the following district judges in terms of each one's overall performance as a judge by selecting the appropriate letter grade. If you feel that you don't have enough information about a judge to mark a specific grade, please select "No Grade".

Figure 9

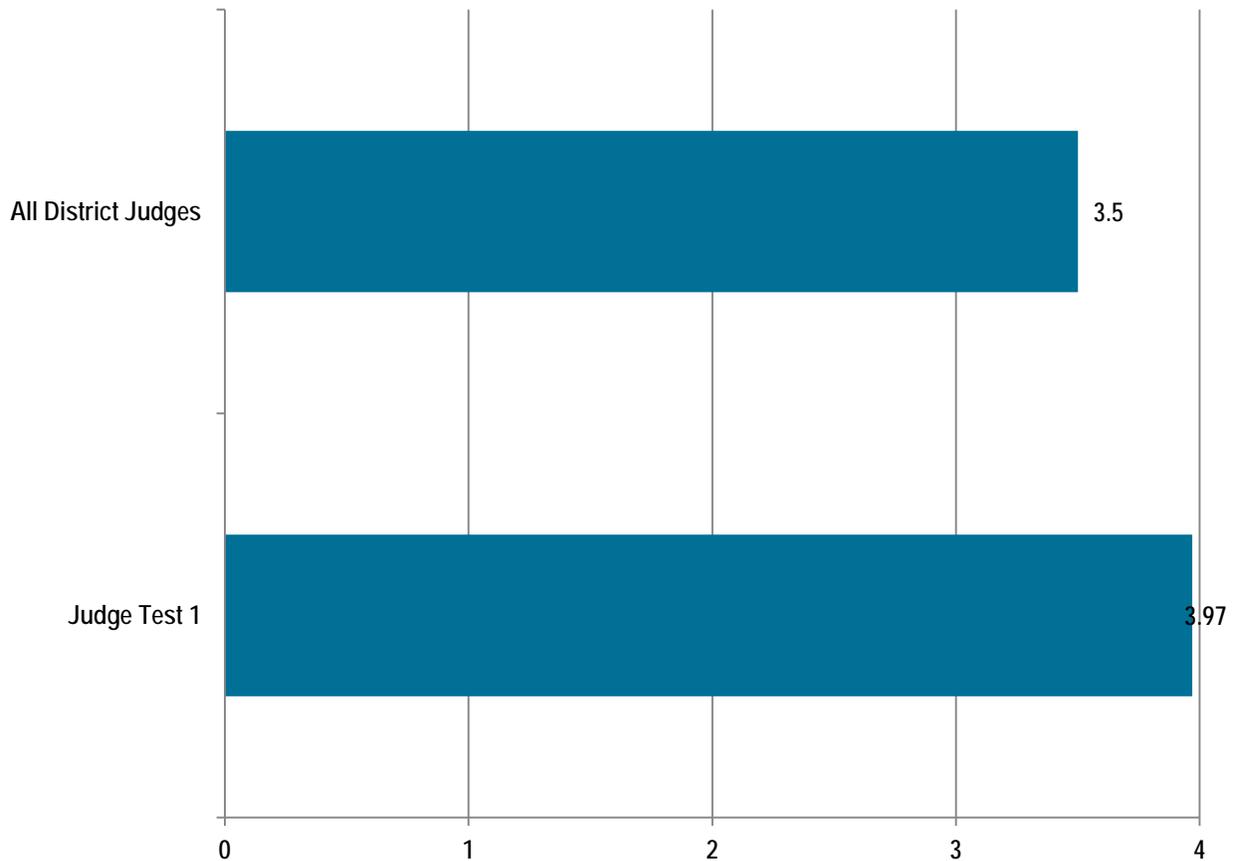


Table 18

Evaluation by Appellate Court Judges								
Judge Test Judge 1 Sample Size: XX	A	B	C	D	Fail	DK/NA	Judge Test 1	All District Judges
Overall performance as a judge	52%	17%	17%	7%	7%		3.97	3.5

Survey of Non Attorneys

Methodology and How to Read Results

For Judge Test Judge 1, [FILL RR] of qualified survey respondents submitted surveys. Of those who responded, [FILL EXP] agreed they had worked with Judge Test 1 enough to evaluate his performance. This report reflects these [FILL EXP] responses.

a. Response rates

So far during the 2015 administration, 1,799 survey invitations have been sent to court staff members and 33,839 to other non-attorneys. Among court staff, 713 complete surveys have been received and an additional 186 indicated that they did not have enough experience to evaluate the judge. The response rate among court staff is 50% and the completion rate is 79%.

Among other non-attorneys, 2,292 complete surveys have been received and an additional 474 indicated that they did not have enough experience to evaluate the judge. The response rate among other non-attorneys is 11% and the completion rate is 83%.

b. Methodology

The 2015 non-attorney survey was conducted via a mixed mode online and mail survey beginning September 24, 2015 and anticipated to end in early February 2016. Respondents were split into two groups for data collection: court staff and other non-attorneys, primarily due to the ability to contact court staff via email. The court staff group includes: staff members, interpreters and probation officers. The other non-attorney group includes: jurors, defendants, witnesses, litigants, and law enforcement personnel.

Court staff members were invited via emailed invitations sent on October 5th and a reminder sent on October 14th.

Other non-attorneys where no email addresses were available, were first mailed a pre-notification letter sent on September 24th informing them about the survey and providing a link and login information to access the survey online. This was followed up with a second mailing that also included the information to access the survey online, as well as a full printed survey booklet and postage-paid return envelope. This second mailing was sent on October 19, 2015.

The process for other non-attorneys will be repeated in January 2016 with a group of respondents who had experiences with the court system in the third and fourth quarters of 2015.

c. Questions:

Respondents evaluated judges on 19 aspects of judicial performance using a grade scale of A, B, C, D, or F. Respondents were also asked if they considered the judge biased toward the defense or prosecution in criminal cases. Non-attorneys were also asked to evaluate the

appropriateness of the sentencing. In a final question, respondents were asked to indicate how strongly they would recommend that the judge be retained or not retained in office. For this evaluation cycle, the “don’t know enough to make a recommendation” response category was excluded from the retention question.

Question Category Areas*

	Court Staff	Other Non-attorneys
Question Categories		
Application of Law	3	3
Communications	3	3
Demeanor	4	4
Diligence	5	5
Fairness	4	4
Individual Questions		
Bias	1	1
Appropriateness of Sentence	1	1
Recommendation to Retain	1	1

**The numbers in the table refer to the number of questions asked in each category by survey group.*

d. Analysis and Reporting

Letter grades were then converted to a numerical score where A = 4, B = 3, C = 2, D = 1 and Fail = 0 for analysis. The results include an overall grade, a grade for each category, as well as a grade for each question. The overall score is calculated by averaging the responses to all questions answered. This score will have the same numerical range as the individual questions from zero to four.

Each category score is calculated by averaging the responses to all questions answered by the attorney with each category. This score will have the same numerical range as the individual questions from zero to four. Similarly, an average score is calculated for each individual question with the exception of the bias and retention questions.

The overall average and category scores will be reported for each judge along with the average scores for the judge’s peers. The average score (with exceptions noted above) will also be reported for each question, along with the peer group score. In addition, the report will include the distribution of responses for each question. That is, the percentage of attorneys that assigned a rating of A, B, C, D, and F. The distribution of responses are also reported for the questions on bias and retention as well as appropriateness of sentences.

e. Comments:

At the end of each group of questions, respondents had the option of leaving comments about the judge’s performance in that area. Respondents were also asked what they considered to be the judge’s strengths and weaknesses and allowed to leave open ended responses to each. By statute, these comments are confidential and only provided to the judge and the District

Commission on Judicial Performance. They are not released to the public when the rest of the report is released.

2015 Judicial Performance Survey Report for Judge Test Judge 1

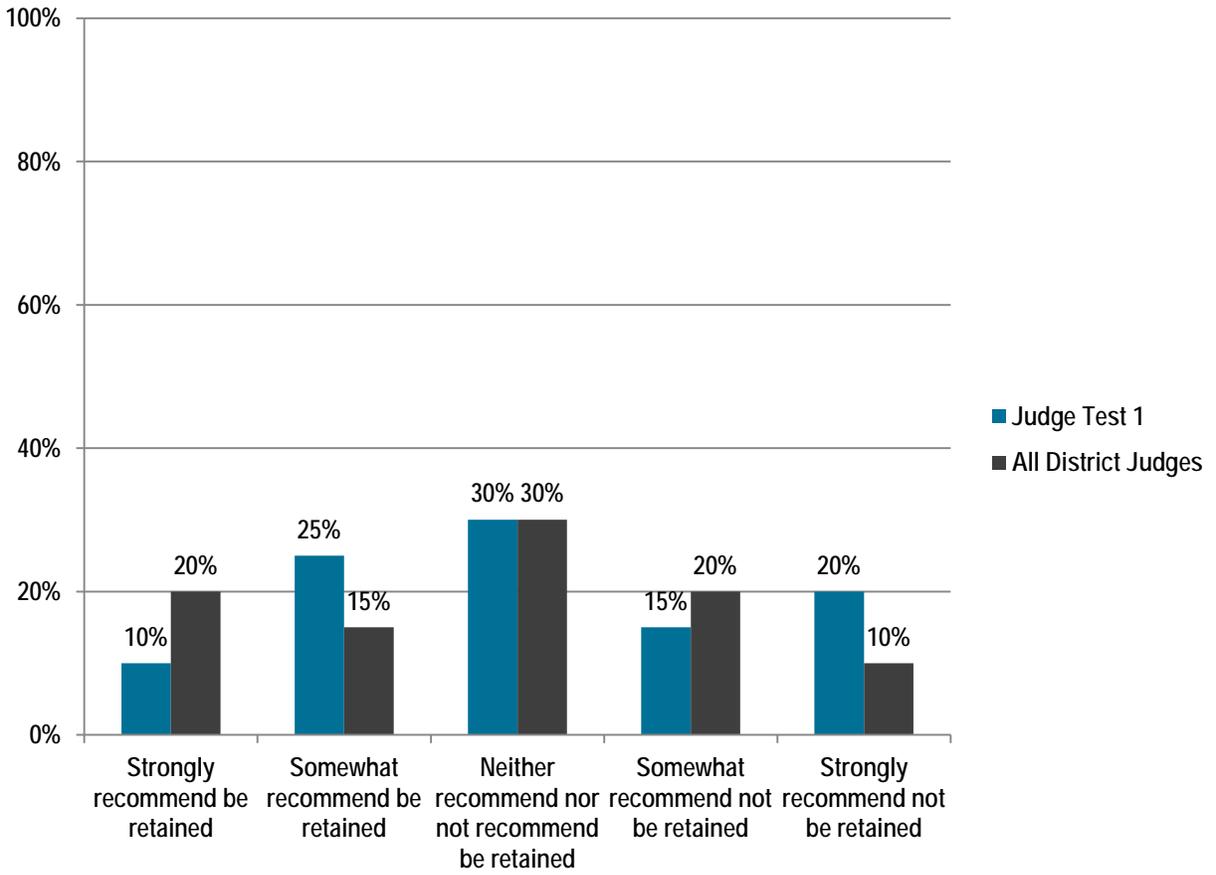
Retention

Keeping in mind your responses to each of the previous questions, how strongly do you recommend that Judge Test 1 be retained in office, or not retained in office?

Table 19

Judge Test Judge 1	
Total Retain	35%
Neither	30%
Total Not Retain	35%

Figure 10



If you have any comments about why you did or did not recommend Judge Test 1 for retention, please enter them in the box below.

Table 20

<u>Respondent</u>	<u>Comment</u>
1	test
2	test

Demeanor

Using a grade scale, where an “A” is excellent along with B, C, D or F for fail, please grade the judge on the following. (If you feel that you don’t have experience with the judge in a specific area, or just don’t know, please mark “Don’t Know/Not Applicable”—DK/NA).

Figure 11

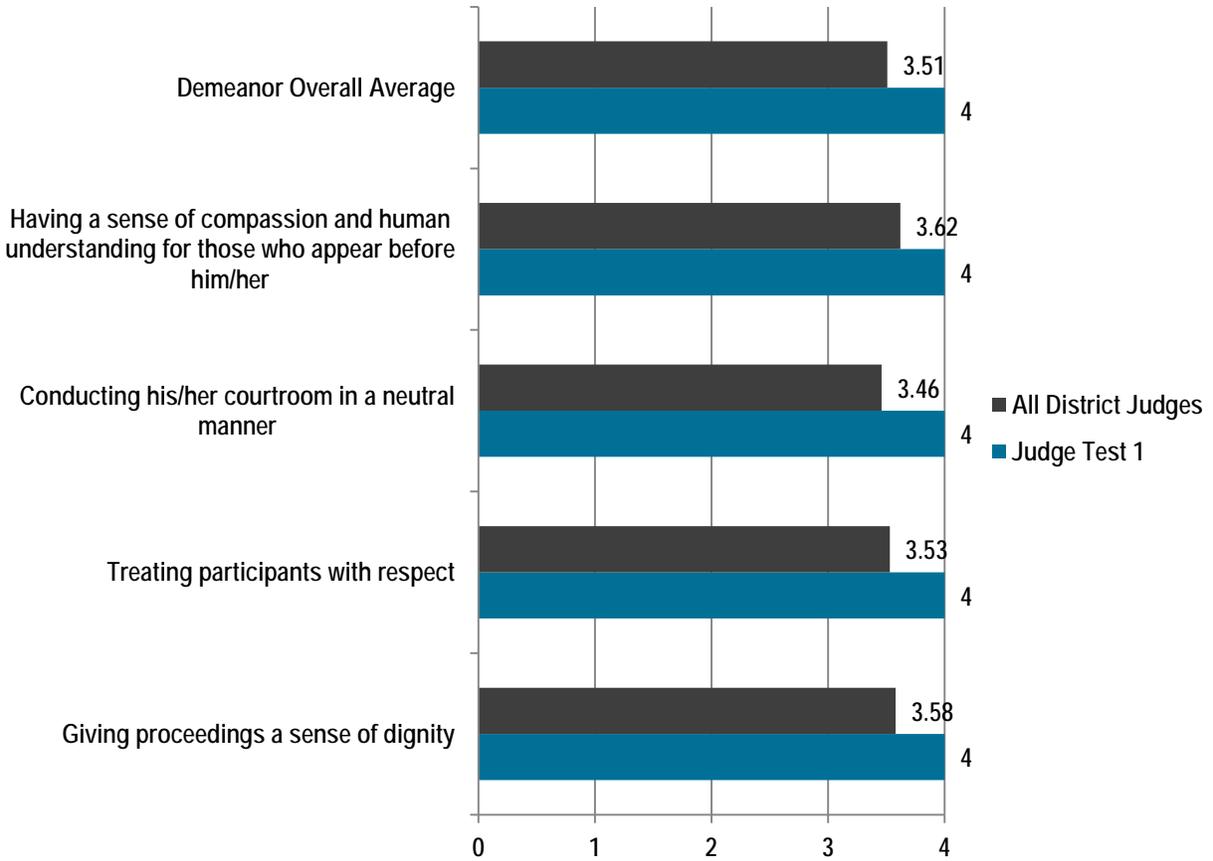


Table 21

Demeanor								
Judge Test Judge 1 Sample Size: 21	A	B	C	D	Fail	DK/NA	Judge Test 1	All District Judges
Giving proceedings a sense of dignity	71%	17%	3%	6%	3%		4	3.58
Treating participants with respect	71%	17%	3%	6%	3%		4	3.53
Conducting his/her courtroom in a neutral manner	65%	10%	10%	2%	12%		4	3.46
Having a sense of compassion and human understanding for those who appear before him/her	62%	8%	8%	8%	15%		4	3.62
Demeanor Overall Average							4	3.51

If you have any comments about Judge Test 1's demeanor, please enter them in the box below.

Table 22

<u>Respondent</u>	<u>Comment</u>
2	test
1	test
1	test

Fairness

Using a grade scale, where an “A” is excellent along with B, C, D or F for fail, please grade the judge on the following. (If you feel that you don’t have experience with the judge in a specific area, or just don’t know, please mark “Don’t Know/Not Applicable”—DK/NA).

Figure 12

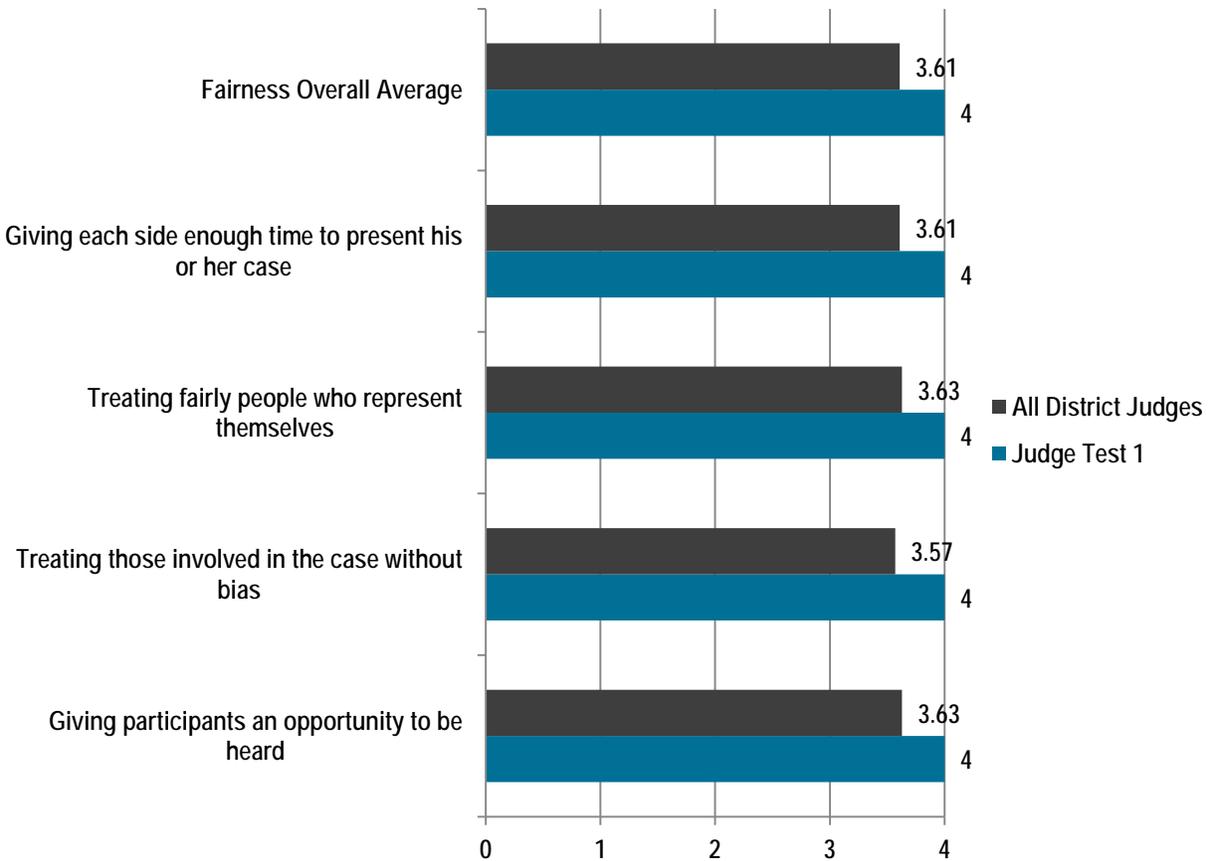


Table 23

Fairness								
Judge Test Judge 1 Sample Size: 9	A	B	C	D	Fail	DK/NA	Judge Test 1	All District Judges
Giving participants an opportunity to be heard	18%	36%	36%		9%		4	3.63
Treating those involved in the case without bias	9%	27%	18%	36%	9%		4	3.57
Treating fairly people who represent themselves	22%	33%	33%	11%			4	3.63
Giving each side enough time to present his or her case	11%	44%	22%	11%	11%		4	3.61
Fairness Overall Average							4	3.61

If you have any comments about Judge Test 1's fairness, please enter them in the box below.

Table 24

<u>Respondent</u>	<u>Comment</u>
2	test

Communications

Using a grade scale, where an “A” is excellent along with B, C, D or F for fail, please grade the judge on the following. If you feel that you don’t have experience with the judge in a specific area, or just don’t know, please mark “Don’t Know/Not Applicable”—DK/NA.

Figure 13

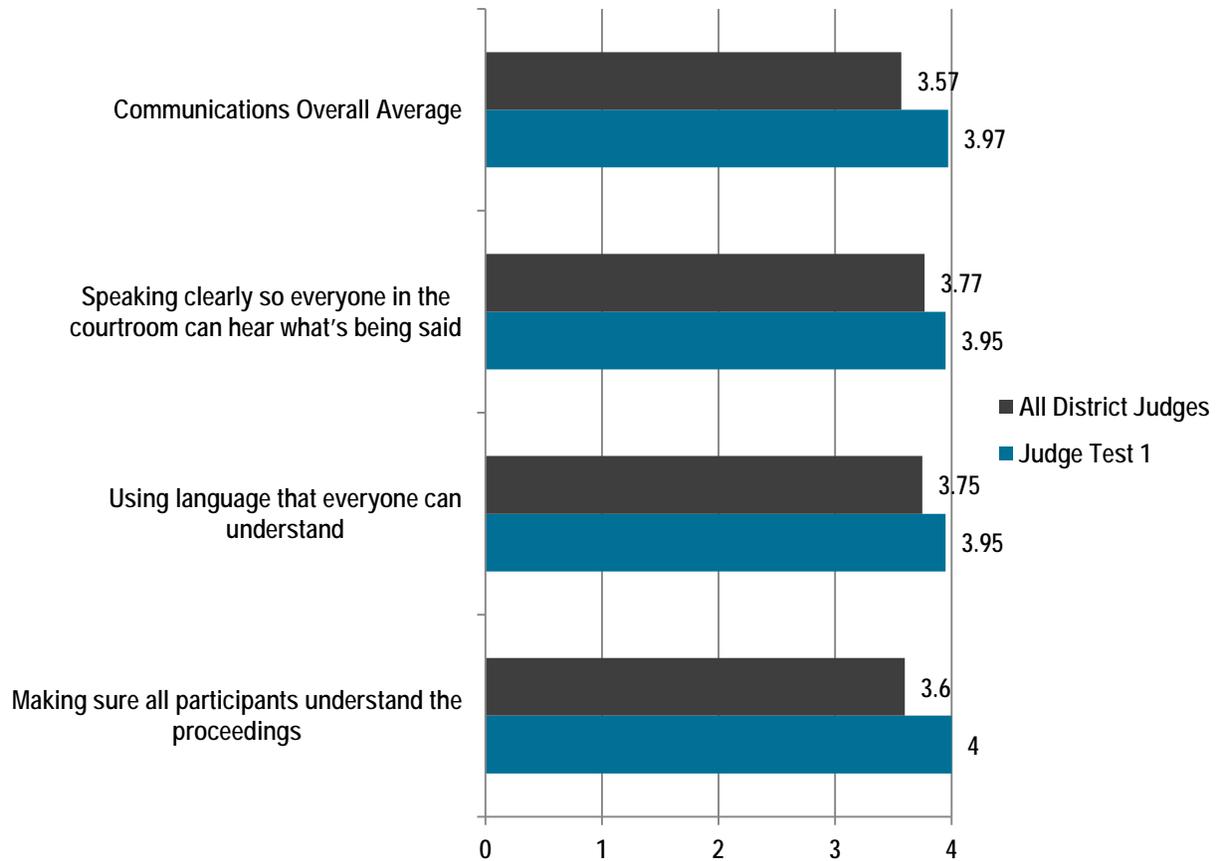


Table 25

Communications								
Judge Test Judge 1 Sample Size: 21	A	B	C	D	Fail	DK/NA	Judge Test 1	All District Judges
Making sure all participants understand the proceedings	66%	17%	11%	3%	3%		4	3.6
Using language that everyone can understand	46%	31%	15%	8%			3.95	3.75
Speaking clearly so everyone in the courtroom can hear what's being said	67%	13%	13%	7%			3.95	3.77
Communications Overall Average							3.97	3.57

If you have any comments about Judge Test 1's communications, please enter them in the box below.

Table 26

<u>Respondent</u>	<u>Comment</u>
2	test
3	test

Diligence

Using a grade scale, where an “A” is excellent along with B, C, D or F for fail, please grade the judge on the following. If you feel that you don’t have experience with the judge in a specific area, or just don’t know, please mark “Don’t Know/Not Applicable”—DK/NA.

Figure 14

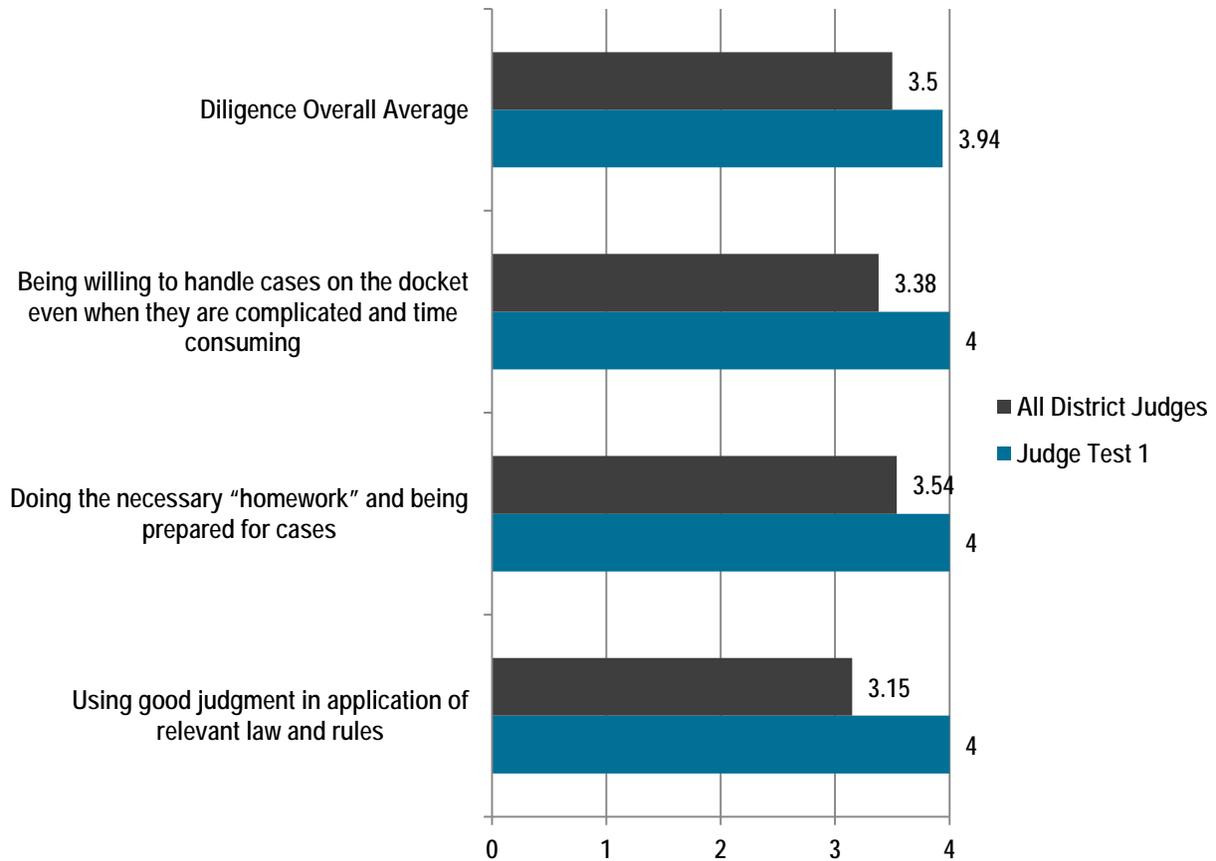


Table 27

Diligence								
Judge Test Judge 1 Sample Size: 20	A	B	C	D	Fail	DK/NA	Judge Test 1	All District Judges
Using good judgment in application of relevant law and rules	52%	17%	17%	7%	7%		4	3.15
Doing the necessary "homework" and being prepared for cases	38%	31%	15%	8%	8%		4	3.54
Being willing to handle cases on the docket even when they are complicated and time consuming	65%	20%	5%	5%	5%		4	3.38
Diligence Overall Average							3.94	3.5

If you have any comments about Judge Test 1's diligence, please enter them in the box below.

Table 28

<u>Respondent</u>	<u>Comment</u>
1	test
2	test

Application of Law

Using a grade scale, where an “A” is excellent along with B, C, D or F for fail, please grade the judge on the following. If you feel that you don’t have experience with the judge in a specific area, or just don’t know, please mark “Don’t Know/Not Applicable”—DK/NA.

Figure 15

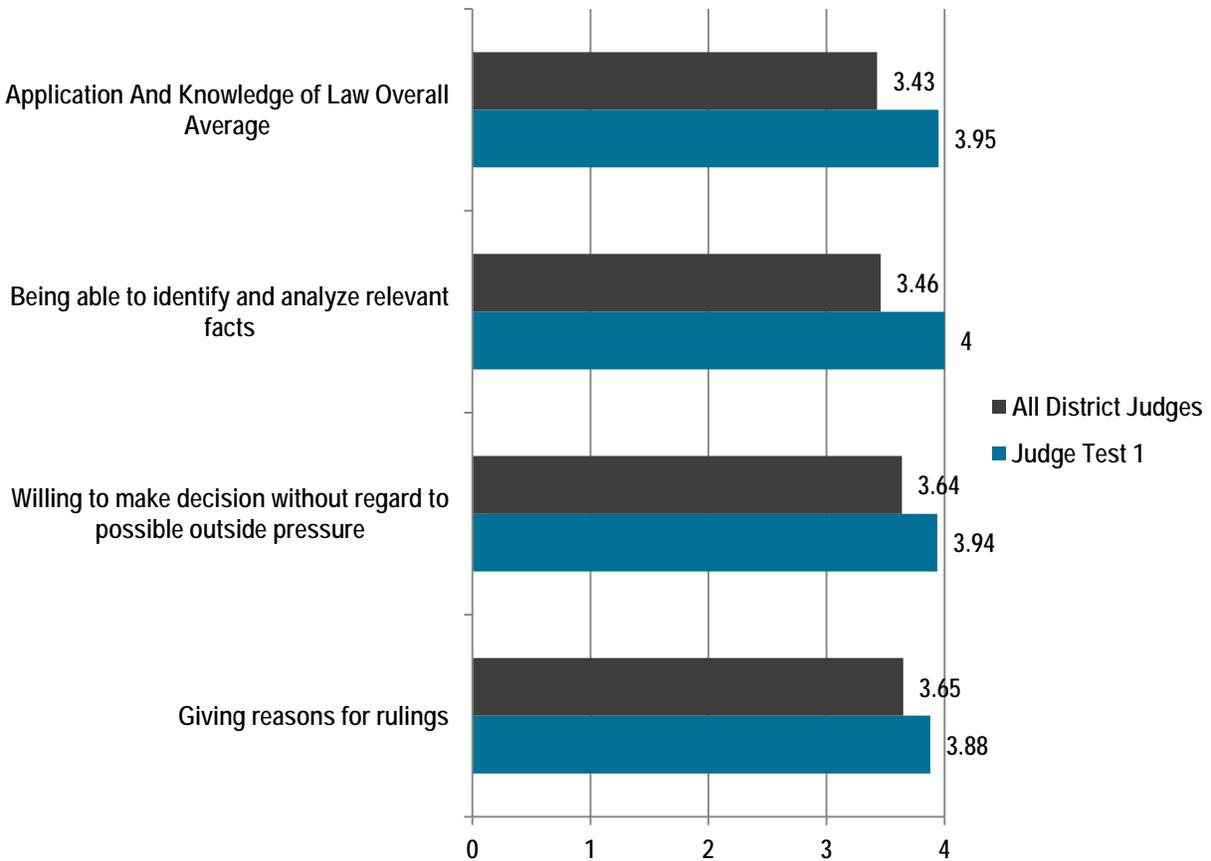


Table 29

Application of Law								
Judge Test Judge 1 Sample Size: 19	A	B	C	D	Fail	DK/NA	Judge Test 1	All District Judges
Giving reasons for rulings	67%	8%	8%	8%	8%		3.88	3.65
Willing to make decision without regard to possible outside pressure	52%	16%	12%	12%	8%		3.94	3.64
Being able to identify and analyze relevant facts	62%	26%	8%	3%	3%		4	3.46
Application And Knowledge of Law Overall Average							3.95	3.43

If you have any comments about Judge Test 1's application of law, please enter them in the box below.

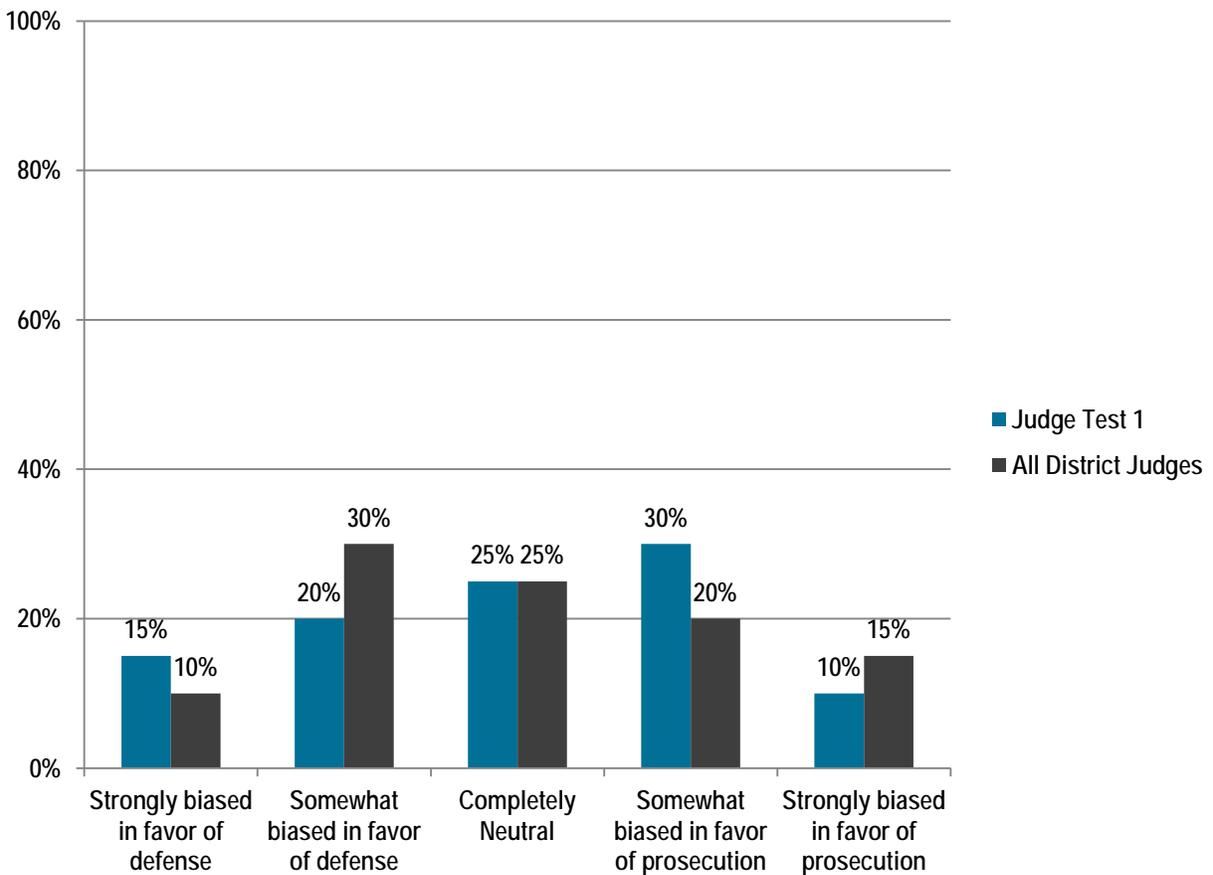
Table 30

<u>Respondent</u>	<u>Comment</u>
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Bias

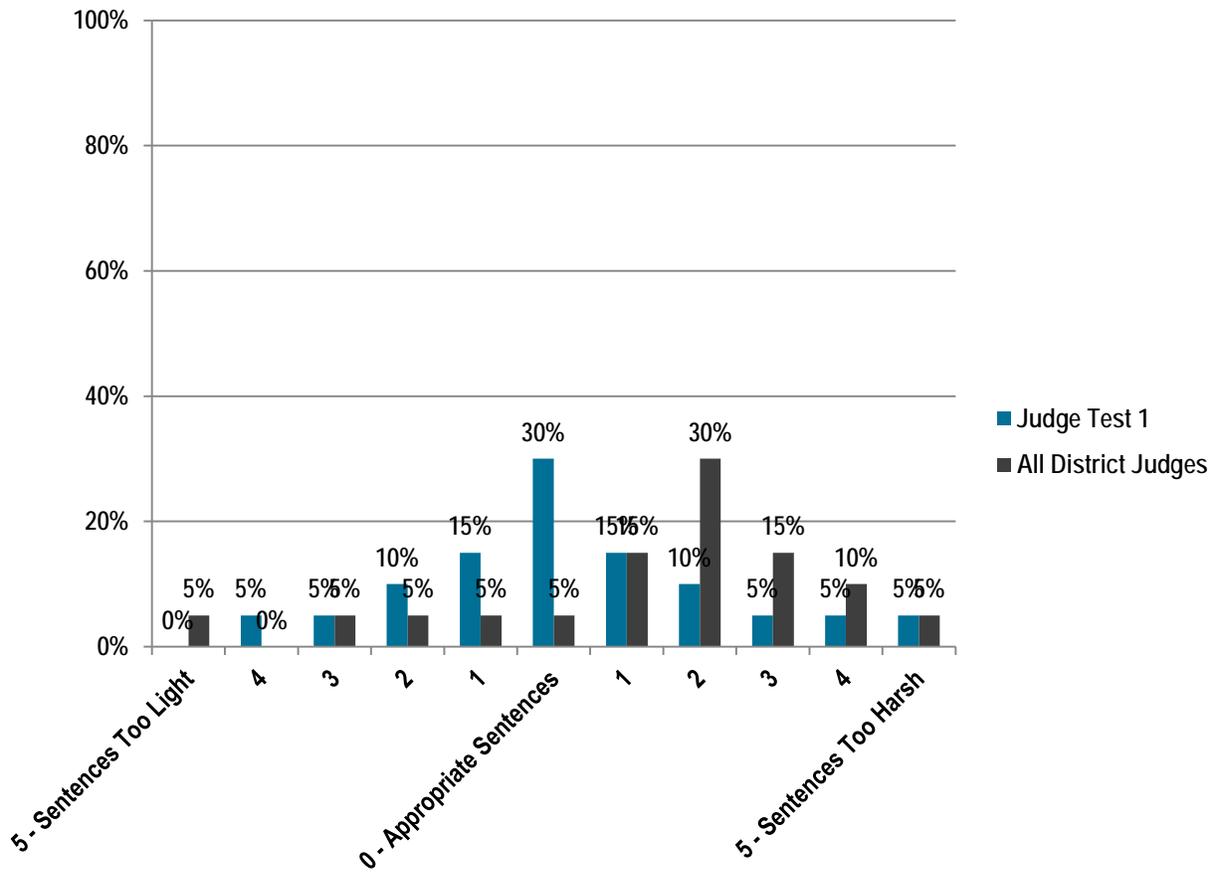
On the scale below, please indicate by selecting the appropriate number how biased you think Judge Test 1 is toward the defense or the prosecution. If you feel Judge Test 1 is completely unbiased, select “0.”

Figure 16



On the scale below, please indicate by selecting the appropriate number how lenient or how harsh you think the sentences generally handed down by Judge Test 1 are. If you feel Judge Test 1 generally hands down appropriate sentences, circle "0."

Table 31



Strengths

What would you say are Judge Test 1's strengths?

Table 32

<u>Respondent</u>	<u>Comment</u>
1	test

Weaknesses

And what would you say are Judge Test 1's weaknesses?

Table 33

<u>Respondent</u>	<u>Comment</u>
2	test

SAMPLE INTERVIEW QUESTIONS

The following categories and questions were developed as guidelines to assist judicial performance commissions in the interview process. Consistency during the interview process will ensure that the commissions receive both appropriate and useful information to assist in evaluating a judge's performance.

MANAGEMENT

1. What case management practices have you employed that have been successful in the reduction of delays?
2. Describe your relationship with members of your staff and changes you have made to increase their efficiency, performance and job satisfaction.
3. Tell us about one or two new methods you are using to manage your courtroom and staff.

CIVIC RESPONSIBILITY – RESPONSIBILITIES OFF THE BENCH

1. As a judge, what obligation do you have to community involvement and leadership?
2. What are the ways in which you assess public confidence in the courts?
3. Describe measures you have taken to increase public confidence in the courts, inside and outside of your courtroom.
4. What are the feedback mechanisms in your courtroom that provide you with information on public confidence and litigant satisfaction?
5. What do you consider to be your obligations and/or role in communicating and educating the organized bar?
6. What do you consider to be your obligation and role to be in educating and communicating with the public and various groups within the public?
7. If you were asked to increase the public confidence in the courts, what would you do and/or implement in order to do so?

SELF-REPRESENTED LITIGANTS

1. Describe the challenges self-represented litigants present to your court.
2. What assistance do you and your staff give to self-represented litigants?
3. In the future, what can the courts do to better serve self-represented litigants?

DEMEANOR

1. What changes have you made to eliminate or reduce bias based on gender, age, ethnicity, color, sexual orientation, socio-economic status, and physical or mental challenges in your courtroom?
2. Explain how you handle difficult attorneys in your courtroom.
3. Give an example of a situation in which you handled public criticism of an unpopular decision.

SENTENCING

1. What information do you consider when deciding who should be placed on probation?
2. What factors do you consider in determining a defendant's ability to pay court-ordered costs, fines and fees?
3. When considering a community-based sentence, how do you determine the programs that would most facilitate an offender's rehabilitation?
4. Describe how you incorporate a victim impact statement into your sentencing decision.

5. How do you handle discovery disputes among parties in civil cases?
6. What procedures have you implemented to expedite the ruling on motions and discovery issues?
7. Philosophically, what do you consider to be your responsibilities to the community when sentencing defendants?
8. How much weight do you give to the recommendations of the district attorney in sentencing defendants?

TRIAL MANAGEMENT SKILLS

1. Do you put any limitations on the attorneys in trial? If so, specifically what limitations? If so, what are your reasons for these limitations?
2. Do you put limitations on jury selection by the attorneys? If so, how much and why?
3. Do you consider yourself to be a “docket/time conscious” judge (as it relates to the way that you conduct your trials) or do you tailor your handling of trials to the particular needs and interests of the parties before you?
4. When you are presiding over a jury trial, what do you consider to be your greatest weaknesses and your greatest strengths?
5. Have you ever become upset and lost your composure? How often does this happen? What do you do as a result? Please give specifics.

FAMILY LAW

1. Describe any opportunity you have had to directly participate in any process designed to improve the effectiveness and administration of “Family Law” cases.
2. Describe an experience you have had as a judge when you have presided over a case where parties were in conflict over an emotional issue. How did you handle it? What was the outcome?
3. What skills do you use when presiding over domestic relations cases? How did you acquire those skills? Do you feel that you have any weaknesses in dealing with domestic cases? If so, what have you done or are you doing, to improve your abilities?
4. Have you ever felt that you did not have sufficient information to properly decide a contested issue concerning children? If so, what did you do to obtain the information you felt you needed?
5. What percentage of your domestic relations caseload involves parties that are self-represented? Do you find these cases more or less difficult to deal with than cases where both parties are represented by counsel? When one party has counsel and the other does not? What issues are particularly difficult in these cases? Do you have any special techniques you use when dealing with unrepresented parties?
6. How important do you believe case management is in domestic relation cases? What, if anything, do you do to manage the domestic cases on your docket?

GUIDELINES FOR CONDUCTING PUBLIC HEARINGS

When preparing to conduct a public hearing, you will find the following information to be helpful:

1. **Notice.** The commission must give at least 20 days notice of each public hearing. It is a good idea to also issue a press release to local news media, including newspapers and radio stations. They might not run the notice or publish the press release but at least you've made the information available. Also, notices should be posted at each courthouse within the judicial district. Keep a record of efforts made to provide public notice. Avoid scheduling the public hearing during religious and other holidays or civic events.
2. **Location.** The location for public hearings may be determined by each judicial district based on available space and accessibility under the Americans with Disabilities Act (ADA). Schools, courthouses, and public libraries (particularly those with large assembly rooms and audio-visual equipment) are good places. It is important that those persons who testify can hear and be heard. Check that the building is ADA compliant.
3. **Electronic Record.** The commission shall arrange to have the public hearing electronically recorded and shall make the copies of the recording available to members of the public, if requested. Commissions shall supply a copy of the recording at no cost to any judge who is the subject of the hearing. § 13-5.5-106, C.R.S.
4. **Sign-up sheets.** Speakers who testify should give their names, addresses, phone numbers, and any organizational affiliations. Sign-up sheets should be made available so the chair can call people to the microphone to testify. You will want to attach the sign-up sheets to the minutes along with any additional information given to the district commission by persons who testify.
5. **Testimony.** At the start of the hearing, the chair should announce guidelines for the meeting. These might include:
 - Request to sign up
 - Time limit
 - All speakers address the chair

The chair can also decide what form of procedure will be followed. Since the hearings are electronically recorded, request that individuals address the chair when speaking and begin by stating their name for the record. If the chair announces someone's name before the person speaks, it is easier to follow who is speaking. It also makes for a more organized meeting if people do not speak until recognized by the chair.

6. **Interpreter.** It may be necessary to have an interpreter present.
7. **Security.** You may want to consider having security present at a public hearing.
8. **Checklist.**

Public Hearings Checklist Items	Complete
1. Arrange for Hearing Location (Schools, courthouses, public libraries, etc.)	
• ADA Accessible?	
• PA System Available?	
• Security Available?	
2. Public Notice (At least 20 days prior to hearing)	
• Posted in all County Courthouses within the Judicial District	
• Write press release including information about the public hearing (date, time, location, etc.)	
• Send press release to local media	
• Follow-up phone reminders to media	
3. Prepare sign-up sheets for speakers	
• Consider requiring speakers to identify themselves	
• Chair to use sheet to call speakers forward to testify	
4. Arrange for interpreter (if necessary, depending on population demographics)	
5. Determine how to electronically record hearing	
6. Testimony at hearing	
• Determine which procedure to use	
• Chair to announce guidelines	
• Use sign-up sheets	
• Set time limit	
• Have speakers address the chair	

NARRATIVE REQUIREMENTS

A narrative shall consist of **four short paragraphs** totaling not more than **500 words**, as follows:

- (1) The retention recommendation, including the number of commissioners who voted for and against retention
- (2) Undergraduate and law schools attended, previous substantial legal or public employment, relevant professional activities or awards, and volunteer or other community work
- (3) Evaluation methods used by the commission, whether any of the groups surveyed had an insufficient response rate, and the percentages of responses from each surveyed group recommending that a justice or judge be retained or not be retained, or making no recommendation that a justice or judge be retained;
- (4) A description of the performance of the justice or judge over the past term, including any areas of notably strong or weak performance with respect to the judicial performance criteria contained in 13-5.5-105.5 (1) and (2), any deficiencies reflected in the interim evaluation, the extent to which such deficiency has been satisfactorily addressed, and any additional information that the commission believes may be of assistance to the public in making an informed voting decision.

Any commission issuing a **“do not retain” recommendation** shall, at the justice or judge’s request, include a **response** from the justice or judge of not more than **100 words**.

The commission may then change its vote count or revise the draft narrative, and shall provide the justice or judge with the final narrative within ten days following the receipt of the response.

If the commission has identified one or more areas of significantly poor performance, it may recommend to the chief justice or chief judge that the justice or judge be placed on an improvement plan.

The Second Judicial District Commission on Judicial Performance unanimously recommends that Judge Ann B. Frick **BE RETAINED**.

Judge Frick was appointed to the Denver District Court in April 2010. Prior to her appointment, Judge Frick was an attorney in private practice. Judge Frick received her undergraduate degree from Colorado College in 1973 and her law degree from the University of Colorado in 1978. Judge Frick has been very active in many community service activities, and since her appointment she has demonstrated her commitment to community services through judicial and legal activities.

The Commission conducted a personal interview with Judge Frick, reviewed opinions she authored, observed her in court, and reviewed surveys sent to attorneys and non-attorneys. Among the survey questions was "how strongly do you recommend that Judge Frick be retained in office, or not be retained in office?" Of attorneys responding to the survey, 88% recommended to retain, 9% not to retain, and 3% made no recommendation regarding retention. Of non-attorneys responding to the survey, 77% recommended to retain, 16% not to retain, and 6% made no recommendation regarding retention. (These percentages may not total 100% due to rounding).

Judge Frick has presided over domestic and civil matters, and currently presides over civil matters. Based on the survey results of attorneys and appellate judges, Judge Frick received an overall combined average rating which exceeded the average combined rating of all district judges standing for retention. Of the non-attorneys surveyed, Judge Frick received an overall combined average rating which was slightly below the average combined rating of all district judges standing for retention. Judge Frick received high marks in case management, application and knowledge of the law, communications, and demeanor. Judge Frick is often described as being very fair, treats all participants in her courtroom with respect, and runs her courtroom in an efficient manner.

AMENDED RULE 13

NARRATIVE REQUIREMENTS

A narrative shall consist of **four short paragraphs** totaling not more than **500 words**, as follows:

- (1) The retention recommendation, including the number of commissioners who voted for and against retention
- (2) Undergraduate and law schools attended, previous substantial legal or public employment, relevant professional activities or awards, volunteer or other community work, and any other relevant or biographical information the commission believes may be of assistance to the public in making an informed voting decision;
- (3) Evaluation methods used by the commission, and the percentages of responses from each surveyed group recommending that a justice or judge be retained or not be retained, or making no recommendation that a justice or judge be retained. A commission may report the number of survey respondents from each surveyed group, if the commission believes the information may be of assistance to the public in making an informed voting decision; and
- (4) A description of the performance of the justice or judge over the past term, including any areas of notably strong or weak performance with respect to the judicial performance criteria contained in section 13-5.5-105.5 (1) and (2), C.R.S., any deficiencies reflected in the interim evaluation, the extent to which such deficiency has been satisfactorily addressed, and any additional information that the commission believes may be of assistance to the public in making an informed voting decision.

Any commission issuing a **“do not retain” or “no opinion” recommendation** shall, at the judge or justice’s request, include a **response** from the justice or judge of not more than **100 words**. The judge or justice shall have seven days from receipt of the commission’s final recommendation and narrative to submit the 100 word response.

The commission may then change its vote count or revise the draft narrative, and shall provide the justice or judge with the final narrative within ten days following the receipt of the response.

Regardless of its recommendation regarding retention, a commission may, in its narrative, inform the voters that the commission has recommended that the judge or justice participate in a performance improvement plan.

The Second Judicial District Commission on Judicial Performance unanimously recommends that Judge Ann Denver **BE RETAINED**.

Judge Denver was appointed to Denver District Court April 2010. Prior to appointment, Judge Denver was in private practice. Judge Denver received an undergraduate degree from Colorado College in 1973 and law degree from the University of Colorado in 1978. Judge Denver has been very active in community service activities, and since appointment has demonstrated a commitment to volunteering for judicial and legal committees and teaching continuing legal education courses.

The Commission conducted a personal interview with Judge Denver, reviewed opinions she authored, observed her in court, reviewed comments received from interested parties during the evaluation, and reviewed survey responses from attorneys and non-attorneys who had experience with Judge Denver. Among the survey questions was “how strongly do you recommend Judge Denver be retained in office, or not be retained in office?” Of the attorneys responding to the survey, 88% recommended to retain, 9% not to retain, and 3% made no recommendation regarding retention. Of non-attorneys responding to the survey, 77% recommended to retain, 16% not to retain, and 6% made not recommendation regarding retention. (These percentages my not total 100% due to rounding). A total of sixty seven attorneys and forty nine non-attorneys responded to the judicial performance surveys regarding Judge Denver this evaluation.

Judge Denver has presided over domestic and civil matters this term. Based on the survey results of attorneys and appellate judges, Judge Denver received an overall combined rating which exceeds the combined rating of all district judges standing for retention. Non- attorneys responding to the surveys rated Judge Denver’s overall performance slightly below the average rating of other district court judges standing for retention. Non-attorneys rated Judge Denver’s performance in “Conducting the Courtroom in a Neutral Manner” lower than all other categories. The Commission did not observe this trait during courtroom observations and was satisfied during the interview that Judge Denver is aware of the criticism and taking steps to insure parties feel the judge is conducting trails in a neutral manner. Judge Denver received high marks in case management, application and knowledge of the law, communications and demeanor. Judge Denver is often described as being very fair, treats all participants in the courtroom with respect, and runs court in an efficient manner. Commission members observed these traits during their observations and interviews with Judge Denver.

IMPROVEMENT PLANS

- Commission identifies area(s) of improvement in writing
- Commission notifies Executive Director of the Office of Judicial Performance Evaluation
- Executive Director notifies the judicial educator at the State Court Administrator's Office
- Judicial Educator, Chief Judge, and judge develop an improvement plan
- Commission and the OJPE are no longer involved
- Contents of the plan are confidential
- Fact that there is an improvement plan may be recited in the narrative

IMPROVEMENT PLANS

(2015 Proposed Rules)

- Commission identifies area(s) of improvement in writing
- Commission notifies Executive Director of the Office of Judicial Performance Evaluation
- Executive Director notifies the judicial educator at the State Court Administrator's Office
- Judicial Educator, Chief Judge, and judge develop an improvement plan
- Commission and the OJPE are no longer involved
- Contents of the plan are confidential
- Fact that an improvement plan has been recommended may be recited in the narrative regardless of the retention recommendation.

Proposed Judicial Performance Plan – [REDACTED]

The Performance Commission in the [REDACTED] Judicial District recommended that Judge [REDACTED] be placed on a performance plan as a condition of receiving a “do retain.” Judge [REDACTED] and I met on [REDACTED] [REDACTED] with Chief Judge [REDACTED], to begin the process of jointly developing an improvement plan for Judge [REDACTED]. During the meeting we discussed areas the Commission identified as areas for improvement. The main areas for improvement are:

Case Management:

- Promptly issuing a decision on the case after trial.
- Maintaining appropriate control over a court proceeding.
- Promptly ruling on pre-trial motions.
- Setting reasonable schedules for cases.

Application and Knowledge of Law:

- Being able to identify and analyze relevant facts.
- Basing decisions on evidence and argument.
- Willing to reconsider error in fact and law.
- Issuing consistent sentences when the circumstances are similar.

Communications:

- Making sure all participants understand the proceedings.
- Providing written communications that are clear, thorough and well-reasoned.

Demeanor/Judicial Temperament:

- Giving proceedings a sense of dignity.
- Treating parties with respect.
- Conducting his courtroom with a neutral manner.
- Consistently applying laws and rules.

Diligence:

- Using good judgment in application of relevant law and rules.
- Doing the necessary homework and being prepared for his cases.
- Being willing to handle cases on the docket even when they are complicated and time consuming.

Judge [REDACTED] will work with a mentor judge throughout this next year. The mentor judge role will be to discuss issues raised by the performance commission, provide guidance and practical suggestions on techniques and practices that Judge [REDACTED] may incorporate into his practice. Judge [REDACTED] will also schedule meetings and courtroom observations with other county court judges who demonstrate good courtroom control and exhibit appropriate demeanor with individuals in the courtroom. The purpose of the observations would be to identify techniques, skills and practices that Judge [REDACTED] may incorporate into his practice. As he brings these techniques into his practice he will work with his mentor judge, or the Judicial Educator to receive feedback on whether or not improvement is occurring. Judicial Education and Judge [REDACTED] will identify and select a mentor judge by February 15, 2013.

Judge [REDACTED] will participate in the videotaping program offered by Colorado Judicial Education. Judge [REDACTED] will schedule a day during a high volume calendar for Judicial Education staff to set up a camera and capture Judge [REDACTED] on the bench for at least 3 hours of proceedings. Best days are when multiple cases have been set and there is a variety of interactions to be filmed. Judge [REDACTED] will review footage individually and seek feedback from the mentor judge, other judges or close confidants. After reviewing the film and making changes, Judicial Education would be available to re-film Judge [REDACTED] and provide new footage for comparison. The comparison will provide demonstration of growth and changed behavior, as well as reinforce areas for continued improvement. The initial video tape session will be completed by March 29, 2013.

In conjunction with working with a mentor judge and videotaping it may become apparent that a professional coach would be beneficial for Judge [REDACTED] to work with. The coach would focus specifically on communication styles, body language, demeanor and procedural fairness. Judicial Education can identify and support Judge [REDACTED] in working with a coach on an as needed basis. A benefit of utilizing a professional coach is receiving the use of assessment tools and structured feedback instruments to better identify areas of strength and weakness.

Judge [REDACTED] will select and attend judicial education courses with educational objectives specific to improving his knowledge, skills and behaviors in case/docket management and application and knowledge of law. The following are suggestions for courses offered at the National Judicial College that may meet the criteria:

Special Court Jurisdiction: Advanced (JS 611)

June 3-13 | Reno, NV

Decision Making (JS 618)

July 8-11 | Reno, NV

Logic and Opinion Writing (JS 621)

April 29-May 2 | Reno, NV

Best Practices in Handling Cases with Self-Represented Litigants

August 19-22 | Reno, NV

Handling Small Claims Cases Effectively

April 8-May 24 | Web

Judicial Education can assist Judge [REDACTED] with course selection, financial assistance and coordination of scholarship opportunities, if needed. Judicial Education recommends Judge [REDACTED] seriously look at attending the “Special Court Jurisdiction: Advanced” course because it covers multiple topics over a week period. This is a course many Colorado County Court Judges attend within the first five years of taking the bench. Participants have found it very helpful in establishing and reviewing their practices for managing dockets and their courtroom. I also think “Advanced Trial Bench Skills” and the “Decision Making” courses would be appropriate given the identified areas for improvement. Finally, I realize the

“Logic and Opinion Writing” course is not a course many county court judges take because they tend not to issue many written opinions. However, judges who have taken the course find the instruction and review of logic and formulating decision to be very helpful in structuring their thoughts and articulating them orally from the bench. Clearly these are not the only courses available to Judge [REDACTED] and Judicial Education will assist him to find other opportunities from other judicial education providers as directed.

Judicial Education will be available to identify other interventions and improvement strategies throughout the year if needed.

When a commission identifies area(s) of performance concern, the commission may utilize any or all of the following tools to provide further information about the interim survey report:

- Conduct courtroom observations
 - Review opinions authored by the judicial officer
 - Interview the judicial officer
 - Review statistical data
- Before using any of these tools, the commission should communicate to the judicial officer what the area(s) of concern is/are, why the commission intends to utilize further evaluative tools, and what tools will be utilized.
 - If neither the judicial officer nor the commission requests a meeting, the commission shall prepare the interim evaluation for publication according to statute. § 13-5.5-106.3(1)(d).
 - If a meeting is held, the commission may revise its evaluation. § 13-5.5-106.3(1)(c), C.R.S.
 - If a meeting is held, after the meeting is held, the commission should communicate with the judicial officer whether any further evaluative tools will be utilized, or whether the commission is considering further action to better understand the judicial officer's overall performance.
 - Any written communications or meeting minutes shall be confidential and shall not be published with the retention election narrative and reports.

Statute

13-5.5-106.3. Interim evaluations.

(1) (a) During each full term of office of each Colorado supreme court justice and each judge of the court of appeals, the state commission shall conduct at least one interim evaluation of each justice and each judge. The evaluations shall be referred to in this subsection (1) as "interim evaluations".

(b) Interim evaluations shall be completed and communicated to the chief justice of the Colorado supreme court or the chief judge of the court of appeals and the appellate justice or judge being evaluated.

(c) Each appellate justice or judge who receives an interim evaluation shall have the opportunity to meet with the state commission or otherwise respond to the evaluation no later than ten days following the justice's or judge's receipt of the evaluation. If the meeting is held or response is made, the state commission may revise its evaluation.

(d) The state commission shall release the survey evaluations related to interim evaluations to the public simultaneously with, and no earlier than, the release of the retention year evaluations pursuant to section [13-5.5-106](#) (1) (c) prepared for that year.

(2) (a) During each full term of office of each district judge and county judge, the district commission shall conduct at least one interim evaluation of each district judge and county judge. The evaluations shall be referred to in this subsection (2) as "interim evaluations".

(b) Interim evaluations shall be completed and communicated to the chief judge of the district

and to the district or county judge being evaluated.

(c) Each district or county judge who receives an interim evaluation shall have the opportunity to meet with the district commission or otherwise respond to the evaluation no later than ten days following the judge's receipt of the evaluation. If the meeting is held or response is made, the district commission may revise its evaluation.

(d) The state commission shall release the survey evaluations related to interim evaluations to the public simultaneously with, and no earlier than, the release of the retention year evaluations prepared for that year.

SECTION 4: REFERENCE MATERIALS

Implicit Gender Bias in State-Sponsored Judicial Performance Evaluations:

A Preliminary Analysis of Colorado's JPE System, 2002-2012 ¹

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One of the important innovations of the merit system of judicial selection is its ability to maintain electoral accountability for judges while removing the need for judges to square off head-to-head in competitive elections. The retention elections used by most merit plan systems allow citizens to remove underperforming judges at the ballot box, but are designed to minimize the need for campaigning and fundraising that competitive elections often require.

A side effect of the absence of significant campaigning, however, is that the voter is left with little information on which to evaluate the judges who are standing for retention. In contested elections, the campaign process (and party labels where partisan elections are used) gives voters important information about the incumbent and the challenger (Bonneau and Hall 2009). The challenger in the race has an incentive to make public whatever shortcomings the incumbent judge might have. Challengers typically seek out weak incumbents, increasing the likelihood that voters will be exposed to information about the weak incumbent's record. In the absence of a motivated challenger, however, voters have virtually no information on which to base their decision whether to retain the incumbent judge. As such, we see low levels of voter turnout and high levels of ballot roll-off in these races.

States that use retention elections to provide accountability for their merit-appointed judges have recognized this problem. The most important thing they have done to counteract this dearth of information is the creation of formal, state-sponsored judicial performance evaluation (JPE) programs. These programs aspire to provide useful, fair, and relevant information for voters to use when making the decision whether to retain a judge. The American Bar Association has contributed to the process by publishing a set of guidelines and

best practices for the development of JPE instruments and institutions (American Bar Association 1985, 2005).

Although some have dismissed “the concerns about the subjectivity of legitimate evaluation factors” as “infinitesimal” (White 2001, 1075), even proponents of such systems have long recognized the importance of addressing concerns about the “fairness of survey methodologies and evaluation commission procedures” (Andersen 2000, 1376). The judicial evaluation system in Colorado grew out of a self-conscious attempt to do just that. The move toward a more complex, formalized JPE system in Colorado was spurred on by the work of several independent organizations, including the Colorado Judicial Institute. The bill that created the Judicial Performance Commissions was signed into law in 1988. Those who supported it at time saw it as a model of the ideal JPE system, which should create an avenue for the active involvement of the citizens in the evaluation of state judges (Mahoney 1989) .

One of the most worrisome sources of unfairness in JPEs comes from unconscious gender bias. A 1993 study of the results of the Colorado Judicial Performance Evaluation Commission’s lawyer survey showed that male and female lawyers alike rated female judges consistently lower than male judges (Sterling 1993). Colorado has since adjusted its evaluation methods, but no rigorous follow up studies have been conducted to confirm that the disparities have been resolved. Ardent supporters of the merit plan and state-sponsored JPE systems have begun to address the possibility that the way JPEs are implemented in the states may be uniquely subject to implicit gender bias (Knowlton and Reddick 2012). We applaud efforts to improve the fairness of JPEs, and we envision this paper as contributing to this goal.

After a brief review of the literature on performance evaluation and implicit gender bias, we provide an introduction to the Colorado JPE system. We summarize a new dataset of information about the results of the Colorado JPEs from 2002-2012. Finally, we provide a preliminary analysis of the predictors of JPE decisions. We find that the outcome of the JPE process relies strongly on the attorney survey component. We also find a statistically significant difference between the success of male and female judges at both the Committee stage and the attorney survey stage.

IMPLICIT BIAS AND PERFORMANCE EVALUATION

Traditionally, gender and race discrimination have been understood to be products of conscious motive or intent (Krieger 1995). But it is likely that this kind of gender- and race-related hostility makes up only a fraction of the bias we might see in professional performance evaluations. For example, male legal professionals tend to perceive much less gender bias in the workplace than do their female colleagues (Coontz 1995). This is exemplified in the introductory quote. Research also shows that, even in the context of increasing diversity initiatives on the part of law schools, race-based stereotypes of law students have a disproportionately negative effect on minority students (Clydesdale 2004). Indeed, achievement levels for minority lawyers still lags, even in the face of economic incentives for law firms to increase racial diversity (Gordon 2003).

Social science research, especially in the field of cognitive psychology, has identified a more innocent but pernicious cause of gender and race discrimination: unconscious bias. The process of simplifying and categorizing our environment, which exists is a necessary condition for most higher-level cognitive function, processes people just as it does letters, shapes, and

colors (Lee 2005). Even absent a conscious bias against women or minorities, everyone is exposed to the societal stereotypes associated with different categories of people. It is through the lens of these stereotypes that we perceive, process, store, recall, and synthesize information about people. Our actions may be based in part upon the accumulated stereotypes about a particular outgroup, resulting in inaccuracy and unfairness based on race or gender.

The social science evidence for unconscious race and gender bias in employment decisions is strong and convincing. In fact, this theory of decision making played a pivotal role in the Supreme Court's decision in *Price Waterhouse v. Hopkins* [(1989) 490 U.S. 228], which held that gender stereotypes had been used to deny a female accountant's bid for partner (Fiske et al. 1991).

Social cognition theory holds that humans are naturally programmed to apply cognitive schemas to aspects of our interpersonal relationships. Just as we use situational stereotypes as shortcuts to understanding our physical world, we also develop them to organize our interpersonal interactions. This works nicely when we are aware of what we are doing and when we can control the content and activation of these schemas. But implicit social cognition theory holds that this is usually not the case; instead, we are gathering information and categorizing people at a subconscious or unconscious level. Implicit cognition is "the process through which we become sensitive to certain regularities in the environment (1) in the absence of intention to learn about those regularities, (2) in the absence of awareness that one is learning, and (3) in such a way that the resulting knowledge is difficult to express" (Cleeremans 2003, 491). Implicit social cognition is the application of this cognitive process to information about groups of people.

This is what gives rise to unconscious bias. And this kind of bias happens much more furtively than bias based on explicit racism or sexism. Unconscious bias theory is a logical extension of implicit social cognition. People who self-report low levels of racial or gender bias can still exhibit implicit bias driven by underlying stereotype schemas (Lee 2005). This does not mean that self-reported measures of sexism and racism are disingenuous; instead, people are “unable to know the contents of their mind” (Kang and Banaji 2006, 1071), and the stereotypes creep in to frame our evaluations and behaviors of others without our conscious consent.

A few of aspects of unconscious bias theory are particularly relevant to JPEs. First, higher rates of bias tend to occur in hiring-related decisions where the characteristics that are stereotypical for the job are at odds with the gender or race stereotype (Heilman 1983). This often results in a paradox or “double bind” for women in the legal profession because they are penalized in their performance evaluations both for being too masculine and for not fitting the masculine stereotype for the job (Bowman 1998).

A second important characteristic of unconscious bias is the fact that subjective evaluation criteria exacerbate discriminatory employment decisions (Fiske et al. 1991). In JPEs, “[t]he force of traditional stereotypes is compounded by the subjectivity of performance evaluations” (Rhode 2001, 15). Previous research finds that the yes-or-no question, “Should Judge X be retained?” in Nevada’s Judging the Judges survey has this effect (Gill et al. 2011). The work of judges and other legal professionals is often based at least partially on subjective assessments, “relying on the judgments of supervisors and colleagues regarding the less measurable activities” (Choi et al. 2009, 1319).

Other characteristics of the evaluation environment may also exacerbate unconscious gender and race bias. Evidence suggests that the anonymity of evaluations increases the effects of implicit bias (Hekman et al. 2010). Evaluations that are done quickly are also more subject to this kind of bias (Carnes et al. 2005). Evaluations of performance after the fact can also encourage bias, as the evaluator is required to access stored information. Information that is inconsistent with existing unconscious stereotypes is more difficult for the brain to store, but supporting evidence may be magnified in the memory—and even embellished or fabricated unknowingly (Bartlett 1932).

All of these conditions hold in attorney surveys of judicial performance. Judging is a male-stereotyped position. The types of questions asked are generally subjective. These are anonymous surveys. They are often done quickly, as attorneys are asked to rate several judges at a time on their performance over the past two years. In all, attorney surveys of judicial performance may be even more likely than other performance evaluations to suffer from unconscious gender and race bias.

These insights have important implications for assessing the evaluation process. There are increasing calls for reliance on JPEs as a way of ensuring quality standards in the judiciary (White 2009). In this context, it is imperative that JPEs not reproduce—even inadvertently—a system that disfavors groups like women and minorities, who have been historically underrepresented in the judiciary. Unfair and biased evaluations do not only harm the individuals subject to them, but they can have far-reaching and deleterious effects on the courts as an institution.

Survey research is a very complicated task, but many JPE programs have not been put together by experts in assessment methodologies. Typically, committees are made up of attorneys who lack such expertise. These committees often engage a single consultant who may or may not have all of the necessary areas of expertise (Wood and Lazos 2009). To date, there has been no comprehensive assessment of the potential for unconscious race and gender bias in Colorado's JPE surveys. In the absence of this research, performance evaluation committees are forced to proceed blindly, hoping that the evaluations they are conducting do not systematically disadvantage women and minorities.

The limited evidence that we have so far indicates that this is a risky gamble. Most of the previous research underlying this cognitive bias theory has relied on self-reported feelings of bias; the research presented here provides a more systematic evaluation of gender and race based disparities in actual performance evaluations.

To date, the small amount of research that has been done on bias in judicial performance evaluations has focused on what is arguably the most subjective question on the survey: "Should Judge X be retained?" (Burger 2007; Gill et al. 2011). The stereotyping that leads to unconscious bias is exacerbated in situations where the evaluation criteria to be used are ambiguous. Certainly this is the case in the retention question. But JPEs around the country use more than just one yes/no question; all of them include a series of more specific questions intended to capture a particular dimension of judicial quality. The JPE programs currently in

existence rely heavily on the questions found in the ABA Guidelines (American Bar Association 1985).²

Colorado Judicial Performance Evaluation Process

The Evaluation Process

The governor of Colorado has the authority (responsibility) of appointing judges to the county, district, appellate, or supreme courts. By law, each judge serves an initial term of two years and must stand for retention during the next general election. If retained by the voters, the judge's term is dependent on the court over which they preside. County judges serve for four years, district judges serve for six years, court of appeals justices serve for eight years, and Supreme Court justices serve terms of ten years. After a judge's term is expired, they must stand for retention again.

Prior to each retention election, each justice on the ballot undergoes a review process. This is completed under the auspices of the Colorado Office of Judicial Performance Evaluation. Judicial performance commissions ("Commissions") are required to evaluate each judge based on: surveys of attorneys and non-attorneys, a judge's self-evaluation, interviews with the judge, reviews of opinions/decisions, courtroom observation, and judicial statistics (including caseload information, open cases, case-aging reports, and sentence modifications) (Office of Judicial Performance Evaluation 2012). The Commissions evaluate all judges on the following categories: integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession/public.

² See Gill et al. (2011, at 735-36) for a table of the ABA Guidelines and the list of states that use questions measuring each of the categories and subcategories.

The Commissions were created by law in 1988 “for the purpose of providing voters with fair, responsible and constructive evaluations of judges and justices seeking retention” (Office of Judicial Performance Evaluation 2012). There are 22 judicial districts in Colorado, and each district has its own Commission. The individuals sitting on the Commissions are a mixture of both attorneys and non-attorneys and are appointed by the Governor, Chief Justice, Speaker of the House, or the President of the Senate. Each appointed commissioner serves a four year term and can only serve a total of two terms.

When evaluating each judge, the Commissions provide a recommendation of Retain, Do Not Retain, or No Opinion. Each commissioner can cast a vote of either Retain or Do Not Retain. The recommendation of “No Opinion” is only utilized when the Commissions are unable to reach a consensus on a judge or if there is not enough information to make an informed decision. Additionally, if the Commission believes a judge has a significant weakness or area to improve upon, they can recommend a performance improvement plan to address areas of concern.

The information utilized during the evaluation process must be shared with the judge. However, Commission deliberations or interviews are not a matter of public record. Instead, for each judge that is evaluated, the Commission must produce: a short narrative,³ the final recommendation of the Commission, and the results of the attorney/non-attorney surveys. This is publicly available and can be obtained at the website of the Colorado Office of Judicial Performance Evaluation (<http://www.coloradojudicialperformance.gov>). Since beginning the

³ The narrative generally includes background information for each judge, such as where they went to law school, the year they were appointed to the court, or any information that may be pertinent to the recommendation. This may include areas of strength/weakness, concerns of the Commission, or whether the judge was placed on a performance improvement plan.

current evaluation process in 1988, the Commissions have evaluated 1,176 judges. They have assigned “Do Not Retain” recommendations to 17 judges and a total of 10 judges have not been retained by the voters of Colorado (Office of Judicial Performance Evaluation 2012).

Potential Problems with the Evaluation Process

There are many qualities about the Colorado judicial performance evaluations that should be commended. It allows for citizen input. It takes into consideration more than just attorney and non-attorney surveys regarding the quality of judges. Specifically, it allows judges a chance to evaluate themselves and defend themselves against what could be some biased attorneys.⁴ However, there still remain potential difficulties for the Colorado process.

The development of a comprehensive, state sponsored JPE system was in part a reaction to the perceived weaknesses of the bar polls that were common in many states at the time. The independent groups pushing for a more comprehensive JPE system argued that citizens had little faith in these polls, largely because “many [citizens] especially distrust lawyers” (Mahoney 1989, 212). But early studies of Colorado’s JPE process revealed some disturbing information about the system. A 1998 American Judicature Society study surveyed Colorado judges about their impressions of the JPE process (Esterling and Sampson 1998). Only about 61% of the judges agreed or strongly agreed with the following statements:

- 1) “I have an adequate opportunity to respond to commission results before they are made public.”
- 2) “The overall process used by the evaluation commission to collect information about my performance is fair.”

Only 30% of judges agreed with a third question:

⁴ In some instances, the Commission noted that a judge may have scored notably lower in some areas because the survey results received were skewed in favor of either defense or prosecution attorneys.

- 3) “Judges have access to a fair appeals process if they disagree with the commission’s report.”

Colorado has attempted to address the concerns expressed by judges in questions 1) and 3) above.⁵ Judges are now afforded the opportunity to respond to unfavorable recommendations with a statement of 100 words or less, which the Commission must publish along with the rest of the information. The first such response appears in a 2008 evaluation.

But the fact that these JPE decisions in Colorado happen across a large number of separate Commissions could present consistency problems. As of the current time, there is still not a defined rubric to guide the evaluation process by each Commission. It is important that state JPEs follow “clear rules and procedures for the performance evaluation process” (Andersen 2000, 1388). While all of the Commissions must base their evaluations on a particular list of information sources (“Judicial Performance Fact Sheet” 2012), it is not clear how any one commission distills this information into a rating and corresponding narrative.

The consistency problem is evident quickly when reviewing the narratives produced by the judicial reviews. Some Commissions are very good, providing much background information regarding the judges. This includes law school attended, year the judge was appointed, other major findings from the evaluation process (both positive and negative). Other Commissions include only the barest of facts. Some do not include any information regarding the findings from the evaluation process, whether they are positive or negative. Beyond the “retain” or “do not retain” recommendation, those narratives provide little guidance to a voter. While there would be no justification to conclude the evaluation process is more strenuous or lax in certain

⁵ These changes are reflected in the “Rules Governing Commissions on Judicial Performance,” which can be found here: <http://www.coloradojudicialperformance.gov/documents/Rules.pdf>.

judicial districts, the lack of consistency in the narratives would indicate there may be inconsistencies in the evaluation process itself across districts.⁶

As it is currently, the only guidance provided to the Commissions is what information must be consulted and which qualities to base the judges' evaluation ("Judicial Performance Fact Sheet" 2012). Each Commission can weigh factors differently when evaluating a judge. Additionally, the process has a "black box" feel to it. Attorney/non-attorney surveys, judicial interviews, courtroom visits, etc. are considered by the Commissions and then a recommendation is presented. It is unclear what information the Commissions are considering, and which pieces of information weigh more heavily in the final decision. This lack of transparency in the process again creates concerns over the consistency of the Commissions.

Another area of concern is the very small number of "do not retain" recommendations.⁷ Only approximately 1% of the total evaluations completed (17 of 1,176) have resulted in a "do not retain" recommendation. Again, with a more standardized grading rubric, Commissions would have more guidance when a "do not retain" rating is appropriate. To illustrate the difficulty of obtaining a recommendation of "do not retain" from the Commissions, a county judge in 2012 was criticized by approximately 38% of attorneys surveyed. Specifically cited in

⁶ There may even be a larger problem with the narratives as it is unclear whether all Commissions are adhering to the "rules" of judicial performance. In a document found on the Colorado Office of Judicial Performance Evaluation's website, effective January 1, 2012, each Commission's narrative was to include the following information: number of commissioners who voted for or against recommendation, undergraduate and law school attended, overall performance of a judge over the evaluation period, and any additional information the Commission feels would help a citizen make a better informed vote choice (<http://www.coloradojudicialperformance.gov/documents/Rules.pdf>).

⁷ There is a possibility that the very fact the performance evaluation exists could influence whether a judge decides to stand for retention. If the judge believes their performance was sub-par and there is a chance the performance evaluation process will highlight their inadequacies, the judge may choose to retire/remove themselves from the bench prior to the performance evaluation process. This was not tested in this research but may be an explanation for the rather small number of "do not retain" recommendations. Perhaps future studies could analyze this potential benefit of judicial performance evaluations.

most of the surveys was the judge's demeanor. The Commission was concerned about the judge's use of sarcasm directed toward lawyers who were unprepared for trial. Furthermore, of the attorneys surveyed who provided an opinion whether to retain or not retain the judge, the total percentage of attorneys who recommended retention was approximately 20% lower than other county judges. Even still, the committee recommended that this judge be retained.

Another example is a district judge who was recommended for retention by the Commission in 2002. The recommendation was received in spite of the judge's history of losing their temper while on the bench (apparently the 2002 evaluation was not the first time this issue was discussed). However, the Commission believed the judge was committed to improving their temper. Coupled with their satisfaction with the remainder of the judge's performance, the Commission recommended retention in this case as well.

Our purpose for discussing these examples is not to dispute the recommendations provided by the Commissions. However, based on these negative comments, it is unclear what swayed the Commissions toward recommending retention. The examples are provided to serve as an illustration of how non-transparent the evaluation process is. On the flip side of this coin, all but one of the judges who submitted responses to their "do not retain" or "no opinion" evaluation recommendations cited the Commission's selective use of negative information in the final decision. One judge noted that "[t]he Commission disregarded the overall presumptive 'retain' score on my performance survey results." Another judge's frustration is obvious; this judge ends her response with the observation that a "MAJORITY (78%) RECOMMENDS THAT I BE RETAINED."

Judges also express concern about the makeup of the commissions. A judge whose 2002 response was not printed verbatim but was summarized by the Commission noted that the small response rate of the surveys and the absence of prosecuting attorneys from the pool of attorney respondents may have biased the results. One judge complained that the Commission was stacked against judges who were tough on crime because it was made up of “the [county] Public Defender’s office chief, the State Public Defender’s spouse, a Public Defender’s spouse and a formal Public Defender, a retired Public Defender investigator, a criminal defense attorney, and no law enforcement representatives.”

The materials the Commissions must consider include much of the information recommended in the ABA Guidelines (American Bar Association 1985, 2005). The Guidelines seek to help state JPE commissions assemble information that is relevant, quantifiable, and objective. But the Guidelines are just that: guidelines. There is some evidence that the way these Guidelines are implemented may fall short of this ideal, especially in terms of the survey dimension of the process (Gill et al. 2011; Gill 2012). What makes the process of evaluating Colorado’s JPE system more difficult is the fact that there is no set system through which the various materials available to the Commissions are turned into recommendations.

What is clear is that the Commission recommendation narratives spend a lot of time talking about the results of the attorney surveys. In the next section, we will evaluate the quantitative data that the Colorado Office of Judicial Performance Evaluation (OJPE) makes available on their website, most important of which is the results of the attorney surveys.

THE COLORADO JPE DATA

Although the Commissions do not make public much of the information they use in making their recommendation decisions, the aggregate results of the survey data is provided to the public via the OJPE website. These data are available only from 2002 through 2012, even though the JPE system dates back much farther than that. We have assembled the available quantitative data from the public reports, and we have supplemented these data with additional information about the individual judges. We use this information to try to get a handle on what is driving the JPE results we see in Colorado.

Table 1 presents summary information about the data we have collected. These summary statistics were calculated on a version of the dataset that is aggregated by judge. For those judges with more than one evaluation in the dataset, the averages across all of these evaluations are used. As such, the data in Table 1 are judge-level. Because the Commissions collect different information about trial judges and appellate judges, we have separated these groups out for most of our analysis.

In Colorado's reported JPE results, the Commissions have given "no opinion" or "do not retain" recommendations only nine times out of the 623 evaluations they have performed; all recipients of these negative recommendations were trial court judges. Only six judges were not retained by the voters, but only two of these were judges who had received negative recommendations from the commissions. This means that only 22% of the judges who got negative Commission recommendations were actually voted out of office, while two-thirds of those voted out of office had "retain" Commission recommendations. Again, all six of the judges voted out of office were trial court judges. Table 2 reports the number of times "do not

Table 1 - Descriptive Statistics Averaged by Judge, Colorado Judges 2002-2012

	All Judges					Appellate Judges					Trial Judges				
	n	mean	Sd	min	max	n	mean	sd	min	max	n	mean	sd	min	max
CJP Retain Recommend	387	0.99	0.10	0	1	29	1	0	1	1	358	0.99	0.09	0	1
Retained by Voters	387	0.99	0.09	0	1	29	1	0	1	1	358	0.99	0.09	0	1
Attorney Retain Score	387	88.26	10.28	41.5	100	29	87.09	5.41	79	96	358	88.35	10.58	41.5	100
Judge Retain Score	-	-	-	-	-	28	97	3.16	87	100	-	-	-	-	-
Layperson Retain Score											358	89.07	8.11	57	100
Attorney Bias Scale	-	-	-	-	-	-	-	-	-	-	321	0.33	0.21	0	1
Female Judge	387	0.28	0.45	0	1	29	0.21	0.41	0	1	358	0.28	0.45	0	1
Minority Judge	387	0.08	0.27	0	1	29	0.10	0.31	0	1	358	0.08	0.26	0	1
Time Since Bar Admit	379	26.80	7.38	5	45	29	30.82	6.77	17	43	350	26.47	7.34	5	45
Law School Ranking	384	2.78	1.09	1	6	29	2.03	0.82	1	3	355	2.85	1.08	1	6
U. Denver Alumnus	383	0.27	0.27	0	1	29	0.17	0.38	0	1	354	0.27	0.45	0	1
Positive or Neutral Story	387	4.13	10.65	0	134	29	6.53	11.51	0	54	358	3.93	10.57	0	134
Negative or Scandal Story	387	0.22	1.11	0	11.5	29	0.47	0.91	0	4	358	0.20	1.12	0	11.5

retain” and “no opinion” recommendations were provided from 2002 to 2012, categorized by gender.

Table 2 – Commission Recommendations by Gender

	Retain	No Opinion	Do Not Retain
Male	455	1	2
Female	159	3	3
Total	614	4	5

We are also interested in the major survey evaluation components that may influence the committee outcome. All retention scores were obtained from the website for the Colorado Office of Judicial Performance Evaluation. Attorneys were asked “Do you recommend (Judge Name) be retained in office or not retained in office?” The total percentage of attorneys providing a “retain” opinion was utilized.⁸ In all, the average attorney retention score is 88.26. Laypeople were asked this same question in their evaluations of trial court judges. Their average score was 89.07. Appellate judges were subject to peer evaluation by other judges; the average peer judge retain score was 97.00.

Additionally, a variable is included that attempts to measure how biased attorneys believe a judge to be. For county and district court judges, attorneys are asked if they believe a judge is biased toward the prosecution or defense. To create a measure of bias, the aggregate percentage of attorneys who believed the judge to be biased was offset against each other to obtain a “net bias” score. This score was folded on itself such that higher levels of bias toward either the prosecution or the defense are closer to the maximum value of 1, and less bias is

⁸ For several years there are several sets of retention percentages provided. Through 2002, the survey offered only three options: “Retain,” “Do Not Retain,” and “No Opinion.” Two sets of percentages are computed by the survey report authors: one set includes the no opinion response, the other does not. We use the set that does not include the “No Opinion” category. Beginning in 2004, the survey began to offer a range of responses: “strongly not retain,” “somewhat not retain,” “undecided,” “somewhat retain,” and “strongly retain.” For the surveys from 2004-2012, we’ve used the sum of “somewhat retain” and “strongly retain” to calculate the retention score.

closer to the minimum value of zero. The trial court judges overall have an average score of .33 out of one. Unfortunately, a similar score could not be created for the appellate court judges, as this question was not asked of respondents evaluating Court of Appeals or Supreme Court judges.

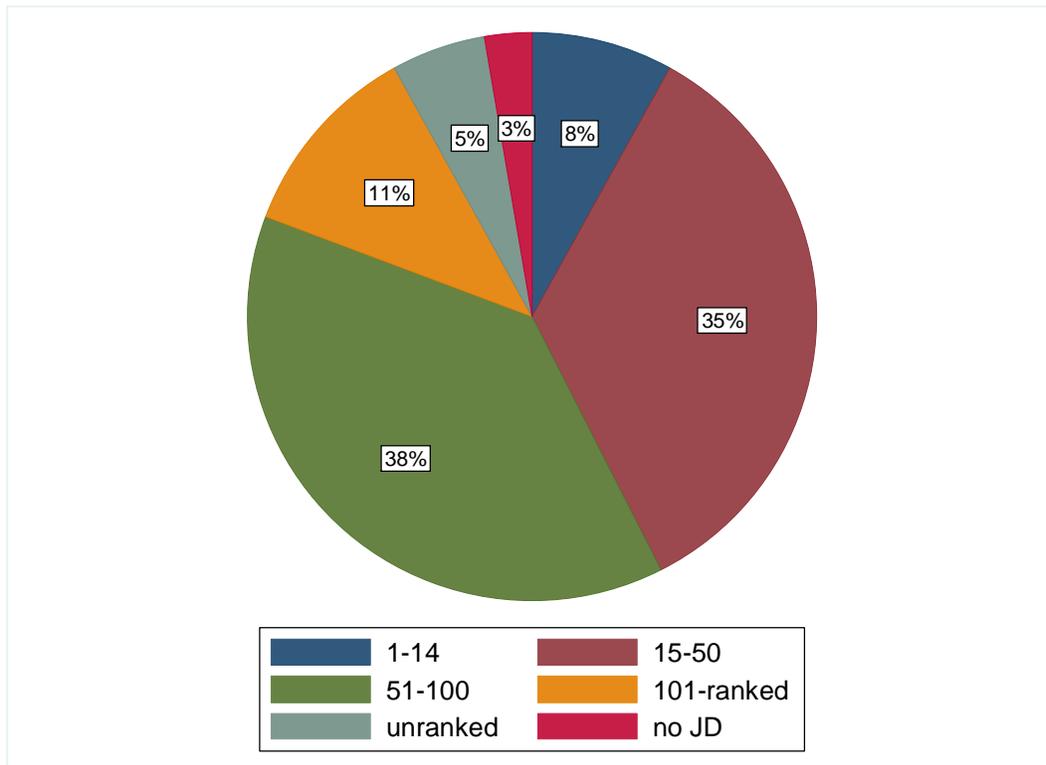
We have also collected a number of other pieces of information about the judges in the hopes of explaining the outcome of the JPEs. Of particular interest in this research is determining whether any implicit gender bias is skewing the results of the evaluation process. As such, gender and minority status were coded based on pictures included in the biographies/narratives of each judge. While there are a substantial number of female judges in Colorado (28% of 358 judges), there are very few minority judges in the analysis (7.54% of 358 judges). We have also included the number of years elapsed since the judge was admitted to the bar.⁹ The average number of years since bar admittance is 26.8 years, although there is a wide range of values (5-45 years).

A measure of the prestige of the judge's law school is also included in the models. Law school alma maters were determined either through the judicial narratives provided by the judicial performance commissions or through Martindale. Based on the 2012 US News and World Report Law School Rankings, all law schools were assigned a category. Those schools ranked 1-15 by US News and World Report were coded as a 1, 16-50 – 2, 51-100 – 3, 101-150 – 4, 151+/unranked – 5. If an individual did not attend a law school, they were assigned a score of 6. The distribution of law school prestige is presented in Figure 1. We have also created a series of dummy variables for judges who graduated from the University of Denver Sturm College of

⁹ In those instances where the judge is a lay judge that was not admitted to the bar, we use the year in which the judge completed his or her graduate education, where appropriate. When the lay judge had no graduate degree, we set the date at three years past the attainment of the bachelor's degree.

Law (27.32% of judges) and the University of Colorado Law School (26.20% of judges), the only two law schools in Colorado. In all, slightly more than half of the judges received JDs from Colorado law schools.

Figure 1 - U.S. News Rankings of Law Schools Attended by Colorado Judges, 2002-2012



Because there may be a relationship between the number of times a judge is mentioned in the news and the chances of retention, a variable is included that indicates how many times each judge was mentioned in the Denver Post. For each evaluation period, only the time from the previous evaluation to 45 days prior to the current election are included. This is because the judicial performance evaluations must be completed prior to 45 days before the election. Any press received after the evaluations are completed and released to the public would/could not influence a lawyer's evaluation because that evaluation survey would have already been submitted.

We assume that how a judge is portrayed in a news story could impact a lawyer’s perception of that judge. Because of this, news stories were classified as neutral/positive or negative. Those that were positive either praised a ruling or discussed how good of a job a judge is doing. Neutral press mentions the judge, but takes no stance for or against them. In our sample, judges had an average of 4 positive or neutral mentions in the press, with a maximum of 134 stories. Negative stories criticized the judge’s decisions, connected the judge to a scandal of some sort, or were otherwise openly hostile to the judge. There were fewer of these kinds of stories; the average number of negative stories was .22, although the number was twice that for appellate judges.

MODELING JPE RESULTS

Our goal in this preliminary analysis of Colorado JPE data is to get a sense of what the JPE process is measuring. The first step is to get a sense of what pieces of information influence the probability that a judge will get a positive recommendation from the JPE Commission. To investigate this, we performed an exploratory analysis using various explanatory variables to predict the positive recommendation. Our dataset is an unbalanced panel, since we have multiple evaluations for many of the judges, but not for all judges. We are particularly interested in finding out how heavily the commissions rely on the information from the various survey components of the JPEs. Because only the trial judges were evaluated by both attorneys and laypeople, a model comparing the effects of these two different sources of information can only include the universe of trial court judges.

Table 3 - Population Averaged Generalized Estimating Equations Model of Positive JPE Recommendations

	Odds Ratio	SE	z	P > z
Female Judge	0.205	0.166	-1.96	.051
Years Since Bar Admission	0.975	0.056	-0.43	.664
University of Denver JD	1.456	1.254	0.44	.662

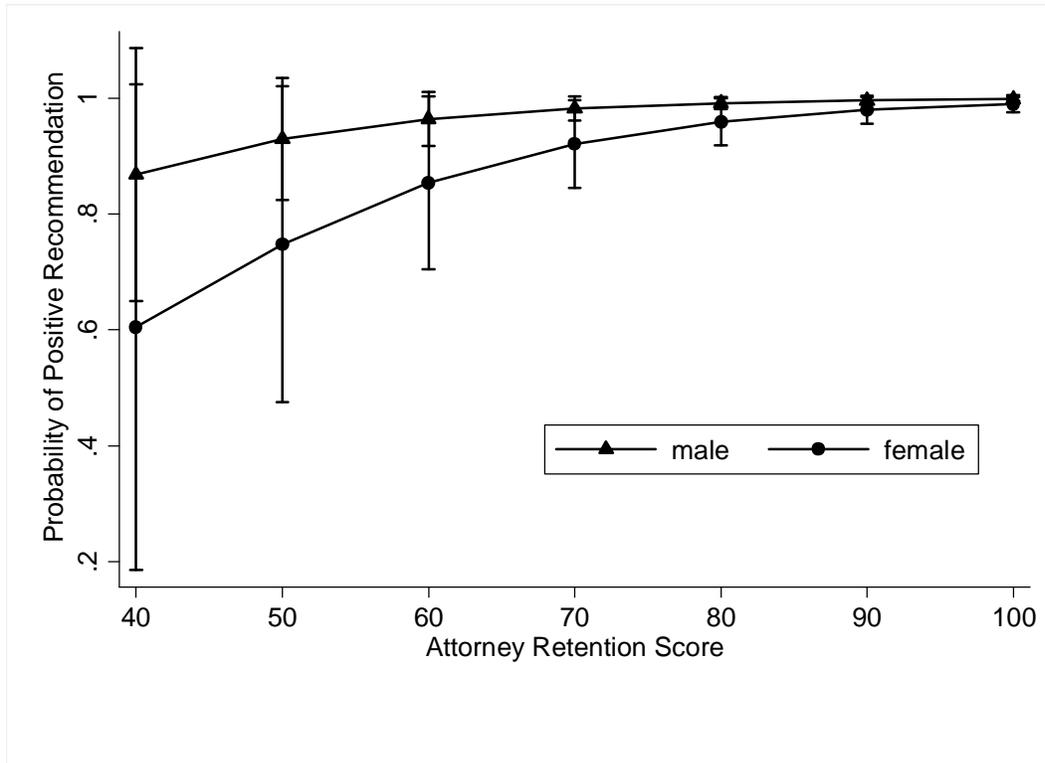
Law School Prestige	0.758	0.253	-0.83	.406
Neutral/Positive Stories	1.090	0.145	0.65	.518
Critical/Scandal Stories	0.900	0.103	-0.93	.354
Attorney Retention Score	1.076	0.025	3.20	.001
Layperson Retention Score	1.041	0.039	1.05	.292
Constant	0.036	0.132	-0.91	.362
N=575 evaluations of 349 judges; evaluations per judge mean = 1.6, min=1, max=5; Wald $\chi^2=18.85$, p=.015				

The results of this model can be found in

Table 3. The covariates in this model do not help to predict the probability of a positive Commission recommendation, with two exceptions. Although the layperson retention scores do not help to predict positive recommendations, the attorney retention scores do. This suggests that the Commissions may be relying on the surveys of attorneys to help them establish a baseline for their decision to give a negative performance evaluation.

The other significant predictor of positive recommendations in our model is judge sex. Female judges have a lower likelihood, all other things equal, of receiving a negative recommendation from the Committees. The plot in Figure 3 illustrates the effect that having a low attorney survey score has for men and women. The result suggests that the Committees might be slightly less willing to give women judges with poor attorney retention scores a positive recommendation when compared to their similarly situated male colleagues. **Figure 3**

Figure 2 - Predicted Marginal Probabilities of Positive Committee Recommendation by Sex over Attorney Score



Since the attorney survey is such an important predictor of negative Commission recommendations, we investigate the makeup of these scores. To estimate the effects of judge characteristics on the resulting attorney survey scores, we use a pooled ordinary least squares regression with panel corrected standard errors (Beck and Katz 1995). This method allows us to control for the fact that the repeated observations of each judge are not independent from one another. It is also a good way to deal with an unbalanced panel, which we have because not all judges were evaluated in each evaluation cycle in our data.

The Colorado JPEs do not ask the same questions of respondents evaluating appellate judges as they do of respondents evaluating trial judges. For this reason, we analyze the results of the appellate judges separately from those of the trial judges. We find one main similarity common to the models, along with a couple of interesting differences. The results of the model of attorney retention scores for appellate judges can be found in Table 4.

Table 4 Pooled OLS Regression with Panel Corrected Standard Errors of Attorney Retention Scores for Appellate Judges

	Coef.	PCSE	z	P > z
Female Judge	-3.042	1.524	-2.00	.046
Years Since Bar Admission	-0.288	0.131	-2.20	.028
University of Denver JD	6.249	1.693	3.69	.000
Law School Prestige	-1.736	1.405	-1.24	.216
Neutral/Positive Stories	0.364	0.114	3.18	.001
Critical/Scandal Stories	-3.693	1.418	-2.60	.009
Constant	97.963	5.231	18.73	.000
N=48 evaluations of 29 judges; evaluations per judge mean = 1.655, min=1, max=4; $r^2=.30$; Wald $\chi^2=63.88$, $p=.000$				

Our model shows that, all else equal, female judges score significantly lower than male judges. In our model, the only variable that is not significant is the prestige of the judge's law school. However, appellate judges get a large boost when they have graduated with their JD from the University of Denver Sturm College of Law. Interestingly, alternative specifications for local connections, including a measure of having attended the University of Colorado School of Law and a measure of having attended either of these Colorado law schools, were not significant. As we would expect, the attorney evaluations are influenced by the media coverage of the judges. Positive or neutral stories boost scores by about a third of a point per story. Critical stories or stories linking the judge to a scandal are quite harmful; these reduce the judge's score by 3.7 points per story.

Table 5 - Pooled OLS Regression with Panel Corrected Standard Errors of Attorney Retention Scores for Trial Judges

	Coef.	PCSE	z	P > z
Female Judge	-3.193	0.493	-6.47	.000
Years Since Bar Admission	0.041	0.043	0.94	.346
University of Denver JD	-0.435	0.893	-0.49	.626

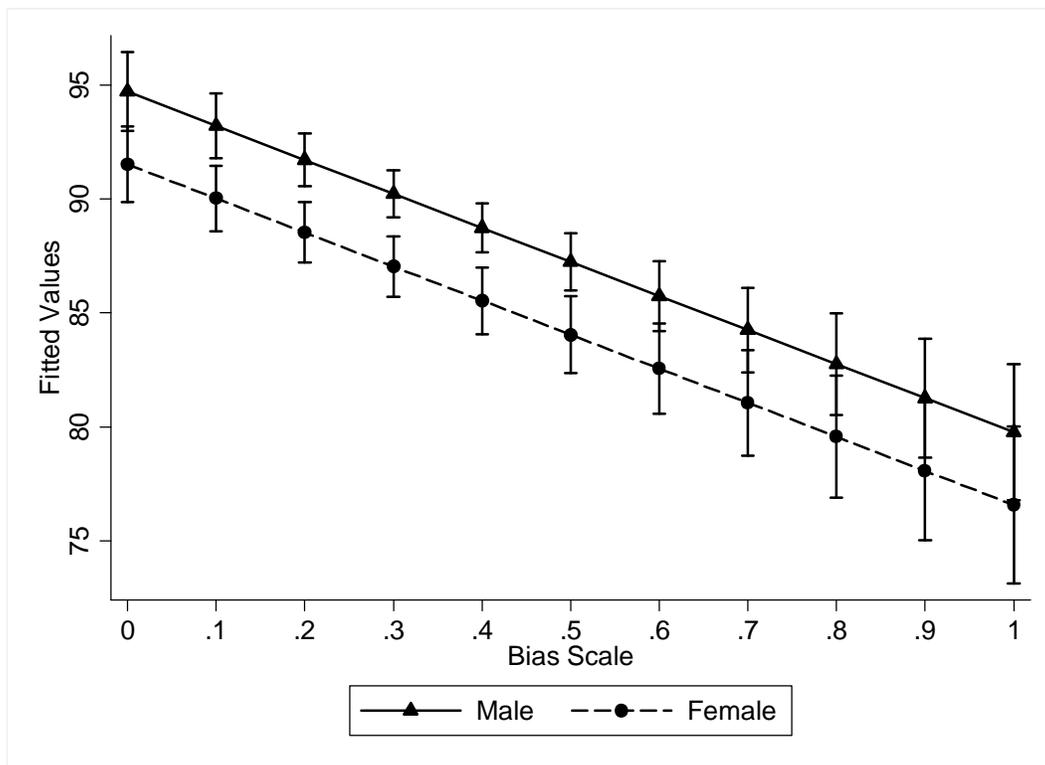
Law School Prestige	-0.192	0.418	-0.46	.645
Neutral/Positive Stories	-0.095	0.020	-4.66	.000
Critical/Scandal Stories	0.024	0.317	0.08	.939
Bias Score	-14.947	2.143	-6.98	.000
Constant	94.510	2.736	34.54	.000
N=614 evaluations of 314 judges; evals per judge mean = 1.955, min=1, max=6; $r^2=.13$; Wald $\chi^2=217.63$, $p=.000$				

The results of our analysis of trial judges appear in Table 5. As with the appellate judges, female judges score significantly lower than their male counterparts. Most of the other measures that we hypothesized would be driving the attorney retention scores of trial court judges are not significant. Aside from judge gender, only two of the other measures have significant explanatory power. The first of these is the category of positive or neutral coverage in the news. Interestingly, this media coverage actually decreases the predicted scores for the judges. The other significant independent variable is the attorneys' assessment of the degree to which the judge is biased for the prosecution or the defense. Moving from the lowest value to the highest value of this variable decreases the retention score by 15 points. This relationship, along with the sex-based difference in predicted scores, is presented graphically in Figure 3.

DISCUSSION

The results of this analysis show a statistically significant gender penalty for female judges of about 3 points in the attorney surveys. This is a small difference. But we believe that this pattern is something that still deserves attention. It is likely that this small but persistent difference in scores reflects a difference in the way that female judges experience

Figure 3 - Predicted Marginal Effect of Judge Sex over Values of Bias Scores for Trial Court Judges



their work on a day-to-day basis. That such a bias is reflected in the attorney surveys suggests that the bias may be reflected in the way that female judges are treated in their courtrooms (Rhode 2001; Bazelon 2009).

Another reason to take this disparity seriously is the fact that the Commission decision relies heavily on these attorney surveys. Worse still, the Commissions are also significantly more likely to give female judges a negative recommendation even after controlling for the implicit bias already present in the attorney surveys. While the impact of this bias is of a relatively small magnitude at the attorney survey level, it appears that this gender gap is multiplied at the Commission level, where commissioners add their own implicit biases on top of those already contained in the attorney surveys.

The obvious question now is what to do about this problem. Previous research on gender bias in attorney surveys conducted by non-state actors (Gill 2012; Gill et al. 2011; Wood

and Lazos 2010) was largely dismissed by proponents of merit selection and JPE (Kourlis 2010) on the basis that state-sponsored programs are unlikely to suffer the same methodological as these “bar polls” (Andersen 2000). It is true that Colorado’s program is much more comprehensive than just a survey of attorneys. Colorado has taken pains to get its Commissioners to consider information from a large variety of sources in its decision making process. If done systematically and with careful planning to avoid the problem of implicit bias, this can be a very effective strategy.

But the problem of implicit bias persists, even in Colorado’s comprehensive and well-funded JPE system. It is difficult to identify confidently a single source of this bias; it is likely coming from a number of the evaluation criteria the Commissions are charged with considering when making their recommendations. A large part of the problem, however, is that it is difficult to know the source of the bias. The Commissions do not follow a set procedure for weighing the evidence, and this preliminary analysis suggests that the attorney surveys play a substantial role in at least framing the Commissions’ recommendations. And, although the attorney surveys are conducted in connection with a state-sponsored JPE program, they are still virtually indistinguishable from the unofficial “bar poll” surveys in other states (Gill 2012).

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JUDICIAL PERFORMANCE EVALUATION

Steps to Improve Survey Process and Measurement



In the wake of charges that judicial performance evaluation surveys are biased against women and minority judges, states must take action to ensure that programs are fair and equitable to all.

by **JENNIFER K. ELEK, DAVID B. ROTTMAN, and BRIAN L. CUTLER**

State judicial performance evaluation (JPE) programs promise to help courts achieve a variety of central goals (e.g., more informed judicial selection, retention, and/or assignment decisions; improvements in judicial quality; greater transparency). However, recent criticisms leveled against these programs and supported by preliminary empirical evidence portray JPE surveys based on the popular ABA model¹ as systematically biased against minority and women judges.² Such claims invariably heighten the methodological scrutiny applied to all survey-based JPE programs that, in turn, will likely reveal a number of other shortcomings in existing JPE surveys. Most state JPE surveys do not reflect recent advances in the scientific understanding of survey design related to performance evaluation. States must remedy weaknesses in their JPE surveys if they wish to preserve the credibility of JPE programs in the public's eye and within the court community. To provide states with some guidance in this effort, we review several fundamental shortcomings common to state and model JPE surveys in the U.S. and offer some concrete steps for improvement in key areas.

An Overview of Judicial Performance Evaluation in the States

The first official state-sponsored judicial performance evaluation program began in Alaska in 1976 as part of an effort to address concerns that the voting public lacked sufficient information to make educated decisions about judges in retention elections.³ Many other states followed suit: A 2004 national survey identified 21 states and territories with official JPE programs and 1 state with a pilot program.⁴ The Institute for the Advancement of the Ameri-

can Legal System (IAALS) website recognizes 18 states that presently have active JPE programs.⁵ The specific purposes of these programs vary by state: Results may be disseminated to judges to facilitate self-improvement, to the public to facilitate more informed voting decisions, and to judicial administration to facilitate more effective retention decisions and inform other administrative decision-making processes. Proponents of JPEs point to the potential of these programs to improve the quality of justice, to reinforce judicial independence, and to foster greater public

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1. GUIDELINES FOR THE EVALUATION OF JUDICIAL PERFORMANCE (Chicago, IL: American Bar Association, 1985); BLACK LETTER GUIDELINES FOR THE EVALUATION OF JUDICIAL PERFORMANCE (Chicago, IL: American Bar Association, 2005), available at http://www.americanbar.org/content/dam/aba/migrated/jd/lawyersconf/pdf/jpec_final.authcheckdam.pdf.

2. Gill, *Judicial Performance Evaluations as Biased and Invalid Measures: Why the ABA Guidelines Are Not Good Enough* (Mar. 30, 2012), available at http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2031800_code792278.pdf?abstractid=2031800&mirid=1; Gill, Lazos & Waters, *Are Judicial Performance Evaluations Fair to Women and Minorities—A Cautionary Tale from Clark County, Nevada*, 45 LAW & SOC'Y REV. 731 (2011).

3. Brody, *The Use Of Judicial Performance Evaluation To Enhance Judicial Accountability, Judicial Independence, And Public Trust*, 86 DENV. U. L. REV. 115 (2008).

4. Rottman & Strickland, *STATE COURT ORGANIZATION 2004* (Washington, D.C.: U.S. Department of Justice, 2006). It is also worth noting that 9 additional states in this survey reported having JPE programs operated independently by their state bar associations.

5. *Judicial Performance Evaluation in the States*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., <http://iaals.du.edu/initiatives/quality-judges-initiative/implementation/judicial-performance-evaluation> (last visited Apr. 12, 2012).

trust and confidence in the judiciary, among other benefits.⁶

Whether JPE programs reach their full potential depends on a variety of factors.⁷ The foundation of a strong JPE program rests perhaps most heavily on the quality of metrics used. Any state seeking to create or improve upon an existing JPE program faces a number of critical decisions about the substantive content and execution of the performance evaluation itself. Early in the development process, for example, those responsible for a state JPE program must choose which of the available performance measures and methods to employ. These may include but are not limited to caseload and workload statistics, courtroom observations, personal interviews, substantive reviews (e.g., of the judge's decisions, opinions, or orders; of past disciplinary actions against the judge), feedback from the public, and/or surveys of court users and employees.⁸

Of the available methods, nearly every state incorporates some form of evaluation survey.⁹ Undoubtedly, the popularity of the survey method is due in part to the fact that surveys can be used to gather a standard set of information from a large group of individuals in a relatively short amount of time. A well-designed survey is a powerful and efficient data-collection tool. However, poorly designed surveys can produce misleading or useless information.

Despite the many useful conceptual guides that have been proffered to advise states on JPE program development and to outline the many indicators of good judicial performance,¹⁰ little detailed technical guidance is publicly available to states on how to craft a good JPE survey instrument. In the absence of formal guidance on instrument development, some state committees appear to develop JPE survey instruments from scratch or simply replicate those in use elsewhere, often with limited input from scientific experts in survey methods or job performance evaluation. Without strong participation from such experts, a JPE survey is likely to fall prey to any number of

common survey design mistakes that undermine the quality of survey data.¹¹ Moreover, JPE surveys should be revised or redesigned to reflect important recent refinements to methodologies for survey-based job performance evaluation.

The time has come to review the quality of existing JPE survey methods. New evidence of problems with existing JPE surveys is starting to emerge. Empirical research on data drawn from one unofficial JPE survey, for example, shows that women and members of minority groups receive more negative evaluations than their white male counterparts,¹² legitimizing anecdotal claims made about gender and racial bias in the JPE survey process more generally.¹³ The quality of some state JPE programs has been questioned even by those involved in and generally supportive of the JPE process. For example, in a 2008 opinion survey of judges from a state with a long-running and respected JPE program, only 12.3% felt that the "validity and accuracy of survey responses were not a problem."¹⁴ To stimulate discussion and possible corrective action in response to these concerns, this article offers detailed guidance on how states can develop a JPE survey instrument and process that minimizes bias and produces high-quality, meaningful evaluation data on judicial performance. First, we identify

some significant concerns about the design of existing state and model JPE survey methods and explain why and how particular shortcomings in survey development and implementation can introduce bias into the evaluation process. We then offer some suggestions on how to implement best practices in performance measurement and survey design to address these issues.

The Quality of Existing Judicial Performance Evaluation Surveys

Although a layperson may view the development of a survey instrument as a relatively simple and straightforward process, in reality, seemingly trivial language, design, and implementation decisions can seriously compromise survey quality. These decisions can create coverage, sampling, non-response, and measurement errors that reduce the accuracy of results.¹⁵ The first three types of errors result when an unrepresentative sample of respondents is used—that is, when the experiences or opinions gathered from survey respondents do not accurately reflect those of the entire population of all potential respondents (e.g., a national poll of voter attitudes that uses a predominantly Republican sample of respondents). On the other hand, measurement error, or how much a measured value (e.g., results from a national poll of how much voters

6. Brody, *The relationship between judicial performance evaluations and judicial elections*, 87 JUDICATURE 168, 192 (2004); Paynter & Kearney, *Who Watches the Watchmen?: Evaluating Judicial Performance in the American States*, 41 ADMIN. & SOC'Y 923 (2010); White, *Judging Judges: Securing Judicial Independence by Use of Judicial Performance Evaluations*, 29 FORDHAM URB. L.J. (SPECIAL SERIES: JUDICIAL INDEPENDENCE) 1053-1077 (2002).

7. Kourlis, Gagel, Singer, Jamison, Danford & Seidman, SHARED EXPECTATIONS: JUDICIAL ACCOUNTABILITY IN CONTEXT (Denver, CO: Institute for the Advancement of the American Legal System, 2006); Kourlis, Gagel, Jamison, Singer, Danford & Seidman, TRANSPARENT COURTHOUSE: A BLUEPRINT FOR JUDICIAL PERFORMANCE EVALUATION (Denver, CO: Institute for the Advancement of the American Legal System, 2006).

8. Rottman & Strickland, *supra* n. 4; Kearney, *Judicial Performance Evaluation in the States*, 22 PUB. ADMIN. Q. 468 (1999).

9. Brody, *supra* n. 3; Kourlis & Singer, *Using judicial performance evaluations to promote judicial accountability*, 90 JUDICATURE 200 (2007).

10. BLACK LETTER GUIDELINES FOR THE EVALUATION OF JUDICIAL PERFORMANCE, *supra* n. 1; DRI, WITHOUT FEAR OR FAVOR IN 2011: A NEW DECADE OF CHALLENGES TO JUDICIAL INDEPENDENCE AND ACCOUNTABILITY (Chicago, IL: Authors, 2011); Kourlis et al., SHARED EXPECTATIONS, *supra* n. 7.

11. See Dillman, Smyth & Christian, INTERNET, MAIL, AND MIXED-MODE SURVEYS: THE TAILORED DESIGN METHOD (Hoboken, NJ: Wiley & Sons, 3d ed. 2009), for a comprehensive review; see Farthing-Capowich & McBride, *Obtaining Reliable Information: A Guide to Questionnaire Development for Judicial Performance Evaluation Programs*, 11 ST. CT. J. 5 (1987), and Bernick & Pratto, *A Behavior-Based Evaluation Instrument for Judges*, 18 JUST. SYS. J. 17 (1995), for specific reviews in the context of JPE.

12. Gill et al., *Are Judicial Performance Evaluations Fair to Women and Minorities*, *supra* n. 2.

13. Durham, *Gender and Professional Identity: Unexplored Issues in Judicial Performance Evaluation*, 39 JUDGES' J. 13, 13-16 (2000).

14. Brody, *supra* n. 3.

15. Groves, SURVEY ERRORS AND SURVEY COSTS (New York, NY: Wiley, 1989).

State and Model Judicial Performance Evaluation Survey Instruments Reviewed

Sources

1. Alaska
2. Arizona
3. Colorado
4. Connecticut
5. Florida
6. Hawaii
7. Idaho
8. Illinois
9. Kansas
10. Massachusetts
11. Nevada (pilot)
12. New Hampshire
13. New Jersey
14. New Mexico
15. Rhode Island
16. Tennessee
17. Utah
18. Virginia
19. ABA Judicial Division Lawyers Conference model (2005)
20. Defense Research Institute model (2011)
21. IAALS model (2006a)
22. IAALS model (2006b)

results may be strictly confidential or publicly published and disseminated. The selection of surveys we reviewed represents this diversity. Moreover, state JPE programs most commonly target attorney respondents; most survey instruments of other respondent groups tend to be either similar in structure to the attorney survey or substantially less comprehensive. For the purpose of this review, we focused on the attorney versions of JPE surveys. Despite some variation in content, these surveys tended to share some fundamental design flaws that could produce low-quality data. The most common and important of these flaws are discussed below.

Survey content issues. A number of state and model JPE surveys exhibit problems in how the question stems were constructed and with the types of standard response options provided:

Poor item construction. In the

like a presidential candidate) differs from its actual value (e.g., how much voters actually like the candidate), is exacerbated by poor instrument construction. We focus primarily on the latter type of error, but will touch on elements from all four.

Decisions that mold the content of the survey instrument frame the context for evaluation and establish the process by which respondents formulate their judgments. By clearly defining the target behavior under review and the standards for use in evaluating that target behavior, instrument developers can minimize measurement error. Without clear definitions that instruct attorneys and others to evaluate the judge on his or her actual behavior, however, people will tend to base judgments on expectations (e.g., assumptions derived from rumors or personal reputation), stereotypes (e.g., about judges in general) and other heuristics that may produce systematic bias.¹⁶ As a result, JPE surveys may then be susceptible to a wide range of well-documented response biases that are common with the survey method.¹⁷

Although research on the efficacy of state JPE survey instruments is sparse,¹⁸ systematic gender and racial disparities have been found in JPE survey results in some states.¹⁹ These findings are reinforced by a larger body of scientific research which shows that people make judgments of others that often are biased (intended or not) by cultural stereotypes in a number of ways. For example, a job may be seen as requiring specific skills or traits that are associated

with a particular stereotype about a certain social group.²⁰ When judgments require respondents to ascribe personality characteristics to an individual or develop higher-order attributions about the individual's personality traits or abilities, these judgments may be informed by such stereotypes.²¹ One study illustrates this phenomenon well: Participants tended to explain a male's successful performance on a "masculine" task as indicative of his ability, but tended to explain a female's successful performance on the same task as a result of pure luck.²² Moreover, stereotypes may subtly alter the standards used in evaluation if the provided standards are poorly defined. In one empirical study, people asked to evaluate a female and a male candidate for a "masculine" police chief position reported that whichever qualifications the male applicant possessed that the female applicant did not (street smarts, formal education) were more important for the job.²³ Thus, biases may stem not only from any explicit prejudices a person may have, but also from implicit associations derived from cultural stereotypes and other heuristics that simplify information processing for the respondent.

With these concerns in mind, we examined 18 current or recently used state JPE surveys and four "model" surveys (see Appendix A) for their use of basic best practices in survey design. Recall that state JPE programs may serve a range of purposes from informing judicial retention and assignment decisions to informing judges for educational purposes and

Standards but Higher Ability Standards for Devalued Groups, 72 J. PERSONALITY & SOC. PSYCHOL. 544 (1997); Steinpreis, Anders & Ritzke, *The Impact of Gender on the Review of the Curricula Vitae of Job Applicants and Tenure Candidates: A National Empirical Study*. 41 SEX ROLES 509 (1999).

21. E.g., Dunning & Sherman, *An Individual Difference Measure of Motivation to Control Prejudiced Reactions*, 23 PERSONALITY & SOC. PSYCHOL. BULL. 316 (1997).

22. Deaux & Emswiler, *Explanations of Successful Performance on Sex-Linked Tasks: What Is Skill for the Male Is Luck for the Female*, 29 J. PERSONALITY & SOC. PSYCHOL. 80 (1974).

23. Uhlmann & Cohen, *Constructed Criteria: Redefining Merit to Justify Discrimination*, 16 PSYCHOL. SCI. 474 (2005).

16. Martell, *Sex Bias at Work: The Effects Of Attentional and Memory Demands on Performance Ratings of Men and Women*, 21 J. APPLIED SOC. PSYCHOL. 1939 (1996).

17. Examples of these response biases include halo effect, horns effect, central tendency bias, leniency error. See Bernick & Pratto, *supra* n. 11, for a concise review of these response biases in the context of JPE.

18. See Brody, *supra* n. 3.

19. E.g., Burger, ATTORNEYS' RATINGS OF JUDGES: 1998-2006 (Mound City, MO: Mound City Bar Association, 2007); Gill, *Judicial Performance Evaluations as Biased and Invalid Measures*, *supra* n. 2; Gill et al., *Are Judicial Performance Evaluations Fair to Women and Minorities*, *supra* n. 2.

20. Biernat & Kobrynowicz, *Gender- and Race-Based Standards for Competence: Lower Minimum*

JPE surveys we reviewed, poorly constructed question stems were a common problem. Some of the most pervasive issues included (a) the *double-barreled* problem, (b) language that is too abstract or vague, and (c) language that does not match the provided response options. Explanations and examples of each of these issues follow.

Double-barreled items. One problem with many existing JPE surveys is that they are littered with double-barreled items. A double-barreled item is a compound question that presents two or more qualitatively different aspects of judicial behavior for evaluation but that only allows the respondent to supply a single rating response. These types of problematic items can often be identified by use of the conjunction “and.” For example, a few of the double-barreled items we found in the set of existing state and model JPE surveys we reviewed include:

- “The judge listens with patience and attentiveness”
- “Uses common sense and is resourceful in resolving problems that arise during proceedings”
- “Is effective in initiating and managing settlement efforts/conferences”
- “Providing written communications that are clear, thorough, and well reasoned”
- “Is able to maintain proper order, decorum, and control in the courtroom”
- “Judge acts with patience, dignity, and courtesy”
- “Oral and written decisions and orders are clear and well reasoned”

Surveys that contain double-barreled items are poor evaluation instruments because they invariably produce inaccurate results. For each item, each respondent must subjectively decide which embedded question to answer. Consider the item above that refers to the judge’s degree of patience, dignity, or courtesy (a triple barreled item!). How is a respondent to rate the judge if the judge acts with dignity and courtesy but is not very patient? Perhaps the respondent will rate the judge on one of the three elements (patience or dignity or cour-

tesy), or average across the three, or take a completely different tack. The respondent does not have a clear idea of what question is truly being asked in the survey, and the judge, the state JPE committee, and the public will not know what respondent ratings actually mean about the judge’s performance on double-barreled items. Moreover, those judges who do not receive perfect ratings will also not be able to discern from the item exactly which behavior(s) to target for improvement. By failing to clearly communicate unambiguous feedback about which judicial behaviors should be changed, many JPE programs designed with a purpose of improving performance quality do not efficiently fulfill this goal. The elimination of confusing compound items is one easy step toward a clearer, more functional, and more meaningful survey-based JPE program.

Language that is too abstract or vague. Survey items should be articulated clearly using specific, concrete language. Many state JPEs are plagued with language that is too abstract or vague. As discussed above, respondents must impose their own subjective definitions onto abstract or ill-defined items, making subsequent ratings for those items difficult to interpret. Some examples of vague question stems include:

- “Judge’s charge to the jury/juries”
- “Gives proceedings a sense of dignity”
- “Demonstrates appropriate demeanor on the bench”
- “Effective as an administrator”
- “The judge promotes public confidence in the judiciary”
- “Behaves in a manner that encourages respect for courts”
- “Demonstration of appropriate compassion”

What exactly is the respondent rating about “the judge’s charge to the jury?” What does “the judge promotes public confidence in the judiciary” or “gives proceedings a sense of dignity” mean in terms of actual, observable behavior? What is the precise definition of “appropriate compassion” or “appropriate demeanor” for a judge? In each of these cases, it is impossible

to know what the judge is actually doing to earn the performance rating that s/he receives. These items fail to adequately describe the types of behavior under evaluation and performance standards necessary to rate that behavior in a meaningful way.

An instrument designed to measure “performance” should focus on observable behavior. Some items from existing instruments, however, employ abstract language that implicitly requires respondents to make assumptions about or attribute general characteristics to the judge in order to produce a rating response. Instead of focusing on how the judge actually behaves in court, some of these items also require respondents to conjecture about what and how the judge thinks. For example, consider the following question stems from existing state JPE surveys:

- “Is willing to reconsider error in fact or law”
- “Willingness to make difficult or unpopular decisions”
- “Skills in effecting compromise”
- “Patience”
- “Keeps an open mind and considering all relevant issues in making decisions”

Other problems with these items aside, most respondents probably do not have accurate, unbiased insight about what a judge is willing or not willing to do. Instead, they must use other information to develop a judgment about the likelihood that the judge thinks in a particular way. Rephrasing these items to capture this observable information would produce cleaner, more reliable data and ultimately better guidance on which behaviors should be reinforced and which behaviors should be changed.

Additionally, items that require respondents to form higher-order attributions about the judge’s overall skill, ability, knowledge, or personality (such as those that ask respondents to evaluate the judge’s “patience” or “skills in effecting compromise”) can elicit ratings that are systematically distorted. In the process of forming these higher-order judgments of others, people—particularly those

with fewer opportunities to interact with the judge—often rely on more than just observed behavior. They tend to interpret and categorize others using information derived from social stereotypes and other heuristics.²⁴ These stereotypes and other assumptions can color judgment and bias evaluations of performance.²⁵

Poor rating scales. In the 18 state and four model JPE surveys we reviewed, a poorly constructed rating scale emerged as one of the most pervasive problems. Weak scales typically resulted from conflating two or more evaluation constructs, failing to provide adequate definitions for scale points, or a combination of both.

When a rating scale conflates two or more constructs, respondents may experience difficulty distinguishing between response options on a consistent basis. One example of a conflated response scale that is used by some state JPE programs is the academic grading scale (A-D, F), incongruously defined in part by some level of acceptability and some degree of performance quality, such as:

- A = Excellent
- B = Very Good
- C = Acceptable
- D = Poor
- F = Unacceptable

24. E.g., Bodenhausen & Wyer, *Effects of Stereotypes on Decision Making and Information-Processing Strategies*, 48 J. PERSONALITY & SOC. PSYCHOL. 267 (1985); Darley & Gross, *A Hypothesis-Confirming Bias in Labeling Effects*, 44 J. PERSONALITY & SOC. PSYCHOL. 20 (1983).

25. E.g., Baltes & Parker, *Clarifying the Role of Memory in the Performance Cue Effect*, 15 J. BUS. PSYCHOL. 229 (2000); Baltes & Parker, *Reducing the Effects of Performance Expectations on Behavioral Ratings*, 82 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 237 (2000); Deaux & Emswiller, *supra* n. 22; Eagly & Karau, *Role Congruity Theory of Prejudice Toward Female Leaders*, 109 PSYCHOL. REV. 573 (2002); Martell, *Sex Bias at Work: The Effects of Attentional and Memory Demands on Performance Ratings of Men and Women*, 21 J. APPLIED SOC. PSYCHOL. 1939 (1996).

26. Kourlis et al., *SHARED EXPECTATIONS*, *supra* n. 7.

A respondent forced to answer using this rating scale may have trouble determining whether a poor performance in a particular area should be scored as “poor” or as “unacceptable” if s/he believes a poor performance is unacceptable. Or perhaps the respondent may view only an excellent performance as acceptable, but this subjective working definition may change for a different performance area. The differences between available response

standards of performance for this court.

5 – Excellent: Consistently exceeds minimum standards of performance for this court.

Without a clear understanding of what the “standards of performance for this court” are and whether or how these standards may differ between individual courts across the state, the provided scale point definitions fail to clarify the meaning of each response option or denote when such an option would be appropriate.

Of course, some evaluation surveys do not define the provided rating scale at all. In particular, two respected state pioneers of JPE used survey instruments that offered respondents only a grading scale (A-D, F). These surveys did not supply any definition

or instructions for how the grading scale should be applied by respondents in the evaluation of judicial performance, or what type of performance would earn a judge an “A” rating.

When presented with conflated and/or vague rating scales, respondents must draw on available extraneous information to simplify and clarify the otherwise challenging performance evaluation task. What information respondents draw on to clarify this task varies across individuals and can even change for the individual respondent as he or she progresses through the evaluation survey. Thus respondents are more likely to respond in a manner that is systematically biased in favor of overall leniency, middle-of-the-road options, or particular social groups, to the detriment of data quality. Greater subjectivity in how response options are interpreted and used produces greater variability in the survey data; thus poorly designed JPE surveys can be highly unreliable sources of information about performance quality.

Items incongruous with the provided rating scale and other errors.



STATES MUST REMEDY WEAKNESSES IN JPE SURVEYS IF THEY WISH TO PRESERVE THE CREDIBILITY OF JPE PROGRAMS.



options are unclear and without further elaboration rely on each individual respondent’s subjective interpretation of how the scale should be applied in each case, to the detriment of instrument reliability.

As vague survey items contribute to measurement error, so do vague or inadequately defined rating scale options. That is, some scales may not conflate different constructs as in the example above, but they may not provide a clear description of how the rating scale options should be applied to observed behavior either. For example, Kourlis, Gagel, Singer, and colleagues²⁶ argue that Alaska’s JPE survey rating scale does not provide respondents with a definition for the “minimum standards of performance for this court:”

- 1 – Poor: Seldom meets minimum standards of performance for this court.
- 2 – Deficient: Does not always meet minimum standards of performance for this court.
- 3 – Acceptable: Meets minimum standards of performance for this court.
- 4 – Good: Often exceeds minimum

Some JPE surveys list question stems that do not match some or all of the supplied response options. A mismatch occurs when an item is phrased in such a way that not every response along the provided rating scale clearly or logically follows. For example, one question stem we found asked respondents to assess the judge on “absence of coercion or threat” using a 5-point scale of “excellent,” “good,” “adequate,” “less than adequate,” and “poor.” It is challenging to match rating scale items with performance on this item. Other problems with this item aside, a more appropriate item-response scale pairing would include the question stem like “uses coercion or threats” and yes/no response options or a response scale to gauge frequency of occurrence. Similarly, another state JPE survey asks respondents to rate judges on “judicial temperament” along a 5-point scale of “poor,” “deficient,” “acceptable,” “good,” and “excellent.” However, some of these options are non-sequiturs (e.g., how a person can have a *deficient* temperament is unclear). Although this typically occurs in conjunction with a poorly crafted rating scale, a mismatch may occur even if the provided rating scale is clear and unidimensional.

Incongruous item-scale pairs can force the respondent to make subjective decisions about how to interpret the question and how to apply each response option. Like the other survey construction errors, this problem can hurt the actual validity of the survey by reducing response accuracy. It may also hurt the face validity of the survey (i.e., layperson perceptions of survey quality) by leading people to conclude that the instrument is not a good one or does not work as advertised.

Finally, several surveys we reviewed would benefit from more thorough copy-editing before re-use. We found a substantial number of grammatical and typographical errors that may serve as another cue of poor survey quality to respondents, judges, and the public. If people perceive the JPE survey to be ineffective or of poor quality, they will not support the JPE program.

Procedural issues. Some JPE survey programs we reviewed incorporated procedures that could have an adverse effect on the quality of data obtained from the survey. These procedures could discourage honest responses, encourage biased responses, or encourage participants to respond based on biased sources of information. In addition, some JPE programs suffer from coverage, sampling, or nonresponse error, all of which can produce biased survey results.

Formats that deter negative feedback. Some surveys require respondents to answer additional questions only when they supply negative feedback about the judge. Two state JPE surveys we reviewed required respondents to explain their reasoning any time they used one of the lowest two rating options to describe the judge’s performance. This practice can imply that negative feedback should be used infrequently and that neutral or positive feedback is expected. Some respondents may wish to avoid the time burden or greater effort required to supply a clear argument for a negative rating choice. As a result, these respondents may be less likely to provide negative feedback (artificially inflating the ratings provided) or even less likely to complete the survey if the costs associated with honest participation outweigh the perceived benefits.

Formats that encourage evaluation based on biased sources of information. Some surveys are designed in a way that explicitly permits or encourages the use of unreliable or biased sources of information in respondent evaluations of a judge. Two of these formats and the problems associated with them are discussed below.

Hearsay or personal contact. In some jurisdictions, attorneys, court staff, and others can evaluate a judge’s performance even if they have not had any direct, professional contact with the judge. For example, one state JPE survey we reviewed allowed respondents to rate a judge even if they know the judge only by professional reputation or only through

personal (i.e., non-professional) contact. Although this information is reported separately in the JPE report for this state, Kourlis, Gagel, Singer, and colleagues²⁷ criticize this use of hearsay and non-judicial behavior in an evaluation of a judge’s workplace performance. Certainly, a respondent who has no direct experience with a judge in the professional workplace is ill-equipped to evaluate his or her judicial performance.

Individual vs. grouped evaluations of judges. Some JPE surveys ask respondents to evaluate multiple judges simultaneously on the same form. When making sequential judgments like this, respondents tend to engage in comparative thinking between the individuals under evaluation.²⁸ These comparison-based *assimilation* and *contrast effects* may then artificially increase or decrease performance ratings of certain judges. For example, a respondent may give a particularly excellent judge the highest possible rating, and then inadvertently rate the next judge—a very good but not excellent judge—as somewhat higher than he or she might otherwise respond because of salient similarities with the preceding judge (assimilation effect). Or, a respondent may give a particularly terrible judge the lowest possible rating, and then rate the next judge—an average performer—as excellent in comparison (contrast effect). Thus, some judges may receive artificially lower or higher scores

27. Kourlis et al., SHARED EXPECTATIONS, *supra* n. 7.

28. (e.g., Damisch, Mussweiler, & Plessner, 2006; Schwarz & Bless, 1992; see also Mussweiler, 2003, 2007; Koebel, 1984, p. 231) *E.g.*, Schwarz & Bless, *Constructing Reality and Its Alternatives: An Inclusion/Exclusion Model of Assimilation and Contrast Effects in Social Judgment*, in Tesser & Martin, eds., *THE CONSTRUCTION OF SOCIAL JUDGMENT* 217-245 (Hillsdale, NJ: Erlbaum, 1992); Damisch, Mussweiler & Plessner, *Olympic Medals as Fruits of Comparison? Assimilation and Contrast in Sequential Performance Judgments*, 12 J. EXPERIMENTAL PSYCHOL.: APPLIED 166 (2006); see also Mussweiler, *Assimilation and Contrast as Comparison Effects: A Selective Accessibility Model*, in Stapel & Suls, eds., *ASSIMILATION AND CONTRAST IN SOCIAL PSYCHOLOGY* 165-185 (New York, NY: Psychology Press, 2007); Koebel, *The problem of bias in judicial evaluation surveys*, 67 JUDICATURE 225, 231 (1984); Mussweiler, “Everything is Relative:” *Comparison Processes in Social Judgment*, 33 EUR. J. SOC. PSYCHOL. (2002 JASPARS LECTURE) 719 (2003).



access) whose opinions may differ from those who do have access to the survey. Alternatively, the source of potential respondents from which a sample is drawn (e.g., outdated respondent lists that exclude new attorneys; lists that contain only individuals who voluntarily registered with a particular organization or who allowed their contact information to be publicly shared) may categorically exclude certain types of individuals, producing a biased sample. In either case, the resulting sample may not be representative of the entire population to which the researchers intend to generalize the survey results. Some JPE programs, particularly in states without a statewide database that documents attorney appearances before each judge, may struggle with coverage error when attempting to create viable lists of respondents from which to sample. They may then be forced to adopt more costly and labor-intensive methods, such as assembling lists piecemeal from various impoverished sources to create a more complete directory of the eligible population, or to accept the problems associated with existing convenience samples.

Sampling error. In some states, the entire population of eligible respondents may be invited to complete a JPE survey, but typically, efforts are focused on a smaller subset of individuals because surveying the entire population is too costly. Sampling error “results from surveying only some rather than all members of the population and exists as a part of all sample surveys.”³⁰ That is, results of any survey based on a smaller sample of respondents will necessarily be an estimate of the opinions of the larger population that, as with any estimate, contains some error. Thus surveys based on very small effective sample sizes may produce results that are not indicative of the opinions of the entire eligible population. Perhaps due to the logistical problem of coverage limitations (discussed above), some programs invited small numbers of attorneys or other respondents to participate in each judge’s JPE survey. In one pilot study, fewer than 10

simply because of the order in which they are rated by respondents in the same sitting. Moreover, a survey in which respondents self-select which judges they wish to evaluate has poor quality control over the sample of respondents who choose to evaluate any particular judge. Respondents may evaluate more familiar judges based on direct experiences, but also evaluate less familiar judges using information derived from their reputations or from heuristics about other differentiating personal characteristics, such as gender or racial stereotypes. Evaluation surveys of multiple judges, therefore, may produce less accurate results than surveys in which respondents are asked to evaluate one particular judge independently of the others.

Unrepresentative data. The quality of a survey depends on the representativeness of resulting data to the opinions of the target population (i.e., the amount of *survey error*). Although survey methods in the real world are often informed by practical considerations such as total population size, convenience samples, availability of contact information, and program costs, such considerations should be evaluated carefully given their inherent trade-offs with data quality. Undoubtedly, each state or jurisdiction struggles with a different array of limitations or challenges in a data collection process that requires careful consideration to ensure that the JPE

survey is implemented in a manner that reflects the best possible compromise between survey best practices and the practical realities of applied data collection. However, those overseeing state JPE programs that rely on survey-based methods should recognize that if survey data are collected from a group of respondents who differ in some systematic way from others in the target population who were not given the opportunity to complete the survey or who opted not to participate in the survey, the results may lead to erroneous conclusions about the opinions of the target population. Some state JPE programs may suffer from any or all three of the following sources of survey error, each of which may contribute to the problem of unrepresentative data.

Coverage error. Coverage error can occur “when not all members of the population have a known, nonzero chance of being included in the sample for the survey and when those who are excluded are different from those who are included on measures of interest.”²⁹ That is, the survey may be based on data from a subset of individuals that is not representative of the larger population of potential respondents because certain types of individuals are systematically excluded from the surveying process. These individuals may be inadvertently excluded because the survey mode (e.g., web-based surveys) makes the survey inaccessible to certain types of individuals (e.g., people who prefer not to use email or the internet, or who do not have reliable internet

29. Dillman et al., *supra* n. 11, at 17.

30. *Id.*

surveys were delivered to potential attorney respondents for nearly half of all evaluated judges; the majority of these judges had surveys delivered to five potential respondents or less.³¹ If random samples are of sufficient size, however, they can produce estimates of the opinions of the larger population within an acceptable margin of error.

Non-response error. Even if the JPE program committee elects to survey the entire population of potential respondents or devises a good representative random sample from unbiased lists of potential respondents, certain types of individuals may tend to accept the invitation to participate, whereas certain other types of individuals may tend to opt out. That is, some subgroups of eligible participants may be more likely to self-select into completing the survey than others and their opinions may thus be overrepresented in the data. One state issued their JPE survey to all attorneys registered with the state bar association and allowed each attorney to choose whether or not to complete an evaluation survey for each judge, with no evident attempt to verify subsequent data quality.³² Compounding the problem, JPE surveys have notoriously poor response rates. Many modern JPE programs fail to achieve the often-cited acceptable response rate of 50%³³ and some are reportedly completed by less than 25% of invited participants.³⁴ Low response rates can increase the likelihood of significant non-response error,³⁵ limiting the extent to which researchers and others can generalize from the sample to the larger population. Although low response rates may not necessarily always result in non-response error,³⁶ a well-designed survey process should take precautions to minimize non-response rates in order to reduce the possibility of this type of error to adversely affecting data quality.

Recommendations for Improvement

States can improve the accuracy of existing JPE surveys in a number of ways:

Use simple, concrete items that describe observable behaviors.

Instrument developers can follow several useful guidelines when preparing survey items for use. First, they should avoid creating or adopting survey items that are too complex. Items that contain the conjunction “and” can be simplified by replacing similar terminology with a single catch-all phrase or by separating distinct terms into different question stems. This practice should reduce the incidence of problematic double-barreled items.

In addition, instrument developers should ensure that all provided response options follow logically from the question stems. For example, every option along a frequency rating scale of “Never,” “Rarely,” “Sometimes,” “Often,” and “Always” would make sense as a response to the evaluation item, “The judge listened carefully during the court proceeding.” If a single, standard set of response options does not apply to every question, instrument designers should consider either rephrasing questions in a way that all response options apply, reworking the rating scale so that the options match the existing questions, or creating separate rating scales to match individual questions or sets of questions.

Most importantly, selected items should contain concrete language that describes behaviors that respondents could reasonably observe in their direct experiences with the judge.

Question stems that focus on specific, observable behavior (e.g., “The judge started courtroom proceedings on time”), rather than inferred attributes (e.g., “The judge is patient”) and/or vague, abstract concepts (e.g., “The judge gives proceedings a sense of dignity”), will tend to produce more accurate ratings that are less influenced by stereotypes, expectations, and other heuristics.³⁷

Some innovative techniques demonstrate great promise in further reducing response biases and stereotype bias in surveys. One particular strategy incorporates a *structured free-recall* (SFR) task that forces evaluators to actively recall specific memories about a person’s past behavior prior to completing the evaluation of his or her performance.³⁸ In the SFR task, respondents are prompted to recall and then list specific positive and negative behaviors they observed from the evaluated person. This intervention facilitates evaluator recall of observed behavior, reduces evaluator reliance on heuristics when subsequently formulating judgments, and increases overall response accuracy.³⁹

Improve rating scales. State JPE program committees should also scrutinize the rating scale or scales currently in use, as this was a significant problem in many of the survey instruments we reviewed. Poor rating scales should be modified or replaced entirely.

A good rating scale:

Is balanced. If a bipolar construct is

31. Brody, NORTH CAROLINA JUDICIAL PERFORMANCE EVALUATION PILOT PROGRAM, PHASE 2 FINAL REPORT (Cary, NC: North Carolina Bar Association, 2009), available at <http://www.ncbar.org/download/ncba/jpeFinalReport.pdf>

32. Brody, *Judicial Performance Evaluations by State Governments: Informing the Public While Avoiding the Pitfalls*, 21 JUST. SYS. J. 333 (2000).

33. *E.g.*, *id.*

34. *C.f.*, Thomas, Richardson & Leone, NEVADA JUDICIAL EVALUATION PILOT PROJECT: FINAL REPORT (Reno, NV: Administrative Office of the Courts, 2009); Kourlis et al., SHARED EXPECTATIONS, *supra* n. 7.

35. See Rogelberg & Luong, *Nonresponse to Mailed Surveys: A Review and Guide*, 7 CURRENT DIRECTIONS IN PSYCHOL. SCI. 60 (1998).

36. See Groves, *Nonresponse Rates and Non-response Bias in Household Surveys*, 70 PUB. OPINION Q. 646 (2006).

37. Gioia & Sims, *Self-Serving Bias and Actor-*

Observer Differences in Organizations: An Empirical Analysis, 15 J. APPLIED SOC. PSYCHOL. 547 (1985); Podsakoff, MacKenzie, Lee, & Podsakoff, *Common Method Biases in Behavioral Research: A Critical Review of the Literature and Recommended Remedies*, 88 J. APPLIED PSYCHOL. 879 (2003); see also Dillman et al., *supra* n. 11.

38. See, e.g., Bauer & Baltes, *Reducing the Effect of Gender Stereotypes on Performance Evaluations*, 47 SEX ROLES 465 (2002).

39. Baltes, Bauer & Frensch, *Does A Structured Free Recall Intervention Reduce the Effect of Stereotypes on Performance Ratings and by What Cognitive Mechanism?*, 92 J. APPLIED PSYCHOL. 151 (2007); Baltes & Parker, *Clarifying the Role of Memory in the Performance Cue Effect*, *supra* n. 25; Baltes & Parker, *Reducing the Effects of Performance Expectations on Behavioral Ratings*, *supra* n. 25; Bauer & Baltes, *supra* n. 38.

surveys may offer a single checkbox option for respondents to indicate if they are undecided or if the question does not apply to them. However, respondents for whom the question applies but who are nonetheless undecided about how to rate the judge can be very different from respondents for whom the question does not apply. This distinction can be meaningful, and it is generally best to err on the side of caution, gathering more detailed information when possible. After data is collected, data analysts can always merge two separate response options, but they can never disentangle different groups who used a single, conflated response option.

Standardize the amount of effort required from respondents, regardless of their feedback. By requiring survey participants to elaborate on their responses only when they provide negative or extreme ratings, instrument developers may inadvertently discourage some respondents from providing such feedback. The extra work involved in elaborating upon responses may result in fewer of these types of performance ratings, even if the ratings are warranted. Other respondents may feel that their written explanations or commentary jeopardize their anonymity in the survey. Respondents may end up selecting more moderate ratings than they would otherwise offer. If additional comments are permitted in the survey, all respondents should have an equal opportunity to clarify their ratings in order to avoid deterring some from offering particular types of feedback.

Select respondents who have recent experience with the judge, and prompt them to use more reliable sources of information. The JPE program should survey respondents with recent and preferably regular experience working with the judge. Respondents are more likely to accurately recall recent experiences, as memory degrades over time. If eligible participants can be identified and sampled in a representative manner (see *Gather data from respondents who*

lotion, below), the result will be more reliable, meaningful feedback than if the respondents have infrequent or minimal opportunities to observe and interact with the judge undergoing evaluation.

A JPE survey instrument should also be structured in a way that encourages respondents to base their judgments on the most reliable sources of information. First, the survey should contain specific instructions for respondents not to base evaluations on reputation or personal or social contact, but instead on professional behavior directly observed in the workplace environment. The goal is to assess observed performance, not reputation or hearsay. Secondly, a single evaluation should survey a respondent about one individual judge rather than the array of all judges undergoing evaluation. Separate evaluations of each judge should allow for more accurate results than surveys that ask respondents to evaluate an array of judges simultaneously.⁴⁹

Conduct a careful internal test of the survey. The survey development team should carefully review the final draft of the survey to ensure that all grammatical and typographical errors are resolved, all instructions are clear and concise, all items and response options make logical sense, and the mechanics of the survey operate as intended.

Conduct a pilot study. Once a survey instrument has been carefully crafted, reviewed, and tested internally, instrument developers should

conduct a pilot study to ensure that the JPE survey meets statistical standards for instrument reliability and validity prior to an official statewide launch.⁵⁰ Moreover, a pilot study provides instrument developers with an opportunity to identify sources of confusion in the survey. Conducting cognitive interviews⁵¹ with a handful of eligible respondents may help uncover these problem areas and may also produce useful suggestions for improvement.

Gather data from respondents who adequately represent the target population. For the pilot and production survey studies, states should gather response data from a representative sample of participants.⁵² The identified sample should be large enough to permit the expected statistical analyses and should not be drawn from sources that systematically omit certain types of otherwise eligible respondents from participation. Generally, larger samples produce more precise estimates than smaller samples, but this precision does not increase linearly; the benefits afforded by increases in sample size eventually level off to achieve only marginal, if any, additional gains in accuracy. The point at which the costs outweigh the benefits depends on the size of the target population and the nature of the survey.

States should also implement strategies to improve JPE survey response rates from the identified sample. Dillman and colleagues⁵³ provide an excellent summary of evidence-based strategies for improving response rates to survey invitations, including

49. See, e.g., Biernat, Manis & Kobrynowicz, *Simultaneous Assimilation and Contrast Effects in Judgments of Self and Others*, 73 J. PERSONALITY & SOC. PSYCHOL. 254 (1997).

50. (e.g., Brody, 2008; for a general review of scientific guidance, see Litwin, 1995) E.g., Brody, *The Use Of Judicial Performance Evaluation To Enhance Judicial Accountability, Judicial Independence, And Public Trust*, *supra* n. 3; see Litwin, *HOW TO MEASURE SURVEY RELIABILITY AND VALIDITY* (Thousand Oaks, CA: Sage Publications, 1995), for a general review of scientific guidance.

51. Bickart & Felcher, *Expanding and Enhancing the Use of Verbal Protocols in Survey Research*, in Schwarz & Sudman, eds., *ANSWERING QUESTIONS: METHODOLOGY FOR DETERMINING COGNITIVE AND COMMUNICATIVE PROCESSES IN SURVEY RESEARCH* 115-142 (San Francisco, CA: Jossey-Bass Publishers, 1996); DeMaio & Rothgeb, *Cognitive*

Interviewing Techniques: In the Lab and in the Field, in Schwarz & Sudman, eds., *ANSWERING QUESTIONS: METHODOLOGY FOR DETERMINING COGNITIVE AND COMMUNICATIVE PROCESSES IN SURVEY RESEARCH* 177-195 (San Francisco, CA: Jossey-Bass Publishers, 1996); Forsyth & Lessler, *Cognitive Laboratory Methods: A Taxonomy*, in Beimer, Groves, Lysber, Mathiowetz & Sudman, eds., *MEASUREMENT ERRORS IN SURVEYS* 393-418 (New York, NY: Wiley, 1991); Tourangeau, *Cognitive Science and Survey Methods*, in Jabine, Straf, Tanur & Tourangeau, eds., *COGNITIVE ASPECTS OF SURVEY DESIGN: BUILDING A BRIDGE BETWEEN DISCIPLINES* 73-100 (Washington, D.C.: National Academy Press, 1984).

52. See Dillman et al., *supra* n. 11, for detailed guidance on crafting a representative sample and on minimizing coverage, sampling, and non-response error.

53. *Id.*

individual (rather than bulk) emails or contact letters with personalized salutations⁵⁴ and multiple follow-up reminders⁵⁵ in addition to the initial invitation to participate,⁵⁵ that vary depending on the selected method for administering the survey. For example, how mailed surveys are assembled in the envelope may influence non-response, whereas login strategies may play a role in both response rate and quality of responses to web-based surveys.⁵⁶ These and other implementation decisions can exacerbate or reduce problems with sample representativeness.

Moving Forward

Our primary goal is to raise awareness of the need for better judicial performance evaluation surveys. Although some state JPE programs employ surveys with greater methodological rigor than others, it is clear that the quality of existing state JPE surveys as a whole can be greatly

improved. We have identified an array of fundamental challenges faced by state JPE survey programs and provided general technical guidance for improvement, but some states may require more context-specific technical guidance to optimize the quality of their survey-based JPE programs. Additional steps may be advisable. Once survey methods conform to best practices, others may wish to focus more on implementation concerns and less on survey construction issues. In addition, more states should consider implementing non-survey approaches to judicial performance evaluation measurement; these approaches should receive the same level of empirical scrutiny as the survey-based method. Each individual measure used in JPE programs—from survey measures to individual caseload and workload statistics to the review of a sample of written opinions—is an incomplete picture of judicial performance. When surveys, interviews, more objective caseload data, and other information about a judge’s work performance are used as part of a multi-method evaluation program, the strengths of each individual measure can theoretically compensate for the shortcomings of others. Future research efforts should prioritize the development of efficient multi-method evaluation programs

for which quality surveys are but one component.

As states integrate scientific best practices into their JPE programs, they will gain more powerful, more persuasive, more informative, and more useful systems of judicial performance evaluation. For those concerned about the integrity of state JPE programs and the viability of these programs in the future, these are strong motivations to take corrective action now. ★

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54. Barron & Yechiam, *Private E-Mail Requests and the Diffusion of Responsibility*, 18 *COMPUTERS IN HUM. BEHAV.* 507 (2002); Joinson & Reips, *Personalized Salutation, Power of Sender, and Response Rates to Web-Based Surveys*, 23 *COMPUTERS IN HUM. BEHAV.* 1372 (2007).

55. Cook, Heath & Thompson, *A Meta-Analysis of Response Rates in Web- or Internet-Based Surveys*, 60 *EDUC. & PSYCHOL. MEASUREMENT* 821 (2000).

56. See Dillman et al., *supra* n. 11, at 263-266, 289-292.

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