

# Colorado State Commission On Judicial Performance

1998 Report



Presented to  
The Colorado General Assembly  
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## **I. Introduction and Overview**

This report describes the role of the State Commission on Judicial Performance during the evaluation process for the 1998 Judicial Retention election. This report contains a description of the program, the 1998 evaluation process and retention results.

In 1966, Colorado voters passed a constitutional amendment that abolished partisan elections for state judges and thereby established a new merit selection system for the nomination, appointment and retention of judges in the state court system. Colorado was among the first states to adopt such a system based on the non-partisan selection and retention of judges. The merit selection system removes judges from the unseemly business of raising money from lawyers and litigants. Judges are no longer perceived as linked to any interest group. The goal of the system is the promotion of a high quality independent judiciary with a great deal of integrity. Under this selection system, merit is considered by examining factors such as legal training and background, judicial temperament, intellectual ability, neutrality, fairness, and capability for upholding the law.

To advance the ideal of the best possible judiciary, 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 trial and appellate 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.

Each judicial district has a district commission on judicial performance that evaluates the performance of judges within the district. A State Commission evaluates the justices of the Colorado Supreme Court and the judges of the Colorado Court of Appeals. The State Commission promulgates rules for the review of judges and provides guidance for the twenty-two (22) local district commissions throughout the state. These commissions are composed of ten volunteer members, four attorneys and six non-attorneys, who are appointed and serve terms of four years. The Chief Justice and the Governor each appoint one attorney and two non-attorneys. The President of the Senate and the Speaker of the House each appoint one attorney and one non-attorney.

## **II. Commission Responsibilities and Powers**

The State Commission on Judicial Performance developed a process for the evaluation of district and county judges, justices of the Supreme Court, and judges of the Court of Appeals. The evaluation criteria were generally modeled from the American Bar Association's Special Committee on Judicial Performance Evaluation. According to Section 13-5.5-103(1)(a) 5 C.R.S. (1998), those criteria include, but are not limited to: integrity; knowledge and understanding of substantive, procedural and evidentiary law; communication skills; preparation, attentiveness, 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 service to the profession and the public.

The trial judges' evaluations result from survey questionnaires, a personal interview with the judge and statistical information concerning caseload and casetypes. The evaluation may also include oral interviews with other persons who have appeared before the judge on a regular basis, written documentation from interested parties, and public hearings. The evaluation of the justices of the Colorado Supreme Court and the judges of the Colorado Court of Appeals is the product of an interview with the State Commission on Judicial Performance and survey results from attorneys.

Evaluations for all judges include a narrative profile with a recommendation of "Retain," "Do not retain," or "No opinion". A "No opinion" recommendation shall be made only when the commission concludes that results are not sufficiently clear to make a firm recommendation and shall be accompanied by a detailed explanation.

### **III. Commission Process and Procedures**

The district commissions generally begin meeting monthly in January of the election year in order to prepare for the judicial performance process. Commission members receive biannual training on the statute, rules and procedures, the Colorado Code of Judicial Conduct, interviewing techniques and media relations.

Information used in the evaluation of Colorado's Judiciary may be drawn from the following sources:

(1) Questionnaires: Questionnaires are used to acquire information from individuals who have appeared before, or have professional contacts with the judge being evaluated. The following groups are surveyed in the evaluation of trial judges: attorneys (including district attorneys and public defenders), jurors, litigants, court personnel, probation officers, social services case workers, litigants, crime victims and law enforcement personnel. Different evaluation questionnaires were designed for the appellate judges since they have limited contact with the public. The individual questionnaires and any written comments are confidential.

Questionnaires are distributed to a sample of prospective respondents selected at random. The local judicial district administrators provide lists of respondents to the office of the State Court Administrator. The jury commissioner of each judicial district provides the Office of the State Court Administrator with lists of jurors who have served.

The completed questionnaires are mailed directly from the respondents to the Pueblo Data Processing Center. Once the raw data is compiled, it is forwarded to an independent statistician for analysis and production of a summary of the responses. The statistician employed to perform this evaluation for the State Commission has been Dr. Joyce Sterling, a Professor at the University of Denver College of Law. The statistical summaries are compiled and then mailed to the chairs of each local commission.

(2) **Caseload Evaluation:** A caseload evaluation including a statistical review of the number and nature of cases handled by each judge who is standing for retention is provided to the district commissions. This information is gathered by the district administrators and provided to the chair of each district commission.

(3) **Self-Evaluations:** Judges completed a self-evaluation about their own performance, which was provided directly to the local commissions.

(4) **Personal Interviews:** The commissions conduct interviews with each judge standing for retention. The interviews must be conducted within fifteen (15) days after the commission's initial review of information is complete. Neither the commission nor the judge may waive the initial interview process. The judge is provided with the same information that is provided to the district commission members concerning that judge no later than ten days prior to any scheduled interview.

Within ten (10) days following the interview with the judge, the chair of the district commission shall provide the judge with a complete written draft of the narrative profile. The narrative profile is required to conform to the format designed by the State Commission. As set forth in Rule 11 of the Rules Governing the Commissions on Judicial Performance, the narrative profile must include a statement of the groups of respondents surveyed and the percentages of responses received from each group who recommend that a justice or judge be retained, not retained or have no opinion on the retention of a justice or judge. The draft of the narrative profile shall not be released to any person other than the judge whom it concerns.

After reviewing the draft of the narrative profile, the justice or judge being evaluated may respond, in writing, within ten (10) days of receipt of the draft. If the judge requests it, he or she has the right to meet with the commission to address the contents of the narrative profile within ten (10) days of the request. The commission may, after such a meeting, revise its evaluation.

Final recommendations are produced by the local district commissions and published in the form of a narrative profile no later than forty-five (45) days prior to the retention election. Recommendations shall be either "Retain," "Do not retain," or "No opinion." A "No opinion" shall be given only when the commission concludes that the results of information gathered are not sufficiently clear to make a firm recommendation. Such a recommendation must be accompanied by a detailed explanation. Additionally, any commission issuing a "Do Not Retain" recommendation shall, at the justice or judge's request, include language in the narrative profile summarizing their position. The justice or judge may, upon review of the summary, elect to withdraw the summary from inclusion in the narrative profile. The chair of the commission shall provide the justice or judge with any redraft of the narrative profile, in writing, within ten (10) days following the additional interview, or, absent an additional interview, within ten (10) days of the receipt of the justice or judge's response.

#### IV. 1998 Evaluation Process

In 1998, 108 justices and judges were eligible to stand for retention. Because one justice and three judges announced their resignation or retirement from office, Judicial Performance Commissions evaluated two Supreme Court justices, six judges of the Court of Appeals, thirty District Court and sixty-six County Court judges standing for retention. The evaluation process included the mailing of approximately 22,000 survey questionnaires to obtain feedback and information about the judges' performance. The overall response rate to the survey process was 49%, compared to 34.8% in 1996. The response rate for attorneys, the largest response group, was 61%, compared to 45% in 1996. The increase may be attributed to improved procedures to encourage response including prepaid return postage. In addition, follow-up postcards were sent to respondents to encourage completion of the questionnaire.

The following chart reflects the response rates for all of the respondent groups in 1998:

Respondent Group	Number of Surveys Sent	Number of Surveys Returned	Rate of Response
Attorneys (Public and Private)	7259	4420	61%
Court Employees	2326	1385	60%
Jurors	3462	1275	37%
Law Enforcement	2814	1268	45%
Litigants	5060	516	10%
Social Service Case Workers	461	151	33%
Victims	838	85	10%
Unidentified		1800	
<b>TOTAL</b>	<b>22220</b>	<b>10900</b>	<b>49%</b>

For the first time, narrative profiles and recommendations were included in the Ballot Analysis Booklet (blue book) published by Legislative Council. Approximately 1.5 million blue books were mailed to voters throughout the state. Informal election day exit polling results indicate that an average of 58% of those polled responded that the information included in the blue books was helpful in making the decision whether to vote yes or no on a particular judge. Information on judicial retention was also available on the Internet at the Colorado Bar Association Homepage and the Colorado Courts Homepage. Narrative profiles and recommendations, and photographs of the justices and judges, if

provided, were available to provide information to voters to assist them in their selection. The Office of the State Court Administrator issued press releases and radio announcements to inform the public about the availability of the information in the blue books and on the Internet.

Of the 104 justices and judges standing for retention in the 1998 general election, the commissions recommended the retention of all 104 of those evaluated. Statewide, all justices and judges were retained in office by a margin of approximately 72%. This significantly increased over 1996, when justices and judges were retained in office by a margin of 64%, and a reversal of previous trend may be attributed to the judicial performance program.

## V. Retention History

Since 1988, of the 469 justices and judges evaluated by the judicial performance process, four were not retained by the voters.

<i>Year</i>	<i># of Judges on the Ballot</i>	<i># of Judges Commission Recommended To Retain</i>	<i># of Judges Commission Recommended To Not Retain</i>	<i># of Judges Commission Recommended No Opinion</i>	<i># of Judges Not Retained</i>
1990	107	103	1	3	0
1992	75	70	3	2	1
1994	87	84	3	0	2
1996	96	91	3	2	1
1998	104	104	0	0	0
<b>Total</b>	469	452	10	7	4

## VI. Conclusion

Accountability to the public for the work of judicial officers is essential to a well-run representative government. The self-improvement component for judicial officers can be as important to the process as the public accountability of the judiciary. By providing judges with an opportunity to reflect on their performance and improve their skills as judicial officers, the information learned through this evaluation and review process provides a valuable feedback mechanism to the judges and the public they serve.

Perfecting a judicial performance evaluation process, which provides the public and judicial officers with the essential information, given the limited resources, has been a

challenging undertaking. Improving the process to evaluate judicial accountability has been an ongoing operation, an operation that strives for fairness both to the public and the judicial officers whom it evaluates.

Since its inception, the judicial performance program has been housed in the Judicial Department, which has provided both personnel and administrative support, much of it unfunded. In FY 1998, this program received an appropriation of \$90,000. The State Commission and 22 district commissions used the \$90,000 appropriation to accomplish the following:

- Evaluate the 104 justices and judges standing for retention on the ballot.
- Distribute approximately 22,000 questionnaires to district attorneys, public defenders and private attorneys, jurors, litigants, probation officers, social services case workers, crime victims, court personnel and law enforcement officers for use in evaluating the judges and justices on the ballot.
- Produce narrative profiles and recommendations available in the legislative ballot analysis booklets (blue books) distributed to all voter households in Colorado.
- Make available on the Internet judicial retention information.

The State Commission remains committed to increasing the judiciary's responsiveness to the public and increasing the public's confidence in the judicial system. Therefore, the State Commission concludes that as a critical part of the non-partisan merit selection system, the judicial performance program is too important to discontinue. When the citizens of Colorado amended the constitution in 1966, they intended to keep judges independent so that they could make decisions based upon law, not on political pressure, or campaign promises or contributions. To that end, the State Commission strongly encourages the reenactment of statutory authority for the program as a resource to instill public trust and confidence in the independence of the judiciary in Colorado.