

Colorado State Commission on Judicial Performance

2000 Report



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the Colorado General Assembly
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I. INTRODUCTION AND OVERVIEW

This report describes the role of the State Commission on Judicial Performance (State Commission) and District Commissions on Judicial Performance (district commissions) during the evaluation process for the 2000 judicial retention election. This report contains a description of the program and the 2000 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 to finance political campaigns. Judges are no longer perceived as linked to any interest group. The goal of the system is to promote an independent judiciary of excellence and integrity. Under this selection system, merit is considered by examining factors such as legal training and background, judicial temperament and demeanor, courtroom management, intellectual ability, neutrality, fairness and capability for upholding the law.

To advance the ideal of the best possible judiciary, in 1988 the Colorado General Assembly created commissions on judicial performance 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 that district. The 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 22 district commissions throughout the state. These commissions are composed of ten volunteer members, four attorneys and six non-attorneys, who are appointed to 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 has 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), C.R.S., 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 legal profession and the public.

The trial judges' evaluations are based on survey questionnaires, a self-evaluation completed by the judge, 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 are the product of survey results from attorneys and court employees, a self-evaluation, an interview with the State Commission and review by the State Commission of opinions authored by the justice or judge.

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

III. EVALUATION PROCESS AND PROCEDURES

Survey Process

In 2000 for the first time, the State Commission privatized the survey portion of the evaluation process, contracting with an independent market research firm to conduct a survey regarding each justice and judge standing for retention. The outside firm provided an independent and statistically valid survey that improved the quality of information disseminated to the public, commission members and the judiciary. Contracting with an independent firm also eliminated any perceived appearance of a conflict and thus enhanced public confidence in the evaluation process.

The independent firm performed the following functions:

- Randomly selected 200 cases heard by the judge
- Verified addresses of prospective respondents (37,000 names and addresses extracted from randomly selected cases)
- Designed and produced questionnaires
- Mailed questionnaires to over 32,000 verified addresses
- Sent follow-up mailings (after receipt of the initial questionnaire, individuals who had not responded were contacted by mail up to three additional times if necessary)
- Performed data input from returned questionnaires
- Performed statistical analysis
- Drafted, produced and distributed report to commissions and judges, which included comparing the judge's performance against the performance of other judges evaluated in the district and statewide
- Advised State Commission on survey procedures

Evaluation response rates increased in 2000 from 1998 for every category of respondent except law enforcement and may be attributed to confidence in both the independence and expertise of the outside firm.

Respondent	Response Rate 1998	Response Rate 2000	% Increase or Decrease ()
Court/Probation personnel	60%	67.6%	7.6%
Crime Victims	10%	19.5%	9.5%
Jurors	37%	55.9%	18.9%
Law Enforcement personnel	45%	44.2%	(.8%)
Litigants	10%	22.2%	12.2%
Social Services caseworkers	33%	66.7%	33.7%
Attorneys	61%	61.8%	.8%

Evaluation Process

The State Commission meets monthly throughout the year. The district commissions generally begin meeting monthly in February of the election year in order to prepare for the judicial performance process. State and district commission members receive training on the statute, rules and procedures, the Colorado Code of Judicial Conduct, interviewing techniques, preparation of narrative profiles, the conduct of public hearings and public and media relations.

Sources of Information

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

- **Questionnaires.** Questionnaires are used to acquire information from individuals who have appeared before the judge being evaluated. The following groups are surveyed to evaluate trial judges: attorneys (including district attorneys and public defenders), jurors, litigants, court personnel, probation officers, social services caseworkers, crime victims and law enforcement personnel. Questionnaires for attorneys and non-attorneys were designed for the trial judges and a separate questionnaire was designed for the appellate judges. For the first time, a questionnaire was designed for the trial judges to evaluate the appellate judges. Responses to the questionnaires were confidential and anonymous.
- **Self-Evaluations.** Justices and judges complete a self-evaluation of their performance. The evaluation requires a self-assessment of a justice's or judge's strengths and weaknesses, goals for development and reputation in the legal community in the following areas: legal ability, integrity, communication skills, judicial temperament, administrative skills, settlement activities, judicial philosophy, community reputation, overall performance and community service.

- **Personal Interviews.** The commissions must conduct interviews with each justice and judge standing for retention. Neither the commission nor the justice or judge may waive the initial interview. No later than ten days prior to the scheduled interview, the commission provides the justice or judge with the same information that is provided to the commission concerning that justice or judge.
- **Public Hearings.** The commissions may hold public hearings to solicit public comment, and a written summary is provided to the justice or judge. Public hearings must be completed no later than 30 days prior to the scheduled interview with the justice or judge.
- **Oral Interviews.** The commissions may conduct interviews with other persons who have had professional contact with a justice or judge on a regular basis. The justice or judge is then provided a written summary of the interview. The name of the interviewee remains confidential. Oral interviews must be completed no later than 30 days prior to the scheduled interview with the justice or judge.
- **Documentation from Interested Parties.** Interested parties may write letters to commissions about a justice or judge who are given a copy of the letter. The letter must contain the author's name and address, but the commission may redact the name and address of the author on the copy provided to the judge.
- **Caseload Evaluation.** A caseload evaluation including a statistical review of the number and nature of cases handled by each judge is provided to the district commissions by the district administrator of the judicial district.

Drafting of Narrative Profiles

Within ten days following the interview with the justice or judge, the chair of the commission shall provide the justice or 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, and includes a statement regarding 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 is not released to any person other than the judge whom it concerns.

The justice or judge may respond, in writing, within ten 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 days of the request. The commission may, after the meeting, revise its evaluation.

Final recommendations by the state and district commissions are published in the form of a narrative profile no later than 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

the information gathered are not sufficiently clear to make a firm recommendation, and must be accompanied by a detailed explanation. Additionally, any commission issuing a "Do Not Retain" recommendation shall, at the justice's or judge's request, include language in the narrative profile written by the commission summarizing the justice's or judge's position. The justice or judge may, upon review of the summary, elect to withdraw the summary from the narrative profile.

Public Distribution of Information

Public awareness is critical to the program's success. Each commission designates one member to serve as Public Information Liaison to contact local newspapers, radio stations, speak to local public interest groups and respond to inquiries from the media. The State Commission provides separate training for the Public Information Liaisons.

For the second time, the narrative profiles and recommendations were included in the Ballot Analysis Booklet (blue book) published by Legislative Council. Approximately 1.6 million blue books were mailed to voters throughout the state.

The profiles, recommendations, and photographs of the justices and judges, if provided, were also available on the Internet at the Colorado Bar Association Homepage and the Colorado Courts Homepage with links made to the State of Colorado and General Assembly Homepages. From August 8 through election day, there were 10,950 hits to the judicial performance narrative profile website, a 390 percent increase over the 2,236 website hits in 1998.

One indicator of increased public awareness of the process is that over three million more votes were cast on judicial retention elections in 2000 than in 1998. In the 2000 election, 3,081,874 more votes for judges were cast than in 1998 for a 24 percent increase even though 18 fewer justices and judges stood for retention.

IV. 2000 EVALUATION RESULTS

At the beginning of the evaluation process, 91 justices and judges were eligible to stand for retention. Because five judges resigned, retired or were appointed to a higher court, judicial performance commissions evaluated 86 individuals: four Supreme Court justices, three Court of Appeals judges, 36 District Court and 43 County Court judges standing for retention.

Of the 86 justices and judges standing for retention in 2000, two judges received a "Do Not Retain" and one judge received a "No Opinion". Although voters retained all the justices and judges standing for retention, these judges received fewer retention votes than the statewide average of 72 percent. One of the two judges receiving a "Do Not Retain" recommendation was retained by 54 percent and the other by 60 percent. In both instances, there was continuing coverage in the newspapers and editorials, and letters to the editor, in support for and opposition to the judge. Therefore it can be argued that the public made informed decisions when voting.

V. 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 is 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 gained through this evaluation and review process provides a valuable feedback mechanism to the judges and the public they serve.

The State Commission is committed to improving the process of evaluating judicial performance and strives to achieve one that is fair to both the public and the judiciary. However, given limited resources, this has been a challenging undertaking. 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. Past evaluation processes therefore have been piecemeal with a potential for errors or perceived conflicts of interest or bias to influence evaluation outcomes.

In 2000 the program received an appropriation of \$71,613. Given the quality and reliability of past evaluations, the State Commission and Judicial Department decided to contract with an independent research firm to conduct the survey portion of evaluating the judges standing for retention in November 2000. The Department absorbed the cost through forced vacancy savings assessed to the courts. This has diverted much needed resources from the courts to the judicial performance program. The Department is requesting an increase in general funds in FY 2002 to provide funding to continue the improvements made to the process in 2000 and fund additional improvements planned for the program for the 2002 election cycle.

The State Commission believes the improvements made in the 2000 evaluation process enabled the state and district commissions to more closely fulfill their statutory responsibilities to advance the ideal of the best possible judiciary. The improvements created a fair process, established accountability and quality control and therefore increased credibility with the public, commissions and judges. The State Commission is committed to ensuring that future evaluations are conducted through an independent and statistically valid process.

As a critical part of the non-partisan merit selection system, the State Commission remains committed to increasing the judiciary's responsiveness to the public and increasing the public's confidence in the judicial system. When the citizens of Colorado amended the constitution in 1966, they intended to ensure that judges could make decisions based upon law, not on political pressure or campaign promises or contributions. The judicial performance program provides a method of ensuring the public accountability of the judiciary. To that end, the State Commission strongly encourages the support of the General Assembly for adequate resources for this program to instill public trust and confidence in an independent judiciary for Colorado.