COMMISSIONS ON JUDICIAL PERFORMANCE

REPORT ON THE 1994 JUDICIAL PERFORMANCE EVALUATION PROGRAM

PRESENTED TO
THE COLORADO GENERAL ASSEMBLY

January 31, 1995

Submitted by The
State Commission on
Judicial Performance

Judicial Performance Evaluation Program Report

This report was prepared pursuant to Section 13-5.5-109(2) 6A C.R.S. (1993 Supp.), which requires the State Commission on Judicial Performance to submit relevant information and make recommendations for improvement to the Judicial Performance Evaluation Program. This report contains a program description, a discussion of program issues and recommendations for improvements to the program. The third round of judicial performance evaluations was completed in 1994. Election results for judges who stood for retention during the 1994 general election are attached.

Program Description

In 1993, the Colorado General Assembly continued the judicial performance evaluation program. It established commissions on judicial performance and charged them with the responsibility of evaluating judges and justices who are subject to periodic retention elections. The judicial performance evaluation program has two primary goals:

(1) To provide Colorado citizens voting on the retention of judges and justices with fair, responsible and constructive information about the performance of individual judges and justices; and

(2) To provide judges and justices with useful information concerning their own performance for the purpose of self improvement.

The State Commission is responsible for evaluating Court of Appeals judges and justices of the Colorado Supreme Court. The State Commission also oversees 22 local judicial district commissions throughout Colorado. Each commission on judicial performance has 10 members. Two are appointed by the speaker of the House of Representatives, two are appointed by the president of the Senate and the governor and the chief justice of the Supreme Court make three appointments each. No more than four attorneys may be appointed to any commission. Each appointing authority selects one attorney. Active judges and justices, including those hearing cases as senior judges, may not serve on any commission. The State Commission is staffed by the Office of the State Court Administrator. District Administrators in each of the 22 judicial districts serve as staff to the local commissions.

The State Commission developed evaluation criteria which were generally modeled after the American Bar Association's Special Committee on Judicial Performance Evaluation. Information used for evaluation is drawn from three sources:

(1) **Questionnaires** are used to acquire information from persons who have contact with trial judges inside and outside the courtroom. Those surveyed include jurors, litigants, court personnel, probation officers, social services caseworkers, law enforcement officers and lawyers. Special evaluation questionnaires were designed for appellate judges since they have limited contact with the public.

(2) **Caseload evaluation** includes a statistical review of the number and nature of the cases being handled by a judge.

(3) **Individual interviews** are held with each judge or justice being evaluated. Prior to preparing a final narrative report for publication and distribution, each commission provides each judge being evaluated with a draft of its narrative profile and recommendation. The judge or justice has the opportunity to meet with the commission, or to respond in writing, following receipt of the draft. If the judge responds personally or in writing, the commission may amend its evaluation.

Final recommendations are made and published no later than 60 days before the election. Recommendations concerning judges are to "Retain," "Do not retain," or "No opinion." A "No opinion" recommendation can only be made when a commission concludes that the evaluation results are not sufficiently clear to make a firm recommendation. Such a recommendation must be accompanied by a detailed explanation.

In 1994, one Supreme Court justice, two Court of Appeals judges, thirty-two district court and fifty-two county court judges were evaluated. To date, a total of 269 judges and justices have been evaluated under the program. Commissions recommended retention for 257 of those evaluated, recommended non-retention of seven, and had no opinion as to the retention of five. In 1994, commissions recommended against retention of three judges. Two judges, one in Arapahoe District Court and one in Adams County Court, were not retained by voters.

Program Issues

Commission members are volunteers who spend enormous amounts of time gathering, evaluating and distributing information about the individual performances of Colorado's judicial officers. Their work is performed with minimal funding. This lack of adequate funding is believed to significantly contribute to the major criticism of the program. It is difficult with limited funding to cover the mailing costs in order to achieve the needed number of responses and to distribute the information to the public.

In 1994, the program was allocated $16,181. In addition $2,000 in cash donations were collected. In order for the program to run efficiently, the budget request for FY 1996 is $87,512. It is anticipated that $2,000 will be received from private donations. These funds are used to employ a professional statistician who performed the statistical analysis of the completed questionnaires which are used by commission members in their evaluations. The money is also used to cover the costs of printing, mailing of the questionnaires and distribution of the narrative profiles and final recommendations.

Individual commission members have expressed concern about the evaluation process being limited by lack of funding.

Each commission has expressed a great deal of concern over the problem of vacant commission positions that remain unfilled throughout the entire evaluation process.

Recommendations for Improvement

The 1994 program will again be evaluated by the Trial Court Advisory Committee which is made up of trial judges. A review of the judicial performance evaluation program, including observations about program deficiencies, needs to be considered now that the program has completed it third evaluation. Public accountability for the work of judicial officers is essential to good government. How that accountability should be measured is an evolving process. The process must be fair to both the public and those judicial officers under consideration. There is room for improvement to the program. It should not be abandoned without the opportunity to address concerns. The self improvement potential for judicial officers who have been evaluated and will be evaluated is as important to the process as judicial accountability. Judges who learn from these evaluations provide a direct benefit to themselves and to the public.

The State Commission will be working on improving the following areas:

- The questionnaires will be evaluated to determine if the current questions need to be modified or re-written.
- The selection process used for mailing out questionnaires which identifies attorneys that have appeared before the judges being evaluated.
- Improving the return rate of questionnaires from all respondent groups.
- Improving the training of local commission members.
- Increasing the public awareness of the Judicial Performance Commissions efforts.
- Work on the appointment process to get all commission vacancies filled.

These improvements to the program will address concerns about the evaluation process and improve the delivery of information to the public.

COMMISSIONS ON JUDICIAL PERFORMANCE
SUMMARY OF 1994 ELECTION RESULTS

	Court	Yes Votes	Percent Yes	No Votes	Percent No	Total Votes	Commissions on Judicial Performance Recommendations
SUPREME COURT							
William Erickson		600,035	67%	297,303	33%	897,338	Retain
COURT OF APPEALS							
Stephen Briggs		575,435	66%	302,890	34%	878,325	Retain
Karen Metzger		581,406	67%	288,537	33%	869,943	Retain
1ST DISTRICT							
Christoph Munch	District	81,447	64%	46,487	36%	127,934	Retain
Henry Nieto	District	82,320	64%	45,974	36%	128,294	Retain
Gaspar Perricone	District	82,671	64%	46,847	36%	129,518	Retain
Michael Villano	District	84,208	65%	45,353	35%	129,561	Retain
Lisle Woodford	District	83,009	65%	44,899	35%	127,908	Retain
Kim Goldberger	Jefferson	83,472	65%	44,978	35%	128,450	Retain
Frederic Rodgers	Gilpin	690	59%	481	41%	1,171	Retain
2ND DISTRICT							
John Coughlin	District	63,806	73%	23,735	27%	87,541	Retain
Robert Fullerton	District	67,061	75%	22,800	25%	89,861	Retain
Warren Martin	District	61,119	72%	23,972	28%	85,091	Retain
Frank Martinez	District	63,486	73%	24,006	27%	87,492	Retain
William Meyer	District	61,680	73%	22,965	27%	84,645	Retain
Ronald Mullins	District	61,167	73%	23,129	27%	84,296	Retain
Connie Peterson	District	63,475	74%	22,576	26%	86,051	Retain
Morris Hoffman	District	62,671	72%	24,062	28%	86,733	Retain
Dana Wakefield	Juvenile	65,841	74%	22,987	26%	88,828	Retain
Orrelle Weeks	Juvenile	61,943	72%	23,722	28%	85,665	Retain
Larry Bohning	County	61,319	73%	23,077	27%	84,396	Retain
Kathleen Bowers	County	63,560	74%	22,300	26%	85,860	Retain
James Breese	County	61,125	73%	22,951	27%	84,076	Retain
Brian Campbell	County	63,702	74%	22,706	26%	86,408	Retain
Arthur Fine	County	62,086	72%	23,818	28%	85,904	Retain
Lawrence Manzanares	County	63,994	73%	23,265	27%	87,259	Retain
Raymond Satter	County	61,802	73%	23,103	27%	84,905	Retain
3RD DISTRICT							
Claude Appel	District	3,832	63%	2,242	37%	6,074	Retain
George Newnam	Las Animas	3,148	72%	1,210	28%	4,358	Retain
Robert Haeger	Huerfano	1,383	67%	684	33%	2,067	Retain
4TH DISTRICT							
Peter Booth	District	63,464	60%	42,279	40%	105,743	Retain
Donald Campbell	District	70,040	65%	37,250	35%	107,290	Retain
Michael Heydt	District	64,291	62%	39,120	38%	103,411	Retain
Steven Pelican	District	66,718	64%	38,342	36%	105,060	Retain
Caroline Benham	El Paso	63,233	62%	37,940	38%	101,173	Retain
Geoffrey deWolfe	El Paso	53,584	53%	47,920	47%	101,504	Do Not Retain
James Patterson	El Paso	63,902	64%	36,716	36%	100,618	Retain
Stephen Sletta	El Paso	63,126	62%	38,005	38%	101,131	Retain
5TH DISTRICT							
Richard Hart	District	10,622	73%	3,994	27%	14,616	Retain
Robert Wheeler	Clear Creek	1,984	71%	802	29%	2,786	Retain
6TH DISTRICT							
No Retention Elections							
7TH DISTRICT							
Larry Vickers	Hinsdale	324	78%	93	22%	417	Retain
Paul David Smith	Ouray	868	73%	319	27%	1,187	Retain
Sharon Shuteran	San Miguel	1,374	83%	289	17%	1,663	Retain

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8TH DISTRICT							
James Hiatt	District	40,616	72%	15,856	28%	56,472	Retain
John Kochenburger	Larimer	39,854	71%	16,538	29%	56,392	Retain
9TH DISTRICT							
T. Peter Craven	District	11,385	75%	3,810	25%	15,195	Retain
Thomas Ossola	District	10,173	69%	4,504	31%	14,677	Retain
Victor Zerbi, Jr.	Garfield	6,580	70%	2,815	30%	9,395	Retain
Stephen Carter	Garfield	6,843	72%	2,678	28%	9,521	Retain
Fitzhugh Scott III	Pitkin	3,350	82%	757	18%	4,107	Retain
Laurie Noble	Rio Blanco	1,412	71%	575	29%	1,987	Retain
10TH DISTRICT							
David Cole	Pueblo	27,098	72%	10,657	28%	37,755	Retain
James Frasher, Jr.	Pueblo	26,469	71%	10,959	29%	37,428	Retain
11TH DISTRICT							
Julie Marshall	District	13,161	68%	6,232	32%	19,393	Retain
Harold Taylor	Custer	1,012	85%	180	15%	1,192	Retain
Stanley Mayhew	Park	2,097	65%	1,108	35%	3,205	Retain
12TH DISTRICT							
Gordon Bosa	Conejos	1,522	69%	683	31%	2,205	Retain
Michael Trujillo	Rio Grande	2,446	70%	1,039	30%	3,485	Retain
13TH DISTRICT							
Steven Shinn	District	15,004	65%	7,926	35%	22,930	Retain
Edgar Brandenburg	Morgan	3,880	60%	2,586	40%	6,466	Retain
David Colver	Phillips	1,539	87%	228	13%	1,767	Retain
Kevin Hoyer	Washington	1,786	85%	309	15%	2,095	Retain
Thomas Callahan	Yuma	2,740	73%	1,009	27%	3,749	Retain
14TH DISTRICT							
Cecil Williams	Grand	2,835	80%	706	20%	3,541	Retain
Mary James	Moffat	2,940	76%	938	24%	3,878	Retain
James Garrecht	Routt	4,401	82%	998	18%	5,399	Retain
15TH DISTRICT							
Paul Tallman	Cheyenne	609	59%	426	41%	1,035	Retain
Gary Davis	Kiowa	630	71%	263	29%	893	Retain
George McLachlan	Prowers	2,170	55%	1,779	45%	3,949	Retain
16TH DISTRICT							
M. Jon Kolomitz	District	6,397	76%	2,071	24%	8,468	Retain
Carl Ross	Crowley	1,029	83%	215	17%	1,244	Retain
Ralph Wadleigh	Otero	4,048	74%	1,404	26%	5,452	Retain
17TH DISTRICT							
Donald Marshall, Jr.	District	35,984	62%	21,793	38%	57,777	Retain
Philip Roan	District	35,724	62%	22,070	38%	57,794	Retain
John Vigil	District	36,361	63%	21,645	37%	58,006	Retain
Cindy Bruner	Adams	39,028	66%	19,773	34%	58,801	Retain
Emil Rinaldi	Adams	36,306	62%	21,817	38%	58,123	Retain
Sabino Romano	Adams	36,053	62%	21,988	38%	58,041	Retain
Robert Steinborn	Adams	26,414	46%	31,578	54%	57,992	Do Not Retain
18TH DISTRICT							
Michael Bieda	District	62,173	49%	64,043	51%	126,216	Do Not Retain
Ethan Feldman	Arapahoe	64,901	68%	30,371	32%	95,272	Retain
Dana Murray	Arapahoe	66,594	70%	27,970	30%	94,564	Retain
Geraldine Allan	Arapahoe	66,895	70%	29,050	30%	95,945	Retain
Truston Fisher	Lincoln	1,366	76%	423	24%	1,789	Retain

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19TH DISTRICT							
Willis Kulp	Weld	21,166	67%	10,658	33%	31,824	Retain
20TH DISTRICT							
No Retention Elections							
21ST DISTRICT							
Amanda Bailey	District	22,341	69%	10,033	31%	32,374	Retain
Arthur Smith, Jr.	Mesa	22,078	69%	10,018	31%	32,096	Retain
22ND DISTRICT							
No Retention Elections							