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**The Bench Speaks on
Judicial Performance Evaluation:**
A SURVEY OF COLORADO JUDGES

INSTITUTE FOR THE
ADVANCEMENT
OF THE AMERICAN
LEGAL SYSTEM

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EXECUTIVE SUMMARY

The Bench Speaks on Judicial Performance Evaluation: A Survey of Colorado Judges

The State of Colorado has had a judicial performance evaluation (JPE) program since 1990. The program has four goals: (1) providing voters in retention elections with information about the judges seeking retention;¹ (2) educating the public about qualities and levels of performance expected of judges; (3) recognizing and highlighting the individual and collective strengths of judges; and (4) providing information to sitting judges to help them improve their performance on the bench. Although the Colorado program is considered to be one of the best in country toward meeting its stated goals, in the nearly two decades the program has been in place, there has never been a formal effort to measure the program's effectiveness.

In March 2008, the Institute for the Advancement of the American Legal System at the University of Denver (IAALS) and Professor David Brody of Washington State University Spokane began a study to measure the overall effectiveness of the Colorado program. The first stage of the study was an electronic survey sent to all sitting appellate, district, and county court judges in Colorado, designed to gather the judges' perceptions of the state's JPE program. In all 17 of 26 appellate judges (65%) and 172 of 269 trial judges (64%) responded to the survey. Many of the judges also responded to individual questions with separate written comments.

The most important findings from the survey were as follows:

1. **Most judges indicated that the JPE program has been beneficial to their professional development.** Over 85% of trial judges, and 50% of appellate judges, said that JPE has been either "significantly beneficial" or "somewhat beneficial" to their professional development. As one judge put it, "Judges receive very little feedback. I thought the evaluation provided very valuable information, including the perception of others and areas I could work on." Only 21% of appellate judges and 6% of trial judges indicated that JPE was detrimental to their professional development.

2. **Most judges feel that JPE does not decrease judicial independence.** About 41% of appellate judges and 44% of trial judges said that the JPE process has had no effect on their judicial independence. Another 24% of appellate judges and 29% of trial judges said that JPE *increases* their judicial independence.

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¹ All appellate, district, and county judges in Colorado are chosen through commission-based appointment. The newly appointed judge faces the voters in an uncontested retention election at the end of a two-year provisional term, and then at the end of each subsequent full term.

3. Judges support the collection of a wide range of data to evaluate their job performance. Nearly 72% of appellate judges and 73% of trial judges agreed that case management data should be considered in the JPE program, although they cautioned that such data should be reviewed and interpreted carefully. In addition, over 88% of trial judges stated that courtroom observation was a “somewhat useful” or “very useful” part of the JPE process. The supplemental comments emphasized the importance in the judges’ minds of collecting a wide range of data in a sound manner.

4. Judges are concerned that some evaluations may be based on unreliable survey data. Both appellate and trial judges expressed deep concern that surveys distributed to attorneys, jurors and litigants frequently do not yield sufficient statistical data for an evaluation commission to make an informed recommendation on the judge’s retention. In particular, judges noted that low survey response rates in rural areas give undue influence to the few respondents who do complete the survey, and commented that district commissions need to develop better strategies for using (or rejecting) limited survey data. Overall, 64% of appellate judges and 53% of trial judges deemed the number of survey respondents to be a “major problem,” and only 14% of appellate judges and 14% of trial judges stated that survey response rates were “not a problem.”

5. Judges suggest that the public needs to be made more aware of evaluation results and how to find those results. Most judges responding to the survey had no difficulty with the current methods of disseminating evaluation information, which includes a narrative profile of each judge facing retention in the voter Blue Book, and information on each judge’s evaluation posted on the state commission’s website. However, judges also expressed concern that these methods leave some portion of the public unaware of the evaluations or how to find them.

Summary of findings

Collectively, the survey responses suggest that Colorado judges are quite comfortable with the concept of judicial performance evaluation and measurement of job performance based on process-oriented criteria. To the extent judges expressed concerns about the system, those concerns lay in the details of survey methodology and data collection. Put another way, Colorado judges are supportive of judicial performance evaluation so long as it is conducted fairly and reasonably.