

Recommendations for Review of Written Opinions

Opinion review is a component of an appellate JPE program that is best suited to being administered by an official performance evaluation commission. These recommendations apply to such an opinion review process.

Opinion review teams

The opinion review should be undertaken by two- or three-person teams (depending on the size of the evaluation commission and the number of judges to be evaluated), in order to ensure a manageable workload for commission members and allow a more careful and tailored review. Each team should be composed of one attorney and one non-attorney, with an additional attorney or non-attorney as needed for a three-person team. Where the membership of the evaluation commission includes former or retired judges, these individuals should not be assigned to an evaluation team, but rather should be available to all teams to consult on matters that would benefit from a judicial perspective.

Selection of opinions

Each justice/judge subject to evaluation should select five opinions for the evaluation team to review. One of these opinions should be a dissenting or concurring opinion, and for intermediate appellate judges, one should be an unpublished opinion. The opinions should be chosen from throughout the judge's entire term (or term since the last evaluation) and should represent a variety of case types and complexity of issues.

Criteria for review

The criteria used in reviewing the written opinions must focus on the quality and clarity of the opinion rather than the particular outcome reached in the case. These criteria should include legal analysis and reasoning, fairness, and clarity. Criteria should be discussed with evaluators prior to the evaluation cycle, to ensure consistency across the evaluation teams in their understanding and application of the criteria. Opinion review templates for attorney and non-attorney reviewers are provided here.

Review process

The opinion review should take place in two stages. In the first stage, each member of the evaluation team should read and assess the submitted opinions individually. In the second stage, the team should meet and discuss the individual assessments of each opinion—and the justice's/judge's opinions as a whole—and prepare a report to the commission summarizing their assessment. The report should highlight particular strengths and/or weaknesses, as applicable, and make specific reference to any areas of disagreement between the attorney and non-attorney evaluators. Each evaluation team should then share its assessment with the full commission and answer any questions that commission members may have.

Opinion review training

Staff for the performance evaluation commission should develop and conduct a training program for commission members on direct opinion review. Training should emphasize the broad purposes of appellate judicial performance evaluation, focusing on the importance of process-based and objective assessments as opposed to assessments of the outcomes of specific cases. During the training, commission members should review the criteria referenced in the opinion review templates, discussing what each criterion means and does not mean. Special consideration should be given to each type of evaluator (non-attorney, attorney, retired judge, etc.). For non-attorney evaluators, the commission should provide an overview of the role and functions of appellate courts and the opinion writing process. The commission might also consider providing a glossary of legal terms that are used in the opinion review templates, as well as terms the non-attorney evaluators may commonly encounter in appellate opinions. Attorney evaluators (including former or retired judges) should be reminded to focus on the criteria employed in the evaluation process, rather than the substantive issues raised by the opinion or the outcome.