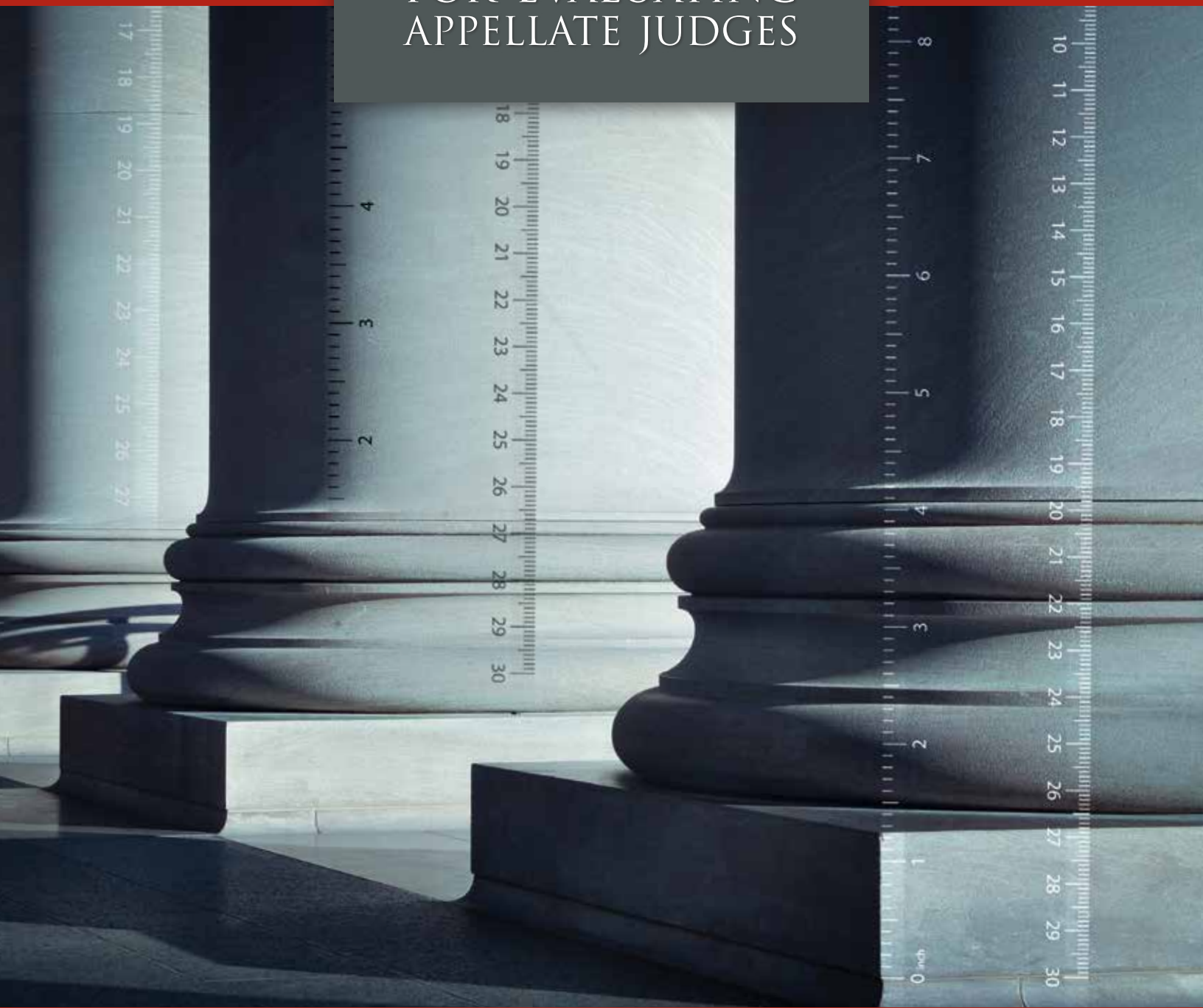


RECOMMENDED TOOLS FOR EVALUATING APPELLATE JUDGES



RECOMMENDED
TOOLS
FOR EVALUATING
APPELLATE JUDGES



QUALITY JUDGES
INITIATIVE

October 2013

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INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM



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IAALS, the Institute for the Advancement of the American Legal System, is a national independent research center at the University of Denver dedicated to continuous improvement of the process and culture of the civil justice system. By leveraging a unique blend of empirical and legal research, innovative solutions, broad-based collaboration, communications, and ongoing measurement in strategically selected, high-impact areas, IAALS is empowering others with the knowledge, models, and will to advance a more accessible, efficient, and accountable civil justice system.

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The *Quality Judges Initiative* is dedicated to advancing empirically informed models for choosing, evaluating, and retaining judges that preserve impartiality and accountability. Through comprehensive analysis of existing practices and the collaborative development of recommended models, *Quality Judges Initiative* empowers, encourages, and enables continuous improvement in processes for choosing, evaluating, and retaining judges.

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RECOMMENDED TOOLS FOR EVALUATING APPELLATE JUDGES

INTRODUCTION

Judicial performance evaluation (JPE) is a tool for assessing judges' job performance using objective benchmarks that focus on process rather than outcomes. In several states with retention elections, JPE programs provide broad-based, apolitical information to voters about judges standing for retention. But, JPE is not confined to states with judicial retention elections; it serves a similar purpose in some states in which the legislature or a commission makes the retention decision. And in a handful of states where judges are chosen in contested elections or have life tenure, JPE programs are used to encourage and inform judicial self-improvement.

In addition to these primary purposes that JPE serves, such programs have the additional benefit of enhancing public trust and confidence in the judiciary by demonstrating that individual judges and the judiciary as a whole are accountable for their performance. Preserving public trust and confidence is as important for appellate courts as for trial courts. Appellate courts decide cases involving some of the most controversial legal, political, and social issues of the day and establish precedents to be applied in future cases. But having “no influence over either the sword or the purse,” appellate courts cannot enforce their own decisions. Instead, the extent to which the public trusts appellate court rulings depends upon the legitimacy of the courts themselves. A well-structured, objective, and transparent performance evaluation program can enhance judicial legitimacy.

These considerations have never been more relevant than in today's political climate, with attacks on judges motivated by unpopular rulings becoming more and more commonplace. State supreme court justices, in particular, have increasingly come under fire for decisions in a single case or on a specific issue, whether it is same-sex marriage, abortion rights, tort reform, capital punishment, or taxation. These attacks tend to dominate the discussion during the election cycle. Some special interest groups offer their own judicial evaluation processes—processes based solely on how the judge has ruled in cases relating to each group's interests. It may be that voters will make their choice on the basis of a single case, but it also may be that voters want information about the judge's performance across all of the cases she has decided. In the context of an election, whether contested or retention, it is essential that voters have an alternative or additional source of information about the job performance of judges on the ballot that does not turn on political or outcome considerations. We offer recommended components of such an evaluation process here.

To a large extent, JPE programs for appellate judges have been patterned after programs for trial judges. But there are fundamental differences in the work of trial judges and appellate judges—differences that must be taken into account in designing programs for evaluating their performance. The most obvious difference is that appellate judges engage in collegial decision making, deciding

cases in three-judge panels or as an entire court, while in a trial court the judge is the sole “decider.” Appellate judges also have far less interaction with the parties in their cases than do trial judges, only coming face to face with attorneys during an oral argument (if held) that is likely to last no longer than an hour. Perhaps the most significant difference between appellate and trial judges is their work product. While trial judges hold conferences and make rulings throughout the course of a trial, an appellate judge’s primary output is the written opinion, and, even then, individual judges do not write an opinion in every case. All of these factors affect the “who, what, and how” of a judicial performance evaluation program.

Recognizing that performance evaluation programs can and should be more closely tailored to the role and responsibilities of appellate judges, IAALS undertook a two-year effort to develop recommended tools for evaluating appellate judges. Without any preconceptions about what these tools would entail, we revisited the key questions that shape a JPE process—for what criteria appellate judges should be held accountable, who is in the best position to assess appellate judges’ job performance, and how the evaluation process should be structured.

The tools we offer here include guidelines and templates for a written opinion review process, surveys for attorneys, trial judges, and court staff, and a self-evaluation survey. As we discuss in more detail in the **Implementation** section, these tools are designed to be flexible and adaptable. They may be used individually or as part of a comprehensive evaluation program. They also may be used in programs that are designed to provide information to voters and others responsible for reselecting judges, programs that serve to enhance public trust in the judiciary, or programs that simply encourage judicial self-improvement. Finally, these tools may be utilized by an official performance evaluation commission, a bar association, or a citizens group.

DEVELOPING OUR RECOMMENDATIONS

Our effort to develop recommended tools for evaluating the performance of appellate judges began in August 2011 with our *National Conference on Evaluating Appellate Judges: Preserving Integrity, Maintaining Accountability*. We brought together more than 70 appellate judges, attorneys, scholars, and JPE program coordinators, with 18 states represented. The conference featured panels that discussed the role and responsibilities of appellate judges, appropriate indicators and tools for evaluating their performance, challenges to establishing and implementing an appellate JPE program, strategies for improving existing programs, and using appellate JPE to defuse political and special interest attacks in judicial elections.

To provide a foundation for these discussions, we conducted a pre-conference survey of appellate judges in nine states who are subject to JPE. Of the 64 judges who responded, 71 percent described JPE results as having “some influence” on voters’ decisions in retention elections, with 17 percent

saying they have “a lot of influence.” The appellate judges we surveyed were somewhat less positive about the impact of JPE on their professional development, with 53 percent finding it “somewhat beneficial” and 10 percent viewing it as “significantly beneficial,” while one in three respondents believed it had no effect on their professional development. A total of 62 percent of respondents reported being “very satisfied” (29 percent) or “somewhat satisfied” (33 percent) with the JPE process in their state, while 14 percent were “somewhat” or “very” dissatisfied. So while appellate JPE programs appear to succeed in providing apolitical, useful information to voters and are somewhat effective in promoting professional development, there is clearly an opportunity for improvement.

When we asked appellate judges subject to evaluation about the specific aspects of their state’s JPE process that could be improved upon, respondents overwhelmingly indicated that the evaluation process should incorporate review of their written opinions. Conference panelists and attendees engaged in a broad discussion of the criteria to be used in an opinion evaluation and the types of individuals best suited to conducting the review, and we formed a post-conference task force to consider these questions in greater detail and depth. The task force included two appellate judges, two representatives of state JPE commissions, and a law professor. *An Opinion on Opinions: Report of the IAALS Task Force on State Appellate Court Opinion Review* was the outgrowth of that effort and offers recommendations and guidelines regarding how to identify the opinions to be reviewed, who should perform the review, and the criteria on which the review should be based.

To assist us in ensuring that our recommended tools for evaluating appellate judges were inclusive, fair, and workable, we contracted with the Butler Institute for Families at the University of Denver to conduct focus groups of Colorado appellate judges and appellate attorneys in September and October 2012. These focus groups considered 1) the responsibilities of appellate judges that should be included in a performance evaluation process and 2) the characteristics of a high-quality appellate opinion. The feedback we received during these focus group discussions was invaluable in helping us define the parameters of our recommendations and further refine our guidelines for opinion review. The *Focus Group Report* provides more information about the process and outcomes of the focus groups.

The final step in developing our recommendations for evaluating appellate judges was assuring that one of our primary evaluative tools—the survey—was comprehensive and clear. Based on input from our focus groups, we developed surveys to be completed by three types of respondents who come into professional contact with appellate judges: appellate attorneys, trial judges, and court staff. Working again with the Butler Institute, we conducted cognitive interviews with representatives of each respondent group to “field test” our surveys. We also conducted cognitive interviews with appellate judges themselves regarding a self-evaluation tool.

OUR RECOMMENDATIONS

With the benefit of this outreach to stakeholders and input from experts, we developed recommended components of a comprehensive program for evaluating the performance of appellate judges, including guidelines for implementing an opinion review process, surveys for attorneys, trial judges, and court staff, and a self-evaluation tool.

OPINION REVIEW

Recognizing that an appellate judge's primary output is the written opinion, we offer a recommended process for reviewing these opinions, including guidelines regarding the makeup of the evaluation teams that should carry out the review, the identification of opinions for review, the review criteria and process, and training for opinion reviewers. We also offer opinion review templates for attorney and non-attorney evaluators to be used in conjunction with these recommendations.

SURVEYS

We offer model surveys for three types of respondents: attorneys, trial judges, and court staff. For attorney respondents, the survey poses questions for three categories of attorneys that are based on the nature of their professional contact with the judge: 1) attorneys who use appellate decisions extensively in their legal practice, 2) attorneys who have appeared before the evaluated judge in oral arguments, and 3) attorneys in whose case the judge has written an opinion. In all three instances, attorneys have an important perspective on the judge's performance, but it may be appropriate to give differing weight to attorney assessments based on the type and extent of their professional interaction.

The other two types of respondents are trial judges whose decisions are reviewed by appellate judges and who apply appellate decisions in their own rulings, and court staff, including staff attorneys, law clerks, and administrative assistants.

Surveys for each respondent type include questions relating to such criteria as legal ability, impartiality and fairness, temperament and demeanor, communication skills, and administrative performance.

In order to give evaluated judges a sense of the extent to which the attorneys who respond to the survey are representative of the attorneys with whom they have had professional contact, the attorney surveys begin with demographic questions about the nature of the attorney's practice. Responses to these questions should be reported in the aggregate and not associated with responses to questions regarding the judge's performance.

The model surveys include an optional section for structured free recall. This exercise is designed to address the potential for implicit biases on the part of survey respondents to affect their assessments of individual performance. Research has shown that people make better and more accurate performance evaluations when they take a few minutes to think about specific aspects of the individual's performance rather than simply relying on their general impressions of the individual.

SELF-EVALUATION

Recognizing that self-improvement is one of the primary purposes of JPE, we also offer a self-evaluation survey. The self-evaluation survey consists of questions similar, if not identical, in content and form to the questions asked of attorneys, trial judges, and court staff. This allows judges to gauge how their own assessments of their performance compare to those of others, with a common framework for such comparison. The self-evaluation tool also includes open-ended questions that require the judge to provide a more detailed explanation of how she assesses various aspects of her own performance. These open-ended questions are well suited for inclusion in a commission interview of the judge, if conducted as part of the evaluation process.

IMPLEMENTATION

In developing recommended tools for evaluating the performance of appellate judges, one of our priorities has been to develop tools that are flexible and adaptable to a variety of evaluation programs—in terms of the purpose(s) for conducting the evaluation, the identity of the evaluating entity, and the available budget.

A performance evaluation commission administers most of the appellate JPE programs currently in place as part of an official program, and more information about official programs—including the selection and composition of such commissions—is provided later in these materials. However, state bar associations are also well positioned to implement the attorney survey component of such a process. Several bar associations in states with retention elections already conduct advisory polls of their members to provide voter information, but it is also appropriate for bar associations to conduct such polls regarding incumbent judges standing for reelection. Our attorney survey is well suited in form and content to being used for these polls. At the same time, appellate judges should be particularly supportive of the use of surveys that have been developed with input from judges themselves and in accordance with social science principles of survey design.

A comprehensive judicial performance evaluation program can require a significant budget allocation—including survey dissemination and processing costs, commission expenses, staff salaries, and publicity costs—but there are steps that may be taken to minimize these costs. Surveys for all respondent types—attorneys, trial judges, and court staff—may be conducted electronically, saving printing, mailing, and follow-up costs. Rather than hiring a survey consultant, a performance evaluation commission, state bar association, or other evaluating entity may utilize online survey software that will distribute the survey and tabulate the results. Staff will simply need to provide the email addresses of potential respondents, including state bar association members, state trial judges, and court staff to judges subject to evaluation—all of which are readily available. Based on court records, staff may also target those attorneys who have recently had cases with evaluated judges.

CONCLUSION

This report describes tools that have been developed with the input and expertise of social scientists, judges, and attorneys to be used in evaluating the job performance of appellate judges. How and by whom the tools are used and in what combinations will be a function of the needs and resources of individual jurisdictions.

One important message that all of these tools embody is that appellate judges are different from trial judges—their decision making process, their interaction with parties to their cases, and, in particular, their work product is not the same as that of trial judges. Their primary work product is the written opinion, which is read and used not just by the parties or the trial judge in the case but also by the bar at large. How the opinion is written and how it defines and resolves the issues is critical in the development of the law. These are aspects of the opinion that can—and should—be evaluated, and these tools will aid in that effort.

Perhaps of greatest importance, these tools convey the message that the quality of a judge's performance does not turn on the outcome in a particular case or even a group of cases. Rather, we as lawyers, court users, and voters must hold judges accountable for providing a *process* that is fair, impartial, and transparent. Measuring how well judges meet this obligation is important, and these tools can be instrumental in gauging the effectiveness of our judges and keeping our courts strong.

OVERVIEW OF EXISTING APPELLATE JPE PROGRAMS

ALASKA

Commission. The Alaska Judicial Council (AJC) administers the JPE program. The AJC consists of seven members—three attorneys appointed by the Alaska Bar Association, three non-attorneys appointed by the Governor with legislative confirmation, and the Chief Justice, who serves as the chair. The six non-judicial members serve staggered, six-year terms. Members must come from different parts of the state and are appointed without regard to political affiliation.

Criteria. The AJC evaluates judges based on five criteria, including legal ability, impartiality, integrity, temperament, and diligence.

Data collection. The AJC surveys active and inactive members of the Alaska Bar Association and court employees. The AJC also interviews evaluated judges, examines recusal and peremptory challenge records, and sends questionnaires to counsel who participated in significant cases identified by the judge during the review period. In addition, the AJC holds public hearings on judges standing for retention to solicit citizen input.

Dissemination. A summary of evaluation results and a retention recommendation for each judge are included in the Lieutenant Governor’s Official Election Pamphlet. Detailed evaluation results are posted on the AJC’s website.

Website. <http://www.ajc.state.ak.us/retention/retent.html>

ARIZONA

Commission. The Commission on Judicial Performance Review consists of 30 members, including 18 public members, six attorneys, and six judges. All members are appointed by the Supreme Court and serve staggered, four-year terms. The Chief Justice appoints the commission chair.

Criteria. Judges are evaluated in five categories, including legal ability, integrity, communication skills, judicial temperament, and administrative performance.

Data collection. Surveys are distributed to attorneys and other judges. The commission holds public hearings on judges in election years and accepts written comments from the public at any time. Judges also complete a self-evaluation form.

Dissemination. The commission votes in a public meeting on whether each judge “Meets” or “Does Not Meet” judicial performance standards. This determination, along with the evaluation results, is included in the Secretary of State’s Voter Information Pamphlet.

Website. <http://www.azjudges.info/>

COLORADO

Commission. The State Commission on Judicial Performance has 10 members, six of whom must be non-attorneys and four of whom must be attorneys. The Governor and the Chief Justice each appoint one attorney member and two non-attorney members, and the Speaker of the House and President of the Senate each appoint one attorney member and one non-attorney member. Commission members serve staggered, four-year terms.

Criteria. Judges are evaluated on six criteria, including integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and the public.

Data collection. Surveys are sent to attorneys, court staff, other appellate judges, and district judges. The commission also considers judges' self-evaluations, courtroom observation by commission members, case management data, interviews with judges, and reviews of decisions/opinions.

Dissemination. Mid-term evaluations are for self-improvement. For end-of-term evaluations, the commission provides survey results and a narrative for each judge, as well as a recommendation as to whether the judge should be retained. The narratives, which offer a summary of survey results, are included in a voter guide (the Colorado Blue Book). Narratives, survey results without the confidential comments, and interim survey results without the confidential comments are also posted on the Office of Judicial Performance Evaluation's website.

Website. <http://www.coloradojudicialperformance.gov/>

DISTRICT OF COLUMBIA

Commission. The Commission on Judicial Disabilities and Tenure consists of five members and three alternate members appointed by the President, the Commissioner of the District of Columbia (Mayor), and the Chief Judge of the U.S. District Court for the District of Columbia. Members serve staggered, six-year terms.

Criteria. Candidates for reappointment are evaluated on their work product, legal scholarship, dedication, efficiency, and demeanor. Retired judges seeking senior status are evaluated on their physical and mental fitness and ability to perform judicial duties.

Data collection. Each candidate for reappointment or senior status submits a written statement reviewing the significant aspects of his or her judicial activities that may be helpful to the Commission in its evaluation, along with illustrative materials. The Commission may also accept and seek pertinent information from the bar, other judges, court staff, and members of the lay public, and convene a conference with the candidate.

Dissemination. Evaluation reports for reappointment candidates are submitted to the President, the candidate, and the public.

Website. <http://cjdt.dc.gov/>

FLORIDA

Scope. The Supreme Court and the Florida Bar offer a voluntary, confidential judicial feedback program for appellate judges.

Commission. The Florida Bar Judicial Administration and Evaluation Committee works with the Supreme Court to offer a voluntary, confidential judicial feedback program.

Criteria. Attorneys are asked about judges' questioning, professional conduct, knowledge of the case, and opinions.

Data collection. Attorneys may complete and mail feedback forms to the Florida Bar or complete feedback forms online.

Dissemination. Feedback is only provided to the judge to whom the feedback pertains.

Website.

<http://www.floridabar.org/DIVEXE/BD/CMStanding.nsf/2021e58ed0c7505585256e45004b060d/ac08d41e165ed93285256eda0067b316!OpenDocument>

HAWAII

Commission. The Judicial Performance Committee oversees the evaluation process and consists of thirteen members, all appointed by the Chief Justice. The Judicial Evaluation Review Panel consists of nine members, including former judges, members of the public knowledgeable in the law, and retired practitioners who consult with evaluated judges about their evaluations.

Criteria. Attorneys rate appellate judges on aspects of their fairness/impartiality, written opinions, and oral argument.

Data collection. Surveys are sent to attorneys who have appeared before judges on substantive matters. The number of surveys for each judge does not exceed 150.

Dissemination. Individual evaluation results are confidential and are provided only to the evaluated judge, the Chief Justice, and the Judicial Evaluation Review Panel. A summary evaluation report for each court is made public.

Website.

http://www.courts.state.hi.us/courts/performance_review/judicial_performance_review.html

MISSOURI

Commission. The Appellate Judicial Performance Evaluation Committee consists of six attorneys and six non-attorneys who serve staggered, six-year terms. Members are appointed by the Missouri Bar, based on nominations from regional bar associations, members of the Board of Governors, and non-attorney citizens.

Criteria. Judges are evaluated according to the following performance standards: deciding cases based on established facts and applicable law, explaining decisions clearly, exhibiting proper courtroom demeanor, and deciding cases promptly.

Data collection. Evaluations are based on attorney surveys, the committee's review of five written opinions, public comment, personal observation of judges in the courtroom and/or interviews with the judge, and a peer review survey completed by other judges on the same court.

Dissemination. Evaluation results are posted on the Missouri Bar's website.

Website. <http://www.showmecourts.org/>

NEW HAMPSHIRE

Commission. There is no commission. Evaluations are conducted through the Administrative Office of the Courts (AOC).

Criteria. Justices' performance is evaluated on a scale ranging from excellent to deficient.

Data collection. The AOC surveys attorneys, law professors, self-represented litigants, and judges/marital masters.

Dissemination. The AOC only makes public summary results for the court.

Website. <http://www.courts.state.nh.us/sitewidelinks/evaluations.htm>

NEW MEXICO

Commission. The Judicial Performance Evaluation Commission (JPEC) consists of seven attorneys and eight non-attorneys, who are appointed by the Supreme Court from nominations by the Governor, Chief Justice, Speaker of the House, Senate President Pro Tempore, House Minority Leader, Senate Minority Leader, and President of the State Bar.

Criteria. Judges are evaluated in four areas, including legal ability, fairness, communication skills, and preparation, attentiveness, temperament, and control over proceedings.

Data collection. The JPEC surveys attorneys with whom judges have had direct interaction, current and former law clerks, court staff, trial court judges whose decisions have been appealed, and fellow judges. The JPEC also conducts a review of appellate opinions.

Dissemination. For judges standing for retention, a summary of each judge's overall performance and a retention recommendation are posted on the JPEC website and published in a "Report to Voters," which is released to the media and voters. Midterm evaluations are for self-improvement only and are confidential.

Website. <http://www.nmjpec.org/>

TENNESSEE

Commission. The Judicial Performance Evaluation Commission (JPEC) consists of nine members, including two each appointed by the Speaker of the House and the Speaker of the Senate, and five appointed by the Judicial Council. Gender and racial balance is required by law.

Criteria. Judges are evaluated based on six criteria, including integrity, knowledge and understanding of the law, ability to communicate, preparation and attentiveness, service to the profession, and effectiveness in working with other judges and court personnel.

Data collection. The JPEC surveys attorneys, court personnel, trial court judges, and other appellate judges. The commission also considers written opinions, a self-evaluation, caseload and workload statistics, and any public input that may have been received, and it conducts a formal interview with each judge.

Dissemination. The JPEC publishes a Tennessee Appellate Judges Evaluation Report that for each judge includes a recommendation as to whether the judge should be retained or replaced, a short biography, a descriptive summary of survey results, and the commission's impressions from the interview, along with a response by the judge.

Website.

<http://www.tncourts.gov/boards-commissions/boards-commissions/judicial-performance-evaluation-commission>

UTAH

Commission. The Judicial Performance Evaluation Commission (JPEC) consists of thirteen members, no more than seven of whom may be attorneys. The President of the Senate and the Speaker of the House of Representatives each appoint two members; the Governor and the Supreme Court each appoint four members; and the Executive Director of the Commission on Criminal and Juvenile Justice is an ex officio member. No more than half of the members appointed by each branch of government may be of the same political party. Members serve staggered, four-year terms.

Criteria. Survey respondents evaluate judges in three areas: legal ability, integrity and judicial temperament, and administrative ability.

Data collection. The JPEC surveys attorneys and court staff. The commission also ensures compliance with disciplinary standards, case-under-advisement time standards, and education standards, and encourages public comment.

Dissemination. For each judge standing for retention, the JPEC posts on its website a final evaluation report, including a retention recommendation supported by a commission vote. Interim evaluations are shared with the evaluated judge and with court administrators for judicial education and self-improvement purposes.

Website. <http://www.judges.utah.gov/>

The image shows the cover of a book titled "EVALUATION TOOLS". The title is centered in a dark, serif font. The background is a photograph of classical architectural columns, with a central white vertical band. The left side shows a dark grey column, and the right side shows a light blue-grey column. The overall aesthetic is professional and academic.

EVALUATION TOOLS

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.

**Opinion Review Template:
Attorney Reviewer**

Reviewer's Name: _____

Justice's/Judge's Name: _____

Case Name: _____

I. Legal Analysis and Reasoning (*skip for a concurring or dissenting opinion*)

- a. The opinion adequately explains the basis of the court's decision.
Agree *Partly Agree/Partly Disagree* *Disagree*

- b. The opinion follows an applicable standard of review for the case.
Agree *Partly Agree/Partly Disagree* *Disagree*

- c. The opinion clearly sets forth rules of law, if any, to be used in future cases.
Agree *Partly Agree/Partly Disagree* *Disagree*

- d. The opinion provides clear direction to the trial court.
Agree *Partly Agree/Partly Disagree* *Disagree*

- e. The opinion decides only those issues that need to be decided in the case before the court.
Agree *Partly Agree/Partly Disagree* *Disagree*

Additional comments on **Legal Analysis and Reasoning**:

II. Fairness

- a. The opinion addresses the issues raised by both parties fairly.
Agree *Partly Agree/Partly Disagree* *Disagree*

- b. (*For a concurring or dissenting opinion*) The opinion is appropriate in tone and substance.
Agree *Partly Agree/Partly Disagree* *Disagree*

Additional comments on **Fairness**:

III. Clarity

- a. The opinion is clear.
Agree *Partly Agree/Partly Disagree* *Disagree*

- b. The opinion is concise.
Agree *Partly Agree/Partly Disagree* *Disagree*

- c. The opinion adequately summarizes the relevant facts in the case.
Agree *Partly Agree/Partly Disagree* *Disagree*

- d. The opinion's legal reasoning is easy to follow.
Agree *Partly Agree/Partly Disagree* *Disagree*

Additional comments on **Clarity**:

**Opinion Review Template:
Non-Attorney Reviewer**

Reviewer's Name: _____

Justice's/Judge's Name: _____

Case Name: _____

I. Fairness

- a. The opinion addresses the issues raised by both parties fairly.
Agree *Partly Agree/Partly Disagree* *Disagree*
- b. *(For a concurring or dissenting opinion)* The opinion is appropriate in tone and substance.
Agree *Partly Agree/Partly Disagree* *Disagree*

Additional comments on **Fairness**:

II. Clarity

- a. The opinion is clear.
Agree *Partly Agree/Partly Disagree* *Disagree*
- b. The opinion is concise.
Agree *Partly Agree/Partly Disagree* *Disagree*
- c. The opinion adequately summarizes the relevant facts in the case.
Agree *Partly Agree/Partly Disagree* *Disagree*
- d. The opinion's legal reasoning is easy to follow.
Agree *Partly Agree/Partly Disagree* *Disagree*

Additional comments on **Clarity**:

**Survey:
Attorney Respondent**

SECTION I: Introduction

Please check the following statements that apply to you (may check more than one):

- I use appellate opinions extensively in my practice.
- I have appeared before this judge in oral argument.
- This judge has written an opinion in one of my cases.

[If at least one of these options is selected]

Please answer the following demographic questions. Your responses to the demographic questions will NOT be associated with your answers to the evaluative questions. Rather, aggregate demographic information about attorney respondents will be provided to the evaluated judge.

1. Which of the following best describes your legal practice?
 - a. Private, solo
 - b. Private, 2-5 attorneys
 - c. Private, 6+ attorneys
 - d. Private, corporate employee
 - e. Government
 - f. Public service agency or organization (not government)
 - g. Other

2. How long have you practiced law in this state?
 - a. 5 years or fewer
 - b. 6 to 10 years
 - c. 11 to 15 years
 - d. 16 to 20 years
 - e. 21 years or more

3. In what county is your practice based? _____

4. What types of cases do you primarily handle?
 - a. Mainly criminal
 - b. Mainly civil
 - c. Mixed criminal & civil
 - d. Other

5. In the most recent case in which you appeared before this judge, did you represent the winning party or the losing party?
 - a. Winning party
 - b. Losing party
 - c. Mixed outcome
 - d. Case not yet decided

SECTION II: Structured Free Recall

Research has shown that people make better and more accurate performance evaluations when they take a few minutes to think about specific aspects of the person’s performance rather than simply relying on their general impressions of the person.

*To help you make a better performance evaluation, please take a few moments to recall some **positive** aspects of the evaluated judge’s performance. In your experience with the judge, what did s/he do well? If it is helpful in organizing your thoughts, you may list these positive aspects here. Anything you record here will be discarded once you submit your survey; it will not be shared with the evaluated judge [or the evaluation commission].*

1.	
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*Now, please take a few moments to recall some **negative** aspects of the evaluated judge’s performance. In your experience with the judge, what did s/he do poorly? If it is helpful in organizing your thoughts, you may list these negative aspects here. Anything you record here will be discarded once you submit your survey; it will not be shared with the evaluated judge [or the evaluation commission].*

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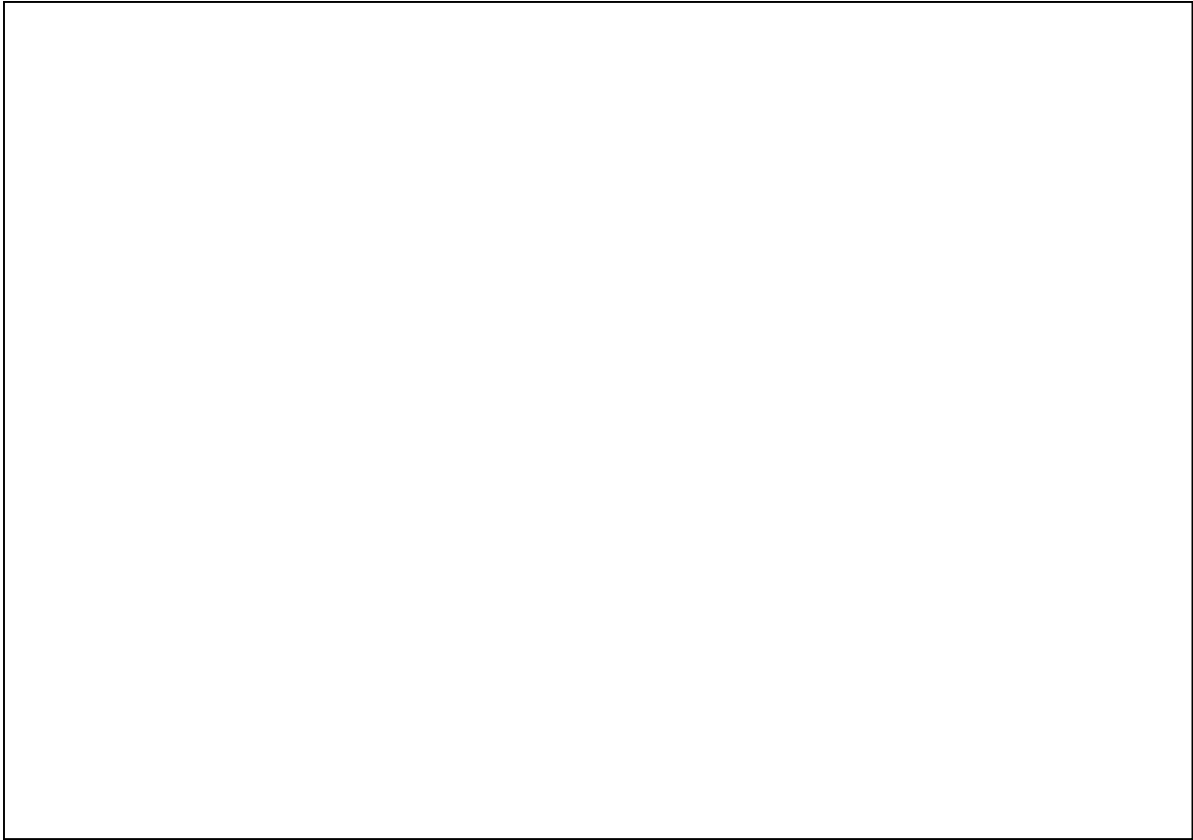
SECTION III: Survey

Rate the evaluated judge's performance as described in the statements below, using the rating scale provided. Please use N/A if you have not had the opportunity to experience the behavior described.

	1 <i>Strongly Disagree</i>	2 <i>Disagree</i>	3 <i>Neither Agree nor Disagree</i>	4 <i>Agree</i>	5 <i>Strongly Agree</i>	N/A <i>Not Applicable</i>
Legal Ability						
1. Writes opinions that adequately explain the basis of the court's decision.						
2. Writes opinions that follow an applicable standard of review for the case.						
3. Writes opinions that clearly set forth any rules of law to be used in future cases.						
4. Writes opinions that decide only those issues that need to be decided in the case before the court.						
Impartiality/Fairness						
5. Writes opinions that address the issues raised by both parties fairly.						
Temperament/Demeanor						
6. Writes separate opinions that are appropriate in tone and substance.						
Communication Skills						
7. Writes opinions that are clear.						
8. Writes opinions that are concise.						
9. Writes opinions that adequately summarize the relevant facts in the case.						
10. Writes opinions in which the legal reasoning is easy to follow.						
<i>If the attorney has appeared before the judge in oral argument:</i>						
Impartiality/Fairness						
11. Is attentive to the arguments of all parties during oral argument.						
Temperament/Demeanor						
12. Is punctual for proceedings.						
13. Is attentive to the differing opinions of colleagues during oral argument.						
<i>If the judge has written an opinion for the court in one of the attorney's cases:</i>						
Legal Ability						
14. Writes opinions that accurately reflect the evidence in the record.						

SECTION IV: Narrative Comments

Please provide any additional comments you have about the evaluated judge's performance. These comments will be shared with the judge, with any identifying information removed.

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**Survey:
Trial Judge Respondent**

SECTION I: Structured Free Recall

Research has shown that people make better and more accurate performance evaluations when they take a few minutes to think about specific aspects of the person's performance rather than simply relying on their general impressions of the person.

*To help you make a better performance evaluation, please take a few moments to recall some **positive** aspects of the evaluated judge's performance. In your experience with the judge, what did s/he do well? If it is helpful in organizing your thoughts, you may list these positive aspects here. Anything you record here will be discarded once you submit your survey; it will not be shared with the evaluated judge [or the evaluation commission].*

1.	
2.	
3.	

*Now, please take a few moments to recall some **negative** aspects of the evaluated judge's performance. In your experience with the judge, what did s/he do poorly? If it is helpful in organizing your thoughts, you may list these negative aspects here. Anything you record here will be discarded once you submit your survey; it will not be shared with the evaluated judge [or the evaluation commission].*

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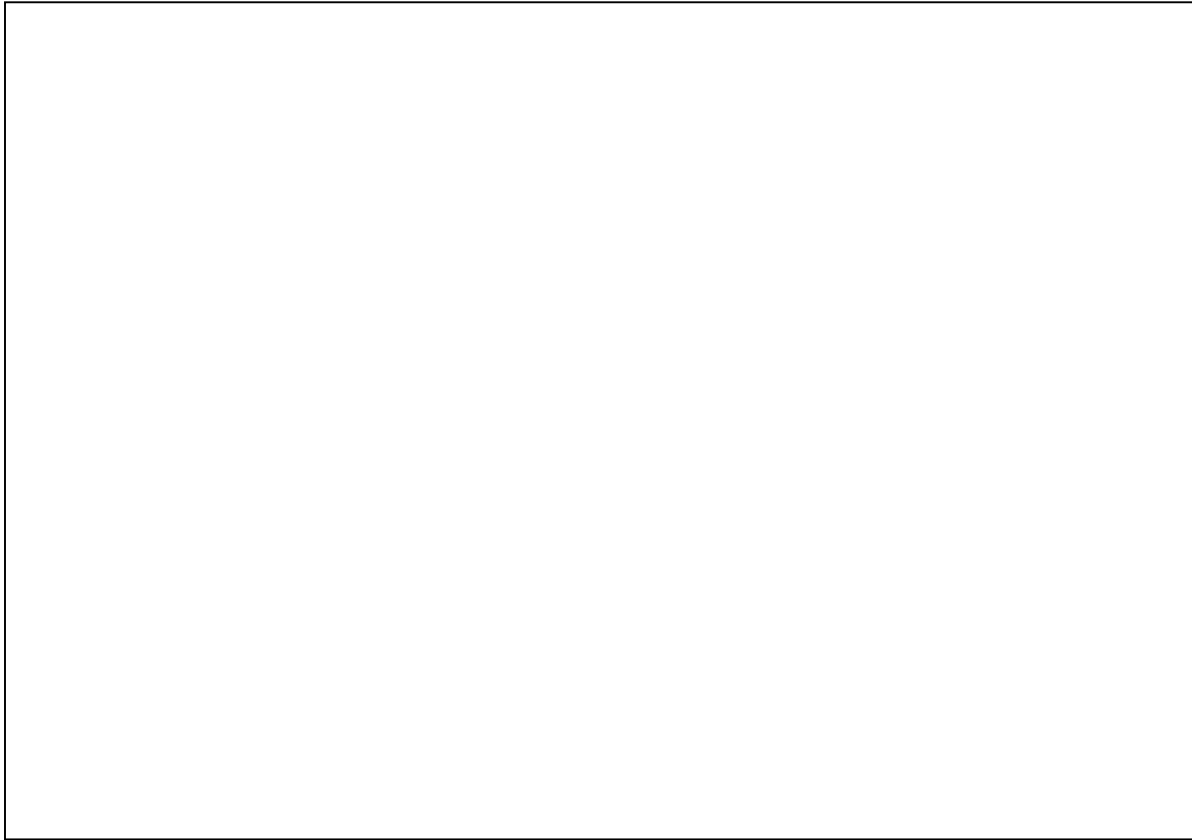
SECTION II: Survey

Rate the evaluated judge's performance as described in the statements below, using the rating scale provided. Please use N/A if you have not had the opportunity to experience the behavior described.

	1 <i>Strongly Disagree</i>	2 <i>Disagree</i>	3 <i>Neither Agree nor Disagree</i>	4 <i>Agree</i>	5 <i>Strongly Agree</i>	N/A <i>Not Applicable</i>
Legal Ability						
1. Writes opinions that adequately explain the basis of the court's decision.						
2. Writes opinions that follow an applicable standard of review for the case.						
3. Writes opinions that provide clear direction to the trial court.						
4. Writes opinions that clearly set forth any rules of law to be used in future cases.						
5. Writes opinions that decide only those issues that need to be decided in the case before the court.						
6. Writes opinions that accurately present the facts needed to decide the case.						
7. Writes opinions that accurately summarize the proceedings in the trial court.						
Impartiality/Fairness						
8. Writes opinions that address the issues raised by both parties fairly.						
Temperament/Demeanor						
9. Writes separate opinions that are appropriate in tone and substance.						
Communication Skills						
10. Writes opinions that are clear.						
11. Writes opinions that are concise.						
12. Writes opinions in which the legal reasoning is easy to follow.						

SECTION III: Narrative Comments

Please provide any additional comments you have about the evaluated judge's performance. These comments will be shared with the judge, with any identifying information removed.

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**Survey:
Court Staff Respondent**

SECTION I: Structured Free Recall

Research has shown that people make better and more accurate performance evaluations when they take a few minutes to think about specific aspects of the person's performance rather than simply relying on their general impressions of the person.

*To help you make a better performance evaluation, please take a few moments to recall some **positive** aspects of the evaluated judge's performance. In your experience with the judge, what did s/he do well? If it is helpful in organizing your thoughts, you may list these positive aspects here. Anything you record here will be discarded once you submit your survey; it will not be shared with the evaluated judge [or the evaluation commission].*

1.	
2.	
3.	

*Now, please take a few moments to recall some **negative** aspects of the evaluated judge's performance. In your experience with the judge, what did s/he do poorly? If it is helpful in organizing your thoughts, you may list these negative aspects here. Anything you record here will be discarded once you submit your survey; it will not be shared with the evaluated judge [or the evaluation commission].*

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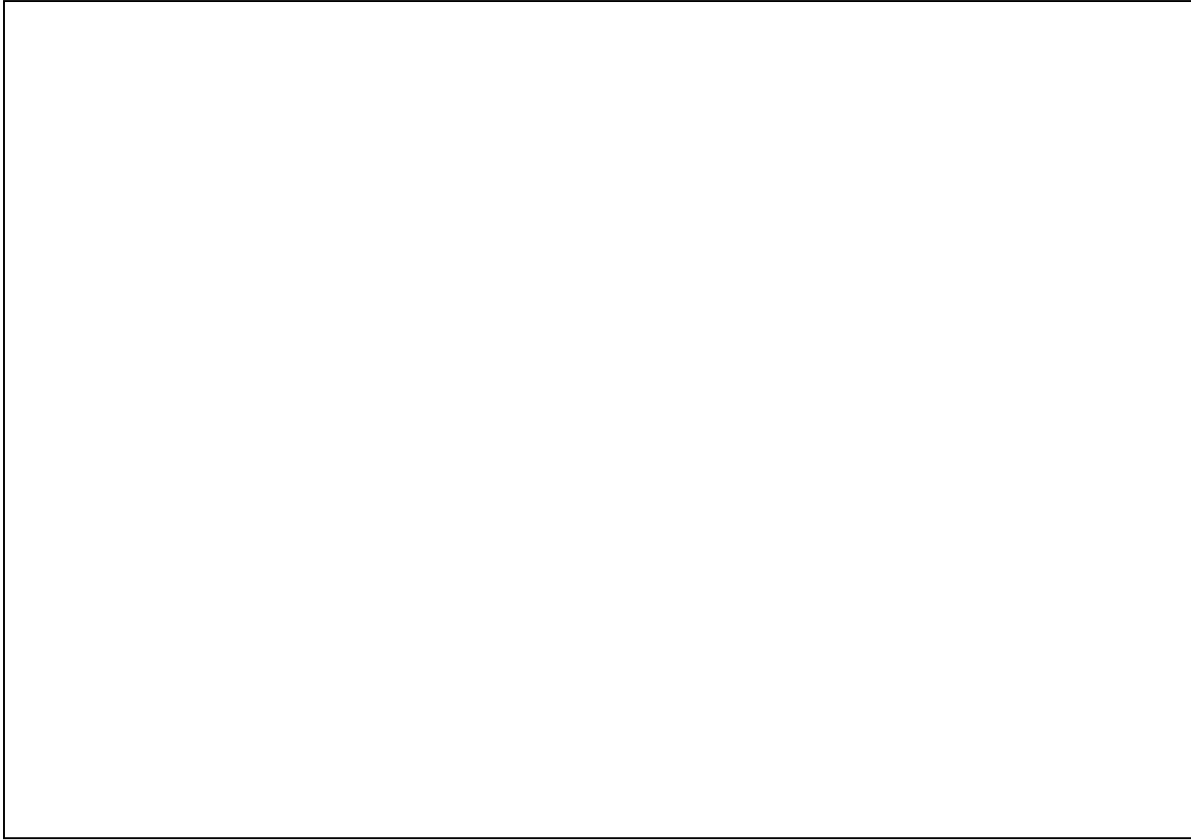
SECTION II: Survey

Rate the evaluated judge's performance as described in the statements below, using the rating scale provided. Please use N/A if you have not had the opportunity to experience the behavior described.

	1 <i>Strongly Disagree</i>	2 <i>Disagree</i>	3 <i>Neither Agree nor Disagree</i>	4 <i>Agree</i>	5 <i>Strongly Agree</i>	N/A <i>Not Applicable</i>
Impartiality/Fairness						
1. Is attentive to the arguments of all parties during oral argument.						
Temperament/Demeanor						
2. Engages in collegial decision making.						
3. Shows respect to all court employees.						
4. Behaves in a manner that fosters respect for the court system.						
Communication Skills						
5. Provides feedback constructively to court staff.						
6. Encourages constructive feedback from court staff.						
Administrative Performance						
7. Is punctual for proceedings.						
8. Effectively handles workload.						

SECTION III: Narrative Comments

Please provide any additional comments you have about the evaluated judge's performance. These comments will be shared with the judge, with any identifying information removed.

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Self-Evaluation

Please evaluate your own performance as described in the statements below, using the rating scale provided.

	1 <i>Strongly Disagree</i>	2 <i>Disagree</i>	3 <i>Neither Agree nor Disagree</i>	4 <i>Agree</i>	5 <i>Strongly Agree</i>	N/A <i>Not Applicable</i>
Legal Ability						
1. Write opinions that adequately explain the basis of the court's decision.						
2. Write opinions that follow an applicable standard of review for the case.						
3. Write opinions that provide clear direction to the trial court.						
4. Write opinions that clearly set forth any rules of law to be used in future cases.						
5. Write opinions that decide only those issues that need to be decided in the case before the court.						
6. Write opinions that accurately present the facts needed to decide the case.						
7. Write opinions that accurately summarize the proceedings in the trial court.						
Impartiality/Fairness						
8. Write opinions that address the issues raised by both parties fairly.						
9. Am attentive to the arguments of all parties during oral argument.						
Temperament/Demeanor						
10. Am attentive to the differing opinions of colleagues during oral argument.						
11. Engage in collegial decision making.						
12. Behave in a manner that fosters respect for the court system.						
13. Show respect to all court employees.						
Communication Skills						
14. Write opinions that are clear.						
15. Write opinions that are concise.						
16. Write opinions that adequately summarize the relevant facts in the case.						

17. Write opinions in which the legal reasoning is easy to follow.						
18. Provide feedback constructively to court staff.						
19. Encourage constructive feedback from court staff.						
Administrative Performance						
20. Am punctual for proceedings.						
21. Effectively handle workload.						

The following questions may be asked during the commission’s interview of individual justices or judges. If no interview is conducted, these questions should be included with the self-evaluation survey.

- What do you think makes a clear written opinion?
- Please describe how you prioritize your workload.
- How do you use your law clerks?
- If you could change something about your job, what would it be?
- What has been the greatest challenge during your current term and how did you meet it?



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