

**Judicial Evaluation Pilot Project
of the Judicial Conference Committee
on the Judicial Branch**

**Darlene R. Davis
Federal Judicial Center
1991**

This publication was undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development on matters of judicial administration. The analyses, conclusions, and points of view are those of the author. This work has been reviewed by Center staff, and publication signifies that it is regarded as responsible and valuable. It should be emphasized, however, that on matters of policy the Center speaks only through its Board.

The U.S. District Court for the Central District of Illinois recently completed a pilot Judicial Evaluation Project under the auspices of the Judicial Conference Committee on the Judicial Branch. The response of participants in the project was overwhelmingly positive.¹ At its March 12, 1991, meeting, the Judicial Conference adopted a recommendation that the Federal Judicial Center write a synopsis of the project for circulation to the courts.² This report is intended to provide useful information to members of the federal judiciary who wish to conduct similar evaluation programs.

This report consists of seven parts. Part I discusses the events leading to the pilot project. Part II gives a summary of existing judicial evaluation programs and problems raised by judicial officers regarding evaluations. Part III discusses the guidelines adopted for the pilot project. Part IV describes the pilot project procedures. Part V discusses the principal concerns in developing an evaluation program. Part VI presents sample responses to the pilot project, and Part VII sets forth general guidelines in establishing an evaluation program.

I. Background

The Judicial Conference Committee on the Judicial Branch appointed a subcommittee to study judicial evaluations and make recommendations. The Judicial Evaluation Subcommittee, Judge Justin L. Quackenbush, chairman (E.D. Wash.); Judge Pierre N. Leval (S.D.N.Y.); Judge Michael M. Mihm (C.D. Ill.); Judge Randall R. Rader (Fed. Cir.); Judge Jane R. Roth (D. Del.); and former Judge Philip W. Tone of Jenner & Block in Chicago, considered evaluation programs currently operating and attended various workshops and seminars.

The subcommittee chose to initiate a pilot project of voluntary, confidential evaluations with the specific goal of judicial self-improve-

1. The judges in the district selected for the project were District Judges Harold A. Baker, Michael M. Mihm, and Richard Mills; Magistrate Judges Charles H. Evans and Robert J. Kauffman; and Bankruptcy Judges William V. Altenberger, Basil H. Courtakon, Gerald D. Fines, and Larry L. Lessen.

2. Judicial Conference of the United States, Preliminary Report—Judicial Conference Actions 5 (March 12, 1991).

ment. Because of the voluntary nature of the project, subcommittee members agreed that the pilot district would have to be one in which the judges unanimously agreed to participate.

The Central District of Illinois was selected because of the concerted interest of the district judges. Although the pilot program was originally to include only district court judges, the magistrate judges and bankruptcy judges in the district volunteered to participate as well, and the project was expanded. The size of the district—three district judges, two magistrate judges, and four bankruptcy judges—facilitated management of the program.

II. Existing Judicial Evaluation Programs and Problems

State Courts

As of the beginning of 1991, twenty-seven states had permanent or pilot court-based judicial evaluation programs. Most of these programs are mandatory. The focus of state evaluation programs is principally reelection or reappointment.

Federal Courts

The current use of performance evaluations by the federal courts is "non-systematic and infrequent."³ While many courts conduct an informal evaluation of the performance of bankruptcy judges considered for reappointment, only the Seventh, Eighth, and Ninth Circuits have reported any type of formal evaluation activity within the circuit.⁴

The Seventh Circuit Judicial Council uses evaluations to screen sitting bankruptcy judges who are applying for reappointment. A letter and questionnaire are sent to a random sample of 100 attorneys who have had at least two matters before the subject judge within the last two years.⁵

The Eighth Circuit also uses evaluations in making decisions regarding the retention of magistrate and bankruptcy judges. In addition, two district judges have initiated evaluation programs. One judge conducts an anony-

3. Memo from Carol Krafka to William Eldridge (July 17, 1987) (discussing the Ninth Circuit Judicial Evaluation Project).

4. *Id.* at 5.

5. The Seventh Circuit Executive, Collins T. Fitzpatrick, reports that more than 60% of the attorneys in the sample respond to the questionnaire.

rious survey of jurors at the close of each trial. He does not solicit evaluations from attorneys. Another judge on one occasion issued a performance questionnaire to attorneys who had practiced before him.

In the Ninth Circuit, a 1981 resolution of the Judicial Council recommended adoption of a program of voluntary, confidential self-evaluation for district judges. Subsequent surveys revealed, however, that few judges chose to participate. In 1985, as part of the Ninth Circuit Judicial Council's Annual Action Plan, the Circuit Executive's Office surveyed attorneys in a series of court management studies. In addition to judicial performance, the surveys addressed the nature of the responding attorney's practice, the service provided by the clerk's office, and the service provided by court reporters.⁶ The circuit also conducts evaluations of bankruptcy judges seeking reappointment.

Problems

Although the federal bench has not engaged in self-evaluation to a large extent, many federal judges are subject to evaluation programs developed by state and local bar associations. Objections voiced most often by federal judges are that

- participation is compulsory and there is a lack of confidentiality.
- questions are framed to critique and compare judges and do not promote individual judicial improvement.
- the result is a "ranking" of judges, or popularity contest, leading to a determination of "winners versus losers" or categorization of judges as "good" or "bad."
- the surveys are not objective and are sent to lawyers who are not federal practitioners.
- the reliability of the evaluation is doubtful, and the evaluation itself threatens judicial independence.

Because of such apprehensions, the major obstacle in instituting voluntary programs is lack of participation. The Ninth Circuit Judicial Evaluation Committee surveyed its judicial officers in 1985 and discovered that, despite the Judicial Council's 1981 resolution, of the 234 judicial officers,

6. Ninth Circuit Judicial Council, Final Report: Survey of District Court Operations; Attorneys' Attitudes (July 1987).

only 19 (less than 8%) had used some type of voluntary self-evaluation program. The low participation rate was attributed to four factors: (1) a strong tradition of judicial independence; (2) federal judicial officers' lack of familiarity with evaluation techniques; (3) doubt about the efficacy of the results; and (4) cost of judicial evaluations in time and resources.⁷

III. Judicial Conference Subcommittee Guidelines

The Judicial Conference Subcommittee on Judicial Evaluation made every effort to design and administer the Illinois-Central Pilot Project to avoid the problems encountered in other judicial evaluation programs.

The committee first determined that self-administered questionnaires, written questionnaires filled out by the respondent in private, would be the method of collecting information. The survey pool would consist of attorneys only: Jurors, parties, and witnesses were specifically excluded. The pool was further restricted to those attorneys who had recently practiced before the subject judge. The clerk of court would handle distribution of the questionnaires and select the members of the attorney pool.

The subcommittee reviewed several questionnaires used by various state and federal judges and decided that the judicial officers of the district should determine the format of the questionnaires. With this approach, the evaluation would center on the needs of the specific judicial community.

Since mandatory disclosure of the evaluation results would not facilitate the purpose of the evaluation, that is, judicial self-improvement, the subcommittee resolved that the results would remain strictly confidential. It was also anticipated that there would be greater voluntary participation if judges were assured that the results would not be disclosed. Accordingly, completed questionnaires would be returned directly to the subject judge.⁸

7. Office of the Circuit Executive, U.S. Court of Appeals for the Ninth Circuit, Report on Judicial Evaluation in the Ninth Circuit (August 1986).

8. ABA Guidelines for the Evaluation of Judicial Performance advocate confidentiality. Guidelines 5-1 and 5-3 state that results and data should be confidential and "should not identify or give comparative rankings of individual judges."

IV. Pilot Project Procedures

Chief Judge Harold A. Baker initiated the evaluation process by sending a letter to district judges, encouraging them to participate (see Attachment A). The letter emphasized, however, that participation in the project was voluntary. It also stressed that the questionnaires would be returned to the judge evaluated and that no one else would see the information unless it was released by that judge. Those judges who wanted to participate were to notify the chief judge in writing by a given date.

Members of the court then met to determine the form and content of the evaluation questionnaire. The subcommittee deemed it important that the judge being evaluated have some idea of the length and type of experience the responding attorney has had with him, in other words, the basis for the attorney's opinion. Therefore, in the initial questionnaire, the first question asked the responding attorney to indicate, without revealing his or her identity, the number of cases, motions, and hours before the subject judge within the last three years. However, the subcommittee noted that if the number of hours was particularly large, a judge could possibly identify the attorney responding, or at least narrow the field. Therefore, the questionnaire was amended and subsequent questionnaires simply asked the attorney to indicate whether he or she had more or less than five hours with the judge.

Aimed at gathering responses that would foster judicial self-improvement, the questionnaire focused on five areas of evaluation criteria: integrity, judicial temperament, legal ability, decisiveness, and diligence. Both scaled and open-ended responses were solicited. The same questionnaires were used for district judges, magistrate judges, and bankruptcy judges.

The clerk of court selected the participating attorneys.⁹ Names were taken from a sample of both criminal and civil cases closed within the previous year and a half. From this sample, the clerk chose 150 attorneys who had practiced before the subject judge.¹⁰ In selecting the pool, efforts were made to ensure that there was a representative number of non-local,

9. Clerk of Court John M. Waters made the selections.

10. According to the ABA National Project on Judicial Performance Evaluation, this is the most widely used means of selecting participants in such evaluations.

or out-of district, lawyers: approximately one out of every two lawyers in the sample.¹¹

Included in the package sent to the attorneys were

- a cover letter signed by all of the district judges;
- instructions on the use of the evaluation form;
- the evaluation form; and
- a franked return envelope addressed to the judge being evaluated marked "To be opened by addressee only."

The cover letter emphasized that responses should be based on the personal observations of the responding attorney only (see Attachment B).

Attorneys were given thirty days to respond.

In other programs, issuing questionnaires regarding more than one judge at a time had resulted in a comparison or ranking of the subject judges. To avoid this, the pilot project issued questionnaires regarding only one judge at a time. It is recommended that larger districts, which, because of the large number of judges, may not have the luxury of issuing questionnaires regarding one judge at a time, evaluate only one judge per category (district, bankruptcy, magistrate).

Features of the Pilot Project

- Participation by each judge was voluntary.
- The evaluation questionnaire was approved by the judges in that district or court.
- The information sought was limited to that which provided a means of judicial self-improvement.
- The questionnaire asked for both negative and positive input.
- The completed responses were sent directly to the judge being evaluated.
- The clerk of court selected the attorneys asked to respond.
- The identities of the attorneys asked to participate were not revealed.
- Only one judge per category was evaluated at any given time.

11. In conducting bankruptcy judge evaluations, the person selecting the attorneys should make efforts to have an even number of creditor and debtor attorneys in the pool.

V. Principal Concerns: Costs and Confidentiality

The chief concerns of courts considering conducting judicial evaluations are the costs of such programs and the ability to keep the results confidential. Steps that a court can take to safeguard confidentiality and minimize costs should be considered in the design of the evaluation program.

Costs

Design, reproduction, and distribution are the main expenses of an evaluation program. Use of court resources will reduce or eliminate much of these costs, and simple questionnaires with limited questions will obviate the need for computer or technical analysis services.

The costs of the pilot project were minimal. The major expenditures—copying, postage, and execution—were handled by the clerk's office at no extraordinary expense. Although the number of judges participating in the pilot project was small, the cost of a similar evaluation program in a large district would most likely be minimal. For example, in evaluating 100 judges, a recent performance evaluation project in Colorado used in-house design and keypunch for an actual dollar cost of \$0. Printing approximately 2,000 questionnaires cost \$1,000.

Some courts may want to develop computer software to tally the evaluation results. This would substantially increase the costs of the program. Estimates for computer-assisted evaluation programs run as high as \$15,000. A computer-assisted judicial evaluation conducted five years ago in Alaska cost \$40,000. Colorado chose to contract computer "independent analysis" of its questionnaires for a cost of more than \$6,000. Any court seeking to use computer-generated responses or tallying should consider the additional expense of not only the program or package but also additional technical personnel.

Confidentiality

There are legal and practical considerations in protecting the confidentiality of the evaluation results.

In brief, the Freedom of Information Act, 5 U.S.C. § 551(1), and the Privacy Act, 5 U.S.C. § 552a, do not apply to the courts of the United States and therefore do not form a statutory basis for compulsory disclosure of evaluations maintained in court records. However, the *Guide to*

Judiciary Policies and Procedures, Volume IV-A, chapter 2, § 201.3(B), permits disclosure of any records “which have not been sealed by the court or defined by rule or statute to be nonpublic.” Courts should consider local rules, legislation, or orders that would prohibit such disclosure.

As for practical considerations, the probability of disclosure increases with the number of people handling the questionnaires and the length of time the responses are retained. Consequently, the likelihood of disclosure would increase with the use of computers and particularly with contract computer services.

VI. Responses

Although no formal counts are available because of the confidential nature of the results, judges participating in the pilot project reported a return rate of about 50%. The responses of all the judges but one were favorable. The following are some of their comments:

The confidential evaluations that I have received back have been *most* helpful to me as a judicial officer.

The comments are useful in that they affirmed most of the procedures that I employ on the bench, and were critical of practices I knew were unpopular with the bar (especially our “trailing jury calendar” and displeasure with the denial of continuances).

I applaud this project and urge every judicial officer in the country—including circuit judges—to participate. The responses from the bar are an excellent barometer of how we are perceived to be performing our duties.

* * *

I have reviewed the results of the evaluation survey and find them helpful. They are helpful because they are about as objective an evaluation as we can hope to get.

92% of the lawyers responding think that I am doing a good job. 3% believe I am an idiot or evil or both. The other 5% have the matter under advisement.

Bottom line. It is good to know what the customers are thinking.

* * *

All of my responses were anonymous and professional. No one took the opportunity to "lay it on me." I really feel that the responses were genuine and intended to be helpful. No one except by their written responses conveyed anything to me about this project.

My overall appraisal is that this project is extremely worthwhile to me. Although I would feel distressed if the responses would be critical and unfavorable, I still want to know. I know of no reason why the attorneys would not be honest and truthful in their responses. In fact, a couple have zeroed in on an area that has some justification as far as they are concerned but not as I see it from the broad overall viewpoint. Nevertheless, since they have brought it up, it means something to them. I should know about it and will keep it in mind.

Personally, from my standpoint, I have benefitted from knowing the feelings, ratings and views of the attorneys. We all develop habits or ways of doing, or not doing, things in connection with our offices that we often are oblivious to that need continuing or changing. The responses I got will aid me in doing my job. Those that have responded I think probably do not have anything real critical to present, and they can be assumed to be satisfied or else would latch onto this opportunity to express themselves. It may be that this project should be repeated in the future. I would vote for it.

One bankruptcy judge responded negatively to the evaluation, stating that he did not believe the project was worthwhile.

In the Ninth Circuit, although the number of judges engaged in voluntary evaluation programs was small, the assessment of the value of such programs by those who participated was overwhelmingly positive.

Ninth Circuit Judges' Assessments of Judicial Evaluation

	Number	Percentage
Extremely Helpful	13	69
Somewhat Helpful	4	21
Of Limited Use	1	5
Not Helpful	1	5

VII. Evaluation Guidelines

There are several factors that any court considering establishing an evaluation program should address:

1. Judicial officers—Who will participate?

Some courts may choose to include only district courts in the evaluation project, particularly if magistrate judges and bankruptcy judges are currently evaluated for reappointment purposes.

2. Focus—What do you want to know?

Is the court interested in attorneys' perceptions of the judges? Improving court management techniques? Determining the effectiveness of certain local rules or procedures? It is important that the judicial community determine the goals of the program. Sample evaluation forms are included as Attachment C.

3. Evaluator pool—Who is included?

The standard judicial evaluation seeks responses from attorneys. Jurors, parties, and witnesses have also participated in judicial performance appraisals. The focus of the evaluation will help determine the appropriate pool.

4. Initiator of questionnaire—Who will send out the questionnaires?

Preparation and distribution of the questionnaire may be undertaken by the chief judge of the district, the chief judge of the circuit, the clerk of court, each individual judicial officer, or the circuit executive.

5. Timing of questionnaire—What is the distribution timetable?

Evaluations may be issued at one time for all participating judges. However, this may lead respondents to compare and rank judges as opposed to assessing individuals. Evaluating one judge at a time will prevent ranking of judges.

6. Distribution of results—Who should receive the results?

The results may be reviewed by the subject judge and the chief judge of the district, the local bar, or the circuit executive. Judges may also choose to keep the results confidential.

Recommended Literature

Schwarzer, *From the Bench: Grading the Judge*, *Litigation*, vol. 10, no. 2, at 5 (1984).

Farthing-Capowich & McBride, *Obtaining Reliable Information: A Guide to Questionnaire Development for Judicial Performance Evaluation Programs*, *State Court Journal*, vol. 11, no. 1, at 5 (1987).

Greacen, *What Standards Should We Use to Judge Our Courts?*, *Judicature*, vol. 72, no. 1, at 23 (1988).

Attachment A
Letter to District Judges from Chief Judge
of Pilot District

Dear Judge _____:

The purpose of this letter is to advise you of a Judicial Evaluation Project which will be conducted in the near future, and to request that you consent to participate in this project.

Participation in the Evaluation would be completely voluntary.

Why an evaluation? We all work hard at what we do. We deal with a large number of attorneys over a period of time. Those attorneys, because of our contacts with them, develop attitudes about us and how we perform our judicial function. Those perceptions about us may be fair or unfair. In any event, those perceptions of us, if made known to us, could aid us in performing our duties even better than we do now.

God knows I speak from personal experience when I say that none of us is perfect. I'm sure that there are aspects of how I perform my job that are inefficient and on occasion irritating to the attorneys who practice before me. If those things were made known to me, such information might well lead me to change certain practices and/or procedures in response to those attorney observations. Of course, I might also decide that the observation was unfair or unwarranted and ignore it.

In any event, I believe that a judge should be interested in receiving some appropriate feedback from the attorneys who practice in his/her court.

On that same point, there is certainly much interest by members of the bar to evaluate judges. I believe that we should take steps ourselves to initiate a voluntary Evaluation Process.

Here's how the Evaluation Project would work in this District:

1. Participation in the project is voluntary. If you do not affirmatively consent to participate, you will not be contacted again about this matter.

2. The Evaluation Questionnaire which will be used here in the _____ District of _____ is one which we will develop. The entire focus of the questionnaire will be to elicit responses which will aid the person being evaluated in self-improvement. There will be no "ranking" of judges, and no questions dealing with areas other than self-improvement.

3. The questionnaires will be sent to approximately 150-200 attorneys who have practiced in front of the judicial officer being evaluated within the past 18 months. This will be done on some sort of a random basis by the U.S. District Clerk (the Bankruptcy Clerk in the case of any Bankruptcy Judge participating). A cover letter will advise the attorney who receives the questionnaire that he/she is being asked to participate in the Evaluation Project. The attorney will be told that he/she is not to include identifying information in the response.

4. The completed questionnaire is to be placed in an envelope which will be sent with the questionnaire. The envelope will be addressed to the judge who is being evaluated. Nobody else will see the evaluations unless the judicial officer releases the information to others. The reason for this confidentiality is that the only valid purpose for the questionnaire is the self-improvement of the judicial officer. Consequently, what the judicial officer chooses to do with the returned questionnaires is entirely his/her own business.

If you are willing to participate in this Pilot Project, please let me know in writing by _____, 19___. The Evaluation will occur only after the form of the questionnaire and the procedures to be followed are approved by the judges of this district. If you decide not to participate, that's fine too. I think you will find that, if you do choose to participate, it will be a positive experience.

Sincerely,

Attachment B
Pilot District Evaluation Materials Mailed to Attorneys

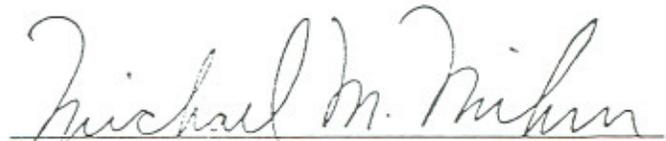
Dear Attorney:

By receipt of this communication, you are being requested to participate in a Judicial Evaluation Project in the Central District of Illinois.

The judicial officers of this District are very interested in performing their judicial duties in as professional a manner as possible. In pursuit of this goal, we have determined to solicit input regarding our performance from attorneys who have appeared in our courts. Our goal is that this information will allow each of us to engage in constructive criticism regarding those things you believe we could do better.

We ask you to take the time to fill out the questionnaire and send it back as directed. Needless to say, if we did not believe that your input was important, we would not be conducting this project.


HAROLD A. BAKER, Chief Judge


MICHAEL M. MIHM


RICHARD MILLS

INSTRUCTIONS

The first three questions on the next page ask how much, and what kind of personal experience you have had with Judge _____ . After answering these questions, please answer as many of the following questions as you can. Each of your answers should be based solely upon your personal observations. Please do not base your answers on the opinions of other lawyers which you may have heard.

The questions ask the degree to which you agree with favorably phrased statements. Agreement will indicate a favorable assessment on a given characteristic and disagreement will indicate an unfavorable assessment. A space is provided for comments at various points during the questionnaire.

If you do not have sufficient personal experience to provide an informed opinion about a given characteristic, please leave the appropriate response for that question blank. If you have sufficient personal experience within the past three years but have no opinion about one or more characteristics, please respond by checking number "3" to indicate "no opinion."

Please do not put your name on the questionnaire or in any other way identify yourself in the questionnaire. When you have completed the questionnaire please place the questionnaire in the envelope provided. The questionnaire will go directly to the judge you have evaluated for his exclusive use. Please complete the questionnaire and mail it in by _____, 1990.

Thank you for assisting us in this important project.

Please answer each question below by filling in the appropriate number.

1. State the number of cases in which you have appeared before Judge _____ during the past three years. 0-5 _____
over 5 _____
2. State the approximate number of contested motions in which you have actively participated before Judge _____ in the past three years. 0-5 _____
over 5 _____
3. State approximately how many hours you have observed Judge _____ in court or in chambers during the past three years. 0-5 _____
over 5 _____

INTEGRITY (1-Strongly Agree, 2-Mildly Agree, 3-No Opinion, 4-Mildly Disagree, 5-Strongly Disagree)

4. His rulings are uninfluenced by the identity of the lawyers and parties involved. _____
5. His rulings are free from any predisposition to decide for a particular party. _____
6. His awards of costs are fair and reasonable. _____
7. His awards of attorney's fees in appropriate cases are fair and reasonable. _____
8. He refrains from ex parte communications. _____

COMMENTS:

JUDICIAL TEMPERAMENT (1-Strongly Agree, 2-Mildly Agree, 3-No Opinion, 4-Mildly Disagree, 5-Strongly Disagree)

9. He is courteous toward lawyers and litigants. _____
10. He conducts court proceedings with appropriate firmness. _____
11. He gives due consideration to the convenience of lawyers and litigants in scheduling proceedings. _____
12. He refrains from prejudging the outcome of a case during early proceedings. _____

13. He refrains from coercing settlements. _____

COMMENTS:

LEGAL ABILITY (1-Strongly Agree, 2-Mildly Agree, 3-No Opinion, 4-Mildly Disagree, 5-Strongly Disagree)

14. His written rulings are clearly expressed. _____

15. His oral rulings are clearly expressed. _____

16. His rulings on evidentiary questions reflect a current knowledge of the law and the case file. _____

COMMENTS:

DECISIVENESS (1-Strongly Agree, 2-Mildly Agree, 3-No Opinion, 4-Mildly Disagree, 5-Strongly Disagree)

17. He rules promptly on motions. _____

18. He insures steady progress of a case. _____

19. He is decisive in his rulings. _____

20. He decides cases with reasonable promptness. _____

21. He rules promptly on evidentiary questions. _____

COMMENTS:

DILIGENCE (1-Strongly Agree, 2-Mildly Agree, 3-No Opinion, 4-Mildly Disagree, 5-Strongly Disagree)

22. He convenes court punctually. _____

23. His hearings and pretrial conferences reflect adequate research and preparation regarding the facts of the case and applicable law. _____

24. He deals with emergency matters expeditiously. _____

COMMENTS:

25. Does Judge _____ have any specific mannerisms or practices which you find irritating or distracting? If yes, please explain.

26. What positive statements can you make regarding how Judge _____ performs his official duties.

27. What are the areas in which you believe Judge _____ is in need of the most improvement regarding the performance of his official duties? Please explain.

28. Do you believe that Judge _____ should be more/less involved in settling cases. Please explain.

Attachment C
Sample Questionnaires

Seventh Circuit Questionnaire

JUDICIAL EVALUATION QUESTIONNAIRE

JUDGE

Please check the appropriate answer or supply the indicated information. Space for additional written comment is provided at the end of the questionnaire.

Section 1: Experience of Responding Attorney

1. Characterize the extent of your total experience before Judge

Substantial

Limited

None

If you checked "none" do not complete this questionnaire.

2. How many years have you been practicing law?

Five years or less

More than five years

3. In how many motions or other pretrial proceedings have you participated before Judge _____ ?

Two or less

More than two

4. In how many trials have you participated before Judge _____ ?

Two or less

More than two

5. Has your experience before Judge _____ been primarily
(check one):

Civil

Criminal

(over)

Section II: Judge Work Habits and Judicial Tempera-
ment

1. Promptness in ruling on pretrial motions:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

2. Promptness in rendering written opinions:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

3. Adequacy of research and preparation for hearings, status and pretrial conferences:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

4. Adequacy of research and preparation for trials:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

5. Punctuality in convening court and keeping appointments in chambers:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

6. Decisiveness in rulings and decisions:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

7. Efficiency and effectiveness in use of court time:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

8. Attentiveness to arguments of counsel and testimony of witnesses:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

9. Restraint from usurping role of counsel in questioning witnesses:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

10. Willingness to allow counsel sufficient time to develop case fully in trial:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

11. Accessibility to counsel in chambers:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

12. Courteousness toward counsel, litigants and witnesses:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

13. Willingness to work hard, including not subordinating court and trial schedule to personal convenience:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

Section III: Judge _____ Impartiality and Integrity

1. Displays bias based on sex:

- Frequently
- Sometimes
- Rarely
- Not at all
- Insufficient basis for rating

2. Displays bias based on race or ethnicity:

- Frequently
- Sometimes
- Rarely
- Not at all
- Insufficient basis for rating

3. Rulings influenced by identity of lawyers, law firms or parties involved:

- Frequently
- Sometimes
- Rarely
- Not at all
- Insufficient basis for rating

4. Rulings influenced by judge's political or other personal beliefs:

- Frequently
- Sometimes
- Rarely
- Not at all
- Insufficient basis for rating

5. Restraint from prejudging the outcome of a case:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

6. Restraint from ex parte contacts:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

7. Ability to apply the law despite public clamor, prospect of personal unpopularity, notoriety or unjust criticism:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

Section IV: Judge _____ Professional Competence and Legal Ability

1. Quality of oral rulings: informed decisions based on authority, substantively sound, clearly communicated:
 - _____ Excellent
 - _____ Satisfactory
 - _____ Unsatisfactory
 - _____ Insufficient basis for rating

2. Quality of written opinions: substantively sound, intellectually honest, written with clarity and precision:
 - _____ Excellent
 - _____ Satisfactory
 - _____ Unsatisfactory
 - _____ Insufficient basis for rating

3. Knowledge and application of rules of procedure:
 - _____ Excellent
 - _____ Satisfactory
 - _____ Unsatisfactory
 - _____ Insufficient basis for rating

4. Knowledge and application of rules of evidence:
 - _____ Excellent
 - _____ Satisfactory
 - _____ Unsatisfactory
 - _____ Insufficient basis for rating

5. Knowledge and application of substantive law:
 - _____ Excellent
 - _____ Satisfactory
 - _____ Unsatisfactory
 - _____ Insufficient basis for rating

6. General legal reasoning ability and comprehension:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

7. Ability to understand legal issues and arguments raised by counsel in highly complex cases:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

8. Familiarity with new legal developments:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

9. Approach to settlement and resolution of pretrial disputes:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

10. Ability to manage case during pretrial proceedings (productiveness of status and pretrial conferences and effectiveness of pretrial orders):

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

11. Conduct of jury voir dire:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

12. Procedures for preparation and discussion of jury instructions:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

13. Ability to instruct the jury correctly, fairly and effectively:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

14. Imposition of sanctions against parties or counsel:

- Generally appropriate
- Generally inappropriate
- Insufficient basis for rating

Performance in Criminal Cases: The following questions should be answered only by attorneys who have participated in criminal matters before Judge

1. Knowledge and application of Federal Rules of Criminal Procedure:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

2. Knowledge and application of controlling substantive criminal law:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

3. Ability to understand issues in usual criminal cases:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

4. Procedures for taking defendants' pleas:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

5. Consistency in sentencing practices:

- Excellent
- Satisfactory
- Unsatisfactory
- Insufficient basis for rating

6. Overall appropriateness of sentences imposed:

- Generally too lenient
- Generally appropriate
- Generally too severe
- Insufficient basis for rating

7. Participation in negotiating pleas:

- Generally appropriate
- Generally inappropriate
- Insufficient basis for rating

8. Evaluate _____ predisposition, if any, toward criminal defendants as reflected by his actions and demeanor:

- Tends toward innocence
- Neutral
- Tends toward guilt
- Insufficient basis for rating

9. Evaluate Judge _____ favoritism, if any, toward defense or prosecution as reflected by his actions and demeanor:

- Favors defense
- Neutral
- Favors prosecution
- Insufficient basis for rating

COMMENTS

Please use this space to comment or elaborate on any items in the questionnaire. (Continue on reverse side if necessary.)

Please return this questionnaire in the envelope provided no later than _____

Ninth Circuit Judicial Council Sample Questionnaires

APPENDIX I

CIRCUIT JUDGE EVALUATION

Circuit Judges Browning and Tang have addressed the following issues in their evaluation questionnaires:

I. Oral Argument

Questions 1 & 2 should be answered "yes" or "no".

1) Was oral argument helpful in resolving the issues on appeal? 2) Did you have a reasonable opportunity to present your views during oral arguments?

On Questions 3 through 13 respondents should rate the judge on a list of abilities. The rating categories are "excellent," "good," "fair," "poor," or "insufficient basis for rating." In responding to the portion of the survey that deals with a judge's written opinions (Questions 7-13), the respondent should consider any opinions written by the judge with which they are familiar.

3) The judge's familiarity with the applicable law, the facts of the case and the arguments presented in the briefs. 4) The judge's attentiveness to arguments of counsel. 5) The judge's courtesy to counsel. 6) The judge's courtesy to other members of the Court.

II. Written Opinions

7) How concise is the judge's writing style? 8) How well did the judge organize his opinion? 9) How sound is the reasoning in his opinions? 10) How well was the relevant law applied to the facts? 11) How well did the judge indicate why arguments contrary to the result in the case were considered? 12) How clear was the explanation of the disposition of contested issues? 13) How clear and complete was the opinion's explanation of action to be taken after remand?

Questions 14 to 18 should be answered "always," "usually," "rarely," or "never."

14) Regardless of whether your client prevailed in the appeals in which you participated, do you believe that the Court resolved the contested issues? 15) Regardless of whether your client prevailed in the appeals in which you participated, do you believe that the Court used sound reasoning in resolving contested issues? 16) In appeals in which you participated (in preparation of briefs, in oral argument, or both) did the Court issue its decision within a reasonable time, given the complexity of the case? 17) Decisions issued by the Court are very rarely inconsistent with the decisions previously issued by the Court.

APPENDIX II

DISTRICT JUDGE EVALUATION

There are many models available for the evaluation of district judges. The committee decided to publish a version of the issues addressed in a survey conducted by Judge Spencer Williams. Judge William W Schwarzer and Judge Richard Bilby have used a more elaborate survey. Because Judge Schwarzer's survey form has been used by magistrates, it is available in Appendix IV. The only reason the Committee reproduces the Williams model here is because it uses a relatively simple format. However, judges concerned with a fuller response from attorneys might wish to review the Schwarzer or Bilby models.

Attorneys should rate the judge's ability in each of the categories below, by indicating whether it "excellent," "good," "satisfactory," "needs improvement," "poor," or "not observed."

- 1) Knowledge of law (new developments)
- 2) Settlement skills
- 3) Avoidance of sexual, racial or ethnic bias
- 4) Restraint from favoritism toward the prosecution in criminal cases
- 5) Restraint from favoritism toward the defense in criminal cases
- 6) Restraint from favoritism toward the plaintiff in civil cases
- 7) Restraint from favoritism toward the defense in civil cases
- 8) Restraint from prejudging the outcome of the case
- 9) Punctuality
- 10) Promptness in making rulings and decisions during trial
- 11) Promptness in rendering decisions after trial
- 12) Success in balancing need to move cases with parties' right to full and fair hearing
- 13) Judicial temperament and demeanor
- 14) Tolerance and self-control
- 15) Courtesy to counsel, witnesses and litigants
- 16) Firmness
- 17) Open-mindedness
- 18) Impartiality
- 19) Restraint from usurping the role of competent counsel in questioning witnesses
- 20) Knowledge of law (procedure)
- 21) Knowledge of law (substantive)
- 22) Overall rating of the judge

APPENDIX III

BANKRUPTCY JUDGE EVALUATION

All bankruptcy judges who apply for reappointment under circuit merit screening procedures are evaluated by attorneys practicing in their court. Below are the questions used on the judicial evaluation form.

All questions are to be answered by the respondent indicating if he "strongly agrees," "mildly agrees," has "no opinion," "mildly disagrees," or "strongly disagrees" that the statement describes the judge.

Judicial Integrity

1. The judge's rulings are uninfluenced by the identity of the lawyers and parties involved. 2. The judge's rulings are free from any predisposition to decide for a particular party. 3. The judge awards costs and fees to trustees and receivers that are fair and reasonable. 4. The judge's award of attorney's fees in appropriate cases are fair and reasonable. 5. The judge refrains from ex parte communications regarding contested matters.

Judicial Temperament

6. The judge is courteous towards lawyers and litigants. 7. The judge conducts court proceedings with appropriate firmness. 8. The judge gives due consideration to the convenience of lawyers and litigants in scheduling proceedings. 9. The judge refrains from prejudging the outcome of a case during early proceedings.

Legal Ability

10. He understands the issues in complex cases. 11. He readily understands the issues in ordinary cases. 12. His written rulings are clearly expressed. 13. His oral rulings are clearly expressed. 14. His rulings reflect a knowledge of current legal developments.

Decisiveness

15. He rules promptly on motions. 16. He insures steady progress of a case. 17. He is decisive in his rulings. 18. He decides cases with reasonable promptness.

Diligence

19. He convenes court punctually. 20. His hearings and pretrial conferences reflect adequate research and preparation. 21. He deals with emergency matters expeditiously.

APPENDIX IV

MAGISTRATE EVALUATION

In performing an evaluation, Magistrate Infante adapted a survey form used by Judge Schwarzer. Of course, the issues developed in this questionnaire are of value to both district judges and to magistrates.

All questions should be answered by respondent indicating whether the magistrate's conduct is "excellent," "satisfactory," "unsatisfactory," or "insufficient basis for rating."

Overall Factors

1. Attentiveness to argument of counsel and testimony of witnesses. 2. Restraint from usurping role of counsel in questioning witnesses. 3. Willingness to allow counsel sufficient time to develop the case fully in trial. 4. Accessibility to counsel in chambers. 5. Courteousness towards counsel, litigants and witnesses. 6. Willingness to work hard, including not subordinating court and trial schedule to personal convenience.

Impartiality and Integrity

7. Magistrate's lack of bias based on sex. 8. Magistrate's integrity and honesty.

Professional Competence and Legal Ability

9. Quality of oral rulings, informed decisions based on authority, substantively sound, clearly communicated. 10. Quality of written orders, opinions, and judgments: substantively sound, intellectually honest, written with clarity and precision. 11. Knowledge and application of rules of procedure. 12. Knowledge and application of rules of evidence. 13. Knowledge and application of substantive law. 14. General legal reasoning ability and comprehension. 15. In jury trials, the conduct of voir dire. 16. Procedure for preparation and discussion of jury instructions. 17. Ability to instruct the jury correctly, fairly and effectively.

Performance in Criminal Cases

18. Knowledge and application of Federal Rules of Criminal Procedure. 19. Knowledge and application of controlling substantive criminal law. 20. Ability to understand issues in usual criminal cases. 21. Procedures for taking defendants' pleas.

Arkansas Bar Association Questionnaire

JUDICIAL CRITIQUE

Instructions

Enclosed is a questionnaire which is being sent to all lawyers who are members of the Arkansas Bar Association. This critique is part of a continuing program to enhance judicial performance in Arkansas.

All individual ratings are to be absolutely confidential and anonymous. DO NOT SIGN YOUR NAME. Results of the critique as to each judge will be made available to that judge only. The results will not be released to the media by the Bar Association, and the Association STRONGLY DISCOURAGES public dissemination of the results by any judge.

There are seven (7) separate parts to the questionnaire, relating to the seven different types of judges you are asked to critique in Arkansas: (1) Supreme Court Judges; (2) Court of Appeals Judges; (3) Circuit Judges; (4) Chancery Judges; (5) Federal Judges; (6) Bankruptcy Judges; and (7) Federal Magistrates.

On the left side of each page are phrases that MAY or MAY NOT describe the particular judge you are critiquing. The names of the judges appear at the top of each page. Simply mark your rating score on each judge in the blank corresponding to his name and the descriptive phrase. The more the phrase describes a judge, the closer you rate him toward a "9"; the less the phrase describes him, the closer you rate him toward a "1". READ EACH PHRASE CAREFULLY.

Leave all blanks unmarked for those judges you are not rating. It is VERY IMPORTANT that you rank a judge ONLY in the area where you have had an opportunity to personally observe the judge's performance, and that you critique ONLY THOSE JUDGES WITH WHOM YOU HAVE EXPERIENCED A WORKING RELATIONSHIP. You are not to rate those judges with whom you have not worked. Therefore, rate the judges on the basis of your own knowledge, not what others say.

Please return the completed questionnaire to the Arkansas Bar Association in the enclosed envelope by August 15, 1984.

Thank you for your time in this important matter.

Rate only those Judges with whom you have had a working relationship.

1	2	3	4	5	6	7	8	9
Does Not Describe					Describes Judge			
Judge At All					Perfectly			

1. Is punctual in opening court and keeping appointments

2. Is impartial and fair toward litigants and lawyers

3. Avoids ex parte approaches

4. Knows and applies rules of procedure

5. Conducts court proceedings with appropriate firmness

6. Is patient and courteous to all litigants, witnesses and lawyers

7. Has good knowledge of substantive law

8. Is prompt in making rulings and giving decisions

9. Is a hard and conscientious worker

10. Has a good temperament for a judge

11. Written opinions are of a good quality

Nebraska Bar Association Questionnaire

Federal Judges, Magistrates and Bankruptcy Court

- 5 = Excellent (performance is outstanding)
 4 = Good (performance is above average)
 3 = Satisfactory (performance is adequate)
 2 = Deficient (performance is below average)
 1 = Very Poor (performance is well below average and unacceptable)

Characteristics

1. Knowledge and application of substantive law	
2. Knowledge and application of rules of evidence and procedure	
3. Ability to perceive factual and legal issues	
4. Awareness of recent legal developments	
5. Absence of bias or prejudice in civil cases	
6. Absence of bias or prejudice in criminal cases	
7. Not influenced by nature of case	
8. Not influenced by identities of lawyers involved	
9. Not influenced by identities of litigants involved	
10. Not influenced by improper, ex parte approaches	
11. Patience and courtesy to litigants, witnesses and jurors	
12. Patience and courtesy to lawyers	
13. Judicial temperament and demeanor	
14. Efficiency in docket management	
15. Punctuality in attending court proceedings	
16. Promptness in making rulings and giving decisions	
17. Attentiveness to arguments and testimony	
18. Management and control of trial	
19. Efficient and conscientious worker	
20. Quality and clarity of written opinions	
21. Absence of undue personal observations or criticisms of litigants, judges, and lawyers from the Bench or in written opinions	
A. Is the judge's health such that the judge can effectively discharge the duties of judicial office?	% Yes % No % N.Op.
B. In your opinion, should this judge be retained in office?	% Yes % No % N.Op.

Approximate number of lawyers who rated this judge.