

JUDICIAL PERFORMANCE EVALUATION

The Colorado Commission on Judicial Performance also asks about the judge's service to the legal profession and the public. A number of programs use self-evaluation tools implemented independently by judges. Some states conduct evaluations only of first-instance judges, while others also have programs for appellate judges. In nine states, local bar associations distribute nonofficial judicial performance evaluation surveys.

Further Resources

The National Center for State Courts developed a resource guide for courts interested in implementing JPE, available at www.ncsc.org/topics/judicial-officers/judicial-performance-evaluation/resource-guide.aspx. The American Bar Association has published information about JPE programs, Black Letter Guidelines for the Evaluation of Judicial Performance (1985), available at www.americanbar.org/content/dam/aba/migrated/jd/lawyersconf/pdf/jpec_final.authcheckdam.pdf. The Institute for the Advancement of the American Legal System also has helpful information about the JPE process, including a complete list of state court judicial evaluation programs. See <http://iaals.du.edu/initiatives/quality-judges-initiative>.

A well-designed and carefully administered judicial performance evaluation (JPE) program can serve to improve the administration of justice and enhance public confidence in the judiciary. A JPE program provides feedback to help judges improve their performance and can be used to inform the development of appropriate judicial education programs. A JPE program can also promote accountability by setting forth neutral criteria about the competencies and qualities expected of judges.

Goals of a JPE program

The development of a JPE program should be guided by its intended purpose. Is the goal of the program to assess the performance of new judges and give them feedback as they learn their judicial role? To provide information to individual judges at all experience levels to help them improve their performance? To make determinations as to promotion or reappointment? To bolster the accountability of the court to the public or another part of the government?

Considerations when creating a JPE Program

The goal of the program affects many of its features:

- whether judges are required to undergo evaluation or can choose not to participate
- how often and when in a judge's tenure an evaluation is conducted
- who has access to the results of the evaluation
- who is asked to provide feedback
- methods used to obtain feedback
- nature of the feedback that evaluators actually provide

Multiple performance evaluation tools may be needed if the program's goals are multifaceted.

A judiciary should consider developing its own JPE program to ensure that the goals and methods of the program are appropriate. The program may be administered and developed by individual courts, a judicial council, the judiciary's governing body, or in consultation with a judicial education or research institution.

A systemic JPE program is preferable to ad hoc judicial evaluations of judges. A systemic program is the best way to promote

accountability and minimize legitimate concerns about interference with judicial independence. In addition, although most judges want to know how they are doing and how they can improve, ethical and practical considerations may constrain individual judges from obtaining feedback on their own.

Criteria to assess

It is important that evaluation criteria be based on neutral and quantifiable measures and not the substance of court rulings, thereby minimizing any potential that the program will be politicized or used to undermine judicial independence. Judicial attributes to assess include legal knowledge, integrity and impartiality, communication skills (oral and written), professionalism and temperament, and administrative skills (including case management).

Gathering information about judicial performance

Information about judicial performance can be collected from a number of sources, such as questionnaires or interviews with attorneys, court staff, law enforcement personnel, or litigants, as well as observations by other judges or trained court observers. The judge being assessed also may complete a self-assessment tool. In addition, a judge's written decisions and case disposition data may be reviewed.

In most cases, judicial performance surveys allow for anonymous feedback from respondents and some degree of confidentiality of the results. Some court systems release judicial evaluation results only to the judge being evaluated; others provide information to the chief judge [court president] or judicial council, and in some cases results are made public—often permitting the judge to review and appeal any negative feedback.

Advocates of releasing evaluation results to the public argue that such transparency promotes accountability and public confidence in the judiciary. Others think that releasing such results undermines judicial independence and that providing information about the JPE process and about the mechanisms available for dealing with negative feedback constitutes adequate accountability.

Judicial performance evaluation in the federal courts

The U.S. federal judiciary does not have a mandatory JPE program,

although some judges have participated in voluntary evaluation programs. The Civil Justice Reform Act (1990) mandates publication of semiannual reports documenting the rate at which judges dispose of cases and motions. These reports provide caseload statistics but are not evaluations of qualitative performance. (See www.uscourts.gov/statistics/civiljusticereformactreport.aspx.)

In 2003, at the request of the Judicial Conference Committee on the Administration of the Bankruptcy System, the Federal Judicial Center developed an evaluation program for bankruptcy judges. An individual judge may ask the Center to survey attorneys who have practiced before the judge to assess his or her impartiality and integrity, legal ability, and professionalism and work habits. Some courts have collectively decided that each judge in the court will undertake such an evaluation. Survey responses are anonymous and confidential; they are released only to the judge being evaluated. (The standard questionnaire is available at https://fjc.co1.qualtrics.com/SE/?SID=SV_6zaevuAaSHJnV3.)

In general, federal judges share an expectation that all judges will perform at a high level. Chief judges have a critical role in helping judges meet this expectation by routinely monitoring caseload statistics, establishing regular communication among the judges in the court, helping newly appointed judges learn the intricacies of the judicial role, and assisting all judges in resolving matters that might interfere with their performance.

Judicial performance evaluation programs in the state courts

A number of state court systems have adopted judicial performance evaluation programs. These programs differ in their goals and thus in the level to which results are publicized, but they are often intended to serve as a resource for voters during judicial elections. (In the United States, some state court judges are elected or are appointed by the governor for a limited term and required to participate in a popular election to retain their positions.) Some state JPE programs distribute questionnaires to attorneys (including prosecutors and defenders), jurors, and litigants. Other JPE initiatives use committees composed of attorneys, judges, and citizens to observe and assess performance, including courtroom demeanor, written decisions, and case management skills.