



JUDICIAL PERFORMANCE EVALUATION PROCESS

By Chris Creighton

There are 324 justices and judges in Colorado. Seven justices preside over the Supreme Court and issue binding majority decisions on lower court rulings. Additionally, 317 judges preside over other various courts, including the Court of Appeals (22 judges), district courts (181 judges), and county courts (114 judges).

In 1966, Colorado voters approved a constitutional amendment that repealed the election of judges. A system of judicial nominating commissions, Governor-appointed judges, and retention elections was enacted in its place. Under this system, a justice or judge wishing to retain his or her position must run for another term every four years in a retention election. Judicial performance evaluations are prepared to assist voters in determining whether to retain a justice or judge. This *issue brief* explains judicial performance commissions, the judicial evaluation process, and recent changes to the process resulting from the enactment of House Bill 17-1303.

State and District Commissions

The State Commission on Judicial Performance (state commission) evaluates the performance of Supreme Court justices and Court of Appeals judges and creates judicial performance evaluation rules, guidelines, and procedures. The state commission also develops judicial evaluation surveys, collects judicial evaluation data, appoints and supervises the executive director of the Office

of Judicial Performance Evaluation, and provides oversight and guidance to the office. The state commission consists of ten volunteer members appointed by the Governor, the Chief Justice of the Supreme Court, the President of the Senate, and the Speaker of the House.

There are 22 district commissions on judicial performance (district commission), one for each of the state's judicial districts (click [here](#) for a district map). District commissions evaluate the performance of district and county court judges. Each district commission consists of ten volunteer members appointed in the same manner as the state commission.

Evaluation Criteria and Process

State and district commissions evaluate the performance of justices and judges¹ based on the following criteria:

- Integrity;
- legal knowledge;
- communication skills;
- judicial temperament;
- preparation, attentiveness, and workload management; and
- service to the legal profession through public education.

In order to evaluate a justice or judge, the state or district commission collects and reviews: judicial survey data; case management

¹Magistrates are Judicial Department employees and are not evaluated in the same manner as justices and judges.

data; judicial opinions and orders; and any other judicial performance-related information. Evaluation information is also collected from direct courtroom observation and interviews with justices and judges.

Evaluations in Retention Years

Retention elections are held during the November general election. Prior to the election, judicial performance evaluations are completed by the appropriate commission for each justice and judge whose term is set to expire. The evaluation results must be shared with the justice or judge prior to the date in which he or she is required to declare candidacy for retention.

A performance evaluation consists of a completed narrative, which includes: an assessment of the justice's or judge's strengths and weaknesses; a discussion of any deficiency identified by an interim evaluation; any improvement plan; and a statement of whether any deficiency or improvement plan has been satisfactorily addressed. Justices and judges have the opportunity to meet with the commission or respond to the evaluation, and the commission may revise its evaluation if a meeting or response occurs.

After the results of the evaluation have been shared by the applicable commission with the justice or judge, each commission must make a recommendation on the performance of each justice or judge seeking retention. These recommendations are made public by the state commission no later than two months before the retention election. The state commission also arranges to have the narrative and recommendation included in the statewide ballot information booklet (blue book). Blue book and judicial retention recommendations can be found [here](#).

Evaluations in Interim Years

Interim evaluations must be conducted by the appropriate commission between retention elections. Interim evaluations conducted by the state commission, must be presented to the chief justice of the Supreme Court or

the chief judge of the Court of Appeals and the judge or justice that was evaluated, and include the evaluation and any improvement plan recommendations. Interim evaluation conducted by a district commission must be presented to the chief judge of the district and the judge who was evaluated. Similar to retention year evaluations, justices and judges have the opportunity to meet with the commission or respond to the evaluation, and the commission may revise its evaluation if a meeting or response occurs.

Recent Judicial Evaluation Changes

The following judicial evaluation process changes were enacted into law in 2017 by House Bill 17-1303.

Beginning August 2017, the state commission's duties were expanded. Rule-making authority was expanded to include developing rules, guidelines, and procedures to: make surveys for persons affected by justices and judges public and readily available; allow opportunities to review the surveys; establish uniform evaluation procedures; create system-wide judicial training programs; and establish a volunteer-based courtroom observer program. In addition, the state commission's duties were expanded to evaluate senior retired judges every third year. Lastly, the state commission's reporting requirements now include data on the number of justices and judges eligible for retention and the number of performance evaluations completed. This data must be posted online before each election.

Also beginning in 2017, interim evaluations must be done within the first two years of a justice's or judge's appointment. Further, the designations previously used for judicial performance recommendations are changed from "retain," "do not retain," and "no opinion" to "meets performance standard" and "does not meet performance standard." A majority vote is required by the commission to use the "does not meet performance standard" designation.

Lastly, the state commission is increased from 10 volunteer members to 11 in 2019.