

# **Judicial Performance Evaluations**

American Judicature Society  
Washington State Chapter  
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## **I. Introduction**

Over the past six years, the Washington State Chapter of the American Judicature Society (“AJS”) has been working to develop an effective program of performance evaluations for Washington state judges. The AJS has examined programs used elsewhere, developed and pilot-tested evaluation instruments for both trial and appellate judges, and wrestled with practical issues of implementation. This report summarizes these efforts and asks the Supreme Court to adopt a formal evaluation program by court rule.

## **II. The Challenge**

Few things are more central to the dual task of doing justice and building public faith in the institutions of representative government than assuring that judges perform their duties with both integrity and skill. Washington has been very fortunate in the quality of its judges. But even good judges can improve their performance, and voters could benefit from having more and better information about judicial candidates.

At present, there are few tools broadly available that judges can use to evaluate and improve specific aspects of their own performance. Informal feedback mechanisms are notoriously unreliable. Voters, too, have a hard time distinguishing among judicial candidates, making them reluctant to participate in electing judges and potentially subjecting judges to single-issue attacks. Bar polls and ratings, even where available, offer only the perspective of practicing attorneys. Judicial independence, integrity, and excellence are too important for us to be satisfied with this state of affairs.

The time has come for reform. Thirty years have passed since Alaska established the first state-sponsored program to evaluate judicial performance. Twenty years ago the ABA published a set of proposed guidelines for such programs. A task force led by then-Justice Robert F. Utter undertook to develop a program for Washington, but it was never implemented. The Walsh Commission recommended in 1996 that “[a] process for collecting and publishing information about judicial performance shall be created under the authority of the Supreme Court.” The Legislature has been considering bills that would require evaluations and recommendations for judicial appointments. In at least one other state, an evaluation system was adopted by voter initiative. The Supreme Court should act before others seize the initiative.

## **III. Measuring What Matters**

The first task that the AJS undertook was to articulate performance standards for judges. AJS believes that a judge should possess high levels of integrity and impartiality, professionalism, and legal ability, as well as excellent communication and administrative skills. Under those headings, a trial judge should strive to do the following:

Integrity and Impartiality	<ul style="list-style-type: none"> <li>• Treat all persons fairly, equally, and without discrimination based on race, gender, income, or any other bias</li> <li>• Conduct proceedings fairly, impartially, and with an open mind</li> <li>• Make decisions without consideration of public criticism</li> </ul>
Professionalism	<ul style="list-style-type: none"> <li>• Treat parties, witnesses, jurors, staff, and attorneys with courtesy and respect</li> <li>• Demonstrate emotional maturity and multicultural awareness</li> <li>• Act with patience and self-control</li> <li>• Act in a manner that instills public confidence in the judiciary</li> </ul>
Legal Ability	<ul style="list-style-type: none"> <li>• Understand and apply the relevant rules of law, evidence, and procedure</li> <li>• Appreciate the importance of flexibility and common sense in ensuring just results</li> <li>• Exercise sound legal reasoning</li> </ul>
Administration	<ul style="list-style-type: none"> <li>• Be punctual and prepared for court</li> <li>• Maintain control over the courtroom</li> <li>• Demonstrate a commitment to the improvement of the judicial system</li> <li>• Appropriately enforce court rules, orders, and deadlines</li> <li>• Make decisions and rulings in a prompt, timely manner</li> </ul>
Communication	<ul style="list-style-type: none"> <li>• Communicate in a clear and logical manner while on the bench</li> <li>• Prepare well thought out, clearly presented rulings</li> <li>• Communicate with jurors regarding court procedures, their duties, and delays in the proceedings as they occur</li> </ul>

On the appellate level, these same qualities are manifest when a judge undertakes to do the following:

Integrity and Impartiality	<ul style="list-style-type: none"> <li>• Treat all person fairly, equally, and without discrimination based on race, gender, income, or any other bias</li> <li>• Conduct proceedings and make decisions fairly, impartially, with an open mind and without consideration of public criticism</li> </ul>
Professionalism	<ul style="list-style-type: none"> <li>• Treat staff and attorneys with courtesy and respect</li> <li>• Demonstrate emotional maturity and multicultural awareness</li> <li>• Act with patience and self-control</li> </ul>

	<ul style="list-style-type: none"> <li>• Act in a manner that instills public confidence in the judiciary</li> </ul>
Legal Ability	<ul style="list-style-type: none"> <li>• Understand and apply the relevant law</li> <li>• Appreciate the importance of flexibility and common sense in ensuring just results</li> <li>• Exercise sound legal reasoning</li> </ul>
Administration	<ul style="list-style-type: none"> <li>• Demonstrate a commitment to the improvement of the judicial system</li> <li>• Appropriately enforce court rules, orders, and deadlines</li> <li>• Make decisions in a prompt, timely manner</li> </ul>
Communication	<ul style="list-style-type: none"> <li>• Prepare well thought out, clearly presented written rulings</li> </ul>

Under the guidance of Professor David C. Brody, and utilizing the ABA guidelines, the AJS developed questionnaires to measure these qualities. Pilot tests were conducted among both trial and appellate judges. In the former case, questionnaires were distributed to attorneys, witnesses, and jurors who appeared in the trial judges’ courtrooms. In the case of appellate judges, questionnaires went to attorneys appearing before the appellate court and to superior court judges in the same jurisdiction. The judges who were evaluated found the results very useful; the feedback they received would not otherwise have been available to them.

Professor Brody’s article summarizing his findings was the cover story in the January-February 2004 issue of Judicature. A copy of this article is attached.

#### **IV. Implementation**

Pilot testing not only validated the AJS’s questionnaire-based evaluation process; it also established that a well-designed evaluation program can be carried out at reasonable cost. Nevertheless, a reliable source of on-going funding is essential: grants and volunteer labor are not sufficient to carry out an on-going, state-wide program of judicial performance evaluations.

Discussions on this topic and other practical questions of implementation yielded the following tentative conclusions:

##### **A. Administration**

AJS believes that a panel of citizens should oversee the evaluation process, and that its members should be appointed by the Supreme Court. The panel should represent the diversity of the state’s peoples. It should include both attorney and non-attorney members. AJS favors including retired judges, a substantial number of well-informed lay representatives, and members of good-government groups such as AJS and the League of Women Voters. To assure continuity, members should serve staggered terms. Each participant must be committed to hard work and to achieving results. The Administrative Office of the Courts should provide staff support and oversight.

## B. Respondents

Attorneys should be asked to evaluate trial court judges before whom they have recently appeared. Because broad bar polling raises questions of familiarity and fairness, the names of attorneys to be surveyed should be collected from the clerks' records. AJS believes that jurors and appellate judges should also be contacted for evaluations of trial judges.

At the appellate level, evaluations should be solicited from attorneys who have recently appeared before the Court of Appeals and the Supreme Court. Trial judges should also be invited to evaluate appellate judges with whose work they are familiar. Court of Appeals judges should have the opportunity to evaluate Supreme Court justices, and vice versa. In each case, an evaluating judge should confirm that he or she meets the standard of familiarity required to make an informed evaluation. Asking judges on the same court to provide evaluations of one another could create collegiality issues, and therefore it seems advisable to limit judicial respondents to judges sitting on different courts.

AJS believes that, for a variety of reasons, it would not be worthwhile to solicit evaluations from witnesses, court staff, or academic commentators.

## C. Confidentiality

Respondents must be assured that their views will not be traceable to assure candid evaluations. The methods used in AJS's pilot project to collect and assemble survey responses provide such assurance. For additional protection, responses should reflect ratings on specific criteria and not include narrative comments.

A similar process of evaluation, conducted mid-term, could be a very valuable tool for judicial self-improvement. But the confidentiality required for this kind of evaluation process is likely to require legislation, given the clear public policy in this state favoring release of public records absent specific exemption. AJS believes that the citizen panel created to oversee judicial evaluations should be charged with developing a proposal for mid-term evaluations, with any necessary legislative amendments. It will be essential to work with public access proponents to craft such a proposal.

## D. Public education

A key goal of the judicial evaluation program envisioned by AJS is to provide information to the public for its consideration in judicial elections. AJS believes that evaluations for this purpose should be conducted in the first quarter of the election year, and the results should be published in the Judicial Voter Pamphlet as well as electronically. The results should list the number of responses and provide the judge's response, if offered. AJS does not favor having the evaluation panel recommend either for or against any judge. Rather, bar associations and editorial writers may interpret the results and offer recommendations if they wish.

E. Non-judicial candidates for judicial office

AJS believes that all candidates for election to the bench should be evaluated and the results of those evaluations publicly disseminated. To that end, the judicial evaluation panel should be empowered to evaluate not only judges but also candidates for judicial office who lack judicial experience. The same qualities are relevant for all candidates. In evaluating non-judge candidates, the panel should focus on the candidate's arbitration, mediation, and pro tem experience, seeking evaluations from attorneys who have appeared before or opposite the candidate and judges who have had the candidate in their courtroom.

Although candidates who are not currently part of the court system cannot be compelled to cooperate, and current filing deadlines create practical difficulties in conducting evaluations and publicizing the results, these challenges are not insurmountable. AJS believes that publicizing the evaluation process and disclosing any lack of cooperation will discourage stealth candidates. In addition, the evaluation panel can elicit and publicize information from sources not disclosed by the candidates. The end result will be an evaluation process that is fair to all participants and that promotes voter knowledge.

Respectfully submitted,

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