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## POLICY BRIEF

# Judicial Evaluation Standards

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## Introduction

Judges in Illinois are generally elected through a partisan primary process and non-partisan general election.<sup>1</sup> All Circuit Court judges, Appellate Court judges and Supreme Court justices at each court level stand for retention in a general non-partisan election.<sup>2</sup>

Judicial evaluations have historically been conducted in Cook County to educate the voting public, and Chicago Appleseed's Center for Judicial Performance and Integrity has managed a pilot Judicial Performance Commission in Cook County since 2010. The Pilot Project's judicial evaluations serve both to educate the public and provide sitting judges with an incentive to improve their judicial performance.

This policy brief examines existing standards for judicial evaluation in Colorado, which has operated a judicial performance commission since 1988, as well as models created by the Institute for the Advancement of the American Legal System and the American Bar Association. It also examines the goals and approaches used by the Chicago Appleseed Pilot Project.

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## Features of Meaningful Judicial Evaluation

- Public reports of each judge's strength and weaknesses, as measured by objective, non-case-outcome-determined metrics.
- Input from significant numbers of attorneys, and others, with recent experience in the judge's courtroom with measures to ensure sufficient response rates to get accurate assessments of judicial performance.
- Evaluations which seek collaborative solutions with the judiciary to improve the quality of sitting judges
- Outreach and education campaigns to inform citizens of the evaluations and importance of voter education in elections.



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## The Judicial Performance Commission Model

The Judicial Performance Commission Model is not novel; fifteen states currently have judicial performance commissions.<sup>3</sup> Eleven are mandated by statute and/or State Constitution, and the remainder are established by court rule. All but three of these states require judges to retain their seats through re-election, retention election, or re-appointment. The Judicial Performance Commission model seeks to make the process of keeping one's seat meaningful by focusing on the judge's performance, rather than allowing a *pro forma* process which keeps judges on the beach regardless of their professional skills and ability.

Judicial Performance Commissions are distinguished from Judicial Nomination Commissions by function. 28 states have Judicial Nominating Commissions which nominate candidates for appointment to judicial office. Many states with Nominating Commissions also have Judicial Performance Commissions, but the Performance Commissions evaluate the work of sitting judges for retention purposes or for performance reviews, whereas Judicial Nominating Commissions evaluate candidates for appointment to judicial office.

In 1998, the American Judicature Society studied the performance commissions in Arizona, Colorado, Alaska and Utah, which use commissions for retention purposes. The AJS study found that a majority of judges in Arizona, Colorado and Alaska felt that the evaluations adequately represented their job performance.<sup>4</sup> The same report found that a majority of judges in Arizona, Colorado, Alaska and Utah felt that the process was fair, used appropriate criteria, understood the role of judges and made judges appropriately accountable for their job performance.<sup>5</sup> A 2008 survey of judges in Colorado<sup>6</sup> found that over 85% of trial judges felt the performance commission was beneficial to their professional development. A majority felt that the commission had either a positive effect or no effect on their independence as judges. The primary concerns expressed by the judges were low response rates by attorneys, jurors and litigants to the commission's surveys and a lack of public awareness about the commission's work.

## The IAALS Judicial Performance Commission Blueprint

In 2006, the Institute the Advancement of the American Legal System at the University of Denver released a blueprint for judicial performance evaluation programs<sup>7</sup> based on four principles: transparency, fairness, thoroughness and shared expectations. The Blueprint found that the size of the Commission matters less than its composition. A successful Commission is made of both lawyers and nonlawyers who are chosen without regard to political party affiliation.<sup>8</sup> Much of the credibility of a Commission comes from authority and, therefore, it must be authorized by statute or the state constitution if it is to be effective.



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The Blueprint also offers best practices for creating reliable objective evaluations and protecting the integrity of the process, while balancing the need to preserve independence of the judiciary. Although the Blueprint focuses largely on structural features of successful commissions, it discusses the importance of well-designed surveys and robust data collection methods. Data should be collected from a variety of participants in the legal system (attorneys, jurors, litigants, staff) and meaningful efforts are necessary to preserve their anonymity. Case management statistics and court-watching provide necessary complements to the survey responses.

The Blueprint stresses that “under no circumstances should evaluation results always be kept confidential”<sup>9</sup> It is best that evaluations be made public when a judge is facing election and less necessary to make midterm evaluations public. Disseminating evaluations on this schedule “allows a judge to work toward professional self-improvement out of the public eye, but hold the judge accountable to the voters for whether that improvement was actually achieved.”<sup>10</sup>

The Blueprint advises against seating the Judicial Evaluation and Performance Commission solely within the judiciary because public confidence in the evaluations increases with the independence of the agency. Allowing the Commission to operate outside the sole discretion of the judiciary greatly enhances the value of its work.

### **The American Bar Association Guidelines**

The American Bar Association recommends that courts implement formal judicial evaluations programs in order to improve the performance of both individual judges and court systems as a whole, regardless of whether judges sit for retention in a general election. The ABA first issued guidelines for judicial performance evaluation in 1985, and in 2005, the ABA adopted updated Model Guidelines for judicial performance.<sup>11</sup>

The goals of judicial performance evaluation programs, as described in Guideline 1, are self-improvement in the judiciary and voter education. Guideline illustrates the value of performance evaluation in effective assignment of judges and the development of useful continuing education programs. Guideline 3 recommends public dissemination of evaluations in jurisdictions where judges stand for retention. Guideline 4 stresses the importance of independence and impartiality for the commission.

Guideline 5 outlines criteria for judicial evaluation, divided into the categories of (1) legal ability; (2) integrity and impartiality; (3) communication skills; (4) professionalism and temperament; and (5) administrative capacity. Guideline 6 covers methodology for the evaluation process. Guideline 6 recommends that because the evaluation process “is comprised of data collection, synthesis and analysis”, experts in these topics and appropriate research techniques should be employed to develop the process and instruments used in the evaluation. Guideline 6 stresses the



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importance of reliable input, and anonymity for respondents, as well as a means of insuring meaningful response rates. Surveys, interviews, or other methods of collecting data should be behavior-based (not case outcome based) and should be tailored toward the group being surveyed (e.g., attorneys, litigants, staff or jurors). Finally, evaluations should be periodic and related to term cycles for reappointment, retention or reelection.

## The Colorado Judicial Performance Commission

The Colorado State Commission on Judicial Performance was created by statute in 1988. It is considered the most sophisticated performance commission in operation and is often cited as a model.<sup>12</sup> Judges in Colorado reach the bench, at all levels, through gubernatorial appointment, following recommendations from the nominating commission. All judges stand for retention in a nonpartisan general election, and all judges are evaluated by the Colorado Commission prior to that retention election.

The Colorado Commission's mission is to "provid[e] voters with fair, responsible and constructive evaluations of judges and justices seeking retention. The results also provide judges with information to help improve their professional skills as judicial officers."<sup>13</sup> The statute establishes evaluation criteria in categories of integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and to the public. Trial court judges are reviewed by Commissions at the county and district level, whereas appellate and supreme court judges are reviewed by a Commission at the state level.

All judges are evaluated prior to the end of their term. Evaluations present a narrative which concludes with recommendation of "retain", "do not retain", or "no opinion". Evaluations are made available via the Colorado Commission website, generally in August prior to the election, and remain available to the public via the website after the election.

Evaluations are based upon information from a variety of sources. The Colorado Commission sends a survey to a random selection of persons with recent experience with the judge. This includes lawyers, jurors, litigants, law enforcement personnel, employees of the court, court interpreters, employees of probation officers, employees of local departments of social services, victims of crime, and appellate judges. The Commission also reviews written decisions, collects courtroom statistics and employs observations of the judge in court. Judges are personally interviewed and complete a self-assessment as part of the process. Persons wishing to evaluate a judge, who are not randomly selected to fill in a survey, are invited to send comments to the Commission.<sup>14</sup>

The surveys are compiled by a third party research company which maintains the confidentiality of all responses. The research company compiles reports based upon the survey response and forwards these to the Colorado Commission for use in their evaluations.



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Commissioners are appointed to four year terms, with a two-term limit, and abide by a codified set of rules and ethics. Each Colorado Commission, whether state or district, has 10 members: 4 attorneys and 6 nonattorneys. The Commissioners are appointed by the Chief Justice of the Colorado Supreme Court, the Governor of Colorado, the Colorado Speaker of the House, and Colorado President of the Senate. The Chief Justice and the Governor appoint one attorney and two non-attorneys; the Speaker of the House and the President of the Senate appoint one attorney and one non-attorney.

From 1988 through 2012, the Colorado Commission has worked in 12 election cycles and evaluated 1176 judges with participation from over 1200 members of the community. In that time, there have been 17 recommendation to not retain and 12 evaluations with no opinion as to retention. 10 judges have not been retained by the voting public.

The Colorado Commission is generally considered the model for a public commission to evaluate judges. Its composition includes both attorneys and nonattorneys who are not compensated for their service. All judges standing for retention are evaluated and the evaluations are readily available to the public at a time sufficiently prior to the election.

### **The Chicago Appleseed Pilot Project**

A Chicago Appleseed Task Force in 2008 drew up a plan for a Judicial Performance Commission in Cook County and the Pilot Project launched in 2010. The Pilot Project evaluated 69 judges during the 2010 retention election cycle and 61 judges during the 2012 retention election cycle. More than 2000 individual surveys and interviews were conducted in both 2010 and 2012. The purpose of the Pilot Project is to conduct rigorous, research-based judicial evaluations using data from multiple sources.

Research into judicial performance for the Pilot Project followed standards set by existing commissions and the ABA Model. With cooperation from the Chief Judge, Chicago Appleseed received appearance data from the Clerk of the Clerk, identifying attorneys and law firms that had filed an appearance before the relevant judges in the preceeding three years. Staff sent electronic and paper surveys to as many attorneys in that data as possible and conducted telephone interviews with a smaller sample of attorneys from the data.

The Pilot Project used surveys designed by veteran social science researchers which included questions into five categories: legal ability, courtroom management, diligence, integrity, temperament, and fairness & independence. The questions were designed with the ABA model guidelines, as well as the surveys in use in Colorado, as models. Any attorney listed in the Clerk data as having filed an appearance before a judge up for retention was eligible to be selected at random for a confidential phone interview. Any attorney in the data with a published email address was invited to complete



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the anonymous electronic survey. Brief interviews were conducted with attorneys chosen at random from the data and longer in-depth interviews were conducted with another set of attorneys who could provide feedback on various judges within a court division.

For judges not meeting all of the performance standards, the Judicial Performance Commission provided performance improvement commentary. Evaluation results from the Pilot Project were shared with the judges, their supervising judges and the Chief Judge. The reports were also available to the bar associations, for use in their evaluation process, and were ultimately shared with the public. The reports are archived at both [voteforjudges.org](http://voteforjudges.org) and [Chicagoappleseed.org](http://Chicagoappleseed.org). It is hoped that most judges will learn from the evaluation and improve their performance and that the administrators of the divisions will use the evaluations to improve judicial assignments, education and mentoring programs. It is possible that the rigorous and objective process of public evaluation may prompt some judges to leave the bench voluntarily prior to the retention election, but there is no evidence that the evaluation process advocated in this brief unduly pressures judges in their judicial decisionmaking.

Midterm evaluations being conducted this year will monitor the situation to see if a remedial program of court watching, mentoring, and continuing education is implemented. These midterm evaluations will be shared only with the judges and the administrative judges. However, data from the midterm evaluations will be considered by Commissioners for the Pilot Project when the relevant judges once again stand for retention.

The Pilot Project adopted a combination of best practices from the Colorado and Arizona Commissions, as well as the ABA and IAALS models. Surveys for the Pilot Projects were sent to attorneys identified by the Clerk of the Court as having recent experience in their courtrooms. Judicial performance was evaluated on objective criteria, not case outcomes, and surveys were supplemented with court-watching, media research and an appeals process for the judges.

The Pilot Project lacks statutory or constitutional authority. It appears, however, to have the support of thousands of Chicago-area lawyers and judges. The Pilot Project successfully collected more than two thousand surveys and interviews in both its 2010 and 2012 evaluation cycles. Feedback from both practitioners and judges who responded to the draft evaluation was largely positive. Many practitioners thanked interviewers or left a comment on their survey, expressing a belief in the value of the project. In 2012, ten judges responded to their draft evaluations with corrections or a request to appeal the evaluation. More than half of those judges, likewise, expressed a belief in the value of the process.



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## Goals of Meaningful Judicial Evaluation Systems

- Oversight and useful feedback so the judiciary can improve from within, through peer mentoring, continuing judicial education, and appropriate assignments for judges.
- Meaningful and easy-to-use voter information.
- Rigorous investigation which motivates ill-performing judges to retire or make significant improvements.
- Separation of judicial performance evaluation from judicial discipline and censure.
- Providing information to the judge being evaluated, to the voting public, and to supervising judges about how the judge is performing on the bench, not on how they rule in particular cases. In this way, a meaningful judicial evaluation system can more successfully balance the need for judicial evaluation against the need to protect judicial independence.

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## A Permanent Judicial Performance Commission in Illinois

The Performance Commission Model is a proven method for evaluating the performance of sitting judges with measurable benefit for both the judiciary and the voting public. It provides objective and independent oversight to sitting judges, which helps voters make informed decisions about judicial retention. Evaluations also assist court administration in making decisions about judicial assignments, allocating judicial education resources, and prioritizing systemic improvements.

While the Performance Commission Model enhances public engagement in judicial elections, it also facilitates self-improvement within the judiciary. Regardless of whether electoral outcomes change dramatically, regular evaluations under the Performance Commission Model appear to improve the quality of sitting judges, while maintaining the independence of the judiciary.

The Performance Commission Model is not novel, but it is a demonstrably valuable tool for communities to monitor and improve the numbers of judges meeting or exceeding professional standards of quality.

- The Commissions should be composed of both lawyers and non-lawyers. It should represent the diversity of the community as well.
- Evaluations should highlight a judge's particular strengths, in addition to weaknesses. Evaluations which focus both strength and weaknesses provide a roadmap to judges and their supervisors for improving our courts.
- Evaluations must consist of objective, non-outcome, measures. Appropriate categories include: legal ability and knowledge,



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courtroom management and administrative capacity, temperament, and fairness or independence.

- Evaluations should rely on input from a variety of sources, particularly attorneys, litigants, court staff and jurors with recent substantive experience in the particular judge's courtroom. Commissions require reliable data in order to produce meaningful evaluations. Reliable data comes from confidentiality and a diversity of reporters, such as attorneys, litigants, courtroom personnel and jurors. Care should be taken to interview only persons with recent experience before the judge, while she was in her current assignment. The names of those interviewed should be identified through non-partisan means, such as through appearance forms filed with the court by lawyers appearing before a judge. Reliable data also requires multiple sources who are independent of the judges being evaluated and objective measures, such as docket statistics, or public records, such as disciplinary complaints and law suits.
- It is critical that the evaluations process be transparent and that the evaluations be released to the public prior to the retention election. Evaluations should be shared not only with the judge herself, but also with supervising and presiding judges. Evaluation criteria should be formalized and available to both the judges being evaluated and the public utilizing the evaluations.
- Participation in the evaluation process is mandatory for judges and confidential for attorneys. Judges may not “opt out” of a Judicial Performance Commission. Because the evaluations are based upon public records, interviews with practitioners, and other measures which do not require input from the judges or their participation, input of the candidates is limited to review of the evaluation prior to release for factual inaccuracies and the appeals process.

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## CONCLUSION

In a political system where judges are elected, the voting public must have ready access to thorough and objective evaluations of judicial candidates and judges seeking retention. Meaningful judicial evaluations also serve to educate judges and their supervising judges about what those in their courtrooms say about the strengths and weaknesses of their judicial performance. These evaluations identify good judges and, when necessary, suggest ways to improve judicial performance. Public judicial evaluations conducted in accordance with best practice standards can accomplish all of these goals.





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<sup>1</sup> Illinois has a complex hybrid system for filling judicial positions that is far beyond the scope of this brief. In addition to gaining the bench through popular elections, judges may be appointed to vacancies by the Supreme Court to vacancies.

<sup>2</sup> Associate judges in the Cook County Circuit Courts are elected by the Circuit Court judges, after submitting an application and going through the evaluation process of the Alliance of Bar Associations and the Chicago Bar Association.

<sup>3</sup> Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Maine, Missouri, New Hampshire, New Jersey, New Mexico, Rhode Island, Tennessee, Utah, and Virginia have operating performance commissions of some sort. The Kansas judicial performance commission was defunded in 2011, and there are pilot performance commissions operating in North Carolina and Virginia.

<sup>4</sup> *Judicial Retention Evaluation Programs in Four States: A Report with Recommendations*, Executive Summary, Kevin Esterling & Kathleen Sampson, American Judicature Society, 1998, p.5.

<sup>5</sup> *Judicial Retention Evaluation Programs in Four States: A Report with Recommendations*, Full Report, Kevin Esterling & Kathleen Sampson, American Judicature Society, 1998, p. 41-49.

<sup>6</sup> *The Bench Speaks on Judicial Performance Evaluation: A Survey of Colorado Judges*, Institute for the Advancement of the American Legal System, University of Denver, p. ii-iii, available at <http://iaals.du.edu/library/publications/the-bench-speaks-on-judicial-performance-evaluation>

<sup>7</sup> *Transparent Courthouse: A Blueprint for Judicial Performance Evaluation*, IAALS, February 2006, available at <http://iaals.du.edu/library/publications/transparent-courthouse-a-blueprint-for-judicial-performance-evaluation>

<sup>8</sup> *Id.*, p5.

<sup>9</sup> *Id.*, p6.

<sup>10</sup> *Id.*

<sup>11</sup> [http://www.americanbar.org/groups/judicial/conferences/lawyers\\_conference/resources/judicial\\_performance\\_resources.html](http://www.americanbar.org/groups/judicial/conferences/lawyers_conference/resources/judicial_performance_resources.html)

<sup>12</sup> *Judicial Performance Review: A Balance Between Judicial Independence And Public Accountability*, Dubofsky, Jean E., 34 *Fordham Urb. L.J.* 315, 315 (2007).

<sup>13</sup> <http://www.coloradojudicialperformance.gov/>

<sup>14</sup> Unsolicited letters to the Commission must include a name and return address and are shared with the judge.