

COMMITTEE ON THE JUDICIAL PERFORMANCE EVALUATION PROGRAM

Meeting of Subcommittee Chairpersons

AGENDA and MINUTES

Tuesday, April 14, 2009 -- 3:00 p.m.

Supreme Court Building

231 Capitol Avenue

Hartford, CT

Attorney Conference Room

Attendees: Hon. A. DiPentima, Hon. J. Shortall, Hon. E. Peters, Hon. J. Katz, Hon. A. Ment, Hon. F. Iannotti, , Hon. R. Shapiro, Attorney A. Dranginis, Attorney L. Pepe, Attorney F. Arkin

Staff: K. Chorney, P. George

I. Welcome

Hon. A. DiPentima welcomed the subcommittee co-chairs and emphasized that although this was a public meeting, it was not a public hearing, therefore, comments from members of the public will not be heard. Judge DiPentima asked that each chairperson make a brief presentation on the work of their respective subcommittees.

II. Reports from Subcommittee Chairpersons

Subcommittee on Evaluating Judges Assigned to High Volume Courts and as Presiding Judges

Hon. F. Iannotti stated that this subcommittee took a two-fold approach and looked at issues raised by the reappointment process including the possibility that new judges were not getting two full evaluations in an eight year period, primarily because they are assigned GA courts where there is limited opportunity to meet the questionnaire triggering mechanism. For “newer” judges, the subcommittee proposed a peer review process involving three judges who would sit on panel to observe the judge in a courtroom including how they present themselves on the bench. The first review would be verbal (specifically, not in writing). This process was thought to be particularly appropriate for the newest judges (those on the bench 1-3 years). It was envisioned that every judge in a high volume court would be evaluated by a peer panel at least every three years. Judge Iannotti noted that the idea met with some resistance. The subcommittee agreed that any questionnaire for this group of judges should be concise (no more than one page) and the options for answers should be limited. Judge Iannotti noted that there were a few questions raised by the subcommittee regarding the mechanics of the distribution:

- ◆ Is the Branch able to use juris numbers to establish a specific number of appearances before a particular court? One of the attendees indicated that this is possible.
- ◆ Could distribution be conducted by email? There was a belief that email would generate a far greater response rate than any other methodology.

- ◆ With respect to anonymity, where will responses go?

Attorney Dranginis mentioned that the plan to evaluate judges sitting in high volume courts every three years would result in judges being reviewed after the first year, also in Years 4 and 7, which by design would allow for positive changes to take place before the reappointment process in Year 8. Also, the subcommittee was keenly aware that statistical reliability and validity were big issues for the members.

Attendees wondered if respondents would have the opportunity to write comments. The subcommittee co-chairs indicated that the questionnaire needed to be an overall picture and not case-based, and that the majority felt that comments are not necessary and may open the door to issues not germane. A comment section was not planned for the inclusion on the new form.

Attendees also asked how or if this program would interact with the current mentoring program. The co-chairs indicated that mentors would be included in the process.

Subcommittee on Evaluating Judge Trial Referees

Judge Ment reported that this subcommittee concluded that Judge Trial Referees should be evaluated in the same manner as any other judge doing the same work. Further, the subcommittee would recommend that reviews be forwarded to Chief Court Administrator on a calendar year basis allowing the Chief Court Administrator the opportunity to discuss any issues with the referee. Finally, the subcommittee saw no need for a triggering mechanism of 25 questionnaires.

Appellate System

Justice Katz and Justice Peters reported that this subcommittee had some unique issues because the Appellate Court and Supreme Court sit as a group and not as individuals. In addition, the subcommittee members felt that the Appellate Court judges and Supreme Court justices cannot be evaluated on timeliness, knowledge of the law or legal opinions. The subcommittee members opted to begin the process with “baby steps”. The subcommittee researched forms in use in other states and selected some questions from those forms. Attorneys who appear would receive a questionnaire after they argued a case. To date, it is unclear where respondent results would be directed. A comment section was ruled out based on historical information provided by legal counsel.

Subcommittee on Improvement of The Existing System to Evaluate Trial Judges

Judge Shapiro and Attorney Pepe reported that this subcommittee has a large agenda and is making incremental progress to its goals. The subcommittee members agreed there was a need to expand the way a judge’s work is evaluated, however, reaching consensus is noticeably time-consuming. The subcommittee members reached consensus on several issues and has also begun to vote where consensus cannot be reached.

The subcommittee realized that getting more people involved in the evaluation process was important; Presiding Judges needed to be involved in evaluations, and Administrative Judges did not need to be involved. In addition, the subcommittee agreed that a variety of court staff should be involved in the evaluation process through the Presiding Judge. Other subcommittee co-chairs questioned how a Presiding Judge would evaluate a sitting judge and how this process would account for court staff who may have their own agenda(s). Judge Shapiro and Attorney Pepe emphasized that the current process is so limiting that the subcommittee felt the need to expand the categories of respondents.

Other topics covered by this subcommittee to date include the following:

- ◆ Expanding the attorney questionnaire for educational purposes and amending the answer categories to “consistently”, “occasionally”, or “never” as opposed to the current questionnaire answer options.
- ◆ Extensive discussion of a comment section with no consensus reached; the issue has not yet been put to a vote.
- ◆ Need to obtain a statistical expert to determine statistical validity of the questions; this will increase confidence in the evaluation system.
- ◆ The questionnaire should not reflect questions pertaining to assignments (i.e., a complex litigation docket.)
- ◆ The issue of a comment section in a juror questionnaire was passed by vote of 7-2.
- ◆ There was unanimous agreement that the juror questionnaire should be evaluated to ensure best practices and statistical reliability.

Other issues still under consideration: identifying respondent populations, questionnaire distribution, anonymity, how to provide feedback to judges, who should be involved in an evaluation, how to account for the fact that certain cases are assigned to particular judges (some judges are assigned more difficult cases), how to tie the evaluation process to training, and the acceptance of a response from the “winning” side without the balance of a response from the “losing” side (or vice versa).

The subcommittee felt the mentoring program would suffer negative consequences if tied to the evaluation process.

Regarding the consideration of attorneys’ fear of retaliation, Attorney Pepe indicated that while there is fear that somehow a judge may get back at a responding lawyer, the notion that there is a trail to that lawyer is unfounded, and further, that this must be addressed with education. Attorney Dranginis suggested this as a Fall program for the Hartford Bench/Bar. Lastly, it was noted that the subcommittee expects to complete some, not all, of its work by the May deadline.

III. Timeline and Format for Report to JPEP Committee

It was requested that the recommendations be forwarded by mid-May so that they could be forwarded to the full committee before the June meeting. (Those dates have not yet been established.) The committee’s final report will be presented to the judges on June 22.

A JPEP Committee meeting will be scheduled for the first week of June.

The meeting was adjourned at 4:10 p.m.