

**MINUTES**  
**Judicial Performance Evaluation Program Committee**  
**Meeting of June 4, 2009**

The final meeting of the Judicial Performance Evaluation Program Committee was held at the Wadsworth Mansion in Middletown, CT on June 4, 2009 at 2:00 p.m.

**Members in Attendance:**

Attorney Faith P. Arkin, Hon. Arnold W. Aronson, Attorney Livia D. Barndollar, Hon. Patrick J. Clifford, Attorney James O. Craven, Attorney Gregory T. D'Auria, Hon. Maureen D. Dennis, Hon. Alexandra D. DiPentima (Co-Chair), Attorney Anne C. Dranginis, Attorney Ronald S. Gold, Attorney Raymond Hassett, Hon. Katherine Y. Hutchinson, Hon. Frank R. Iannotti, Attorney David R. Jimenez, Attorney Kevin T. Kane, Hon. Joette Katz, Hon. Christine E. Keller, Hon. Aaron Ment, Dean Jeremy Paul, Attorney Louis R. Pepe, Hon. Ellen Ash Peters, Hon. Barbara M. Quinn, Chief Court Administrator, Ex Officio, Hon. Antonio C. Robaina, Hon. Joseph M. Shortall (Co-Chair), Attorney Michael Thompson, Attorney Herman Woodard and Hon. Patrick L. Carroll, III, Deputy Chief Court Administrator, Ex Officio

Absent: Hon. Joan K. Alexander, Hon. William H. Bright, Jr., Hon. Thomas J. Corradino, Hon. William T. Cremins, Attorney Anna M. Ficeto, Representative Gerald Fox, Attorney R. Bartley Halloran, Attorney Marc J. Kurzman, Hon. Thomas V. O'Keefe, Jr., Senator Andrew W. Roraback, Hon. Robert B. Shapiro, Attorney Richard Silver

Judge DiPentima called the meeting to order and welcomed the members to the meeting at 2:12 P.M.

**I. Approval of January 13, 2009 Minutes**

Motion was made and seconded to approve the Minutes of the January 13, 2009 meeting. Minutes unanimously approved.

**II. Consideration and Action on Subcommittee Recommendations**

Judge Shortall informed the committee members that the Co-chairs would report about each subcommittee's recommendations and that then there would be discussion and a vote on the recommendations. There are many recommendations and the entire subcommittee reports will be submitted to the Chief Justice. With that in mind we will be asking the full committee to vote only on the policy recommendations. The goal of the committee is to improve judicial performance and to increase public confidence in the system. Thereafter, the chairs or co-chairs of each subcommittee presented the report and recommendations.

- Evaluating Supreme Court Justices and Appellate Court Judges Subcommittee

Justice Katz referred to the draft questionnaire provided to the members and informed the members that it was the unanimous vote of the subcommittee that this kind of evaluation be engaged in for Supreme Court Justices and Appellate Court Judges.

A Motion was made and seconded that Supreme Court Justices and Appellate Court Judges be evaluated.

Discussion addressed various concerns of whether it is appropriate to evaluate Supreme Court Justices and Appellate Court Judges, whether helpful information could be obtained, how opinions are issued by the court and the number of times an attorney might appear before the court. It was suggested that the questionnaire be revisited in a year or two to determine whether it is providing useful feedback.

Vote: 22 – 1 Opposed: Judge Keller

Absent for this vote: Attorney Craven, Judge Dennis

Justice Katz reported that there are two changes to be made to the draft questionnaire. The first change is in the first paragraph below the Mission Statement – the words “been an appellant or appellee” should be substituted for the words “appealed a case”. The second change is to item 2.k. – the words “never or not often enough” should be substituted for the words “inadequate or less than adequate”. It was also suggested that item 1.c. be changed to Family instead of Domestic.

A motion was made and seconded that the Questionnaire be adopted subject to review by an expert for statistical validity.

Discussion commenced with regard to whether the questionnaire is statistically reliable and whether an expert should review the questionnaire. It was noted that two other subcommittees are recommending that the questionnaires be reviewed by an expert for statistical validity.

Vote: 24 - 1 Opposed: Judge Keller

- Evaluating Judge Trial Referees Subcommittee

Judge Ment reported to the committee members that the recommendations of the subcommittee as contained in their report were adopted unanimously.

A motion was made and seconded that recommendations 1, 2, 3 and 5 of the subcommittee be adopted.

Discussion questioned whether the review information would only be given to the Chief Court Administrator. That was confirmed.

Vote: 24 - 1 Opposed: Judge Keller

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

Judge Iannotti referred to the report of the subcommittee and noted that he will be asking for a vote with regard to recommendations 1, 2, 5 & 7. The subcommittee believed that the questionnaire should be one page and that certain important questions should be included in the questionnaire.

A motion was made and seconded that recommendation #1 be adopted.

Discussion addressed concerns of how input from employees would be solicited, whether it was intended to evaluate individual judges, problems with anonymity, and whether it would be helpful in determining uniformity of procedures and processes in the courts. It was noted that the phrasing of recommendation 1 should be changed if the intent is to evaluate individual judges. The overall principle is that the spectrum of persons who evaluate judges be expanded to include employees; how collected to be later determined; then the information can be provided to the individual judges and put into a report for all judges.

A motion was made and seconded that it be recommended to the Chief Justice that the pool of those who evaluate high volume judges and presiding judges be expanded to court staff.

Vote: 24 - 1 Opposed: Judge Keller

Adoption of Recommendation 2 was then discussed.

Discussion addressed concerns of evaluating judges in Juvenile Court and the frequency of evaluations. A motion was made to delete from the recommendation family, civil and juvenile; a further motion was made to also delete family support magistrates and family support referees particularly in light of a recommendation to reduce the time periods of hearings which generate an evaluation questionnaire.

A motion was made and seconded to exclude civil, juvenile, family, and family support magistrates from recommendation #2.

Vote: 3-21 In favor: Magistrate Hutchinson, Attorney Kane, Judge Keller  
Abstained: Dean Paul

A motion was then made and seconded to adopt recommendation #2 as is.

Vote: 23 - 2 Opposed: Judge Keller and Atty Kane.

Judge Iannotti next sought discussion regarding Recommendation #5.

Discussion addressed concern with pulling three Judge Trial Referees from their assignments and with possible lack of familiarity with new programs in various matters if the Judge Trial Referee had not been assigned to a particular court for a number of years.

A motion was made and seconded that the specifics of Recommendation #5 be changed to recommend the development of a peer review process for judges with the details to be determined later.

Vote: 24 - 1 Opposed: Atty Gold

Judge Iannotti reviewed Recommendation #7.

Motion was made and seconded that Recommendation #7 be adopted.

Discussion addressed referring the questions to an expert and use of the rating scale. No vote was taken on this motion.

A motion was made and seconded to refer the questions to an expert.

Vote: 24 - 1 Opposed: Judge Keller

A motion was made and seconded to delete the rating responses.

Vote: Unanimous in favor

Motion was made and seconded to adopt recommendation #7 as amended.

Vote: 24 - 1 Opposed: Judge Keller

#### - Improvement of Existing System for Evaluating Trial Judges

Attorney Pepe reviewed the work of the subcommittee and the 4 basic categories discussed by the subcommittee, those being (i) the universe of respondents who evaluate judges, (ii) the vehicle for evaluating, (iii) anonymity and (iv) how to use the data that is collected. The goal is to have a system that is fair, objective, promotes confidence of the judiciary and contributes to the professional development of the judges.

A motion was made and seconded to adopt Recommendation #1 (main part only).

Discussion asked if subparts would be included in report to the chief justice and response was yes.

Vote: Unanimous in favor

A motion was made and seconded to adopt Recommendation #2 (main part only).

Vote: Unanimous in favor

A motion was then made and seconded to adopt Recommendation 2(c). It was noted that the decision to have this question optional was because some respondents might fear that they could be identified and not answer.

Vote: Unanimous in favor

A motion was made and seconded to adopt Recommendation 2(d).

Discussion ensued on including comment section, use of comments, if comment used immediately to improve judicial performance whether the evaluator would know the comment would be used immediately, potential for abuse of comment section when comments taken out of context, comment section versus blogs, how to handle misuse, importance of being able to give comments.

Vote: 20 - 5 Opposed: Judge Keller, Judge Shortall, Judge Dennis, Judge Clifford, Atty Woodard.

Attorney Pepe reviewed Recommendation 2(f) as well as Recommendation 3(b).

A motion was made and seconded to adopt Recommendation 2(f) and 3(b).

Vote: Unanimous in favor

Attorney Pepe next reviewed Recommendation #4 regarding distribution of the questionnaires.

A motion was made and seconded to adopt Recommendation #4.

Vote: 24 - 1 Opposed: Judge Keller

Attorney Pepe reviewed Recommendation #4(b) regarding distribution of a questionnaire after a settlement conference or mediation.

Discussion revolved around how the “appropriate circumstances” part of the recommendation would be determined and by whom. It was noted that this wasn’t addressed, although this was thought of as being after a civil settlement conference or mediation. It could be reviewed to determine how and when this could be done. It was suggested that when a pretrial is more than one hour in length that lawyers would have an opportunity to evaluate a judge.

A motion was made and seconded that the concept of 4(b) be adopted with the how and whether it can be done to be determined at a later time.

Vote: 23 – 2 Opposed: Judge Keller, Justice Peters

Attorney Pepe reviewed Recommendation #5.

A motion was made and seconded to adopt Recommendation #5.

Vote: Unanimous in favor

Attorney Pepe reviewed Recommendation #6.

A motion was made and seconded to adopt Recommendation 6, main portion only.

Discussion addressed whether this might become the only information that would be reviewed, what other states are doing, the need for input other than the questionnaires, need for meaningful process, protection from unfounded criticism. Motion was made and seconded to amend Recommendation #6 to substitute “peer review” for “independent observers”.

Vote: 2 – 21 In Favor: Judge Keller, Dean Paul

Absent for this vote: Judge Clifford and Judge Dennis

Motion was made and seconded that Recommendation #6, main part only, be adopted.

Vote: 20- 3 Opposed: Judge DiPentima, Judge Keller, Judge Ment

Absent for this vote: Judge Clifford and Judge Dennis

Attorney Pepe reviewed Recommendation #6(c)

Brief discussion regarding purpose of recommendation.

Motion was made and seconded to adopt Recommendation 6(c).

Vote: 21 - 1 Opposed: Judge Keller

Abstain: Justice Peters Absent for this vote: Judge Clifford and Judge Dennis

Judge DiPentima then asked the committee members if anyone was seeking a vote on any other recommendations.

A motion was made and seconded that the Existing System Subcommittee's Recommendation 1(b) be adopted, namely, that input for the evaluation system not be sought from litigants, themselves, or self-represented litigants. During discussion it was pointed out that other avenues exist for litigants and self-represented litigants to make complaints regarding a judge's conduct; e.g., complaints to the Judicial Review Council.

Vote: Unanimous in favor

Absent for this vote: Judge Clifford and Judge Dennis

Judge DiPentima informed the members that the reports of these meetings will be part of a report to Judge Quinn, Judge Carroll and the Chief Justice. She noted that this is a very important issue to attorneys and judges for the improvement of our system.

The report will be shared with the committee members. Judge DiPentima thanked the members.

Meeting adjourned at 4:50 P.M.

Committee on Judicial Performance Evaluation Program

**June 4, 2009 Meeting Vote Summary**

<b>Vote #</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
1. Whether to evaluate Supreme and Appellate Court Justices/Judges?	22	1	0	14
2. Whether to adopt the proposed Supreme/Appellate Court questionnaire with Justice Katz's changes and subject to expert review and statistical analysis?	24	1	0	12
3. Whether to adopt the Judge Trial Referee subcommittee's recommendations as set forth in the report?	24	1	0	12
4. Whether to expand the pool of persons who evaluate High Volume Court Judges and Presiding Judges to include court staff?	24	1	0	12
5. Whether to amend the High Volume subcommittee's recommendation #2 to except Family, Civil and Juvenile judges, Family Support Magistrates and Family Support Referees?	3	21	1	12
6. Whether to adopt the High Volume subcommittee's recommendation #2?	23	2	0	12
7. Whether to adopt the High Volume subcommittee's recommendation #5 after the specifics are changed to "develop a peer review process for the evaluation of judges with the details to be determined later?"	24	1	0	12
8. Whether to amend the High Volume subcommittee's recommendation #7 to include expert review and statistical analysis?	24	1	0	12
9. Whether to amend the High Volume subcommittee's recommendation #7 to delete the proposed rating responses?	25	0	0	12
10. Whether to adopt the High Volume subcommittee's recommendation #7 as previously amended?	24	1	0	12

Committee on Judicial Performance Evaluation Program

**June 4, 2009 Meeting Vote Summary**

<b>Vote #</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
11. Whether to adopt the Improvement-Existing subcommittee's recommendation #1 (main part only)?	25	0	0	12
12. Whether to adopt the Improvement-Existing subcommittee's recommendation #2 (main part only)?	25	0	0	12
13. Whether to adopt the Improvement-Existing subcommittee's recommendation #2(c)?	25	0	0	12
14. Whether to adopt the Improvement-Existing subcommittee's recommendation #2(d)?	20	5	0	12
15. Whether to adopt the Improvement-Existing subcommittee's recommendation #2(f) combined with recommendation # 3(b)?	25	0	0	12
16. Whether to adopt the Improvement-Existing subcommittee's recommendation #4 regarding more frequent distribution of surveys and electronic distribution of surveys?	24	1	0	12
17. Whether to adopt the Improvement-Existing subcommittee's recommendation #4(b) regarding evaluating judges presiding over pre-trials and mediations with the how and whether it can be done to be determined at a later time?	23	2	0	12
18. Whether to adopt the Improvement-Existing subcommittee's recommendation #5?	25	0	0	12
19. Whether to amend the Improvement-Existing subcommittee's recommendation #6 by substituting "peer review" for independent observers"?	2	21	0	14



Committee on Judicial Performance Evaluation Program

**June 4, 2009 Meeting Vote Summary**

<b>Vote #</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
20. Whether to adopt the Improvement-Existing subcommittee's recommendation #6 (main part only) with no amendments?	20	3	0	14
21. Whether to adopt the Improvement-Existing subcommittee's recommendation # 6(c)?	21	1	1	14
22. Whether to adopt the Improvement-Existing subcommittee's recommendation # 1(b) that excludes "litigants and self-represented litigants" from the evaluation process?	23	0	0	14

**SUBCOMMITTEE ON EVALUATING SUPREME COURT JUSTICES  
AND APPELLATE COURT JUDGES**

The subcommittee, by consensus, recommends the following questionnaire be distributed to attorneys when they argue before the courts.

Attorney Questionnaire – Supreme Court Justices and Appellate Court Judges

**MISSION STATEMENT:** To provide information to improve the judicial performance of individual judges and justices and thereby improve the judiciary as a whole.

This questionnaire seeks your input on the quality of Judge X’s performance on the appellate bench. Your responses will remain anonymous. Please fill out and return this survey if you have been an appellant or an appellee and Judge X participated in the decision. If you have not had experience with Judge X, please so indicate below, leave the remaining questions blank and return the survey. Your participation is appreciated.

If you have not had experience with Judge X, simply indicate this by checking the box immediately below, leaving the remaining questionnaire blank and returning the survey.

1. Which of the following types of cases have you appealed in which Judge X participated in the decision? Select all that apply.

- a. Civil
- b. Criminal
- c. Family
- d. Juvenile
- e. Other

2. Please evaluate whether Judge X’s job performance meets expectations of excellence, using the following scale:

- 1 All of the Time
- 2 Most of the Time
- 3 Some of the Time
- 4 Not Often Enough
- 5 Never
- NA Cannot Evaluate

If you do not feel you have adequate first hand knowledge to evaluate Judge X on a specific question, select NA (“Cannot Evaluate”).

a. Behaves in a manner that is free from impropriety or the appearance of impropriety      1   2   3   4   5   NA

b. Treats people equally regardless of race, gender, ethnicity, economic status, or any other factor      1   2   3   4   5   NA

c. Displays fairness and impartiality toward

each side of the case	1	2	3	4	5	NA
d. Avoids ex parte communications	1	2	3	4	5	NA
e. Allows parties to present their arguments and answer questions	1	2	3	4	5	NA
f. Asks relevant questions during oral argument	1	2	3	4	5	NA
g. Is courteous toward attorneys	1	2	3	4	5	NA
h. Is courteous toward court staff	1	2	3	4	5	NA
i. Demonstrates appropriate demeanor on the bench	1	2	3	4	5	NA
j. Treats brother and sister judges equally and respectfully	1	2	3	4	5	NA
k. If your response to any of the questions a through j was never or not often enough please provide details that led you to that conclusion	_____					
	_____					
	_____					

3. Did Judge X author or co-author one or more opinions in your case(s)?

4. Background and demographic information.

a. How long have you been a practicing attorney?

- Less than 1 year
- 1 – 2 years
- 3 – 5 years
- 6 – 10 years
- 11 – 20 years
- greater than 20 years

b. Which of the following area(s) of law best describes your practice? (select up to 2 items)

- civil tort – defense
- civil tort – plaintiff
- appellate work
- criminal – defense attorney
- criminal – prosecution
- commercial & general civil litigation
- juvenile delinquency or child dependency
- domestic relations/family law
- estate/probate
- government practice
- law school clinic
- other (please specify) \_\_\_\_\_

c. Which of the following best describes your work setting?

- prosecuting attorney's office

- Attorney General's office
- Public Defender's Office/Assigned Counsel
- legal aid
- in house corporate counsel
- private practice
- other (please specify)\_\_\_\_\_

d. How many times have you argued a case before the Judge over the past two years?

- none
- once
- 2 – 3 times
- 4 – 10 times
- more than 10 times

e. How many times have you evaluated the Judge over the past two years?

- none
- once
- 2 – 3 times
- 4 – 10 times
- more than 10 times

Hon. Ellen A. Peters, Hon. Joette Katz, Chairs; Attorney Gregory D'Auria; Dean Jeremy Paul;  
Attorney Michael Thompson.

**Judicial Performance Evaluation Program Subcommittee:  
Evaluating Judge Trial Referees**

**Report**

The Subcommittee on Judicial Performance Evaluation – Evaluating Judge Trial Referees is chaired by Hon. Aaron Ment. The other members include Hon. Arnold Aronson, Attorney Livia D. Barndollar, Hon. Maureen Dennis and Attorney R. Bartley Halloran. The subcommittee met once and communicated thereafter by e-mail. The subcommittee reviewed the authority of a judge trial referee, discussed the scope of work currently performed by a judge trial referee and compared the work of a judge trial referee to that of a superior court judge. Also, the subcommittee discussed the current review process for judge trial referees.

The following recommendations were approved by the members with one abstention from Attorney Barndollar. (Attorney Barndollar abstained because she was unable to attend the meeting.)

***RECOMMENDATIONS***

1. Judge Trial Referees should be evaluated similarly to Judges doing the same work.
2. Any and all review and recommendation information should be available to the Chief Court Administrator for her information when she is recommending to the Chief Justice the appointment of a Referee to become a Judge Trial Referee.
3. Review recommendations for Judge Trial Referees on a calendar year basis to allow sufficient time for any necessary performance issue improvement.

*Any notice of need for improvement should be provided to a Judge Trial Referee 6 months in advance of Judge Trial Referee re-appointment date.*

4. Continue to appoint Judge Trial Referees on a fiscal year basis.

*Judge Trial Referees should be afforded sufficient opportunity to correct performance issues prior to a designation determination at the end of the fiscal year. Staggering the review of recommendations for Judge Trial Referee appointments will allow the time necessary to accomplish this.*

5. Provide regular and timely review of concerns with Judge Trial Referees through meetings and discussions.

*Judge Trial Referees should be provided feedback regarding their work performance through regular and timely meetings and discussions with Administrative Judges, the Deputy Chief Court Administrator, and/or the Chief Court Administrator.*

## ***Subcommittee on Evaluating***

### ***Judges Assigned to High Volume Courts and as Presiding Judges***

The Subcommittee on Judicial Performance Evaluating Judges Assigned to High Volume Courts and as Presiding Judges is chaired by Hon. Frank A. Iannotti and Attorney Anne C. Dranginis. The members include Hon. Joan K. Alexander, Hon. William H. Bright, Jr., Hon. Patrick J. Clifford, Hon. William T. Cremins, Representative Gerald M. Fox, Attorney Raymond M. Hassett, Family Support Referee Katherine Y. Hutchinson, Hon. Thomas V. O'Keefe, Jr. and Attorney Herman Woodard.

The subcommittee met four times. At those meetings, the members reviewed comments from the Judicial Performance Evaluation Committee meeting, discussed information obtained about evaluation programs implemented in other states, discussed the evaluation criteria and "who should evaluate," and discussed the development of questions that are specific to High Volume Court Judges and Presiding Judges.

Below are the recommendations and the rationale for the recommendations:

#### **RECOMMENDATIONS**

***The subcommittee members unanimously agreed to recommend that:***

- 1. employee input be solicited but not be included as a specific part of the evaluation process; rather it should be in the form of an annual statewide survey, with findings reviewed at the Connecticut Judges Institute.***

Rationale: The subcommittee seeks to ensure that input is solicited from a broader population than a single respondent group (i.e., attorneys) given the importance of in-court efficiencies, the overall performance of judges, and program buy-in; however, it recognizes that employees may be disinclined to complete a survey. The subcommittee agreed to recommend an annual statewide survey because employee input is important to improvement of the bench as a whole.

- 2. judges being evaluated should include but not be limited to Presiding Judges, high volume criminal court judges in both Parts A and B, specialty court dockets, civil, family, family support magistrates/family support referees, and juvenile (delinquency, not neglect) sessions, housing court judges, and special proceeding judges.***

Rationale: In support of the Judicial Performance Evaluation Program, the subcommittee sought to include as many high volume court judges as possible.

- 3. questionnaires on high volume court judges be sent to all respondent groups at the same time, with directions for respondents to select the range of appearances in front of the specific judge (ranges = 1-5, 6-10, or more than 10 times).***

Rationale: The subcommittee wants to ensure that this effort is efficient for all parties involved and is counting on the honesty of respondents to achieve this goal.

- 4. questionnaires be sent out the first week of January of every year with a return date of February 28 of every year.***

Rationale: the subcommittee wanted to ensure that there would be a sufficient period of time between the distribution and collection of the questionnaires and the preparation of the Judicial assignments (e.g., 4 months prior to April of each year.); this recommendation was envisioned as a form of additional information and assistance to the Chief Court Administrator.

5. **a peer review (or peer monitoring) process be initiated by way of a three judge panel, with judges rotating their term of service as determined by the Chief Court Administrator. The first peer monitoring findings will be conveyed orally; the second will be written; both will occur by the first year anniversary of a new judge's appointment. This peer review/monitoring applies to all members of the judiciary.**

Rationale: The subcommittee seeks to provide honest feedback to new and veteran judges. The concept was developed to assist new judges and will work hand in hand with the orientation and mentoring programs. It will also help veteran judges to be better prepared for the reappointment process.

6. **the questionnaires utilize no more than five (5) response options: excellent, very good, good, fair, poor; "Not Applicable" should also be an option for each question.**

Rationale: The subcommittee sought to strike a balance between enough options to enable the questionnaire to be statistically valid and not being so long or diffuse as to be confusing. The additional of "Not Applicable" allows respondents to self-select those items that do not apply to their experience in the high volume courts.

7. **the following Attorney Questionnaire items be included:**

Please rate the judge before whom you appeared					
(1) Excellent	(2) Very Good	(3) Good	(4) Fair	(5) Poor	(6) NA
1. Decisiveness during Proceedings					
2. Courtesy of the Judge					
3. Patience during Proceedings					
4. Courtroom Decorum					
5. Demonstrates Respect During Proceedings					
6. Efficient Pace of Proceedings					
7. Control of Courtroom					
8. Impartiality of Conduct					
9. Consistency of Rulings					
10. Explanation of Rulings					
11. Ability to Effectively Settle Cases					
12. Facilitation in Development of Options for Settlements/Pleas					
Please indicate the number of years you have practiced law: 1-5, 6-10, more than 10 _____					

Rationale: The subcommittee members felt that the questionnaire needed to be short to encourage a high rate of return; the members selected from previous questionnaires or drafted their own questions because they are the most representative of the work of High Volume court judges; and members sought to present the questions in a clear and concise manner. The members noted that it was important for judges to know their strengths and areas needed for improvement.

# JUDICIAL PERFORMANCE EVALUATION PROGRAM

## REPORT OF THE SUBCOMMITTEE ON THE IMPROVEMENT OF THE EXISTING SYSTEM FOR THE EVALUATION OF TRIAL JUDGES

### INTRODUCTION

The Subcommittee for the Improvement of the Existing System for the Evaluation of Trial Judges (the "Subcommittee")<sup>1</sup> submits herewith its report to the Hon. Alexandra D. DiPentima and Hon. Joseph M. Shortall, co-chairs of the Committee on the Judicial Performance Evaluation Program.

### BACKGROUND

In discharging its assignment to determine whether the existing evaluation program for trial judges could be improved so as to enhance judicial performance and increase public confidence in the judicial system, the Subcommittee studied substantial reference materials, including the structure and content of the existing program; the history of the development of that program, including the utilization and modification of attorney and juror questionnaires over the years; guidelines prepared by the American Bar Association for the evaluation of judicial performance; a study on best practices for judicial performance evaluations published by the *Institute for the Advancement of the American Legal System*; and the methodologies employed in judicial evaluation programs in other states.

The Subcommittee met on five (5) occasions between the beginning of February and early May 2009, at which meetings it received comments from the Chief Court Administrator, the Deputy Chief Court Administrator, a former Chief Court Administrator and the Chief Administrative Judge for Family, among others, and discussed and debated numerous issues relating to the existing system for evaluating

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<sup>1</sup> The Subcommittee was co-chaired by The Honorable Robert B. Shapiro and Attorney Louis R. Pepe and had as its members the Hon. Thomas J. Corradino, Hon. Christine E. Keller, Hon. Antonio C. Robaina, Attorney Ronald S. Gold, Attorney David R. Jimenez, Attorney Kevin T. Kane, Attorney Faith P. Arkin, State Senator Andrew W. Roraback, Attorney James O. Craven, Attorney Marc J. Kurzman and Attorney Richard Silver. The co-chairs wish to express their great gratitude and appreciation to the Subcommittee members for all their hard work and to Margaret R. George, Judicial Branch Case Flow Management Specialist, who provided invaluable support and assistance to the Subcommittee.



trial judges and proposed changes thereto. The Subcommittee considered the following aspects of the existing evaluation program: (1) the appropriateness of limiting evaluations to attorneys and jurors only and whether evaluations should be solicited from other participants in the judicial process and from independent observers/evaluators; (2) the sufficiency and appropriateness of the existing attorney and juror questionnaires and their distribution and use; (3) the adequacy of existing procedures to protect anonymity of respondents; and (4) the use of data collected in the evaluation process to provide feedback to judges.

As a result of that effort, the Subcommittee concluded that the Judicial Branch had developed and implemented a thoughtful and well-conceived system for evaluating trial judges but that, nonetheless, it could be improved with certain modifications. Set forth below are the recommendations the Subcommittee respectfully submits for consideration by the Judicial Branch and the rationale for its recommendations. In most cases, the recommendations were adopted by consensus after discussion and, where that happened, it is so indicated. Where consensus could not be achieved, a vote was taken and recorded, and the results of each said vote are also indicated.

Accordingly, this report summarizes the Subcommittee's recommendations. Those recommendations, therefore, do not necessarily represent the individual views of the undersigned authors.

## **RECOMMENDATIONS**

The Subcommittee believes that the existing evaluation program can be improved by the adoption and implementation of the following recommended modifications:

### **Recommendation No. 1: The Evaluation System For Trial Judges Would Benefit By Soliciting The Input From Other Constituents In The Judicial Process Beyond That From Only Jurors And Attorneys, As Is Presently The Case.**

At present, the only evaluations of trial judges come from the attorneys appearing before them and the jurors serving on a case over which they preside. That feedback is in the form of questionnaires, which are anonymously completed and submitted and which are designed to solicit the respondent's impression of the judge's performance during a trial or other hearing (presently hearings over one hour in length). Those two categories of respondents represent, however, only a very small segment of the population affected by the judge's performance and only with respect to one area of the judge's many duties and responsibilities. They cannot, therefore, be considered an entirely fair and representative sample. While reaching out to make the list of respondents more inclusive admittedly presents administrative and management issues, the Subcommittee does not believe those obstacles would be insurmountable. More particularly, on this issue the Subcommittee further recommends:

- (a) **Evaluation of the judge's performance should be solicited from other constituents in the system, including court staff personnel, probation officers, family relations officers, victim advocates, courtroom clerks, and interpreters, but that such feedback should be channeled through the Presiding Judge in that Judicial District.**

It is contemplated that the presiding judge would solicit such information from the identified participants, compile it, and orally report to the Chief Court Administrator on that judge's performance, based on that input, as requested. The information so collected and compiled would be of particular value in the mentoring of the judge. As indicated, the Subcommittee recognized that this process might present certain risks and complications, but it was believed the benefits to be derived in terms of a broader, more robust, more useful evaluation outweighed those negatives. This recommendation was reached by **consensus**.

- (b) **The Subcommittee further recommends that the reach-out by the Presiding Judge to other participants for their impression and reaction to a particular judge *not* include the administrative judge, the litigants themselves, or any self-represented litigants.**

It was concluded that the inclusion of those parties would be too disruptive (in the case of the AJ) or result in feedback of questionable value (litigants and self represented litigants). This recommendation was achieved by **consensus**.

**Recommendation No. 2: The Present Attorney Questionnaire (Rev. 3/07) Distributed To Counsel Following A Trial, After Hearings Over One Hour, Etc., Does Not Provide The Opportunity For A Fair, Proper And Comprehensive Evaluation Of The Judge And Should Be Modified.**

The current attorney questionnaire and its utilization by the Judicial Branch, the Judicial Selection Commission, and the Judiciary Committee of the State Legislature was examined and debated at length, and the Subcommittee decided that it could and should be modified as follows:

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- (a) **The thirteen (13) questions presently proposed (e.g., pace of proceedings, explanation of rulings, etc.) should be increased in number with the focus on questions that would be of particular value to the judge's ongoing mentoring, education and professional development.**

It is believed that the current questions are not comprehensive enough to provide adequate information for a proper and fair evaluation. This recommendation was reached by **consensus**.

- (b) **The responses permitted in the current questionnaire (e.g., excellent, good, fair, poor, N/A/Unobserved) should be replaced with the response categories previously used; i.e., "consistently," "occasionally," "never," "N/A."**

It is the belief of the Subcommittee that the categories previously utilized were less subjective and would produce more useful data. This recommendation was achieved by **consensus**.

- (c) **The information concerning the respondent that is currently required (e.g., years of practice, type of practice, etc.) is adequate, except that it should be supplemented with a question asking whether the outcome of the trial or hearing was favorable or unfavorable to the respondent's position. Further, the response to this question should be optional.**

While conventional wisdom and human nature would suggest that a disappointed attorney would rate the judge less favorably and more harshly, there is no empirical evidence to demonstrate that. It was believed that the answers, therefore, could perhaps be evaluated in light of the outcome and then ultimately the data so collected over time would support a later study to determine whether evaluations are, in fact, skewed by the outcome. The response was made optional so as to avoid any diminution in the anonymity of the respondent. This recommendation was achieved by **consensus**.

- (d) **The current questionnaire should be modified to add the following questions:**

**“What, if anything, did the judge do that you found particularly commendable or admirable?”**

**“What, if anything, did the judge do that you found could be improved?”**

**Further, it is recommended that the Judicial Branch use said comments in the mentoring and professional development of its judges and, in so doing, not necessarily wait until the minimum number of questionnaires required for review have been returned.**

The issue of adding a comment section to the current attorney questionnaire was debated vigorously and over a long period of time. There was very real and strong concern expressed by some that adverse comments so obtained could be taken out of context by members of the Judiciary Committee and mis-used at the time the judge appeared for his/her re-appointment hearing. The judge confronted with such a comment would be unable to identify the case or context in which the comment occurred -- much less its author -- and would be completely defenseless.

Others argued that comment sections were included in previous versions of the questionnaire and produced narratives that were invariably more favorable than unfavorable, and, in any event, the solicitation of comments were essential to an insightful evaluation of the judge's performance.

The foregoing recommendation was, in fact, a compromise of those competing concerns and also an attempt to make clear the value of such comments for the judge's professional development (hence, the recommendation that the comments be used on an ongoing basis). This recommendation was achieved by a vote of 7 to 2.

- (e) **It is recommended that the current attorney questionnaire not be modified so as to solicit the attorney's recommendation for assignment of the judge to the complex litigation docket.**

The Subcommittee rejected the idea that the respondent attorney's opinion as to the qualifications for that particular judge to serve on the Complex Litigation Docket should be solicited, believing that this was

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simply an inappropriate inquiry and that assignment should be left to the appropriate Judicial Branch authority. This recommendation was achieved by consensus.

- (f) **The attorney questionnaire -- either in its current form or as modified with any of the aforescribed recommendations that may be adopted by the Judicial Branch -- should be referred to an appropriate expert for an overall evaluation as to: (i) its adequacy for measurement of a judge's performance of his/her duties and the production of useful information for the judge's education and professional development; and (ii) the number of responses required to produce statistically reliable and meaningful data.**

The Subcommittee recognized that the proper design and utilization of such questionnaires is a complicated undertaking requiring specialized training not present among the members of this Subcommittee. Its recommendations for modification of the questionnaire, as set forth above, were the product of its collective insight obtained as participants in the system and not as professionals with specialized expertise in this area. For that reason, and because the questionnaire plays such an important part in the judge's evaluation, it is strongly recommended that, whether or not the Judicial Branch adopts any of the proposed modifications, the questionnaire be submitted to an expert for the evaluation described above.

**Recommendation No. 3: The Present Juror Questionnaire (Rev. 3/95) Distributed To Jurors Following A Trial, Is Generally Adequate But Could Be Improved Somewhat.**

The current juror questionnaire was subjected to the same scrutiny as that applied to the attorney questionnaire as described above and was found lacking in certain limited aspects:

- (a) **The juror questionnaire should be modified to contain the case caption and a provision for juror comments, except that comment section should be clearly labeled to limit any such narrative to the judge's performance and demeanor and should further state that there should be no reference to jury deliberations.**

Although not as controversial as the comment section in the attorney questionnaire, there were those on the Subcommittee who believed that the solicitation of comments from jurors would be particularly useful in gaining insight to the judicial process from the perspective of an "outsider" and in enhancing "public confidence in the judicial system."

Not surprisingly, there were those who disagreed and the concerns they expressed included out-of-context use and mis-use of the comments in the reappointment process (as discussed above concerning the attorney questionnaire) and the possible use of such comments as evidence in post-verdict motions. The caveat language in the comments section is designed, of course, to focus the juror on proper areas of response and to protect the confidentiality of the juror in deliberations. This recommendation was not achieved by consensus and was adopted by a vote of 7 to 2.

- (b) **The juror questionnaire -- whether in its current form or as modified by recommendations made by the Subcommittee and adopted by the Judicial Branch, should be submitted to an appropriate expert for the same evaluation as that recommended for the attorney questionnaires, *supra*.**

The same concerns expressed above in Recommendation No. 2 (f) are the basis for this recommendation.

**Recommendation No. 4: The Judicial Branch Should Take Steps To Provide For The More Frequent Distribution Of Attorney Questionnaires And To Consider The Electronic Distribution Of And Response To Such Questionnaires.**

Although there was initially some concern among Subcommittee members that the specific and express criteria for the distribution of attorney and juror questionnaires were not being followed uniformly and consistently in all Judicial Districts, further examination of this issue revealed that there are very clear and unambiguous instructions to court personnel as to when and how questionnaires are to be distributed to respondents. Any difference between Judicial Districts or irregularities in any one Judicial District appear to be the result of human error or mishap and not improper practices, policies or procedures. The Subcommittee did, however, believe that the following recommendations would improve the distribution process:

- (a) **The specific and detailed criteria for the distribution of questionnaires are adequate and should be maintained, except that the length of any hearing, which would cause a questionnaire to be distributed to an attorney, should be reduced from one (1) hour to one-half (1/2) hour.**

There was some concern expressed by Subcommittee members that certain court settings with many typically short hearings (*e.g.*, juvenile court or family court) would generate a high volume of not particularly useful data and create significant administrative problems, including numerous responses concerning a judge by the same attorneys. The

majority felt that by reducing the one hour limitation to one-half hour, the volume of data could be significantly increased while still keeping the responses meaningful and substantive. One of the complaints expressed with respect to the current system is that, depending on the judge's assignment, a long period of time may pass before the requisite twenty-five questionnaires are received, thereby depriving a judge from useful feedback early in his/her assignment. Increasing the frequency of responses would address that issue.

No consensus was reached on this recommendation, and so it was adopted by a vote of 6 to 3.

- (b) **An appropriately designed questionnaire should be distributed to attorneys for response upon the completion of a settlement conference or mediation, when appropriate circumstances prevail.**

The fact that the current evaluation program for trial judges measures only the performance of that judge in the courtroom was identified as a significant deficiency in that the judge's duties are far broader than the conduct of trials or hearings, and the contribution he/she makes in those other areas should be recognized and evaluated. Settlement conferences and mediations were two such readily identifiable areas where the judge's performance is undeniably important to the fair and efficient administration of the judicial process.

By the same token, it was recognized by the Subcommittee that the evaluation process here presents its own challenges. For example, while mediations are scheduled well in advance and typically involve the prior submittal of position papers, so as to allow the judge to become familiar with the case and otherwise prepare, pretrial settlement conferences are assigned on an ad hoc basis with little or no opportunity to prepare. Moreover, settlement conferences are often aborted after a very short period of time when it becomes apparent that one or more parties are simply not ready to discuss serious settlement -- unlike a mediation which is requested by the parties.

Accordingly, while the Subcommittee believes that the judge's performance is an important part of the judicial process and should be evaluated, it also recognized that: (i) a different type of questionnaire would have to be developed to measure the judge's performance; and (ii) distribution to the attorneys would not be automatic in the case of completion of a settlement conference, but would require some objective determination as to whether that particular pretrial/settlement conference was appropriate for evaluation purposes. Again, concerns were

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expressed as to the creation of significant administrative problems, as well as presenting numerous responses concerning a judge by the same attorneys (criminal, for example).

On this recommendation consensus was not achieved, and it was adopted by a vote of 7 to 2.

- (c) **A questionnaire should not be distributed and utilized to evaluate a judge's case management performance when a case on the Complex Litigation Docket is settled or dismissed before trial.**

Although there was some belief that the fairness and efficiency with which a judge managed a case over its life on the Complex Litigation Docket was worthy of evaluation, it was ultimately concluded that the judge would be periodically evaluated on his/her performance in hearings in the case of one (1) hour (or one-half (1/2) hour if the recommendation above is adopted), thereby providing evaluative information even if the case settles before trial. On this recommendation no consensus was achieved, and it was adopted by a vote of 6 to 2.

- (d) **Given the familiarity with and use of electronic communications by lawyers and jurors today, the Judicial Branch should consider the development of a system that would distribute and receive questionnaires electronically.**

The prevalence and convenience of electronic communication compelled the Subcommittee to raise this issue for the Judicial Branch's consideration. Admittedly, preservation of anonymity becomes an immediate concern when e-mail responses are used, but it was believed that could be reconciled through the use of appropriate measures. If so, it was believed the number of returns -- and the resulting database -- would likely be substantially increased. This recommendation was reached by consensus.

**Recommendation No. 5: The Judicial Branch Should Engage In A Joint Effort With The Bar To More Widely And Effectively Educate The Bar On The Policies, Practices And Procedures Presently In Place To Protect And Preserve The Anonymity Of Attorneys Completing And Submitting An Evaluative Questionnaire.**

The Subcommittee concluded that the present procedure by which questionnaire responses are collected and inserted into a databank -- after which the questionnaire is shredded -- thoroughly, carefully and completely protects the anonymity of the respondent and precludes any opportunity for the judge to identify the author of any



response.

Unfortunately, these procedures are either not known or understood or appreciated by a wide segment of the bar, who still decline to complete and submit questionnaires under the mistaken belief that any unfavorable responses can and will be made known to the judge in question. While there appears to be no basis in fact for this unfortunate perspective, it is believed it is interfering with the broader collection of useful data, and should be corrected as quickly as possible.

**Recommendation No. 6: A Periodic Evaluation By Independent Observers Should Be Used To Supplement The Appraisals Provided By The Attorney Questionnaire, Juror Questionnaire And Presiding Judge As Described Above.**

The Subcommittee concluded that the current evaluation program, which solicits input only from attorneys appearing before the judge or jurors sitting on a trial over which the judge is presiding, excludes other sources of information that could provide useful and valuable assessments and further fails to take into consideration the judge's performance in his/her duties outside the courtroom. That concern was addressed in part by Recommendation No. 1, *supra*, but it was the belief of the Subcommittee that there should be additional assessment of the judge's performance by individuals who know and understand the judicial process but who have no direct stake in the outcome of an adversarial proceeding or in the judge's performance of his/her other duties.

- (a) **Every judge should be evaluated at least every three years by a panel of three independent evaluators, consisting of one retired judge or judge trial referee; one retired lawyer or active lawyer practicing in a Judicial District different from that of the judge being evaluated; and one non-attorney familiar with and experienced in the legal process and court system.**

It was agreed that the individuals performing any such independent evaluation would not only be required to possess knowledge about the judicial process and have a full appreciation of the complexities and peculiarities of different judicial assignments, they must also enjoy the respect of the bench in general. Engaging such persons -- especially given the unavailability of funding -- presented another issue as did the proposed utilization of judge trial referees, who, if subjected to the same evaluation system that applied to all Superior Court judges, would find themselves in a position of evaluator and evaluatee.

In addition, the issue of whether anyone not an attorney or a judge should be included in any such evaluation process was vigorously debated, with some expressing concern that it would be inappropriate and others arguing that non-attorneys are already required by statute to

be part of the judicial selection process, and their involvement would likely increase public confidence in the system. In the end, the three-member panel proposed above was thought to provide the composition that would meet the criteria required for this process.

The frequency of any such evaluation also was carefully considered by the Subcommittee. Initially, the thinking was that this process would be particularly valuable to new judges. Upon further reflection, however, it was agreed that: (i) more experienced judges would equally benefit from this observation and evaluation process; and (ii) every new judge now enjoys a two year period of mentoring by a more experienced judge who, presumably, engages in much of what is contemplated to be done by the proposed panel of independent evaluators. Accordingly, it was concluded that an evaluation every three years would account for the first two years of mentoring provided a new judge and also provide at least two such independent evaluations and written reports before a judge appeared before the Judiciary Committee for re-appointment.

- (b) **Said panel should observe the judge's courtroom performance for no less than one-half day; gather other relevant information about the judge's performance in all his/her duties; and then prepare a written narrative report. The report should be submitted to that judge and the Chief Court Administrator, and the panel should be available to discuss the report if the judge desires.**

There was some sentiment that the independent panel should communicate its evaluation only to the judge and only orally, so as to provide a kind of "early warning" to any judge who might be encountering difficulties at the beginning of his/her judicial career. Further discussion, however, suggested that that objective might be already addressed by the enhanced Judicial Mentoring Program that is being implemented for all new judges. Moreover, there were some members of the Subcommittee who believed a written report by independent evaluators would provide a valuable perspective, which would be helpful to both the judge and the Judiciary Committee during the re-appointment process. The Subcommittee concluded that a written report would, therefore, be appropriate for that purpose and would also contribute to the judge's professional development.

- (c) **The Judicial Branch should utilize the reports of the independent evaluators to develop and provide appropriate training programs and guidelines for the professional development and education of all judges.**

The Subcommittee, from its first meeting, has kept in the forefront of its considerations the objective of designing an improved judicial performance evaluation system that would not only provide reliable data to fairly and justly measure the judge's performance, but would also provide information that could be utilized for the judge's improvement, education and professional development. The Subcommittee believes that the narrative reports provided by the independent panel of evaluators, as described above, would be a rich source of information not only for that individual judge's improvement, but, cumulatively, for the development of education and training programs applicable to the entire bench. Accordingly, the Subcommittee recommends that such reports be utilized for that purpose.

On that part of the recommendation consisting of the inclusion of a non-lawyer/non-judge on the panel of independent evaluators, there was no consensus, although there was a consensus on the other elements of the recommendation. Accordingly, the recommendation overall was adopted by a vote of 8 to 1.

**Recommendation No. 7. Assuming Adoption Of The Subcommittee's Recommendations Concerning The Modification Of The Criteria For Distribution Of All Attorney Questionnaires (*i.e.*, After Hearings Of One-Half Hour Instead Of One Hour, And, When Appropriate, After Settlement Conferences And Mediations), And Its Recommendation Concerning The Utilization Of A Panel Of Independent Evaluators, All As Described Above, The Feedback Provided Any Judge Should Be Adequate In Terms Of Timeliness And Frequency And, Therefore, No Modification Of The Present Procedure, Which Provides Judges With The Evaluation Reports Only After A Minimum Of Twenty-Five Attorney Questionnaires Are Received And Tabulated, Would Be Required.**

The present evaluation program requires that a printout of the evaluation data for a particular judge is generated only after a minimum of twenty-five attorney questionnaires have been accumulated and put into the system. Only the Chief Court Administrator may override this threshold requirement, although individual judges may request summaries of their aggregate data at any time.

The Subcommittee heard concerns expressed by some that, depending on the vagaries of the system (*e.g.*, assignment to a session of the court not likely to generate many one-hour hearings required to trigger the distribution of a questionnaire, such as

juvenile court) or simply the unwillingness of attorneys to complete and return the questionnaire, substantial time might pass before a judge received an evaluation report and the interview by the Chief Court Administrator that accompanies such report. If that evaluation report then contained significant negative assessments on that judge, the opportunity for early remediation would have been lost, and, further, inadequate time might remain for corrective action before that judge's re-appointment process.

Of course, a countervailing consideration is the preservation of anonymity of the respondent on such questionnaires, which is the reason for requiring no less than twenty-five before an evaluation report is generated.

The Committee believed that the tension between those competing interests would be resolved by generating more questionnaires over a shorter period of time by virtue of shortening the length of the hearing required for the distribution of a questionnaire and also applying the questionnaire process to mediation and settlement conferences, all as described above. In addition, separate and apart from the questionnaires, the report of the panel of independent evaluators would provide substantive and comprehensive feedback to supplement the questionnaire data at least every three years, again as the Subcommittee has recommended. If that were to happen, then the problem of infrequent periodic evaluations -- as well as the risk of diminishing anonymity -- would be eliminated.

This recommendation was adopted by **consensus**.

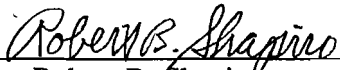
## **CONCLUSION**

The Subcommittee undertook the discharge of its assignment with the overriding belief that any proper program to evaluate a judge's performance should: (a) provide a fair, objective and comprehensive assessment of the contribution to the judicial process being made by that judge; (b) enjoy the confidence of the bench -- and the public -- that the program does, in fact, produce that result; and (c) provide opportunity for the professional development of all judges and the resulting improvement of the judicial process. The Subcommittee believes that the recommendations it has adopted and set forth in this report would move the existing Judicial Performance Evaluation Program closer to those goals and believes, therefore, the Judicial Branch should give them serious consideration.

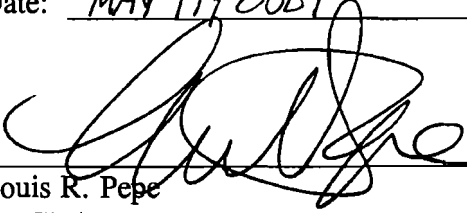
One final point: Any performance evaluation program can, at best, provide only a structure, which, when fairly applied, would produce fair and just results. It must be acknowledged, however, that in measuring professional performance in any field -- including especially judicial performance -- one size cannot fit all. A judge's performance is necessarily affected by the difficulty, complexity or controversial nature of the case he or she is assigned or voluntarily undertakes; the session of the Superior Court to which he/she is assigned; and even the peculiarities of the personalities in a

particular courthouse. Fairness demands that those factors be considered in the evaluation of any judge, but, of course, that must depend on the insight and sensitivity of those judging the judges.

Respectfully submitted,

  
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Hon. Robert B. Shapiro  
Co-Chair

Date: MAY 19, 2009

  
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Louis R. Pepe  
Co-Chair

Date: 19 MAY 09