

AMERICAN BAR ASSOCIATION
BLACK LETTER GUIDELINES FOR THE
EVALUATION OF JUDICIAL PERFORMANCE

FEBRUARY 2005

I. GOALS

Guideline 1-1. Judicial evaluation programs improve the performance of individual judges and the judiciary as a whole. All court systems should develop and implement a formal program for the evaluation of judicial performance.

Guideline 1-2. In jurisdictions where judges are subject to reappointment, retention, or reelection, judicial evaluation programs enable those responsible for continuing judges in office to make informed decisions.

II. USES

Guideline 2-1. Primary uses of judicial performance evaluation include promoting judicial self-improvement, enhancing the quality of the judiciary as a whole, and providing relevant information to those responsible for continuing judges in office.

Guideline 2-2. Additional uses that may be considered include the effective assignment of judges within the judiciary and the improved design of continuing education programs.

Guideline 2-3. The uses of judicial performance evaluation do not include judicial discipline. The information developed in a judicial evaluation program should not be disseminated to authorities charged with disciplinary responsibility, unless required by law or by rules of professional conduct.

III. DISSEMINATION

Guideline 3-1. The dissemination of data and results from a judicial evaluation program should be consistent with and conform to the uses of the program. Except for the authorized uses of the performance evaluation and consistent with the law, the data and results should be confidential.

Guideline 3-2. When judicial evaluations are used only for judicial self-improvement, individual results should be provided only to the judge evaluated and the presiding or supervisory judge responsible for the performance of the court on which the judge serves.

Guideline 3-3. When judicial evaluations are used to improve the quality of the judiciary as a whole, results should not identify or give comparative rankings of individual judges.

Guideline 3-4. When judicial evaluations are used to inform decision makers regarding the continuation of judges in office, results should be made readily available to those responsible for continuation decisions, including voters, governors, legislatures, and commissions.

-4.1. Those responsible for reappointing, reelecting, or retaining judges should be provided with objective summaries of evaluation results for each judge and an explanation of how to interpret the results.

-4.2. If evaluation results are provided to an individual or entity responsible for continuation decisions, and those results include assessments of a judge's overall performance or recommendations as to whether a judge should be continued in office, judges should have an opportunity to review and respond to the evaluation report before it is disseminated.

-4.3. If evaluation results are publicly disseminated, and those results include assessments of a judge's overall performance or recommendations as to whether a judge should be continued in office, judges should have an opportunity to review, respond, and meet with members of the evaluation body before the results are made public.

IV. ADMINISTRATION AND SUPPORT

Guideline 4-1. Ultimate authority over the development and implementation of a judicial performance evaluation program should be vested in the highest court or other constitutionally mandated body having ultimate responsibility for judicial administration.

-1.1. In states where performance evaluation programs have not been established by the judiciary or other governmental body, bar associations should develop and administer evaluation programs according to these guidelines.

-1.2. In states where judges are chosen in contested elections, it may be inappropriate for the judicial branch or any other entity using public funds to disseminate performance evaluations of incumbent judges running for reelection. In order to provide voters in these states with relevant information, bar associations should develop and administer judicial performance evaluation programs according to these guidelines.

Guideline 4-2. The day-to-day activities of the judicial evaluation program should operate through an independent, broadly based, and diverse committee.

-2.1. In jurisdictions where judicial evaluations are used solely for self-improvement and for improving the quality of the judiciary as a whole, oversight committees should be composed of members of the bench and the bar.

-2.2. In jurisdictions where evaluations are used to inform decisions regarding the continuation of judges in office, oversight committees should also include members of the public who are familiar with the judicial system.

Guideline 4-3. Staff support and adequate funding should be available to support a judicial evaluation program of high quality.

Guideline 4-4. Judicial evaluation programs should be structured and implemented so as not to impair judicial independence. The evaluation process should be free from political, ideological, and issue-oriented considerations.

Guideline 4-5. Judicial evaluation programs should be developed systematically and may be implemented in progressive stages. Evaluation programs should remain flexible so that they may be modified as needed. The entity having ultimate responsibility for the evaluation program should conduct periodic assessments of the program.

V. CRITERIA

Guideline 5-1. A judge should be evaluated on his or her legal ability, including the following criteria:

- 1-1. Legal reasoning ability.**
- 1.2. Knowledge of substantive law.**
- 1.3. Knowledge of rules of procedure and evidence.**
- 1.4. Keeping current on developments in law, procedure, and evidence.**

Guideline 5-2. A judge should be evaluated on his or her integrity and impartiality, including the following criteria:

- 2.1. Avoidance of impropriety and the appearance of impropriety.**
- 2.2. Treating all people with dignity and respect.**
- 2.3. Absence of favor or disfavor toward anyone, including but not limited to favor or disfavor based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.**
- 2.4. Acting fairly by giving people individual consideration.**
- 2.5. Consideration of both sides of an argument before rendering a decision.**
- 2.6. Basing decisions on the law and the facts without regard to the identity of the parties or counsel, and with an open mind in considering all issues.**
- 2.7. Ability to make difficult or unpopular decisions.**

Guideline 5-3. A judge should be evaluated on his or her communication skills, including the following criteria:

-3.1. Clear and logical oral communication while in court.

-3.2. Clear and logical written decisions.

Guideline 5-4. A judge should be evaluated on his or her professionalism and temperament, including the following criteria:

-4.1. Acting in a dignified manner.

-4.2. Treating people with courtesy.

-4.3. Acting with patience and self-control.

-4.4. Dealing with pro se litigants and litigation fairly and effectively.

-4.5. Participating and providing leadership to an appropriate degree in professional development activities and in jurisdiction-wide and statewide court improvement and judicial education activities.

-4.6. Promoting public understanding of and confidence in the courts.

Guideline 5-5. A judge should be evaluated on his or her administrative capacity, including the following criteria:

-5.1. Punctuality and preparation for court.

-5.2. Maintaining control over the courtroom.

-5.3. Appropriate enforcement of court rules, orders, and deadlines.

-5.4. Making decisions and rulings in a prompt, timely manner.

-5.5. Managing his or her calendar efficiently.

-5.6. Using settlement conferences and alternative dispute resolution mechanisms as appropriate.

-5.7. Demonstrating appropriate innovation in using technology to improve the administration of justice.

-5.8. Fostering a productive work environment with other judges and court staff.

-5.9. Utilizing recruitment, hiring, and promotion policies and practices to ensure that the pool of qualified applicants for court employment is broad and diverse.

-5.10. Acting to ensure that disabilities and linguistic and cultural differences do not limit access to the justice system.

Guideline 5-6. Additional criteria should be developed reflective of jurisdiction (specialized versus general) and level of court (trial versus appellate).

-6.1. A specialized court judge should be evaluated according to whether he or she demonstrates the knowledge and skills necessary.

-6.2. An appellate court judge should be evaluated on the quality of his or her preparation for and participation in oral argument and on his or her effectiveness in working with other judges of the court.

VI. METHODOLOGY

Guideline 6-1. The judicial evaluation process is comprised of data collection, synthesis and analysis, and its usage.

Guideline 6-2. Expert competence should be used in developing methods for evaluating judges and collecting and analyzing data.

Guideline 6-3. Behavior-based instruments should be used to evaluate judges.

Guideline 6-4. The evaluation process must ensure the anonymity of individual respondents.

Guideline 6-5. Reliable sources of information should be developed for judicial evaluation programs.

-5.1. Multiple sources should be used whenever feasible.

-1.1. Potential sources of information for trial judge evaluations include attorneys, jurors, litigants, and witnesses who have appeared before the judge; non-judicial court staff, social service personnel, and law enforcement officials who have had regular contact with the judge; and appellate judges who have reviewed the judge's decisions.

-1.2. Potential sources of information for appellate judge evaluations include attorneys who have appeared before the judge, non-judicial court staff who have had regular contact with the judge, other appellate judges, and trial court judges whose decisions have been reviewed by the judge.

-5.2. Sources should be limited to those with personal and current knowledge of the judge.

-5.3. Objective sources of information may include public records.

Guideline 6-6. At the outset of the evaluation program, program administrators should establish minimum thresholds for both response rates and number of respondents.

Guideline 6-7. Questionnaire content and wording should be structured with the relevant respondent group, and the nature and extent of that group's interaction with judges, in mind. In most instances, it will be necessary to use a different performance questionnaire for each respondent group.

Guideline 6-8. Judges should be evaluated periodically. The frequency of judicial evaluations should be related to such factors as the length of time the judge has served on the bench and when the judge will be considered for reappointment, retention, or reelection.