

SUPREME COURT OF NEW JERSEY



RICHARD J. HUGHES  
CHIEF JUSTICE

STATE HOUSE ANNEX  
TRENTON, NEW JERSEY


March 14, 1979

TO ALL JUDGES:

The New Jersey Supreme Court has recognized, as have the Governor, legislators and, I am sure, the general public including the organized Bar, the need for evaluation of judges. To recommend an appropriate system, the Court appointed its Committee on Judicial Evaluation and Performance, chaired by Justice Alan B. Handler with Appellate Division Judge William G. Bischoff and Assignment Judge John C. Demos as members. A copy of that Committee's report, with the informative transmittal letter of Justice Handler, is enclosed. The report will be published next week in the New Jersey Law Journal and other press and I wish you to have it in hand immediately.

As indicated by Justice Handler, the Court welcomes constructive criticism from all concerned and ample time will be afforded to examine this consensus before any final action is taken.

All American institutions these days are under public scrutiny, and the need for constant improvement of the administration of justice would suggest the inclusion of courts in this process. I think you know how proud I am of New Jersey Judges, and this pride will increase with the implementation of this reform.

  
Richard J. Hughes  
C.J.

627998

# SUPREME COURT OF NEW JERSEY

CHAMBERS OF  
ALAN B. HANDLER  
JUSTICE



ONE CAPNER STREET  
FLEMINGTON, N.J.  
08822

March 7, 1979

Honorable Richard J. Hughes  
State House Annex  
Trenton, New Jersey 08625

Dear Chief Justice:

Enclosed herewith is the Report of the Committee on Judicial Evaluation and Performance.

It conforms generally to the concepts previously outlined. I would emphasize, in your examination of the Report, that the program recommended is truly for the welfare of judges and the judiciary. The program contemplates a permanent evaluation committee with public as well as judiciary participation. In advancing the administration of justice, it will serve the public interest.

Consistent with the constitutional authority of the Chief Justice and Supreme Court, the evaluation program is to be developed and supervised by the courts; it relies primarily upon assignment judges, who are well-attuned to this responsibility; it is designed to improve judicial performance in office; it seeks, as well, to further judicial education and assist in the effective utilization of judges throughout the court system. Other incidental purposes, those relating to discipline and reappointment, are also important.

With your permission, I would place this Report before the other members of the Court so that it may be included in our conference on Tuesday, March 13, 1979.

Chief Justice Hughes

-2-

March 7, 1979

Subject to the approval of the Court, you might want to consider having the Report available for the General Council Meeting on March 23-24, 1979.

I am sure that the Court will want to provide the opportunity to elicit the views and responses of the organized bar, the profession generally, the informed public, and, most importantly, the judges. Such views will undoubtedly be considered by the Court before acting upon the recommendations of the Report.

Respectfully,

A handwritten signature in dark ink, appearing to read 'Alan B. Handler', written in a cursive style.

Alan B. Handler

ABH/mg  
Encls.

# SUPREME COURT OF NEW JERSEY

CHAMBERS OF  
ALAN B. HANDLER  
JUSTICE



ONE CAPNER STREET  
FLENINGTON, N. J.  
08622

March 8, 1979

TO: THE CHIEF JUSTICE and ASSOCIATE JUSTICES  
OF THE SUPREME COURT

REPORT OF THE SUPREME COURT'S COMMITTEE  
ON JUDICIAL EVALUATION AND PERFORMANCE

I. INTRODUCTORY

In September 1978, the Supreme Court, through Chief Justice Hughes, appointed a special committee to consider the subject of the evaluation and improvement of judicial performance. This Committee was designated as the Supreme Court's Committee on Judicial Evaluation and Performance. The Committee members are Associate Justice Alan B. Handler, Chairman, William G. Bischoff, Judge of the Appellate Division, and John C. Demos, Assignment Judge of the Superior Court.

The Committee understood its charge from the Supreme Court to be to study the subject of the evaluation of judicial performance and to determine whether such evaluation was desirable as a tool for the improvement of the judiciary in New Jersey.

The basic premise adopted by the Committee was that any system for the evaluation of judicial performance should have as its paramount objective the improvement of the level of judicial performance on both an individual and institutional basis. Other goals were also deemed worthwhile by the Committee. An evaluation program should further judicial education. Judicial evaluation should constitute a basis for the assignment of judges within the judicial system. Additionally, it was recognized that judicial evaluation could be incidentally supportive of judicial discipline. Another important corollary use of judicial evaluation would be its availability to the Governor and, through him, the Senate in the exercise of their respective constitutional responsibilities in the reappointment of judges.

Beyond these purposes, it was accepted by the Committee that the judges in this State and the judicial system as a whole currently function at a high professional level. The Committee felt that it was vital not to regress or undo, but to build upon the present system. It was deemed imperative that, in the formulation and implementation of a system for the evaluation of judges, the independence, integrity and confidence of the judiciary be assured and preserved; that judicial evaluation not be permitted to interfere with the judges' discharge of their primary duties; and that judicial evaluation be implemented so as to advance the sound, effective and efficient administration of justice.

The Committee focused upon these goals and values in conducting its study. Its conclusions and recommendations are contained in this Report to the Chief Justice and the Associate Justices of the Supreme Court.

## II. BACKGROUND

The Supreme Court's Committee commenced its study of judicial evaluation in the early part of the present Fall Term. It held a series of meetings and conferences to develop a format and approach to be followed. The Committee utilized as many resources as possible.

To that end the members of the Committee made inquiries of persons generally familiar with the operations of the judicial branch of government. The Committee enlisted the cooperation of the Administrative Director and the Deputy Administrative Director of the Courts; it directed inquiries to other court administrators throughout the country to obtain their views. Assistance was also elicited from the National Center on State Courts. The views of the Chairman of the Advisory Committee on Judicial Conduct were sought as well as all current Assignment Judges and Judges of the Appellate Division;

informal inquiries were made of other sitting and retired judges. The Committee also conferred with judges involved in the New Jersey Judicial College.

The opinion of the organized bar was sought and meetings were held for purposes of discussion with representatives of the State Bar Association and in particular the Chairman and members of the State Bar Committee on the Evaluation of Sitting Judges. The Committee members also participated in and apprised themselves of programs conducted by the State Bar Association and County Bar Associations on the subject of judicial evaluation.

In preparation for this Report, the Committee collected and consulted numerous publications, articles and reports dealing generally with judicial evaluation, judicial discipline and kindred topics. The background materials are gathered in a separate appendix.



### III. SUMMARY OF RECOMMENDATIONS

Following the initiative of the Supreme Court, the Committee has concluded that there should be adopted under the supervision of the courts a formal program for the evaluation of judicial performance.

The Committee's specific recommendations for judicial evaluation deal with its (1) purposes, (2) areas, (3) standards, (4) subjects and frequency, (5) methods, (6) structure and organization, (7) reports and forms, and, (8) in general terms, short and long-range implementation.

In sum, the Committee makes these recommendations:

#### A. Purposes of Evaluation

Judicial evaluation under the supervision of the courts should be directed to certain goals. The objectives of judicial evaluation in order of relative importance are: first, the improvement of the quality and level of the performance

of judges in office; second, the enhancement of programs of judicial education; third, the assignment and use of judges within the judiciary; fourth, the incidental strengthening of judicial discipline; and, fifth, the improved evaluation of judges to be reappointed by the Governor with the advice and consent of the Senate.

#### B. Areas of Evaluation

The areas of judicial performance to be evaluated should be limited to: competence, productivity and conduct.

#### C. Standards for Evaluation

The standards for evaluation should be restricted at this time to whether performance, in the areas to be evaluated, is satisfactory or unsatisfactory, with provision for additional, relevant explanatory comment.

#### D. Subjects and Frequency of Evaluation

All full-time trial judges functioning in the State judiciary should be the subject of the evaluation program.

The frequency of evaluation should relate to the status of the judge in the judicial system. Newly appointed and nontenured judges should be evaluated more frequently and evaluations should be timed to be helpful in terms of reappointment. Tenured and senior judges should be evaluated periodically but with diminishing frequency.

#### E. Methods for Evaluation

No single technique can be completely adequate for judicial evaluation. A combination of evaluation mechanisms should be employed. These involve:

(1) The assignment judge is to assume a central role in the judicial evaluation program and is to evaluate the sitting judges within his vicinage.

(2) The major source of evaluation is to be through reputable and knowledgeable attorneys in conferences with the assignment judge.

(3) The assignment judge will also conduct interviews with the judge who is to be evaluated.

(4) The assignment judge will conduct regular meetings with the judges in his vicinage for the purpose of improving performance.

(5) In addition to periodic formal evaluations, the assignment judge should undertake ongoing continuous evaluations.

(6) Evaluations should be made by judges of the Appellate Division when this can be accomplished as an incident to their review of the record of an appealed case.

(7) Information relevant to judicial performance, as it arises, should be furnished by the Advisory Committee on Judicial Conduct.

(8) Under the supervision of the Supreme Court, questionnaires or polls addressed to attorneys should be developed and administered professionally on a periodic basis as a source of evaluation information.

**F. Structure and Organization of Evaluation Program**

The evaluation program is to be structured to reflect the central responsibility of the assignment judge. Most evaluation information is to be sent to the assignment judge and the primary evaluation is to be made by the assignment judge.

The Supreme Court should appoint on a permanent basis a Committee on Judicial Evaluation and Performance, with broad representative membership, to assume overall supervision and coordination of the judicial evaluation program.

There should be established within the Administrative Office of the Courts a unit or division to assist in the administration of the judicial evaluation program.

**G. Reports and Forms for Evaluation**

Forms and reports for judicial evaluation should be developed by the Supreme Court's Committee On Judicial Evaluation and Performance assisted by the Administrative Office of the Courts.

The Supreme Court's permanent committee should report on a regular basis to the Supreme Court.

The filing, handling, storage, confidentiality, and the limited disclosure and use of evaluation reports should be undertaken in accordance with guidelines developed by the permanent committee and approved by the Supreme Court.

#### H. Other Important Considerations

The evaluation of judicial performance must assure the continued independence, integrity and confidence of the judges. Judicial evaluation must not distract from or interfere with the proper function of judges or impede the efficient administration of the judicial system.

The program is new and, with experience, amenable to modification and refinement. It therefore should be adopted on an experimental basis, carefully monitored in its implementation and, after a reasonable period of time, reviewed or audited by a professionally qualified organization such as the National Center for State Courts.

#### IV. PURPOSES OF EVALUATION

##### A. Improvement of Judicial Performance

The evaluation of judges in office and the assessment of their judicial performance can serve many ends and be directed to diverse goals. The particular objectives selected for judicial evaluation have a material bearing upon the type of evaluation program that is developed and its approaches, emphasis and impact. The most important step in the analysis of whether the evaluation of judges is desirable and feasible is the first one of settling upon the purposes to be accomplished.

The salient goal of judicial evaluation is the improvement of the performance of judges in office and the sustaining of high quality judicial service.

The Committee determined that the basic reason for the adoption of a program



for the evaluation of judges was as a means for improving and maintaining high standards of judicial performance. This raison d'etre dominated its entire study and each of its recommendations.

The Committee's general study disclosed that no jurisdiction has any formal evaluation program designed specifically to enhance continuing judicial effort. A few jurisdictions have formal evaluation programs but they serve limited and different purposes. For example, in the District of Columbia formal evaluation of judges is conducted under federal law by the District of Columbia Commission on Judicial Disabilities and Tenure. Its purposes are judicial discipline and removal, as well as the automatic reappointment of judges determined to be "exceptionally well-qualified" or "well-qualified" and to recommend, or not, the reappointment of other less qualified judges. In Alaska, there is by constitution and

statute the Alaska Judicial Council which evaluates judges and disseminates its conclusions in conjunction with their "periodic retention elections." California has a Commission on Judicial Performance concentrating in the area of judicial discipline, as does New Jersey through its Advisory Committee on Judicial Conduct (R. 2:15-1 et seq.). The Connecticut Supreme Court has utilized questionnaires to be completed by administrative judges with respect to "each judge under [his] supervision" "to better assist \* \* \* in the assignment of judges."

The overwhelming majority of jurisdictions, however, have no evaluation programs at all. Thus, of the 66 jurisdictions canvassed (the 50 states, American Samoa, the District of Columbia, Puerto Rico, Guam and the Virgin Islands, 10 Federal Circuits, and the U.S. Army Military

Courts), 56 had no formal or official evaluation efforts of any kind. In a few states evaluation efforts consist of lawyer polls which were adjudged by the Committee to be uneven, irregular and inconsistent as to standards, objects, polling population and formulation of questions.

It was apparent to the Committee that a new or additional program of judicial evaluation in New Jersey was not required in order to deal with judicial misconduct and discipline. This area is currently addressed through the Advisory Committee on Judicial Conduct. (See discussion, infra). Judicial evaluation, moreover, was not viewed as justifiable solely as a goad for stimulating productivity. Nor was it thought to be necessary in the context of public accountability as in the case of judges elected to office. There was some appreciation by the Committee, however, of a need on the part of those involved with the judicial branch and in the administration of

justice to have reliable perceptions of judicial performance and, as important, that judges have an adequate and reliable means for assessing their own performance and, through constructive correction and self-improvement, raise the level of judicial achievement.

The Committee concluded that no present evaluation program, effort or experience could satisfactorily serve as a model for application in New Jersey. The Committee was of the opinion that to permit or encourage unofficial, informal and unsupervised evaluations would be a detriment to the judiciary, as well as to the profession and the public which it serves. Uncontrolled and haphazard evaluations would not generate confidence in their reliability and could not therefore be expected to function as a tool for constructive improvement of judicial performance. On the contrary, such approaches would tend to be a distraction from judicial effort and be disruptive of the efficient and sound administration of justice.

From its study, the Committee concluded as a threshold matter that judicial evaluation must be a judicial responsibility. The actual performance of sitting judges and the proper discharge of judicial duties are exclusively within the jurisdictional authority of the Supreme Court. N.J. Const. (1947), Art. VI, Sec. II, para. 3. Under the Judicial Article of the Constitution, the Chief Justice has the responsibility for the administration of justice in the State. N.J. Const. (1947), Art. VI, Sec. VII, para. 1. The quality and level of judicial performance invoke a fundamental, nondelegable authority in the Chief Justice and the Supreme Court. The evaluation of judges' performance in office is an integral part of that constitutional responsibility. Judicial evaluation directed to the performance of judges in office should be undertaken by the Supreme Court pursuant to its constitutional powers under the Judicial Article of the New Jersey Constitution of 1947.

Recommendation: The paramount goal of judicial evaluation should be the improvement of

judicial performance. A judicial evaluation program directed primarily to that objective should be developed, implemented and supervised by the Supreme Court.

B. Judicial Education

Interrelated with the improvement of the performance of individual judges in office through judicial evaluation is the broader purpose of general judicial education. There is a strong and long tradition of judicial education in New Jersey. This is an official policy that seeks "to raise the standards of judicial performance".

R. 1:35-2.

For many years the Supreme Court has conducted formal, annual educational programs for judges covering all areas of substantive law, procedure, practice, ethics and conduct. Cf. R. 1:35-2. It has also conducted special educational programs for newly-appointed judges.

Attendance at these programs has been mandatory. Additionally, the Supreme Court has provided specialized programs for the education of judges. The framework of such educational offerings has changed from time to time over the years. At present, these are conducted through the New Jersey Judicial College consisting of members of the judiciary with the assistance of the Administrative Office of the Courts. Furthermore, the Judicial Conference of New Jersey held each year under R. 1:35-1 has broad educational purposes aimed at benefitting the judiciary generally. It seeks to draw upon the contributions of a wide range of representatives from other walks of government and public life in addition to members of the judiciary.

With the collation of reliable evaluation data, the New Jersey Judicial College, assisted by the Administrative Office of the Courts, should provide helpful courses of education, seminars and workshops directed to areas of needed

improvement in the discharge of judicial duties and to aid individual judges in upgrading their judicial efforts.

Recommendation: Judicial evaluation should be designed to supplement general educational programs in the judicial field.

C. Allocation and Assignment of Judicial Manpower

An important objective of judicial evaluation should be the development of a profile of the judiciary. The data generated by judicial evaluation should serve as an inventory of judicial strengths as well as weaknesses. Such information is needed for the effective management of the judiciary.

The courts of this State have a wide and complex range of jurisdiction. Judges now function throughout the court system in almost every conceivable area of human endeavor and most judges can be assigned to any court or to preside over any matter. This has been furthered by the recent



unification of the County Courts into the State Superior Court. N.J. Const. (1947), Art. VI, §§ I, III, V and VI and Art. XI, § VI; Order of Supreme Court, dated November 22, 1978, amending Rules Governing the Courts (eff. December 7, 1978). The complexity and diversity of court matters call for the assignment, to the optimum extent possible, of judges suited by ability, experience and temperament for the handling of particular controversies.

The Chief Justice has complete authority for the administration of the court system including the allocation and deployment of judges throughout the State. N.J. Const. (1947), Art. VI, § VII, para. 1 and 2; R. 1:33-1. The total number of judges, now approximately 300, has risen over the years following the growth of the State's population and the upward surge of litigation at all levels. It has become increasingly difficult to monitor in any consistent or reliable way the performance of individual judges. Judicial evaluations can be of great assistance to the Chief Justice and the Supreme Court in this important area.

Recommendation: Judicial evaluations should be available for use by the Chief Justice and the Supreme Court in the assignment of judges throughout the court system.

D. Judicial Discipline

The discipline of errant judges is a matter of obvious importance to government and to the public. It is an appropriate concern of the Legislature which has adopted legislation to enable the judiciary to act in the area of judicial discipline. N.J.S.A. 2A:1B-1 et seq. It is a direct responsibility of the Chief Justice and the Supreme Court in the exercise of their administrative powers over the judiciary. R. 2:15-1 et seq.

The discipline of judges has traditionally been undertaken by the Supreme Court, e.g., In re Mattera, 34 N.J. 259 (1961). Presently, the Advisory Committee on Judicial Conduct established by the rules of court, R. 2:15-1 implementing N.J.S.A. 2A:1B-10, functions effectively, fairly and comprehensively in the area

of judicial misconduct and discipline under the able chairmanship of retired Justice John J. Francis. "Report of the Supreme Court Advisory Committee on Judicial Conduct", 100 N.J.L.J. 1029 (Nov. 10, 1977). The Supreme Court has continued to exercise ultimate authority over the discipline of judges. E.g., In re Albano, 75 N.J. 509 (1978); In re Holder, 74 N.J. 581 (1977); In re Yengo, 72 N.J. 425 (1977); In re Conda, 72 N.J. 229 (1977); In re Hardt, 72 N.J. 160 (1977).

Judicial evaluation should not have as its purpose the discipline of judges or correcting judges' misconduct. These needs are presently being met. In the implementation of a judicial evaluation system, however, information will be generated on occasion which may be relevant to the discipline of particular judges. There may be revealed a need in a given case for the imposition of sanctions; if failure in judicial performance can equate with misconduct, judicial discipline should not be withheld. In this context, judicial discipline may appropriately be regarded as an incidental purpose of a judicial evaluation program.

Recommendation: Information developed through the judicial evaluation program which indicates judicial misconduct warranting discipline should be made available to the Advisory Committee on Judicial Conduct.

E. Reappointment of Judges

The evaluation of the performance of judges has direct relevance to the fitness and the suitability of judges for reappointment. The information to be developed in the course of the evaluation of the performance of judges will, by definition, have a material bearing upon the qualification of judges to hold office and to be continued in office.

The judiciary obviously has an interest, albeit indirect, in whether a judge should be continued in office through reappointment. While the responsibility for reappointment does not repose in the Chief Justice or the Supreme Court, the judiciary nevertheless has a fundamental concern in the effective exercise of that responsibility by the other branches of government.

It is a detriment to the public if there is not available sufficient reliable information as to the qualifications of individual judges which can be used by the Governor in determining whether a judge is deserving of reappointment. The Governor, as well as the Senate in the exercise of its power to approve through advice and consent, should be widely informed of judges' qualifications in conjunction with reappointments.

Judicial evaluation information, as it bears upon the fitness of a judge in office, should be made available by the Chief Justice and Supreme Court to the Governor, and through him, the Senate in the exercise of their respective constitutional responsibilities for the reappointment of judges. N.J. Const. (1947), Art. VI, § VI, para. 1. The judiciary should work cooperatively with the Executive Branch of Government to the end that, in the sound exercise of gubernatorial discretion, judges who are qualified and suitable for judicial office may be reappointed.

Recommendation: Judicial evaluations should be utilized to assist the Governor and, through him, the Senate in connection with reappointment of judges to office.

V. AREAS OF EVALUATION

Since the paramount objective of the evaluation program is to improve the quality of judicial performance, it is important to define what is encompassed by the judicial performance to be improved through such a program.

Judicial performance has several components. A crucial aspect of that performance relates to judicial competence. It is indispensable to the proper discharge of a judge's responsibility that there be demonstrated a minimum acceptable level of competence, skill and knowledge. A judge's grasp of important areas of the law must be strong. These should include knowledge of major areas of substantive law, insight into constitutional principles which affect the trial of criminal and civil cases, a firm understanding of procedure and the rules of court, a sure mastery of rules of evidence, and the perception to recognize problems coupled with the perspicacity and technical skills

to find solutions. All of these qualities relate to judicial competence -- a primary area of evaluation.

Another important area of judicial performance relates to productivity or efficiency. The effective administration of justice entails the prompt and expeditious disposition of litigated matters, while at the same time assuring correct and just results. The administration of justice is seriously threatened by mounting backlogs of unresolved and undisposed litigated matters. A justice system which fails to dispose of contested cases in a timely manner fails the public; in many areas, such as those involving criminal prosecutions and matrimonial contests and family life, the toll in human and social terms can be devastating. Cf. 102 N.J.L.J. 545 (December 21, 1978).

It is for such reasons that a judicial system must insist upon efficient and productive judges, as well as those who are fair and right. Judges incapable of the efficient and prompt disposition of the matters before

them impede the cause of justice as do those who fail to handle matters correctly or fairly. Judicial evaluation should focus upon productivity as an element of judicial performance.

The other critical and sensitive area of judicial performance relates to judicial conduct or behavior. In many respects this may be regarded as the most important aspect of judicial performance. It is one which impacts most forcibly and visibly upon the public and influences the public's perception of justice. The importance of judicial deportment was underscored by Governor Brendan T. Byrne in remarks delivered at the October 1978 special orientation and educational program conducted for recently appointed judges.

A judge must above all else be honest and of unimpeachable integrity; he is expected to be fair, impartial and unbiased in the discharge of his duties. He must also be free of extremes of attitudes such as



arrogance, intolerance or condescension as well as officiousness or servility. A judge must avoid behavior which generates the appearance that he may suffer from such flaws of character or taints of personality. Judges should be possessed of a balanced temperament and a controlled personality and be courteous and respectful to all who appear before them. The evaluation of performance relating to a judge's conduct must be recognized in the formulation and implementation of an evaluation program.

Recommendation: The evaluation of judicial performance should be directed to the assessment of judicial competence, productivity and conduct in office.

## VI. STANDARDS OF EVALUATION

The evaluation of judicial performance is intended to constitute an administrative tool in the sound administration of justice; it is conceived as a technique to enhance the dispensation of justice. It is not to be regarded as an end in itself. There is a danger that a judicial evaluation program will distract judges from their duties and divert judicial energy from the main business of the judiciary -- judging. The standards to be applied in the evaluation of the performance of judges should be fashioned from these concerns; they should be designed to be fairly simple, relatively easy to understand, and susceptible of a reasonably objective application.

The Committee, in the course of its study, reviewed many evaluation programs as well as questionnaires and polls. A great number of these contained highly refined marking systems. Some jurisdictions with formal programs, for example, called for distinctions to be drawn between:

"outstanding - commendable - satisfactory - needs improvement" (Connecticut), or "exceptionally well qualified - well qualified - qualified - unqualified" (District of Columbia) or "excellent - good- acceptable - needs improvement - poor" (Alaska). Others involving unofficial polls have used: "excellent - good- satisfactory - poor - very poor" (Arizona), or a scale of one ("bad") to nine ("good") (Arkansas). The Committee concluded that standards subdivided into many categories, when applied to judicial performance involving competence, productivity and conduct, are almost impossible to apply with any degree of consistency, uniformity or objectivity. These considerations prompted the Committee to recommend simple standards of evaluation.

The Committee determined that the fairest and most pragmatic standard for evaluating judicial performance should be "satisfactory" and "unsatisfactory", with provision for additional explanatory comment. This standard was adopted in polls utilized in Colorado. A simple standard will reduce the risk of capricious or arbitrary evaluations.

It is recognized that the dual standard proposed by the Committee, namely, satisfactory and unsatisfactory, may not be sufficiently informative in terms of evaluating certain aspects of judicial performance. To rectify this shortcoming, there should be included in the evaluation standards the opportunity for evaluators to supply supplemental, explanatory information.

The Committee in recommending this approach to the evaluation of judicial performance considered that the judicial evaluation program is novel and those who will be involved in its administration are not experienced in these matters. The program should be regarded as experimental and subject to modification. It may well be that with practice and developing knowledge, it will be possible to refine the standards for evaluating judicial effort.

Recommendation: The evaluation of judicial performance should be made on the basis of whether such performance in the areas of competence, productivity and conduct is satisfactory or unsatisfactory with provision for additional, relevant explanatory comment.

## VII. FOCUS AND FREQUENCY OF EVALUATION

The program for judicial evaluation should apply to all full-time judges at the trial level. The primary objective of the formal evaluation program, namely, the improvement of the level of judicial performance, is one which is especially applicable to the regular judges functioning at the trial level.

Particular attention in the evaluation program should be directed to newly appointed judges. It is important that newly appointed judges be evaluated with some frequency so that their performance can be rated and they can be given early and repeated opportunities to benefit from education, instruction and correction.

Nontenured judges, who face reappointment, should also receive special attention for evaluation purposes. The overall performance of such judges and their professional growth have an obvious bearing upon their fitness to continue in office. The evaluation of these judges is a concern, of course, to the judiciary, but it is of especial interest to the Governor and the Senate, who are constitutionally responsible for the decision as to whether such judges should be reappointed.

The first evaluation of newly appointed judges should be undertaken after two years of service. Two years should enable a newly appointed judge to become sufficiently oriented to his duties and to acquire adequate experience so that an evaluation of that performance will be meaningful and revealing. At the same time an evaluation at the two year mark is still sufficiently close to the beginning of a judicial career to be useful in terms of improvement in office.

The evaluation of a newly appointed judge after two years does not replace or obviate informal, ongoing and continuous evaluations coupled with assistance and correction. It is to be emphasized that the assignment judge will keep himself informed as to the progress of newly appointed judges assigned to his vicinage and will take it upon himself to be instructive in assisting such judges. In addition, the newly appointed judges will have the benefit of the educational programs specially

developed by the New Jersey Judicial College for all new judges.

Within one year prior to the expiration of an initial term, that is, within one year prior to reappointment, judges would be subjected to an additional evaluation. An evaluation at this time should be especially revealing because a judge would have served in office approximately four or six years. His or her performance then should be reasonably indicative of qualification for judicial office in the areas of competence, productivity and comportment.

The evaluation of all tenured judges should occur every five years. The Committee did not believe that, at least at the outset of a new judicial evaluation program, the evaluation of tenured judges should be conducted more frequently. It felt that because of the difficulties in initiating the program and coordinating its various components more frequent, formal evaluations might be unduly burdensome. The Committee also took into account that formal evaluations were not a substitute

for ongoing evaluations and that tenured, as well as nontenured, judges would be evaluated on a continuing basis by the assignment judge.

The Committee also was of the view that an assignment judge should conduct supplemental evaluations, in whole or in part, whenever he deemed this necessary or desirable. Thus, even though a particular judge might not be "scheduled" for a periodic formal evaluation, the assignment judge in his sound discretion should have the authority to undertake such an evaluation.

Because of the newness and significance of the program, the Committee determined that priority of effort should be concentrated upon judges at the trial level. Other evaluation approaches could be reserved for consideration at a future date. The Committee recognized that assessment of judicial performance elsewhere in the judiciary should continue. Thus, members of the Supreme Court function closely with the Chief Justice; the work of the Court and its members is largely a matter of public record. The judges of the Appellate Division have been the subjects of careful consideration and evaluation in



connection with their appointment to serve on the Appellate Division; their performance is, and will continue to be, effectively scrutinized through judicial review and by the presiding judge for administration. The assignment judges are subject to current evaluation on a frequent basis. These judges have been screened in connection with their designation to serve as assignment judges; they are in regular contact with the Chief Justice and are appropriately subject to continuous evaluation.

Recommendation: Judicial evaluation should apply to all full-time sitting trial judges. Judicial evaluation should be a continuous, ongoing process coupled with instruction and correction. It should also be conducted periodically on a formal basis for all judges. Newly appointed judges should be evaluated within two years of their initial appointments and within one year preceding their tenure appointments. Judges with tenure should be evaluated every five years. Formal, supplemental evaluations may be undertaken in the sound discretion of the assignment judge on a more frequent basis.

### VIII. METHODS OF EVALUATION

The Committee has concluded from its review of the experiences of other jurisdictions that no single approach or technique is adequate for the purposes of an evaluation program designed to improve the level of judicial performance. It therefore has looked to the institutions and resources within our own judicial system to structure an evaluation program.

#### A. Assignment Judges

Primary responsibility for the implementation of the evaluation program should be placed in the assignment judges. These judges occupy a central role in the judicial system. They have major responsibility for the administration of justice within their respective vicinages. R. 1:33-1 et seq. By rules of court and tradition, the assignment judges exercise through delegation the authority of the Chief Justice; they are responsible

within their vicinages for the supervision of judges and the assignment of cases, the handling of calendars and the performance of the judges.

R. 1:33-3; also R. 1:12-3; 1:30-3(e); 1:30-5; 1:35-2.

Assignment judges historically and traditionally have undertaken informal evaluations of trial judges within their vicinages. In the proper discharge of their responsibilities, assignment judges should be thoroughly familiar with the judges serving under them and be informed of their performance in office. Id.; R. 1:32-1. It makes sense that in the administration of a formal program for the evaluation of trial judges key responsibility be lodged in the assignment judge.

Recommendation: Primary responsibility for the evaluation of the performance of trial judges should be placed in the assignment judges who, under the standards of the judicial evaluation program, should obtain, collate and assess evaluation materials relative to the performance of the judges in their respective vicinages.

## B. Attorney Conferences

Attorneys have an important role to perform in the evaluation of judges. A wide and reliable source of knowledge of judicial ability inheres in attorneys who have become familiar with the performance of trial judges. A judicial evaluation program should look to this resource. Additionally, the Committee in its numerous meetings with representatives of the organized bar came to the conclusion that many attorneys were concerned with and interested in the performance of the judiciary. This interest on the part of lawyers is salutary and should be channelled constructively into a court-supervised judicial evaluation program.

The information to be supplied by lawyers should not be obtained in a haphazard or informal fashion; it should be furnished under appropriate guidelines and standards. This, in the Committee's opinion, could best be accomplished through structured conferences between the attorney and assignment judge.

In order to assure balance and objectivity, the assignment judge should designate three attorneys to assist in the evaluation of a particular judge. These attorneys should be selected on the basis of their knowledge, reputation, experience and familiarity with the judges in the vicinage. The identity of the attorneys should be kept confidential from both the judge to be evaluated as well as from one another.

The evaluation information should be imparted by these attorneys to the assignment judge in a special conference held separately between the assignment judge and the individual attorney. The framework and content of such conferences should be developed as part of the evaluation program.

The Committee recognized that there may be other avenues or approaches for utilizing knowledgeable and responsible attorneys, as well as the organized bar, in an evaluation program. Other alternatives, in the Committee's opinion, should await future study in the light of experience.

Recommendation: The assignment judge should conduct regular conferences with at least three attorneys selected in confidence on the basis of reputation, knowledge, experience and familiarity for purposes of evaluating the performance of individual judges.

### C. Judge Interviews

A vital component in the evaluation of sitting judges should be the interview between the assignment judge and the individual judge. Self-evaluation is perhaps as important as any other information. It is anticipated that sitting judges, in given cases, may sense shortcomings in their own performance, not perceived by others, which should be the subject of candid disclosure, evaluation and improvement.

The sitting judge should also be made privy to evaluation information received by the assignment judge from other sources. The judge should have the opportunity to respond to or address such information, be it favorable or derogatory. It may be that his or her reactions to such information and explanations with respect thereto can shed additional or different light on the evaluation. The judge should know the evaluation made by the assignment judge and be in a position to comment thereon.

Recommendation: In connection with periodic evaluations, the assignment judge should conduct interviews with individual judges in order to have the views of the judges with respect to their performance in office. Such interviews would be in addition to the ongoing meetings and conferences the assignment judge will have with individual judges for the purpose of correcting and improving performance on a continuous basis.

#### D. General Conferences

The assignment judges should hold regular meetings with all judges of the vicinage. These meetings should involve the exchange of information and views concerning judicial performance and discussion of specific and recurrent

problems. There should be reviewed, in particular, cases which have been appealed and decided by the appellate courts.

The purpose of these meetings is primarily instructive and educational and should be geared toward bringing about improvement of judicial effort among individual judges and within the courthouse as a whole.

Recommendation: The assignment judge should conduct regular meetings of all judges within the vicinage for purposes of exchanging information concerning judicial performance and general instruction and correction.

#### E. Appellate Division Judges

The judges of the Appellate Division constitute a unique source of information pertaining to the performance of trial judges. In the regular discharge of their appellate responsibility, they are



called upon to review the performance of trial judges. Where this appellate review enables the Appellate Division judge to evaluate the performance of the trial judge, that evaluation should be made available to the assignment judge.

The evaluation by judges of the Appellate Division should be undertaken only when in the normal and regular review of a case on appeal it is necessary for the Appellate Division judge to canvas the record of the trial; if such a review of the record discloses relevant information with respect to the performance of the trial judge, it should be utilized for evaluation purposes.

It is not anticipated that judges of the Appellate Division will routinely evaluate trial judges in all cases which are appealed. This could become too onerous and would be counter-productive. Cf. "The Appellate Division: A Progress Report", 103 N.J.L.J. 157 (February 22, 1979).

It is recognized that there are many cases, which are appealed, that do not require a full review of the entire record or where the review of the record does not otherwise enable the Appellate Division judge to make a fair or balanced evaluation of the trial judge; evaluations of the trial judge should not be essayed in those situations.

Recommendation: Judges of the Appellate Division should evaluate trial judges when this can be accomplished as an incident to their review of an appealed case the record of which discloses material relevant to the performance of the trial judge.

F. The Advisory Committee on Judicial Conduct

An important source for the evaluation of judicial performance is the Advisory Committee on Judicial

Conduct. In the regular discharge of its statutory and regulatory responsibilities, the Advisory Committee on Judicial Conduct receives general information as well as specific complaints pertaining to the conduct and performance of judges. Many of these cases do not warrant discipline and are closed. Some result in informal conferences between the Advisory Committee on Judicial Conduct and the judge so that the judge may be made aware of the nature of the complaint, may be enlightened by the Committee's assessment of it and instructed if correction is required.

When the Advisory Committee on Judicial Conduct receives or develops information concerning the performance of a judge, the Committee should transmit that information to the assignment judge of the vicinage of the particular trial judge so that the assignment judge may incorporate such information into his evaluation file concerning that judge; if appro-

prate, the assignment judge should confer with the sitting judge and utilize such information for the purposes of instruction and improving performance.

Where the Advisory Committee on Judicial Conduct has decided to continue proceedings involving a judge with a view towards determining discipline, that information should, under appropriate guidelines, be made available to the assignment judges for evaluation purposes.

Reciprocity in this area is called for. Where the assignment judge in the performance of his regular duties, as well as in the implementation of the evaluation program, obtains information affecting a particular judge, which information may warrant possible discipline, it should be referred to the Advisory Committee on Judicial Conduct.

Recommendation: The Advisory Committee on Judicial Conduct should, under appropriate guidelines, make available to assignment judges information which is relevant to the evaluation of the performance of individual judges.

#### G. Polls and Questionnaires

The evaluation of judges should be augmented through the use of professionally designed and administered questionnaires on a periodic basis under the supervision of the courts. These can serve a useful function in an evaluation program. Information relative to judicial performance can be provided through polling

from sources which are wider and more diverse than conventional sources of evaluation data.

The polls or questionnaires should be developed by persons who are professionally qualified and expert in the field of public opinion sampling. The population to be polled, confidentiality of source, the type of questions, the form of question, the design of the poll or questionnaire, the frequency of polling and the interpretation of polls are all matters which are the subject of special expertise and bear directly upon the effectiveness of any such polls or questionnaires and their utility in an evaluation program.

The polls or questionnaires should be addressed to attorneys. An important criterion in the selection of the polling population should

be the knowledge and experience of the attorney.

The State Bar Association Committee on the Evaluation of Sitting Judges has recommended the use of attorney polling. This endeavor is one as to which the organized Bar of the State of New Jersey can be particularly helpful.

Recommendation: The judicial evaluation program under the supervision of the Supreme Court should include the use on a periodic basis of professionally designed and administered polls which are directed primarily to lawyers with knowledge of the judges being evaluated.

IX. ORGANIZATION AND STAFF FOR EVALUATION

A. Supreme Court Committee on Judicial  
Evaluation and Performance

A permanent Committee on Judicial Evaluation and Performance should be responsible for the overall supervision and management of the judicial evaluation program. This Committee would develop and implement the evaluation methodology and supervise and assist the assignment judges and others with respect to their responsibilities in the evaluation program. The Committee should develop forms for the reporting of evaluation data and determine the frequency and direction of such evaluation reports.

The membership of the Supreme Court's Committee on Judicial Evaluation and Performance should consist of at least seven persons. They should include a retired justice or judge, a presiding judge of the Appellate Division, an



assignment judge, a trial judge, a member of the organized bar and representatives of the public at large.

The Committee should be directly responsible to the Chief Justice and the Supreme Court. It should report on a regular basis to the Supreme Court on the evaluation of judges and the evaluation program. The Committee should have the assistance of the Administrative Office of the Courts.

#### B. Administrative Office of the Courts

There should be constituted within the Administrative Office of the Courts a unit or division to undertake the administration of the judicial evaluation program. It should assist the Supreme Court's Committee on Judicial Evaluation and Performance and be responsible for the central filing and custodial keeping of all reports and records pertaining to judicial evaluation. This unit should

also assist the assignment judges and others who are involved in the judicial evaluation program.

Recommendation: The judicial evaluation program should be organized so that its overall direction and supervision shall be the responsibility of a permanent committee designated by the Supreme Court with representative membership. The committee should be directly responsible to the Supreme Court and be assisted by the Administrative Office of the Courts.

X. REPORTS AND FORMS FOR EVALUATION

The forms and reports for the judicial evaluation program should be designed and developed by the Supreme Court's Committee on Judicial Evaluation and Performance with the assistance of the Administrative Office of the Courts.

The major reports should consist of those to be completed by the assignment judge. The assignment judge will receive reports and information from various sources which should be included in the basic evaluation report. That report should include the results of the ongoing evaluations as well as the formal periodic evaluations.

The assignment judges' reports on evaluation should be filed centrally with the Administrative Office of the Courts for use by the Supreme Court's Committee on Judicial Evaluation and Performance. The Committee shall report regularly to the Supreme Court on the evaluation of judges and the status of the evaluation program.

All evaluation information and data should be compiled and kept on a confidential basis. Evaluations should be disclosed to the individual judges. Further guidelines relating to the confidentiality of reports and the limited and selective disclosure of evaluation data should be developed consistent with the purposes of the evaluation program.

Recommendation: Reports and forms for the collection of evaluation information should be developed by the Supreme Court Committee on Judicial Evaluation. They should be designed to reflect the purposes and uses of the judicial evaluation program. Such reports should be filed centrally and maintained on a confidential basis except to the limited extent necessary to fulfill the goals of the program in accordance with guidelines to be developed.

XI. OTHER CONSIDERATIONS

It was stated at the outset that several important considerations weighed heavily in the Committee's deliberations. They deserve brief reemphasis.

The Committee adopted as the uppermost goal of the recommended judicial evaluation program the elevation of the standards of judicial performance. Consistent with this objective, the Committee considered that the judicial evaluation program must be court-supervised to assure and strengthen the continued independence and integrity of judges.

It was also important, in the opinion of the Committee, that the evaluation effort be viewed as a measure supplementing current programs directed toward the improvement of judicial standards. The evaluation program should be a means for serving the administration of the judicial system; in no sense should it be considered as an end in itself.

The Committee was mindful of the newness of its proposal. Many of its recommendations might well invite reasonable differences of opinion, for example, in the areas of the frequency of evaluation, standards, methods and the like. Uncertainty as to its impact should not be allowed to eclipse its potential for good. The entire undertaking of judicial evaluation should not be approached with any rigidity or dogmatism. There should be flexibility and a willingness to modify and improve.

It was recognized that the program of evaluation should be integrated into our present administrative machinery; its diverse components must be coordinated and its various elements developed in orderly fashion for the program to function fairly and effectively. This will take time. The success of the judicial evaluation effort, in large measure, will turn upon the full cooperation of the entire judiciary. Understanding and preparation are called for in its implementation.

Finally, after a reasonable time, the evaluation program, new and essentially experimental

in nature, should itself be evaluated. Its justification is the enhancement of the judiciary and the betterment of judicial services to the public. Whether that expectation is fulfilled should in the future be subject to competent and professional assessment; this might well be undertaken by an independent and reputable organization such as the National Center for State Courts.

## XII. CONCLUSIONS

The Committee is convinced that the cause of the judiciary can be advanced by the adoption and effectuation of a program for the evaluation of judicial performance under the supervision of the Supreme Court. Such a program, designed and developed by the Court for the overriding purpose of assisting individual judges, and the judiciary as a whole, will serve to heighten the level of judicial performance and improve the quality of justice delivered to the public.

The Committee has endeavored through this Report to present such a program and invites its

consideration by the Chief Justice and Associate  
Justices of the Supreme Court.

Respectfully submitted,

Alan B. Handler,  
Associate Justice of the Supreme Court

William G. Bischoff,  
Judge of the Appellate Division of  
the Superior Court

John C. Demos,  
Assignment Judge of the Superior Court

by:   
Alan B. Handler, Chairman



**END**