

6-1-2001

Judicial Retention Evaluation Programs

Seth S. Andersen

Recommended Citation

Seth S. Andersen, *Judicial Retention Evaluation Programs*, 34 Loy. L.A. L. Rev. 1375 (2001).
Available at: <https://digitalcommons.lmu.edu/llr/vol34/iss4/7>

This Symposium is brought to you for free and open access by the Law Reviews at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles Law Review by an authorized administrator of Digital Commons@Loyola Marymount University and Loyola Law School. For more information, please contact digitalcommons@lmu.edu.

JUDICIAL RETENTION EVALUATION PROGRAMS

*Seth S. Andersen**

I. INTRODUCTION

Judicial retention evaluation programs are a key component of efforts to make judicial retention elections more meaningful contests for voters by providing objective, survey-based information on the performance of judges standing for retention. Official judicial performance evaluation programs for retention elections are currently in use in six states: Alaska, Arizona, Colorado, New Mexico, Tennessee, and Utah.¹ Alaska was the first state to adopt such a program in 1976.² New Mexico's Judicial Performance Evaluation Program is the newest, implemented by supreme court order in 1997.³

While the current trend appears to favor adoption of official retention evaluation programs in more states, it is important to note

* Former Director, Hunter Center for Judicial Selection, American Judicature Society. Project Manager, Standing Committee on Judicial Independence, American Bar Association. This paper was prepared specifically for the Summit on Improving Judicial Selection. The views expressed in this paper are those of the author and do not necessarily reflect the views, opinions or positions of the National Center for State Courts, the American Bar Association, the American Judicature Society, the Joyce Foundation, or the Open Society Institute.

1. See UNCERTAIN JUSTICE: POLITICS IN AMERICA'S COURTS: THE REPORTS OF THE TASK FORCES OF CITIZENS FOR INDEPENDENT COURTS 99 (2000), available at http://www.constitutionproject.org/ci/reports/uncertain_justice.pdf (last visited Feb. 27, 2001) [hereinafter UNCERTAIN JUSTICE].

2. See SARA MATHIAS, ELECTING JUSTICE: A HANDBOOK OF JUDICIAL ELECTION REFORMS 20 (1990).

3. See Amended Order Establishing Judicial performance, N.M. Sup. Ct. (1999); Order Establishing Judicial Performance, N.M. Sup. Ct. (1997); *New Mexico Judicial Performance Evaluation Commission, 2000 Voter Information Guide*, available at <http://www.nmcourts.com/JPE.pdf> (last visited Mar. 11, 2001) [hereinafter *New Mexico Judicial Commission*].

that only six of the nineteen states that hold retention elections at some or all levels of court have adopted such programs.⁴ Concerns about the fairness of survey methodologies and evaluation commission procedures, as well as a general reticence among many judges to subject themselves to an evaluation process that may be seen as a threat to decisional independence, have helped to stall the expansion of retention evaluation programs.⁵

This briefing paper will focus on official, state-sponsored, judicial performance evaluation programs that are used to provide voters with information and recommendations in retention elections. Bar polls, and other types of judicial performance evaluation programs that are conducted in many states, either solely for judicial self-improvement purposes or to aid in the reappointment decisions of governors or nominating commissions, do not fall within the scope of this paper.

Judicial retention evaluation programs can be characterized as having some common elements: official status; broad-based survey mechanisms; wide dissemination of survey results and recommendations; and judicial self-improvement.

Funding for these judicial evaluation programs establishes their official status. In contrast to judicial evaluation surveys that are conducted by bar associations, interest groups, or other private entities, the programs considered in this paper are established by law or court order, and are funded through the legislature or the judicial branch. In most instances, the members of judicial performance evaluation commissions are appointed by elected officials and/or judges.⁶

Official judicial retention evaluation programs utilize a broad-based approach to surveying court users. Unlike bar association polls, which by definition seek only the opinions of attorneys on judicial performance,⁷ judicial retention evaluation programs may also include surveys of jurors, litigants, witnesses, court staff, police and probation officers, social service personnel, and others who are in a

4. See UNCERTAIN JUSTICE, *supra* note 1, at 99.

5. See A. John Pelander, *Judicial Performance Review in Arizona: Goals, Practical Effects and Concerns*, 30 ARIZ. ST. L.J. 643, 665 (1998) (discussing judges' opposition to Arizona's judicial performance review pilot).

6. See *id.* at 669-70, 683.

7. See *id.* at 648.

position to evaluate judicial performance.⁸ In addition, performance evaluation commissions consider nonsurvey sources of information, including personal interviews with the judges being evaluated, discipline records, caseload evaluations,⁹ and completion of continuing judicial education requirements.

Official judicial retention evaluation programs strive for the widest possible dissemination of results to voters. While some states are restricted by limited resources, several states are able to send survey results and recommendations to all registered voters.¹⁰ More detailed information on dissemination can be found in the "Program Models" section of this paper.

Although the primary purpose of most judicial performance evaluation programs is to provide voters in retention elections with an objective source of information, all programs also include an important judicial self-improvement component through confidential midterm evaluations and interviews with judges under evaluation.¹¹ The anonymity of survey responses also provides judges with systematic and honest feedback on their performance that is seldom forthcoming under normal circumstances.

II. RATIONALE BEHIND PROGRAMS

Judicial merit selection plans seek to strike a balance between the often competing demands for both judicial independence and accountability to the public by providing for initial appointment through a nominating commission and subsequent terms through noncompetitive retention elections. Retention elections provide accountability in theory, but in practice they can suffer from the same lack of publicity and voter interest as competitive judicial elections often do. The starkest measure of voter interest in retention elections is rolloff—the percentage of balloting voters who do not vote in the retention election.¹² While the 1996 average rolloff percentage in

8. See UNCERTAIN JUSTICE, *supra* note 1, at 98-99.

9. See MATHIAS, *supra* note 2, at 21.

10. See Pelander, *supra* note 5, at 686 (discussing Arizona's distribution to all voters in brochure, public service announcements, and direct mailings).

11. See *id.* at 650-51.

12. See Larry Aspin, *Trends in Judicial Retention Elections, 1964-1998*, 83 JUDICATURE 79, 81 (1999).

retention elections was relatively high at 29.5%, this figure represents an improvement over the period between 1976 and 1984 when average rolloff was 36%.¹³ Moreover, the average affirmative vote in retention elections stood at 75.8% in 1998, rebounding from a historic average low of 69.4% in 1990.¹⁴

The flip side of increasing voter participation in retention elections and confidence in judges standing for retention is an increasing lack of voter differentiation among judges on the same ballot. Voters can and do, albeit extremely rarely, single out individual judges for defeat, but analysis of average affirmative votes for all judges on the same ballot shows that "within a district the typical judge's affirmative vote differs very little from that of the other judges in the district."¹⁵ Judicial performance evaluation programs, therefore, can be premised at least in part on the need to provide voters with more specific information on each judge. This will allow them to make individualized decisions rather than voting all up or all down on multiple retention candidates.

Official retention evaluation programs also seek to involve citizens more directly in the process of evaluating judges. Members of the public are involved in the evaluation process as commission members and as respondents to evaluation surveys. By actively seeking citizen input, it is hoped that voters will see official evaluation information as reflecting their views, or their neighbors' views, as well as attorneys' evaluations of judicial performance.

In addition to improving voter awareness and citizen involvement, official retention evaluation programs can be effective counters to biased or politically motivated judicial evaluations conducted by interest groups seeking to rid the bench of judges they perceive to be unfavorable to their issues. Among the most frequently cited instances of successful "Vote No" campaigns led by interest groups are the defeats of Justice Penny White of the Tennessee Supreme Court and Justice David Lanphier of the Nebraska Supreme Court, both in 1996.¹⁶ In both instances, interest groups launched well-funded,

13. *See id.* at 81.

14. *See id.* at 79-80.

15. *Id.* at 81.

16. *See Traciell V. Reid, The Politicization of Retention Elections: Lessons from the Defeat of Justices Lanphier and White*, 83 JUDICATURE 68, 68 (1999).

last-minute campaigns that focused voters' attention on single decisions. Voters had no neutral performance evaluation to rely upon, making Justices White and Lanphier all the more vulnerable to political attack.¹⁷ Had official performance evaluations been conducted in Tennessee and in Nebraska in 1996, Justices White and Lanphier may still have lost their retention bids, but they would have at least been able to point to the results of independent, nonpolitical evaluations. In addition, the existence of official performance evaluations may reduce the necessity of fund-raising by judges who face organized opposition, especially in those states that disseminate evaluation results widely.

As evaluation commissions are public and do not represent a particular ideology or set of issues, they can help to focus voters' decision making on "the commonly held value of a competent independent judiciary, rather than on partisanship or ideology."¹⁸ Informal (nonrandom) exit polls of retention election voters conducted by the American Judicature Society in 1996 in four states with retention evaluation programs found that official evaluation information has a positive impact on the electorate in terms of increasing participation in retention elections and influencing voting choices.¹⁹ More focused study of voter behavior is needed, however, to determine whether voters give more credence to official retention evaluation information than to interest group evaluations.

Stated goals of evaluation commissions differ from state to state, but Arizona's Rules of Procedure for Judicial Performance Review give the most comprehensive statement of commission goals. The commission is to

assist voters in evaluating the performance of judges and justices standing for retention; facilitate self-improvement

17. *See id.* at 69.

18. Kevin M. Esterling, *Judicial Accountability the Right Way: Official Performance Evaluations Help the Electorate as well as the Bench*, 82 JUDICATURE 206, 215 (1999).

19. *See id.* at 210 (voters in Anchorage, Phoenix, Denver, and Salt Lake City were asked if the official evaluation information influenced their voting choices (percent agreeing or strongly agreeing ranged from 59.8% in Anchorage to 81.6% in Denver), and if they were more likely to vote in a judicial election because of the official evaluation information (percent agreeing or strongly agreeing ranged from 64.6% in Anchorage to 72.0% in Denver)).

of all judges and justices subject to retention; promote appropriate judicial assignments; assist in identifying needed judicial education programs; and otherwise generally promote the goals of judicial performance review, which are to protect judicial independence while fostering public accountability of the judiciary.²⁰

III. PROGRAM MODELS

The following overview of retention evaluation commissions' structure and procedures draws heavily on the results of a 1996-1997 American Judicature Society study of programs in Alaska, Arizona, Colorado, and Utah.²¹ Additional information on newer retention evaluation programs in New Mexico and Tennessee was collected for the purpose of this briefing paper.²²

The six states currently using official retention evaluation programs share common goals, with some notable variations in procedure. Tables describing evaluation procedures and performance criteria are included below as an effective means of summarizing a vast amount of commission-specific information.

Generally speaking, all commissions base their evaluations and recommendations on both statistical and qualitative information from a variety of sources. They conduct formal surveys of court users²³ and meet with judges to discuss evaluation results and self-improvement goals. Several commissions also hold public hearings or solicit public comment in writing.

Evaluation commissions generally send questionnaires only to those attorneys who have appeared before the judge being evaluated, in order to avoid evaluations that are based on second-hand information or the overall reputation of the judge within the legal community. If questionnaires are sent to all attorneys in a particular

20. ARIZ. REV. STAT. ANN. § 17B (West 2000) (Supreme Court of Arizona, Rules of Procedure for Judicial Performance Review: Implementation of Arizona Constitution Article 6(42) Proposition 109, Rule 1).

21. See KEVIN M. ESTERLING & KATHLEEN M. SAMPSON, JUDICIAL RETENTION EVALUATION PROGRAMS IN FOUR STATES: A REPORT WITH RECOMMENDATIONS (1998).

22. See *New Mexico Judicial Commission*, *supra* note 3.

23. For information on groups surveyed in each state, see *infra* Table 1.

jurisdiction, as is the case in Alaska, respondents must indicate their level of direct professional experience with the judge being evaluated.

TABLE 1: EVALUATION PROCEDURES²⁴

	Alaska	Arizona	Colorado	New Mexico ²⁵	Tennessee (Appellate)	Utah
Groups surveyed	Alaska Bar members; peace and probation officers; court staff; jurors for last 2 years of term	Attorneys, litigants, witnesses, jurors, other judges/justices, court staff	Jurors, litigants, court personnel, probation officers, social service and law enforcement personnel, crime victims, attorneys	<i>Appellate level:</i> Attorneys, fellow appellate judges, trial judges, law clerks, staff attorneys, court personnel, law professors	Attorneys, court personnel, other appellate judges, trial judges	Attorneys, jurors
Nonsurvey sources of information	Judge's self-evaluation; legal, discipline, health records; attorneys in 9-12 major cases; judicial conduct commission; conflict of interest filings	Judge's previous self-evaluations and professional goals	Caseload evaluation; interview with the judge	Judge's self-evaluation; interview with the judge	Judges' self-reporting form; caseload/work output data; disclosure of any disciplinary actions of Court of the Judiciary	Compliance with cases-under-advisement standard; completion of 30 hours continuing education per year; compliance with Code of Judicial Conduct

24. Table 1 was adapted from Table III-3: Evaluation procedures from ESTERLING & SAMPSON, *supra* note 21, at 27.

25. See *New Mexico Judicial Commission*, *supra* note 3. The New Mexico Judicial Performance Evaluation Commission also evaluates trial court judges seeking retention. Groups surveyed for trial court evaluations are: attorneys, litigants, jurors, court personnel, adult and juvenile probation officers, social service personnel, psychologists, bail bondsmen, court interpreters, citizen review volunteers, Court Appointed Special Advocate (CASA) volunteers, and law enforcement officers. Additional nonsurvey sources of information for trial court evaluations include caseload evaluations and court observations, if warranted. See *id.*

	Alaska	Arizona	Colorado	New Mexico ²⁶	Tennessee (Appellate)	Utah
Public input	Hearings, newspaper ads and PSAs encourage public comment	Public hearings; requests for public comment in writing	Public hearings; public comment in writing	No	Public hearings; public comment solicited through Web page	No
Judge interview mandatory?	Council "may" interview; draft results shared with judge prior to final evaluation meeting	Factual report must be sent to judge; judge can submit written response; conference team interviews	Yes, after receiving analysis of survey results	Yes, after receiving analysis of survey results	Yes	Judge may request interview if he or she fails to meet certification standards

Surveys of other court users, such as jurors, litigants, witnesses, and court personnel, are generally distributed in court; respondents are asked to mail their completed surveys to an independent data center to ensure confidentiality throughout the evaluation process. Commissions do not factor anonymous citizen comments in their evaluation recommendations, but may provide such comments to judges for their own use.

Retention evaluation commissions vary in their organizational structure. Most commissions include lawyers, judges, and nonlawyer members, although Colorado's commissions have no judge

26. See *New Mexico Judicial Commission*, *supra* note 3. The New Mexico Judicial Performance Evaluation Commission also evaluates trial court judges seeking retention. Groups surveyed for trial court evaluations are: attorneys, litigants, jurors, court personnel, adult and juvenile probation officers, social service personnel, psychologists, bail bondsmen, court interpreters, citizen review volunteers, Court Appointed Special Advocate (CASA) volunteers, and law enforcement officers. Additional nonsurvey sources of information for trial court evaluations include caseload evaluations and court observations, if warranted. See *id.*

members.²⁷ Commissions range in size from the seven members of the Alaska Judicial Council—including three lawyers, three nonlawyers, and the chief justice²⁸—to the thirty-member Arizona Commission on Judicial Performance Review—including six lawyers, eighteen nonlawyers, and six judges.²⁹ Because all Colorado judges stand for retention, the state has one statewide commission for the appellate levels and twenty-two district commissions for trial judges up for retention in each district.³⁰ All other states have a single retention evaluation commission. In Alaska, Arizona, and Utah, lawyer members of commissions are selected by state bar boards of governors. In Arizona, for example, the supreme court selects from a list submitted by the Arizona Bar Board of Governors. The lawyer and nonlawyer members of each Colorado commission, however, are appointed by the chief justice, the governor, the Speaker of the House, and the president of the Senate. Nonlawyer members of commissions are selected, with legislative confirmation, by the governor in Alaska, by the supreme court in Arizona, and by a variety of elected officeholders in New Mexico. Evaluation commissioners generally have staggered terms, ranging from three to six years in length, and must disqualify themselves if a conflict of interest arises in evaluating a particular judge.³¹

The stated criteria used by evaluation commissions also varies from state to state. New Mexico's Statewide Judicial Performance Evaluation Program, for example, bases evaluations on fairness, knowledge and understanding of the law, ability to communicate, preparation and attentiveness, and effectiveness in working with court personnel.³² Naturally, questionnaires sent to attorneys include

27. See *Recommendations for Judicial Retention: November 7, 2000 Election*, available at <http://www.cobar.org/judges/nov2000/> (last visited Mar. 6, 2001) [hereinafter *Recommendations*].

28. See *Alaska Judicial Council: Membership*, available at <http://www.ajc.state.ak.us/AJCMEM.htm> (last visited Feb. 26, 2001).

29. See *Arizona Commission on Judicial Performance Review: Membership*, at <http://supreme.state.az.us/jpr/JPRPublicMBRLIST-01.PDF> (updated Feb. 15, 2001).

30. See *Recommendations*, *supra* note 27.

31. Information on commission membership is adapted from Table III-2: Commission membership found in ESTERLING & SAMPSON, *supra* note 21, at 24.

32. See *New Mexico Judicial Commission*, *supra* note 3.

a greater number of questions relating to legal ability, whereas questionnaires sent to litigants, witnesses, or jurors focus more on issues of integrity, judicial temperament, and administrative skills.

The Arizona Superior Court evaluation survey illustrates the different approaches used with different respondent groups.³³ Respondents are asked to rate superior court judges on the following criteria: "unacceptable," "poor," "satisfactory," "very good," "superior," and "can't rate."³⁴

Litigants, witnesses, jurors, and self-represented litigants rate judges on the following criteria: integrity, communication skills, judicial temperament, and administrative performance. Integrity includes separate questions on equal treatment regardless of race, gender, economic status, and basic fairness and impartiality. Communication skills evaluate the candidates on whether their oral communications are clear and logical. Judicial temperament looks at the candidates' understanding and compassion, dignity, courteousness, conduct promoting public confidence in the court, and ability. Administrative performance includes punctuality in conducting proceedings, maintenance of control in courtroom, and work ethics. Jurors who served are asked the questions above, with additional questions under communication skills, i.e., whether the candidate explained proceedings, reasons for delays, jurors' responsibilities, and gave clear instructions. Additionally, participants are asked in what capacity they were a party to the trial—plaintiff, witness, etc.—as well as race or ethnicity and gender. Finally, space is provided for narrative comments.³⁵

Attorneys who have appeared before the judge rate on the following criteria: legal ability, integrity, communication skills, judicial temperament, administrative performance, and settlement activities. The legal ability category encompasses legal reasoning ability, knowledge of substantive law, knowledge of rules of evidence, knowledge of rules of procedure, knowledge of laws pertaining to

33. For further information on different approaches, see graphic on Arizona superior court surveys adapted from ESTERLING & SAMPSON, *supra* note 21, at 88; see also Pelander, *supra* note 5, at 673-74 (comparing the attorney survey from that used by other respondents).

34. See Pelander, *supra* note 5, at 673-74.

35. See ESTERLING & SAMPSON, *supra* note 21, at 88.

sentencing, and ability to keep up to date. Integrity implies conduct free from impropriety; separate questions on equal treatment regardless of race, gender, and economic status; avoiding prejudging outcomes of cases; and basic fairness and impartiality. Communication skills include clear and logical oral communications or directions, and clearly and logically written decisions. Judicial temperament includes understanding and compassion, dignity, courteousness, conduct promoting public confidence in the court, and ability. In addition to the basis for rating administrative performance given to litigants, witnesses, jurors, and self-represented litigants, attorneys are asked to rate this category based on the candidates' promptness in making rulings and rendering decisions, and their efficient management of the calendar. The settlement activities category includes appropriate actions in encouraging settlement negotiations, promotion of negotiation without coercion or threats, careful exploration of the strengths and weaknesses of each party's case, mediation skills, and credible settlement appraisals. Space is given for narrative comments.³⁶

Following the completion of the full evaluation process, commissions take a public vote to recommend or not recommend retention of each judge. Each state commission uses different language in making recommendations, and some, such as Alaska, provide aggregate numerical ratings of judges' survey results.³⁷ Arizona has developed a unique "conference team" structure that allows each evaluated judge to discuss evaluation results, whether negative or positive and before they are publicly released, with a three-member team that includes one nonlawyer, one lawyer, and one judge or justice. In meetings with conference teams, judges develop specific, written performance improvement goals.³⁸

Finally, commissions face perhaps their most daunting task—wide dissemination of evaluation results and recommendations to the voting public to ensure the usefulness of the evaluation process. Commissions in Alaska, Colorado, and Utah are able to mail evaluation results directly to voters, generally as part of a larger voter

36. *See id.*; Pelander, *supra* note 5, at 673-74.

37. *See* Esterling, *supra* note 18, at 210-11.

38. *See id.* at 212.

information pamphlet mailed to all registered voters. Other states rely on a host of methods for disseminating evaluation results, including: Web pages; voter pamphlets made available at polling places, libraries, banks, shopping centers, courts, bar offices, etc.; newspaper coverage; public service announcements on television and radio; and meetings with community groups.³⁹

Regardless of the professionalism and thoroughness of the evaluation process, all can go for naught if adequate funds are not available for widespread dissemination of results. Prior to 1998, for instance, results of the Colorado Judicial Performance Evaluation Program were not included in the lieutenant governor's voter information guide that is mailed to all households. Despite the fact that the Colorado commissions were able to disseminate approximately 600,000 copies of their own judicial retention voter guides in 1996, widespread frustration with limited dissemination capabilities threatened the viability of the evaluation program.⁴⁰ Colorado's experience should serve as a cautionary tale to other states—sufficient funds for dissemination of results must be a precondition for establishing a retention evaluation program.

IV. VIEWS OF EVALUATION PROGRAMS

Generally, judicial retention evaluation programs are given high marks by judges, evaluation commissioners, and voters. Significant concerns exist, however, over the accuracy and fairness of evaluation programs and the impact of evaluations on judicial independence. Table 2 highlights a sampling of judges' key concerns regarding commission methods, accuracy, and fairness.

39. *See id.* at 209.

40. *See* ESTERLING & SAMPSON, *supra* note 21, at 30.

TABLE 2: COMMISSION METHODS, ACCURACY, AND FAIRNESS⁴¹

Statement	Percent agreeing or strongly agreeing				
	Alaska (N)*	Arizona (N)	Colorado (N)	Utah (N)	All judges (N)
I have an adequate opportunity to respond to commission results before they are made public.	42.9 (7)	60.0 (35)	61.0 (59)	34.4 (32)	53.4 (133)
Judges have access to a fair appeals process if they disagree with the commission's report.	20.0 (5)	51.6 (31)	30.2 (53)	30.8 (26)	35.7 (115)
The overall process used by the evaluation commission to collect information about my performance is fair.	66.7 (9)	66.7 (39)	60.7 (61)	57.6 (33)	62.0 (142)
The evaluation process undermines my independence as a judge.	22.2 (9)	33.3 (39)	14.5 (62)	50.0 (32)	28.2 (142)

* (N) denotes the number of people responding to the query.

The 50% of Utah judges surveyed who felt that the evaluation process undermines judicial independence were primarily concerned with the fact that, in 1996, the Utah Judicial Council surveyed only attorneys.⁴² The addition of a juror survey in Utah in 1997 might improve Utah judges' view of the process. But one cannot ignore the fact that 28.2% of all judges surveyed in 1996 believed that the process undermines judicial independence, even when multiple court user groups are surveyed. Special attention should also be paid to judges' concerns regarding evaluation methods and demands for a process to appeal evaluation results. The problem of accuracy of results is most magnified in rural areas, where only a handful of attorneys or law enforcement officers may return surveys. Clearly, the potential for misleading evaluation results is high when an insufficient number of surveys are returned or when one segment of the attorney population is overrepresented. Judges also must feel that they have adequate opportunities to address questionable or negative evaluation results.

Retention evaluation commissioners have also expressed concerns about outside political pressures on the evaluation process. If a commission has inadequate staff and funding, or finds itself

41. See ESTERLING & SAMPSON, *supra* note 21, at 30; interview with Kathleen M. Sampson, director of the Hunter Center for Judicial Selection and Seth Andersen, program manager, and director of the Colorado Judicial Performance Evaluation Program in Denver, Colorado.

42. See ESTERLING & SAMPSON, *supra* note 21, at 30.

defending the evaluation program from hostile legislation, its independence and credibility can be threatened. Inadequate funding compromises the most crucial element of an evaluation program—methodologically sound and fair survey administration.⁴³

V. CONCLUSION AND RECOMMENDATIONS

Based on its intensive study of retention evaluation programs in four states, the American Judicature Society has offered the following recommendations for ensuring the validity of evaluation programs:

1. Establish clear rules and procedures for the performance evaluation process.
2. Provide adequate funding.
3. Develop clear, measurable performance standards.
4. When there is a sufficiently large pool of respondents, adopt standard random sampling and appropriate follow-up procedures when surveying court user groups.
5. Ensure confidentiality in surveys and in commission deliberations to promote candid responses by surveyed individuals and frank discussion among commissioners.
6. Establish strong self-improvement components of the performance evaluation process.
7. Mandate a procedure for judges to receive and respond to evaluation results before they are made public.
8. Establish an effective mechanism for disseminating evaluation reports to the public.
9. Establish a mechanism to incorporate evaluation results in designing judicial education programs.
10. Establish linkages with print media.
11. Leave the process open to amendment.
12. Establish training programs for all evaluation commissioners.
13. Involve the public in and educate them about the process.⁴⁴

43. *See id.* at 215.

44. *See* ESTERLING & SAMPSON, *supra* note 21, at 117-21 (full text of recommendations).

Judicial retention evaluation programs that are designed and conducted carefully can accrue many benefits to the judiciary and the public. The anonymity of evaluation survey responses provides more honest commentary and constructive criticism of job performance than judges normally receive. Voters in retention elections benefit from an objective source of evaluative information. Finally, the shared desire for some measure of judicial accountability to the public expressed through the institution of retention elections is given better definition through a process of evaluation that is based on a well-defined set of nonpolitical performance criteria.

