

Judicial Performance Commission of Cook County: History, Purpose and Methodology

Since 1977, Illinois judges have been required to seek retention in office in an election every six years. While almost all judges are retained, the process itself has led to increasing levels of judicial campaign fundraising from lawyers who appear before the judges. Moreover, the public has seemingly lost faith and interest in the judicial retention process – sometimes fewer than 50% of people who vote in the election cast ballots for judges.

Chicago Appleseed Fund for Justice, in cooperation with the Chicago Council of Lawyers, has used generous grants from the Joyce Foundation to establish the Judicial Performance Commission of Cook County (JPC) in an effort to better inform voters and to improve the quality of the judiciary.

History of the JPC

In 2008, we created a task force representing key organizations interested in judicial election reform.

The task force concluded that a Judicial Performance Commission provides an opportunity for improving the quality of the state judiciary:

1. Some judges will learn from the evaluation and improve their performance.
2. Some judges, seeing that they will be undergoing a rigorous and objective process of public evaluation, may choose to leave the bench voluntarily.
3. For judges not meeting all of the performance standards, the Judicial Performance Commission provides performance improvement commentary. The Commission will then monitor the situation to see if a remedial program of court watching, mentoring, and continuing education is implemented.
4. Evaluation results from the Judicial Performance Commission will be provided to the Chief Judge of the Circuit Court of Cook County for the purpose of assisting decisions regarding the assignment of judges.
5. A Judicial Performance Commission will aid voters by providing information permitting educated decisions in judicial retention elections.

The Performance Commission Concept

The Performance Commission concept exists in at least five states, using a variety of approaches. These states are Alaska, Arizona, Colorado, New Mexico, and Tennessee.

Much literature exists on these bodies. The goal of this project was to utilize existing work in creating a model system for Illinois. Resulting information, including recommendations as to whether judges should be retained, is distributed widely through voter information guides.

In addition to aiding voters, Commissions help judges perform better on the bench. In Colorado, where a Performance Commission has been in existence for ten years, over 85% of trial judges and 50% of appellate judges report judicial performance evaluations have been “significantly beneficial” or “somewhat beneficial” to their professional development.¹ Many judges also feel that the Commission had no negative effects on their judicial independence, but instead increases their judicial independence.²

Current Status: The 2010 Judicial Performance Commission of Cook County

In 2009 and 2010, we translated the results of the task force into a pilot project, the Judicial Performance Commission of Cook County (“JPC”). The pilot project was launched in February 2010. The following is a status report on the progress made by this project:

Members of the 2010 Judicial Performance Commission (Affiliations for identification purposes only)

The Commission consists of 17 members, of which 40% are non-lawyers.

Chairperson

Leonard Jay Schrager, Professor Emeritus, The John Marshall Law School

Members

Enrique Abraham, Cook County State’s Attorney’s Office

Fay Lomax Cook, Institute for Policy Research, Northwestern University

Jan Czarnik, League of Women Voters of Illinois

Stephen Daniels, American Bar Foundation

Susana Darwin, American Bar Association

Vivien C. Gross, Professor, Chicago-Kent College of Law

Roy E. Hofer, Brinks Hofer Gilson & Lione

Jonathan D. King, DLA Piper

Michelle K. Jordan, League of Women Voters

¹ Ins. for the Advancement of the Amer. Legal Sys. The Bench Speaks on Judicial Performance Evaluations: A Survey of Colorado Judges. Available at <http://www.du.edu/legalinstitute/pubs/2008JudicialPerformanceEvaluationFINALExecsum.pdf>

² See id.

Edward O. Laumann, The University of Chicago, Department of Sociology

James H. Lewis, Chicago Community Trust

Virginia Martinez, MALDEF Chicago Regional Office

Travis Richardson, Richardson & Mackoff

Wesley G. Skogan, Professor, Northwestern University, Department of Political Science

Ada Skyles, Chapin Hall Research Center for Children, at the University of Chicago

Randolph N. Stone, Professor, Mandel Legal Aid Clinic, at the University of Chicago Law School

The staff of the 2010 Judicial Performance Commission:

Malcolm Rich	Executive Director
Elizabeth Monkus	Project Manager
Lisa Stoller	Paralegal
Professor Jack Heinz	Pro bono research consultant
Dr. Anne Heinz	Pro bono research consultant

Methodology Used by JPC

Performance Commission members serve as a board of directors, overseeing and governing the operations, but not influencing the research results. The Commission members made the decisions concerning retention recommendations and needed judicial performance improvement.

The judicial evaluation research efforts were overseen by Anne Heinz, a PhD political scientist with expertise in survey research and program evaluations, and Professor Jack Heinz, a research professor and former Executive Director of the American Bar Foundation. JPC staff members Elizabeth Monkus and Malcolm Rich were responsible for implementation of the evaluation techniques.

All judges seeking retention were notified that they were being evaluated by the JPC and were asked to inform us whether they were currently the subject of disciplinary action. The judges were evaluated by the members of the JPC using several independent sources of information:

The Clerk of the Circuit Court of Cook County, after receiving authorization from Chief Judge Timothy Evans, supplied to the Commission the names of lawyers who had appeared before each judge during the last two years. These lawyers were then surveyed in an electronic survey and in personal phone interviews. The lawyers represent the breadth of attorneys practicing in Cook County and included solo practitioners and attorneys with small, medium and large firms, as well as public defenders, state's

attorneys, and other attorneys employed by public agencies. Legal aid and clinical attorneys also participated in interviews.

Each lawyer received an email a letter describing the evaluation process and providing a link to an electronic survey to be completed and submitted confidentially online. Respondents provided both quantitative answers and written commentary. Dr. Anne Heinz analyzed the results and provided descriptive data.

Another group of lawyers was randomly selected for in-depth, structured phone interviews. These lawyers were grouped by number of appearances before a particular judge so that lawyers who appeared more often, less often, and infrequently were interviewed. Each lawyer was asked the same questions plus follow-up inquiries. As in the electronic survey, the questions included quantitative, scaled questions and narrative responses. The results were entered through an online survey system and Dr. Heinz analyzed these results, as well.

To identify issues that the evaluation process should explore, we also conducted informal interviews. These were non-structured interviews with lawyers having broad-based knowledge of a variety of judges. These interviews were conducted to identify judicial performance issues that needed further exploration.

Over the course of the project, we completed over 2600 surveys and interviews of attorneys regarding their experiences practicing before the retention candidates. In some cases, we employed court watching. We also reviewed the appellate records and examined various databases for media mentions of the judges. While the appellate records and media mentions were discussed as part of the Commission's deliberations, neither was ever found sufficient to be disqualifying for any judge.

Commission members utilized all of these sources of information in determining whether a judge would be Recommended or Not Recommended for retention. Moreover, the members also determined whether a judge, whether or not recommended for retention, would receive performance improvement commentary. Therefore, for each judge the JPC provided a rating and written explanation, including, when appropriate, commentary as to how the judge could improve his or her judicial performance. The Commission sometimes found a judge recommended for retention, but nonetheless in need of some improvement.

The factors considered by the Commission when reviewing a judge were:

- legal ability (follows the law, keeps abreast of recent developments in the law, reasons for ruling are clear),
- fairness,
- diligence (including punctuality),
- integrity,

- temperament,
- courtroom management.

After the Commission considered the research results, its staff prepared a written summary, including a biography, a rating, and the rationale for the Commission's conclusions. The Commission submitted the proposed evaluation and summary to the judge prior to its public release, and provided an opportunity for comment, correction, or reconsideration. Those judges found Not Recommended were given an opportunity to appear in person before the Commission to appeal the decision.

Conclusion

The Judicial Performance Commission of Cook County is a pilot project aimed at improving the quality of the Cook County judiciary. Its goals are to educate voters in judicial retention elections and to identify factors that could improve the performance of judges seeking retention. Subsequently, the Commission will seek to identify whether the judges improve their performance, and in so doing improve the quality of the Cook County justice system.