

JUDICIAL PERFORMANCE EVALUATION PROGRAM

Appellate Evaluations

Questions and Answers for Attorneys

THE PROGRAM GENERALLY

1. What is JPE?

The Judicial Performance Evaluation (JPE) Program conducts evaluations of active justices and judges for the purposes of self-improvement and for use by the General Assembly in the re-election process.

2. How was JPE established?

The JPE Program was established by statute and Rule of Court. See [Virginia Code § 17.1-100](#) and [Part Nine, Rules of the Supreme Court of Virginia](#).

3. What are the goals of JPE?

There are two primary goals of JPE. The first is to give justices and judges useful information and feedback that will help them enhance their performance as a justice or judge. The second is to give members of the General Assembly relevant information to enable them to better evaluate justices/judges who are candidates for re-election.

4. How is the Program governed?

Oversight of the JPE Program rests with the Chief Justice. The Program is administered by staff employed in the Office of the Executive Secretary.

The Chief Justice has appointed the JPE Advisory Committee to provide advice on the operation of the Program. A list of current members of the Committee and its Subcommittees is attached.

5. What is VCU-SERL?

VCU-SERL is Virginia Commonwealth University's Survey and Evaluation Research Laboratory in the L. Douglas Wilder School of Government and Public Affairs. It is the independent contractor that distributes and collects the surveys and prepares statistical and other analyses of the survey data.

THE EVALUATION PROCESS

6. What are the steps in the evaluation process of appellate justices and judges?

The evaluation process consists of several steps:

- A justice/judge is scheduled for evaluation.
- The justice/judge is notified of the upcoming evaluation.
- The justice/judge completes a self-evaluation.
- Opinion selections are requested from the evaluated justice/judge.
- Selected opinions are reviewed by the Appellate Opinion Review Committee, and a consensus report is provided to VCU-SERL.
- Attorneys, who have appeared before or observed the justice/judge, and circuit court judges are asked to complete an evaluation survey.
- The evaluation report, which consists of the attorney survey results, circuit court judge survey results, and the Appellate Opinion Review Committee's consensus report, is sent by VCU-SERL to the evaluated justice/judge.
- The evaluation report of justices/judges, who are in the final year of their term and have had a self-improvement evaluation, will be sent to the Chairs of the House Committee for Courts of Justice and the Senate Committee on the Judiciary of the General Assembly, as required by Virginia Code § 17.1-100.

7. How often are appellate justices or judges evaluated?

Appellate justices/judges are evaluated twice, once during the middle of the term and the year before the end-of-term date.

8. How is the evaluation schedule determined?

The years in which evaluations occur are based on the length of term. Evaluations may be conducted any time during the year. End-of-term evaluations will be completed in time to be transmitted to the General Assembly by December 1.

9. How many appellate justices or judges are evaluated each year?

Typically, fewer than 10 appellate justices or judges are evaluated each year.

OPINION REVIEW

10. Who are the members of the Appellate Opinion Review Committee, and how are they appointed?

The Committee is comprised of up to four retired or senior appellate justices or judges, two retired circuit court judges, and one law school professor. Members of the Committee are appointed by the Chief Justice. Recommendations for a law school professor are solicited from each accredited law school in the Commonwealth, and the

appointment of one professor is made by the Chief Justice from the pool of those recommended.

11. How many opinions are reviewed?

For Supreme Court justices, one criminal opinion, one civil opinion, one additional opinion, and one concurrence or dissent, if available, are reviewed for each evaluated Justice.

For Court of Appeals judges, the reviewed opinions may be published or unpublished, and will include one criminal opinion, one civil opinion, one additional opinion, and one concurrence or dissent, if available.

12. How are the opinions selected for review?

The evaluated justice/judge selects the opinions for review. All opinions will have been written during the previous three years.

However, the Opinion Review Committee may request additional opinions written by evaluated justice/judge or select additional opinions on its own initiative. Additional opinions are reviewed in the same manner as those initially chosen by the justice/judge.

13. What are the members of the Committee assessing when they review an opinion?

They are assessing the legal analysis and reasoning within the opinion, and the opinion's fairness and clarity.

14. Does the Committee issue a report?

Yes. A consensus report, created by the Committee on an established template, is provided to VCU-SERL for inclusion in the report to the justice/judge and the General Assembly (for end-of-term evaluations).

THE EVALUATION SURVEY INSTRUMENT

15. Who is surveyed?

Circuit court judges and attorneys are surveyed.

16. How are attorneys selected to receive a survey?

VCU-SERL sends an electronic survey to all active/in good standing members of the Virginia State Bar twice per year to identify attorneys who have observed or appeared before a justice/judge who has an upcoming evaluation. Attorneys are asked to indicate which of the listed justices/judges they have observed or appeared before during the last three years.

In addition, attorneys' names are obtained from argument dockets for panels and sessions in which the evaluated justice/judge participated. The attorneys identified from these sources compose a pool of potential attorney evaluators. Each judge has a unique pool of potential evaluators.

VCU-SERL strives to survey 250 attorneys for each judge. VCU-SERL randomly selects the evaluation survey recipients where more than 250 attorneys are identified for a judge.

17. How do I know that the e-mail I received about JPE isn't a phishing scam or some other spam?

The e-mail should come from this e-mail address: judiciaeval@vcu.edu.

- **Eligibility Surveys:**

The eligibility surveys are typically sent in May and November each year. If you receive an eligibility survey at another time, please contact the JPE Program at JPEProgram@vacourts.gov to verify the authenticity of the survey.

- **Evaluation Surveys:**

Evaluation surveys take place throughout the year. If you are selected to evaluate a justice or judge, you will receive a hard copy letter, on Supreme Court of Virginia letterhead, informing you that you have been selected to evaluate a particular justice/judge. The letter will let you know that you should expect an e-mail within the next several days, which will contain a link to the evaluation instrument.

After a few days, you should receive the e-mail from judiciaeval@vcu.edu that contains the link. A week to 10 days later, you may receive a reminder to complete the survey.

18. I have never received any e-mails about the JPE process. Why not?

The JPE Program uses contact information that is on file with the Virginia State Bar (VSB). The eligibility survey e-mails are sent to all attorneys who are active and in good standing. Possible reasons why you may not have received an e-mail include:

- Out of date contact information on file with the VSB; or
- Automatic filtering by your e-mail system. You can check your e-mail folders to see if the e-mail was filtered. If so, please try adding judiciaeval@vcu.edu to your address book.

19. How many observations or appearances are required for an attorney to receive a survey?

If an attorney has observed or appeared before an evaluated judge only once during the last three years, that attorney is eligible to complete an evaluation survey.

20. What is the survey designed to evaluate?

The survey completed by attorneys contains 15 performance-based factors (or questions) drawn from the Canons of Judicial Conduct related to observable, mostly in-court behaviors, and a 10-question section related to opinion writing. The surveys completed by circuit court judges contain only the opinion writing section.

21. How are results compiled?

Surveys will be compiled through the electronic survey protocol, which is conducted by VCU-SERL. Observing very stringent standards of security and confidentiality, with access limited only to authorized personnel, VCU-SERL receives and compiles all survey responses and comments.

THE EVALUATION REPORT

22. Who sees the evaluation form I complete?

The individual evaluation responses are received only by staff at VCU-SERL, who have signed confidentiality agreements. All ratings are compiled by VCU-SERL into an aggregate report for each justice/judge. The justices/judges are not provided the names of attorneys included in their evaluation pool or the attorneys who completed surveys.

23. Who sees my comments?

The free-form comments are provided only to the evaluated justice/judge. They are collected solely to assist the evaluated justice/judge in his or her self-improvement. You should write your comments with that use in mind.

24. Can I see the judge's report?

End-of-term reports that are provided to the General Assembly are posted on [Virginia's Legislative Information System Website](#) under "[Reports to the General Assembly.](#)" All other documents related to a justice's/judge's evaluation "are confidential and shall not be disclosed." Virginia Code § [17.1-100](#).

25. Are respondents' comments included in the report submitted to the General Assembly?

No. Comments have never been included in the reports sent to the General Assembly.

Comments are collected on mid-term appellate evaluations and are collected only for the purpose of self-improvement. Comments are not collected during the end-of-term evaluation process.

**Judicial Performance Evaluation Program
Advisory Committee**

| | |
|--|---|
| Hon. Cleo E. Powell, Justice | Supreme Court of Virginia |
| Hon. Mary Bennett Malveaux, Judge | Court of Appeals of Virginia |
| Hon. Rufus A. Banks, Jr., Judge | First Judicial Circuit |
| Hon. Jerrauld C. Jones, Judge | Fourth Judicial Circuit |
| Hon. Joel C. Cunningham, Retired Judge | Tenth Judicial Circuit |
| Hon. Tracy W. J. Thorne-Begland, Judge | Thirteenth Judicial Circuit |
| Hon. Douglas L. Fleming, Jr., Judge | Twentieth Judicial Circuit |
| Hon. R. Frances O'Brien, Judge | General District Court, Seventeenth Judicial District |
| Hon. Jacqueline F. Ward Talevi, Judge | General District Court, Twenty-Third Judicial District |
| Hon. Scott D. Landry, Judge | Juvenile & Domestic Relations District Court, Twelfth Judicial District |
| Hon. Deborah S. Tinsley, Judge | Juvenile & Domestic Relations District Court, Sixteenth Judicial District |
| Hon. H. Lee Chitwood, Judge | Juvenile & Domestic Relations District Court, Twenty-Seventh Judicial District |
| Kevin Martingayle, Esquire | Bischoff Martingayle, P.C. |
| Hon. Teresa Hash Dobbins, Clerk | Powhatan Circuit Court |
| Kristi S. Wright, Esquire | JPE Program Director, Ex Officio |