



MASSACHUSETTS

BAR

ASSOCIATION

TO: Members of the MBA House of Delegates

FROM: The Judicial Evaluation Task Force
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RE: Report of the Task Force

DATE: March 26, 2004

PURPOSE

In early 2003 MBA President, Joseph Vrabel, created the Judicial Evaluation Task Force and gave this group the following charge:

The task force shall review the Association's present position on judicial evaluations. Review will center on the Association's judicial evaluation efforts, including the previous judicial evaluation committee's recommendations and subsequent House of Delegates action. Examination of the MBA's published report in 2001 on the Commonwealth's District, Superior and Family & Probate Courts should be assessed for its purpose and effectiveness in terms of benefiting the court system, the practice of law and the public. The task force shall make an additional assessment and weigh the value of conducting future evaluations in terms of affecting judicial performance and public perceptions. Particular focus will be aimed at the best use of evaluation data and the level of existing and anticipated cooperation between the MBA and the judiciary. Findings and recommendations of the task force shall be made to the MBA leadership.

Lawyers Journal – November 2000. Announcement of Special Committee on Judicial Evaluations
Sample Letter to Special Committee on Judicial Evaluations.
Lawyers Journal – February 2001. Article outlining efforts by Judicial Evaluation Committee
Judicial Evaluation Form
Survey Report
Sample letter to Chief Justices forwarding Survey Report. June 21, 2001
Lawyers Journal, November 2001. SJC Evaluation Efforts
Lawyers Journal, December 2001. SJC Evaluation Article.

Massachusetts Material

M.G.L. c.211 §§ 26, 26A and 26B.

SJC Judicial Performance Evaluation

- Employee Questionnaire
- Cover letters to questionnaires
- Juror Questionnaire
- Attorney Questionnaire

SJC Project Summaries: Round 1 – Spring 2001
Round 2 – Fall 2001
Round 3 – Winter 2002
Round 4 – Spring 2002
Round 5 – Fall 2002

“Update on Judicial Evaluation Program” By: Janet L. Sanders, 31 M.LW. 1075 (February 3, 2003).

Judges’ Conference: Policy Statement on Judicial Independence and Accountability

Boston Globe. November 2001. SJC Evaluation Efforts.

Lawyers Weekly Article. June 22, 2001.

Monan Report

Material From Other Jurisdictions

Connecticut: Overview of their judicial evaluation process.
New Jersey: Overview of their Judicial Performance Program
Rhode Island: Judicial Performance Evaluation Committee: Second Report
New Hampshire: June 29, 2001 Report of the Supreme Court on the Judicial Performance Evaluation Program
Maine: Sample questionnaires.

New Jersey Rules of Court 1.35A. 1 Judicial Performance Committee

EVALUATION OF CURRENT PROCESS

The current evaluation system is legislatively mandated. Mass. Gen. Laws Chapter 211, Section 26, et seq. (see attached). This law requires evaluations of each judge either every twelve to eighteen months or every eighteen to thirty-six months. The statute also mandates “judicial evaluation standards” and “disciplinary procedures for judges who do not complete programs implemented for judges who fail to achieve judicial evaluation standards.” It does not appear that any judicial evaluation standards, disciplinary procedures or programs have been established.

Our Supreme Judicial Court has appointed a Committee on Judicial Performance Evaluation which consists entirely of sitting judges. One paid staff person, Mona R. Hochberg, administers and conducts the evaluation process by sending out and collecting performance questionnaires. This method of evaluating judges by paper questionnaires is labor-intensive, time-consuming, costly, and, in general, inefficient. Judges are not being evaluated in a timely fashion under the current system. The Task Force was not made aware of any steps taken to improve judicial performance after a poor evaluation. Although the results are made available to individual judges and to their chiefs, no enhancement programs have been developed or implemented.

OPERATING PREMISES

The Task Force consists of seasoned and experienced trial attorneys practicing in a variety of courts throughout the Commonwealth. There is also a former judge on this committee. All committee members agreed:

1. Massachusetts’ current system of appointing judges for life tenure is providing our state with a high quality judiciary. Evaluations that have been done show that over ninety percent of the judges receive excellent evaluations. The practicing attorneys on the Task Force agree with these results; by far the majority of judges in Massachusetts are hard-working, intelligent, and fair.

Therefore, the Task Force agrees wholeheartedly with the current MBA position concerning the appointment rather than the election of our judges.

2. Like in any occupation or profession, there are some judges who fail to meet the standard expected. These individuals are usually identified easily by other judges and by lawyers. Evaluations are necessary to identify these individuals in an objective way.

Anecdotal information, though often accurate, is often not considered to be a valid measure of performance.

3. Because Judges in Massachusetts have life tenure, there is a perception that they are not accountable. In order to maintain judicial independence this misperception must be negated. The current process of having Judges conduct the Judicial Performance Evaluations will not satisfy the public's need to know that our Judges are being evaluated and that some action is being taken if a judge receives more than one poor evaluation.
4. The current process of "punishing" under performing judges by reassigning them or by allowing them to hear and decide only certain types of cases is unacceptable. Each and every person walking into a courtroom in Massachusetts, regardless of the size or the nature of the case, must have access to a fair, thoughtful, impartial, and hardworking judge.
5. Judicial evaluations are central to the administration of justice in Massachusetts. A consistent and well organized evaluation and enhancement process is beneficial to the Judges individually and to the system as a whole. They will improve the performance of the Court System and strengthen the respect and interest of the public in our court system.
6. The purpose of Judicial Evaluations is to identify and address those situations where a judge has exhibited a pattern of behavior in the courtroom which demonstrates a lack of judicial temperament or disrespectful courtroom demeanor or failure to timely discharge his/her administrative duties. Evaluations are not designed to criticize judges for exercising their discretion and independence in rendering decisions that is the hallmark of our long-respected and distinguished Massachusetts judiciary. It is hoped that the evaluations will be used to formulate educational and enhancement programs for the judiciary.
7. The SJC standing committee on Judicial Evaluations should have significant representation by the MBA as well as by other bar associations and the public.
8. It is appropriate for the MBA to have a consistent and an on-going role in the judicial evaluation process.

PROPOSAL

The Task Force recommends that the MBA develop and implement a web based judicial evaluation system, allowing MBA members to evaluate judges at any time.

1. Justification: although there may still be a perception that lawyers should not be the sole evaluators, the Task Force has limited its recommendation in this way for the following reasons:
 - a. Lawyers are in the best position to evaluate judges;
 - b. The MBA will be providing this service to its members and to the judiciary;
and,

- c. This proposal is manageable.
2. Feasibility: the co-chairs of the Task Force met with Abigail Shaine, Bill Webber, and two MBA webmasters. They were assured that any such evaluation system can be done on the existing MBA computer system, that the information obtained will be secure, that safeguards will be built into the system so that multiple evaluations by one disgruntled lawyer will be weeded out, and, that the cost to the MBA in creating and managing such an evaluation system is more than manageable.
 3. Format: an evaluation form similar to that used by the SJC and by the MBA in the past would be on the MBA webpage. Prior MBA committees have spent innumerable hours developing a Judicial Evaluation Questionnaire, which is very similar to that used in many other states. The Task Force was satisfied with the existing questionnaire.
 4. Standing Committee: The MBA will establish a twelve member standing committee. Appointments are made by the President. Initially, six members will be appointed to a one year term and six members will be appointed to two year terms. Thereafter, each member will be appointed to a two year term. The committee shall always have members representing the following constituencies: the judiciary, prosecutors, criminal defense lawyers, civil lawyers, domestic relations lawyers, lawyers from firms with over two hundred members, lawyers from firms with fewer than ten lawyers, solo practitioners, and representatives from legal services.
 5. Process: MBA members would use their identification numbers and passwords to log in and to complete the questionnaire. MBA staff would compile the data weekly or monthly. Members of the standing committee would evaluate this information monthly. Quarterly reports would be sent to the Chiefs of the individual courts with a request to submit the reports to individual judges and to the Chief Justice of Administration Management. The Standing Committee shall make every effort to work cooperatively with the judiciary to improve a judge's performance.
 6. Confidentiality: the results of the evaluations are presumptively confidential, however, evaluations may be made public if the Standing Committee determines that it is in the interest of the administration of justice to do so. The confidentiality provision may be waived in any given case if the standing committee, after considering the evaluations and other information in its possession and after attempting to work cooperatively with the judiciary to improve a judge's performance, determines it is in the interest of the administration of justice to make public the results of the evaluations. If publication is recommended by a two-thirds (2/3) majority of the members of the standing committee, the committee will submit its recommendation to the MBA officers for their approval. A majority of the MBA officers must make a decision to publish or not to publish

the results of the evaluation within thirty days of their receipt of the committee's recommendation.

7. Report: the standing committee shall prepare an annual report documenting the overall results of the evaluations; information concerning individual judges will not be included in this report. This report will be made available to the public and shall be sent to the SJC and to the Legislature.

OTHER PROPOSAL – This section is not intended to be part of the report to be approved by the HOD

The Task Force recommends that the Standing Committee also deal with acute issues discerned from its review of the evaluations submitted and from anonymous information it receives from other sources. The Task Force believes that occasionally there is an urgency to deal with a particular judge in a timely fashion.