

REPORT OF THE SPECIAL COMMITTEE ON
JUDICIAL EVALUATIONS APPOINTED BY
THE HAWAII CHAPTER OF THE
AMERICAN JUDICATURE SOCIETY

On October 1, 1999, Chief Judge James Burns, Chairperson of the Hawaii Chapter of the American Judicature Society, announced the formation of a Special Committee on Judicial Performance Evaluations ("This Committee"). This Committee was organized to review generally the status of judicial evaluations in Hawaii. As a result of meetings between the leadership of the Hawaii State Bar Association and Chief Justice Lum in 1990, Rule 19 was issued by the Hawaii Supreme Court and a Judicial Evaluation Committee was appointed by the Chief Justice of the Supreme Court to establish a judicial evaluation program.

The initial efforts of the Rule 19 Committee did not produce a sufficient sampling of responses from attorneys to permit satisfactory evaluations. However, since 1994, the questionnaire sent to attorneys has been improved and the number of attorneys solicited for participation (having experience with particular judges) was increased so that the Rule 19 Committee believed meaningful evaluations were produced. The results of these evaluations have gone only to the Chief Justice initially for his use in reviewing performances with individual judges. The Chief Justice also transmitted individual evaluations to the Judicial Selection Commission for the Commission's review during consideration of applications for retention in office by judges. In addition, commencing in 1996, the State Judiciary has published annual reports on the Judicial Performance Program which are available to the public. However, it should be noted that these annual reports provide mean scores of all evaluated judges and not evaluations of individual judges by name.

The Hawaii State Bar Association has felt for a number of years that there should be a judicial evaluation program and that its results should be made public. After considerable effort, its Standing Committee on Judicial Administration (the "HSBA Committee") has submitted to the HSBA Board a recommendation to establish and administer its own judicial evaluation program, its purposes to be 1) assisting judges in identifying strengths and weaknesses as a basis for improvement of their performance, 2) providing evaluation results to the Judicial Selection Commission for its judicial retention determinations, and 3) informing the public about the performance of judges. It is proposed that these published evaluations be on an individual basis for each judge. Although the HSBA Committee did not specifically so state, it is believed that some of the HSBA members felt

that administration of such evaluations would be more objective since it would not be a case of the Judiciary evaluating itself. In addition, the HSBA Committee believed that publishing evaluations of individual judges is necessary to properly inform the public about the performance of the overall judiciary.

This Committee has met on numerous occasions, has reviewed the Rule 19 Committee Lawyer's Questionnaire, the HSBA Committee on Report on Judicial Evaluation, the column by HSBA President Randy Roth appearing in the November 1999 Bar Journal and the five Reports on the Judicial Performance Program issued from 1996 to 1999 to date by the Judiciary of the State of Hawaii. This Committee has also reviewed the AJS Report on Judicial Retention Evaluation Programs in Four States (Alaska, Arizona, Colorado and Utah) and the series of articles on judicial evaluation of San Francisco judges appearing in the San Francisco Examiner on December 12, 14, 15 and 16, 1998 and on April 11, 1999. Judge Kevin Chang was interviewed by the Chairman of this Committee, and this Committee met in separate meetings with Randy Roth and Doug Crozier of the HSBA, with Wayne Matsuo, the now-deceased chairman of the Judicial Selection Committee and with Chief Justice Ronald Moon.

This Committee's conclusions are as follows:

- 1) This Committee agrees with the HSBA Committee as to the three important purposes which can and should be served by a proper evaluation process. The only issues left are those relating to how best to do the evaluations.
- 2) The Questionnaire issued by the Rule 19 Committee for having attorneys evaluate judges has proved to be satisfactory for obtaining evaluations of judges and for use by the Chief Justice in meeting with judges to aid in improving performance. Various discussions with circuit judges confirm that seeing their respective individual evaluations and discussing them with the Chief Justice have served the purpose of assisting them in improving performance. Thus, the first purpose of having evaluations appears to have been fulfilled under the present system.
- 3) Discussions with the former chairman and other members of the Judicial Selection Commission confirm that receipt of the evaluation (more than one evaluation in some cases) of a sitting judge who has requested retention has been very helpful to the Commission in its review procedure. Although the Commission seeks additional input from various members of the public, the evaluative material it receives from the Chief Justice serves as a foundation for its review. Thus, the second purpose of having evaluations also appears to be fulfilled under the present system.
- 4) Fulfillment of the third agreed purpose seems to be where most of the divergence of opinion occurs between the Judiciary and the HSBA Committee. The Chief Justice and all of the judges on this Committee believe that the report to the public on performance of judges should be done on an

anonymous basis whereas the HSBA Committee believes that each individual judge's evaluation should be reported. Reasons supporting each side of this issue abound. Loss of judicial independence, deterring the potential pool of new judicial applicants and applicants for retention, and concern over possible prejudice to judges resulting from publication of evaluative results from anonymous pollings are some of the reasons given for retaining anonymity of results. Shielding poor judges by use of anonymity, losing public confidence in the quality of the judiciary by hiding behind anonymous report cards on judges and the inability of the HSBA to defend judges unfairly criticized by the media or the public are some of the reasons given for publishing individual report cards on judges.

After much consideration of this issue, this Committee sides with the position of maintaining anonymity of judges and also submits some suggestions for improvement of the evaluative process:

1) Generally speaking, the reputation of the State's judges appears to be satisfactory and the foregoing Judiciary Reports on our circuit and district judges bear this out. Evaluation of all other judges and justices would be worthwhile.

2) The Judiciary's public reports on the judicial performance contained tables with evaluation results of the judges being evaluated during the identified period of time. Table 1 containing results from questionnaires from the Fifth Report is attached hereto for reference. In order to provide the public with more detail concerning the ranges of difference in the scores of judges without naming the respective judges, this Committee suggests also adding data in an additional column as follows:

"Range of Scores"

For example: 3.0 - 4.0

Also, it might be informative to add groupings of scores so as to permit the public to better appreciate brackets in which the various judges fall as shown in the following example:

1.0 - 3.0 (3 judges), 3.0 - 3.4 (16 judges), 3.5 - 3.9 (30 judges), 4.0 - 4.4 (40 judges), 4.5 - 5.0 (25 judges)

3) Such reporting would be sufficient to show the public how our judges are performing and whether one or more might be falling below desired standards. Further, a large enough grouping of judges should be included in such reports so that a particular judge could not be easily identified. For example, a grouping of evaluations of all circuit judges and of all district judges for each year should fulfill the desired purpose of public reporting, but would not lead the media to pursue identification of individual judges. We recognize that such grouping would not be as helpful in evaluations of appellate judges because of the small numbers involved, but grouping could still occur.

4) This Committee believes that having a Judiciary review itself carries with it inherent conflicts and suggests that the entire judicial evaluation process be transferred to the Judicial Selection Commission as soon as practicably possible. Such a change would eliminate the criticism of having the Judiciary supervise itself. The Committee recognizes that such a change has certain legislative and budgetary considerations but believes it worthy of consideration.

5) This Committee questions the advisability of the HSBA conducting judicial evaluations by its own polling of attorneys and then publishing its results. The Committee requests the HSBA to defer action on the proposal until the recommendations submitted herewith have been given consideration by the HSBA, the Judiciary and the general public.

6) This Committee believes we should give serious consideration to the recommendations of the AJS as set forth in its aforesaid four-state report as to how to disseminate reports, establishment of linkages with the media and involving the public in the entire process, to wit:

- a. Additional questionnaires in simple form should also be prepared and utilized in order to obtain exit evaluations of judges by jurors and witnesses.
- b. Court reporters could be a valued source of evaluation, as would clerks and bailiffs, but the latter are assigned to a judge and so could not be assured of anonymity. Such additional questionnaires of court reporters might provide valuable input to the process and would also give the public some participation in the evaluation procedure.
- c. Establish an effective mechanism for disseminating evaluation reports to the public.
- d. Establish linkages with print media.
- e. Involve the public in and educate them about the process.

In closing, this Committee would like to acknowledge the leadership of the American Judicature Society in forming a committee to review judicial evaluation in the face of differing views being proposed by members of the State Judiciary and members of the Hawaii State Bar Association. With membership of this Committee being from the Judiciary and the Bar Association, as well as the lay public, this Committee hopes that its report is representative of all such views in as objective a manner as is possible in such circumstances.

This Committee also wishes to thank Chief Justice Ronald T. Y. Moon, Judge Kevin S.C. Chang, HSBA President Randy Roth, HSBA Judiciary Committee Chair Douglas Crozier and the late Wayne Matsuo for their assistance to this Committee.

Respectfully submitted,

Jean Aoki
Hon. Virginia Crandall
Lynne Kaneshiro
Hon. Victoria Marks
Larry Mecham
Hon. Patrick Yim
Hon. Frances Wong
Bert Kobayashi, Jr., Esq.
Alfred Wong, Esq.
Cynthia Ching, Esq.
Hon. James S. Burns
Professor Neal Milner
Daniel H. Case, Esq., Chair

TABLE 1
JUDICIAL PERFORMANCE PROGRAM - CIRCUIT COURT
EVALUATION RESULTS FOR THE TEN PARTICIPATING JUDGES
SEPTEMBER 27, 1999 - OCTOBER 20, 1999

<u>QUESTIONNAIRE SECTION</u>		<u>RANGE OF SCORES</u>	<u>N</u>	<u>Mean Score</u>	<u>S.D.</u>
<u>LEGAL ABILITY SECTION</u>					
	1. Knowledge of Relevant Substantive Law		10	4.0	0.6
	2. Knowledge of Rules of Procedure		10	4.1	0.6
	3. Knowledge of Rules of Evidence		10	4.0	0.6
	4. Ability to Identify and Analyze Relevant Issues		10	4.0	0.6
	5. Judgement in Application of Relevant Laws and Rules		10	3.9	0.5
	6. Giving Reasons for Rulings when Needed		10	3.9	0.4
	7. Clarity of Explanation of Rulings		10	3.8	0.5
	8. Adequacy of Findings of Fact		10	3.8	0.4
	9. Clarity of Judge's Decision(s) (oral/written)		10	3.8	0.5
	10. Completeness of Judge's Decision(s) (oral/written)		10	3.9	0.4
	11. Judge's Charge to the Jury/Juries		9	4.0	0.7
	Average Score for the Legal Ability Section:		10	3.9	0.5
No. of	Judges in each bracket. 1.0-3.0 ___; 3.0-3.4 ___; 3.5-3.9 ___; 4.0-4.4 ___; 4.5-5.0 ___.				
<u>JUDICIAL MANAGEMENT SKILLS SECTION</u>					
	1. Moving the Proceeding(s) in an Appropriately Expeditious Manner		10	3.9	0.7
	2. Maintaining Proper Control over the Proceeding(s)		10	4.0	0.5
	3. Doing the Necessary Homework on the Case(s)		10	4.1	0.4
	4. Rendering Rulings and Decisions w/o Unnecessary Delay		10	3.9	0.4
	5. Allowing Adequate Time for Presentation of the Case(s)		10	4.1	0.4
	6. Resourcefulness and Common Sense in Resolving Problems		10	3.9	0.5
	7. Skills in Effecting Compromise		10	3.8	0.6
	8. Industriousness		10	4.2	0.3
	Average Score for the Judicial Management Skills Section:		10	4.0	0.4
No. of	Judges in each bracket. 1.0-3.0 ___; 3.0-3.4 ___; 3.5-3.9 ___; 4.0-4.4 ___; 4.5-5.0 ___.				
<u>COMPORTEMNT SECTION</u>					
	1. Attentiveness		10	4.4	0.3
	2. Courtesy to Participants		10	4.4	0.4
	3. Compassion		10	4.3	0.3
	4. Patience		10	4.2	0.5
	5. Absence of Arrogance		10	4.3	0.5
	6. Absence of Bias and Prejudice		10	4.4	0.3
	7. Evenhanded Treatment of Litigants		10	4.2	0.4
	8. Evenhanded Treatment of Attorneys		10	4.3	0.4
	Average Score for the Compartment Section:		10	4.3	0.4
No. of	Judges in each bracket. 1.0-3.0 ___; 3.0-3.4 ___; 3.5-3.9 ___; 4.0-4.4 ___; 4.5-5.0 ___.				
<u>SETTLEMENT AND/OR PLEA AGREEMENT ABILITY SECTION</u>					
	1. Knowing the Case(s) and/or the Law		10	4.0	0.5
	2. Reasonableness of Opinions		10	3.9	0.6
	3. Ability to Enhance the Settlement Process		10	3.9	0.6
	4. Impartiality		10	4.1	0.4
	5. Absence of Coercion or Threat		10	4.2	0.4
	6. Effectiveness in Narrowing the Issues		10	3.9	0.6
	7. Appropriateness of Judge's Initiatives		10	3.9	0.5
	8. Facilitation in Development of Options		10	3.9	0.6
	Average Score for the Settlement/Plea Agreement Section:		10	4.0	0.5
No. of	Judges in each bracket. 1.0-3.0 ___; 3.0-3.4 ___; 3.5-3.9 ___; 4.0-4.4 ___; 4.5-5.0 ___.				
N = Number of Judges with More Than Five Responses for the Item Legend for Mean Score: 5 = Excellent 4 = Good 3 = Adequate 2 = Less Than Adequate 1 = Poor S.D. = Standard Deviation					