

## EXECUTIVE SUMMARY

**Proposal for Reenactment of the Judicial Performance Evaluation Statute  
13-5.5-101 et seq. C.R.S.  
Institute for the Advancement of the American Legal System  
and  
Colorado Judicial Institute**

Across the country the public, legislators, and the media have expressed concerns about judicial accountability. We have an advantage in Colorado. Our state has had merit selection and non-partisan retention elections for over forty years, and a judicial performance evaluation (JPE) program for almost twenty years.

The fundamental purpose of JPE is to provide accurate, credible, and useful information on judicial performance both to the public and to the individual justices and judges in Colorado. Through JPE we can highlight outstanding judicial performance, and provide tools to improve judicial performance. The aim of each of the proposed changes below is to keep Colorado's JPE program consistent with those core purposes.

The Colorado JPE statute sunsets in 2009. Colorado has an opportunity to become a national model for JPE with some clarifications and improvements to the JPE statute. IAALS and CJII accordingly recommend the following additions and clarifications to the statute:

- 1. Establishing an independent office of judicial performance evaluation (OJPE) under the auspices of the judicial branch, but with separate staffing and responsibilities.** This proposal would allow the evaluation process to operate more independently, removing any perception that it is controlled by the judiciary. It would also centralize the staffing functions for all commissions, and would provide for build-out of staff sufficient to perform the increased functions contemplated by the proposal. The OJPE staff would also be responsible for collating magistrate evaluations and distributing them to the magistrates and chief judges in non-retention years, so as to spread the workload. In establishing such an office, the proposed statutory language clarifies the responsibility of the OJPE staff to educate the public about the court system, the importance of judicial independence and the good work of judges, as well as the performance of individual judges. Shifting responsibilities to an independent office would also relieve the district administrators of the time-consuming additional burden of staffing district commissions. This proposal recommends funding of OJPE from the existing JPE Cash Fund.

2. **Requiring the state and district commissions to have partisan balance.** This change would make the composition of evaluation commissions consistent with the constitutional mandate of partisan balance in judicial nominating commissions, and would assure political balance over time.
3. **Clarifying the terms of office for members of the state and district commissions.** Lack of clarity in this area resulted in litigation concerning appointments to the state commission.
4. **Codifying the criteria for evaluation of judges.** The current statute contains a nonexclusive list of relevant performance criteria. It does not, however, further delineate what is meant by those criteria. This proposal clearly sets out the specific skills and abilities that each criterion is intended to measure.
5. **Providing for mid-term evaluations of all judges.** Interim evaluations provide important feedback to a judge at an earlier stage in his or her term, allowing more immediate opportunities for professional development. This proposal would supply all mid-term evaluations to the judge being evaluated and his or her Chief Judge or Justice, but would not release mid-term evaluations to the public until the judge's next retention election.
6. **Publishing data about the number (not names) of judges eligible for retention who chose not to seek retention during any election cycle.** It has been suggested that by some that JPE is ineffective because only a small number of judges have been removed by retention elections over the past 20 years. During each retention cycle there are judges who do not stand for retention for a variety of reasons, including a negative performance evaluation. IAALS and CJI believe that it is important for the public to have access to information about the attrition of judges from the system.
7. **Requiring that a commissioner (state or district) shall recuse him or herself from any evaluation proceedings relating to the individual who appointed that commissioner.** This provision would assure that no commissioner would ever sit in evaluation of the Chief Justice, the Governor, the president of the Senate or Speaker of the House if that person appointed him or her.
8. **Clarifying the procedure for evaluating magistrates.** The current JPE statute provides for the evaluation of magistrates, but does not specify how and when such evaluations should take place. Because magistrates serve at the pleasure of the Chief Judge of a district, this proposal would vest each Chief Judge with the authority and responsibility to evaluate all magistrates in his or her district, using the same criteria and process as is used for district and county court judges. The OJPE would collect the evaluation data for each magistrate and transmit the information to each Chief Judge. The Commissions would not be involved in the process, but the magistrates would still be evaluated by the Chief Judges on the basis of the same criteria as the judges.