

JUDICIAL PERFORMANCE EVALUATION PROGRAM

Questions and Answers for Attorneys

THE PROGRAM GENERALLY

1. What is JPE?

The Judicial Performance Evaluation (JPE) Program conducts evaluations of active judges for the purposes of judge 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 judges useful information and feedback that will help them enhance their performance as judges. The second is to give members of the General Assembly relevant information to enable them to better evaluate 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 advise him on the operation of the Program. A list of current members of the Committee 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 the evaluation reports.

THE EVALUATION PROCESS¹

6. What are the steps in the process?

The evaluation process consists of several steps:

- A judge is scheduled for evaluation (see question 15).
- Attorneys and certain others who have appeared before or observed that judge in court are asked to complete an evaluation survey.
- During the evaluation period, the evaluated judge completes a self-evaluation survey.
- A facilitator judge (retired judge) is assigned to the evaluated judge.
- Evaluation survey results are compiled into an evaluation report by VCU-SERL.
- The evaluation report is sent by VCU-SERL to the evaluated judge and to the facilitator judge.
- The facilitator judge observes the evaluated judge in the courtroom and meets privately with the evaluated judge to discuss the evaluation report and his or her observations.
- If the evaluated judge is in the final year of his or her term and has had at least one self-improvement evaluation at the present level of court, the evaluation report is 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. What is the survey designed to evaluate?

The evaluation survey questions are designed to evaluate judges on the principles set forth in the Canons of Judicial Conduct for the Commonwealth of Virginia.

8. Who is surveyed?

Attorneys, courtroom bailiffs, and court reporters are surveyed for all trial court judges. In addition, in-court clerk's office staff and jurors complete surveys for circuit court judges. Even when accounting for all survey respondents, attorneys are the largest group of survey respondents for all judges.

¹ This describes the process for trial court judges. Since 2018, appellate judges and justices are evaluated as well. The process for identifying and surveying attorneys is largely the same as that used for trial court judges. The evaluation survey seeks feedback on in-court observations as well as opinions written by the evaluated jurist. Facilitator judges are not a part of the appellate evaluation process.

9. How are attorneys selected to receive a survey?

- **Eligibility Survey**

VCU-SERL sends an electronic eligibility 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 judge who has an upcoming evaluation. Attorneys are asked to indicate which of the listed judges they have observed or appeared before during a specific time period (three years for circuit judges; one year for district judges).

- **Case Information**

Attorneys' names are also obtained from case information captured in the courts' case management systems for courts where the evaluated judge sits.

- **Staff Listings**

In addition, VCU-SERL uses attorney staff listings of relevant Commonwealth's Attorney's offices and Public Defender offices to ensure that those attorneys are included in the pool of surveyed attorneys.

The attorneys identified from these sources compose a pool of potential attorney evaluators for the judge. Each judge has a unique pool of potential evaluators.

VCU-SERL strives to survey 250 attorneys for each judge. Judges in rural jurisdictions often have fewer than 250 total potential evaluators. In that event, all potential recipients may receive a survey. VCU-SERL randomly selects the evaluation survey recipients where more than 250 attorneys are identified for a particular judge.

10. What happened to the sign-in sheets previously used in the courtroom to collect attorney names? Isn't that a more accurate way of knowing who to survey?

Paper sign-in sheets are no longer used. The eligibility survey (see question 9) has proven to be a much more effective and consistent source of potential survey respondents than the paper sign-in sheets. The average number of attorneys identified has increased from approximately 85 per judge to over 250 per judge.

11. 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 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 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.

12. 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.

13. I completed the eligibility survey and selected names of judges I observed or appeared before, but I never received an evaluation survey for the judge I see most often. Why?

There are a couple of reasons why you may not have received an evaluation survey for a particular judge:

- More than 250 potential evaluators were identified for that judge, and you were eliminated by the random selection process (see question 9).
- You were selected to evaluate other judges from the same cohort and were eliminated for that reason (see question 19).

14. How often are judges evaluated?

Judges, who are in their first term at a particular level of court (i.e., district or circuit), will be evaluated three times: after the first year of their term, during the middle of the term, and during the last year of the term. The end-of-term evaluation report is provided to the General Assembly as directed by statute. In subsequent terms, the judge will be evaluated only during the middle of the term and during the last year of the term, again with the end-of-term evaluation report going to the General Assembly prior to re-election.

15. How is the judge's evaluation schedule determined?

The years in which evaluations occur are based on the judge's term dates and whether the judge is in his or her first or subsequent 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.

16. I noticed that several judges in my locality are being evaluated this year. Why are the evaluations clustered together like that?

The evaluation schedules are based on the judges' term dates. Occasionally, the term dates coincide to require several judges in the same circuit or district to be evaluated during the same year.

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

If an attorney has observed or appeared before a judge once during the relevant time period, that attorney is eligible to complete an evaluation survey. However, you should not complete a survey or answer particular questions if you do not believe you have enough experience with the judge to provide a valid assessment of the judge's conduct.

18. How many judges are evaluated each year?

On average, between 140 and 160 judges are evaluated each year.

19. I practice in many different localities. With so many judges being evaluated, does that mean I will be inundated with surveys?

No. In any given year, the judges being evaluated are divided into groups, referred to as "cohorts." Each year there will be 5 or 6 cohorts, spaced a month or more apart. Absent unusual circumstances, you should not receive more than 2 evaluation surveys per cohort.

THE EVALUATION SURVEY INSTRUMENT

20. Why did the rating scale change?

In 2015, the JPE Advisory Committee recommended changing the rating scale to collect observations of the frequency of an evaluated judge's behavior, rather than qualitative assessment of the behavior. This type of scale is reported to help minimize potential inherent bias on the part of survey respondents.

21. How are results compiled?

Most surveys will be compiled through the electronic survey protocol, which is conducted by VCU-SERL. Any completed paper surveys (from jurors) are sent directly to 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 FACILITATOR JUDGE

22. What is a facilitator judge?

A facilitator judge is a retired judge who has received training to observe the evaluated judge and to discuss with the evaluated judge the evaluation reports, the judge's self-evaluation, and the facilitator's direct observation.

23. Does the facilitator judge have experience in the type of court on which the evaluated judge is sitting? (i.e., Circuit, General District or J&DR)

Yes.

THE EVALUATION REPORT

24. Who sees my comments?

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

25. 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 judge. The judges are not told what particular attorneys are included in their evaluation pool, or which of those attorneys completed surveys.

26. 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 judge's evaluation "are confidential and shall not be disclosed." Virginia Code [§ 17.1-100](#).

27. 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.

Since 2016, comments are only collected on initial and mid-term evaluations. They are collected only for the purpose of judge 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. Pamela S. Baskervill, Retired Judge	Eleventh Judicial Circuit
Hon. Douglas L. Fleming, Jr., Judge	Twentieth Judicial Circuit
Hon. Tracy W. J. Thorne-Begland, Judge	General District Court, Thirteenth Judicial District
Hon. R. Frances O'Brien, Judge	General District Court, Seventeenth Judicial District
Hon. Jacqueline F. Ward Talevi, Chief 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, Chief 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. Wendy S. Hughes, Clerk	Chesterfield Circuit Court
Kristi S. Wright, Esquire	JPE Program Director, Ex Officio
Jill M. Ryan, Esquire	Staff Attorney to Chief Justice Donald W. Lemons, Ex Officio