

Judge Selection, Evaluation, and Election in Colorado

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Evaluation



COLORADO

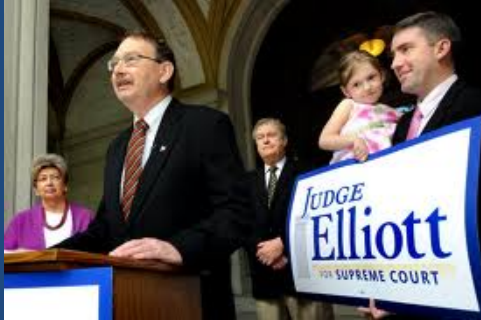
**Office of Judicial
Performance Evaluation**

Judicial Branch

Colorado's Merit Selection of Judges



Statehood 1876 to 1966



- Contested Political Elections (Raise Funds and Seek Contributions)

Required Party Nominations/Affiliations



Judicial Campaigns



2016 General Election marks the
50th Anniversary of Merit Selection
with Retention Elections in
Colorado



Constitutional Amendment 1966

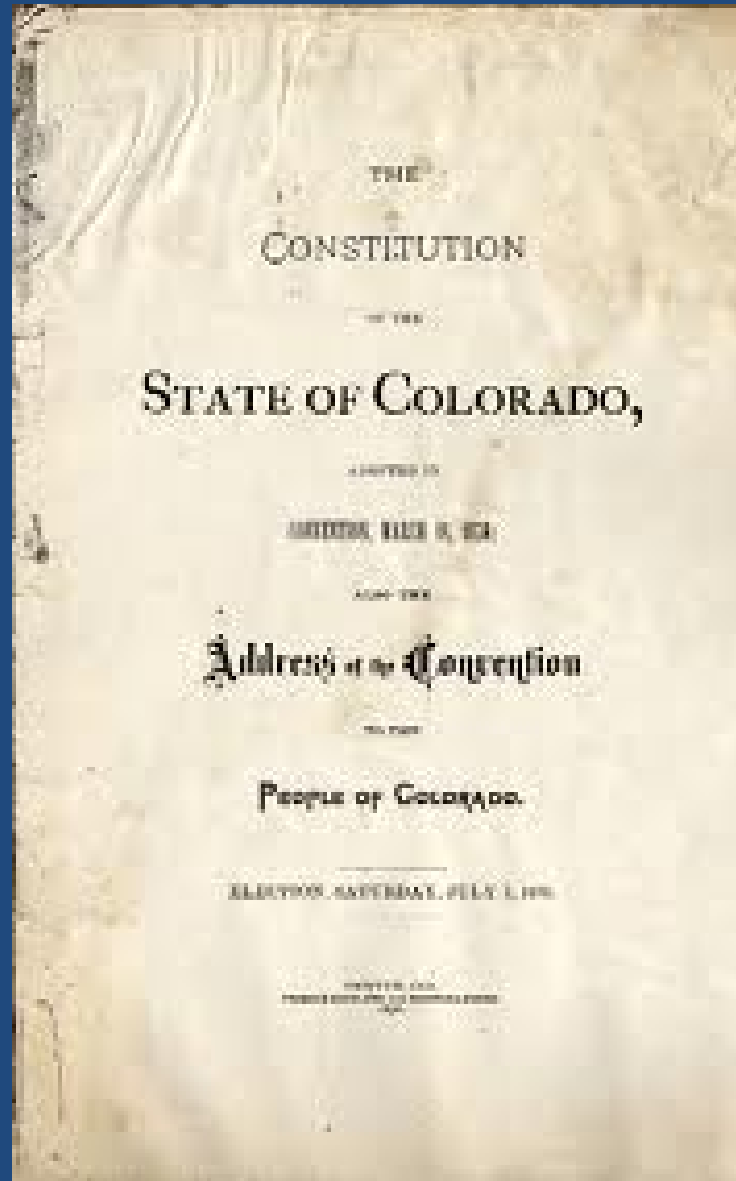
When a judicial vacancy occurs:

State or District Nominating Commissions take applications for judgeships.

Commissions nominate two to three applicants to stand before the Governor for consideration.

(Three for SC and COA)

The Governor has 15 days in which to make the appointment from this list. If this time expires without an appointment, the Chief Justice of the Colorado Supreme Court makes the appointment from the list.



Nominating Commissions

- Statewide Commission – 15 members
 - 8 non-lawyers and 7 lawyers
 - Consider applications for Supreme Court Justices and Court of Appeals Judges
- District Commissions (22 Judicial Districts)
 - 4 non-lawyers and 3 lawyers
 - District and County Court Judges

Commissions

Commission members serve six-year terms. Non-lawyers, who are the majority of every nominating commission, are appointed by the governor. Lawyer members are appointed by joint action of the governor, attorney general, and chief justice.



- No voting member may hold any elective public office or political office.
- No more than half of the members of the commission plus one can be members of the same political party.
- Do not receive a salary (Citizen Volunteers)
- A member of the nominating commission may not apply to be a judge during his or her term.
- A Colorado Supreme Court Justice serves as the *ex officio* chair of each district commission, without a vote.
- Colorado Supreme Court Chief Justice serves as *ex officio* chair State Commission, without a vote.

Judicial Officer Terms

2 years “Provisional Term”

10 years for Supreme Court Justice

8 years for Court of Appeals Judge

6 years for District Court Judge

4 years for County Court Judge

- The appointed judicial officer serves for a “provisional term” of two years and must stand for a “yes” or “no” retention vote at the next general election.
- At the end of the term, the justice or judge again can stand for retention to another term. If a justice or judge is not retained by the majority of the eligible voters the nominating commissions convene to select nominees to fill the office.
- Retirement or resignation of a justice or judge also prompts convening the commission.
- Colorado justices and judges may not serve in office past their 72nd birthday.

Qualifications

- Justices and Judges must be licensed attorneys and have been admitted to practice for five years. May not practice law while serving in office and cannot hold any other public office.*
 - District Judges must be a qualified electorate of the Judicial District
 - County Judges must a qualified electorate of the County **
 - * Part-time county judges who are licensed Colorado lawyers may practice law (Colo. Const. art. VI § 18)
 - ** Non lawyers may be appointed to county courts in less populated areas (CRS §13-6-203(8))

Qualities of Judges

- Commissions select its nominees based on written applications, recommendations, and personal interviews
- They focus on the reputation each applicant does or does not enjoy within the legal profession and in the larger community – for intelligence, hard work, honesty, humility, patience, fairness, and prior public service.

Comes down to:

- Two fundamental questions:

“Is this person qualified to serve as a judge?”

“Who among these applicants are the most qualified persons for nomination?”

Commissions on Judicial Performance



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Judicial Performance Evaluations

- Answers the criticism that voters don't have enough information to fully participate in electing judges.
- Provides Public Trust and Confidence by creating a system to monitor judges performance and warn voters when a judge's performance suggests they are no longer fit to serve. This also requires the judge self monitor performance as they must answer to someone.
- Balances our values for an independent judiciary and accountability to the public.



1988 Statute (13-5.5-101 et seq.)

- General Assembly created Commissions on Judicial Performance and Office of Judicial Performance Evaluation.
- 1990 was the first year commissions reported recommendations and narratives for retention elections.



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Legislative Intention

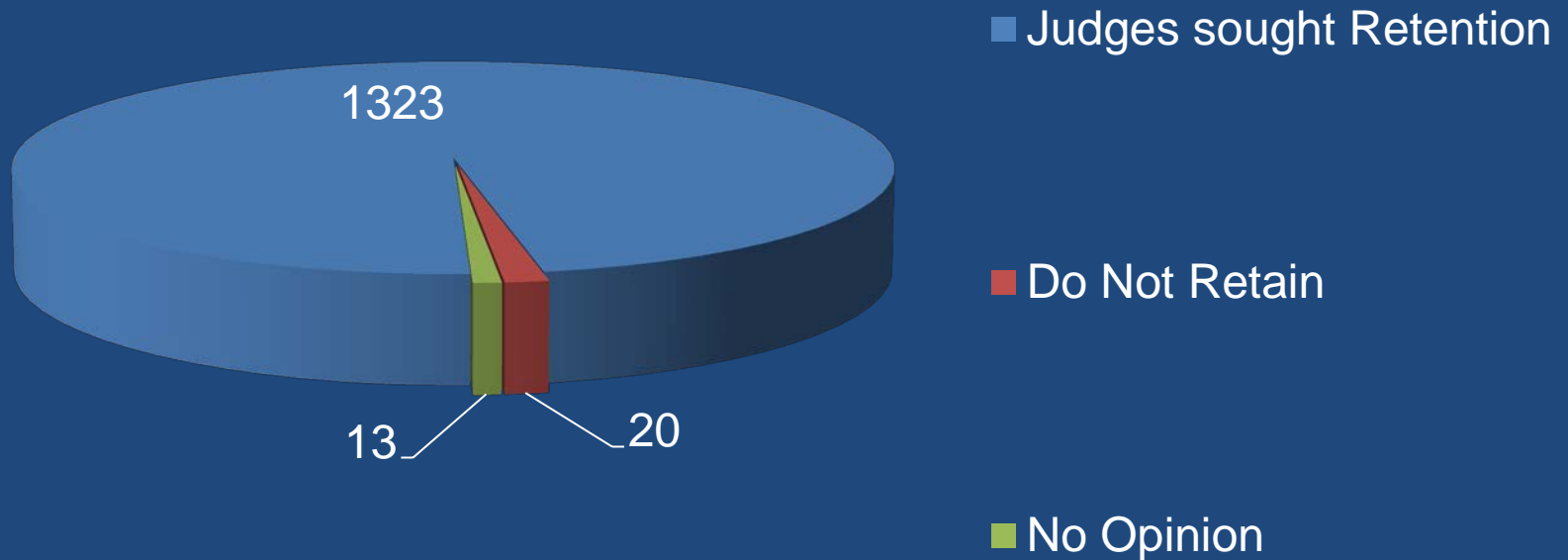
- Provide voters with fair, responsible and constructive information about the performance of judges standing for retention

AND

- Provide judges with useful information concerning their own performance

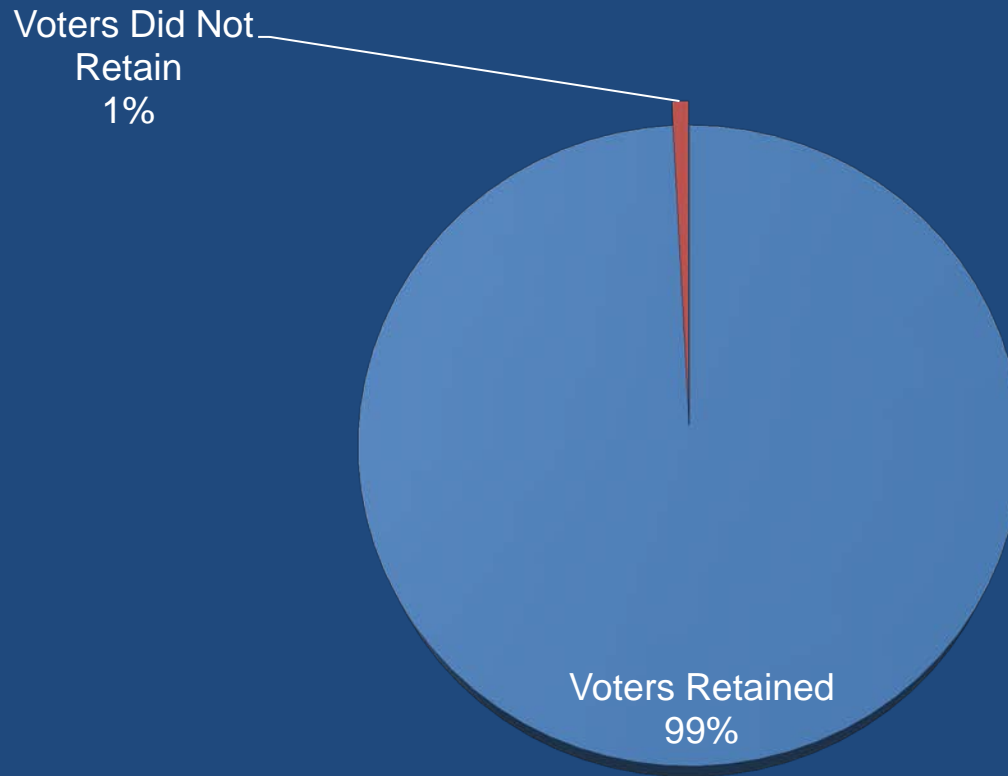
Program History (1990 -2014)

Overall Judges



Program History (1990 – 2014)

Voting Results



Commission Membership

- 10 members
 - 4 attorneys
 - 6 non-attorneys
- 4 appointing authorities
 - Governor (1 attorney and 2 non-attorneys)
 - Chief Justice (1 attorney and 2 non-attorneys)
 - Senate Pres. (1 attorney and 1 non-attorney)
 - Speaker (1 attorney and 1 non-attorney)
- 4 year terms - can serve 2 terms + any vacancy appt.
- Roughly $\frac{1}{2}$ of the commissioners terms expire every odd year

Commission Information

Commissions are nonpartisan

- One commission in each judicial district
 - Evaluates district and county judges
- One state commission
 - Evaluates appellate judges
 - Promulgates Rules



Rules Governing The Commissions on Judicial Performance Chapter 37 of Court Rules

- Promulgated by the State Commission
- Approved by the Supreme Court

Evaluation Process



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Evaluation Requirements

All Evaluation Requirements
are of equal weight

Commissioners must:

- Consider judge's self-evaluation
- Observe judges in the courtroom
- Meet with a representative for the District Attorney and Public Defender, if asked
- Review 3/5 written decisions (can be more)
- Review judge's case management statistics
- **Consider survey results**
- Interview the judge

Evaluation Requirements

Commissioners may:

- Conduct public hearings
- Consider information from interviews with judges and other persons



Survey Trial Judge

Survey Respondents

- **Attorneys** who have appeared before the judge
 - Prosecutors
 - Public defenders
 - Private attorneys
- Appellate judges

Survey Trial Judge

- **Non-Attorneys** who have appeared before the judge
 - Jurors
 - Litigants
 - Law enforcement personnel
 - Social services caseworkers
 - Court employees (court clerks, FCF, drug court coordinators or clinicians, interpreters, etc.)
 - Probation officers
 - Crime Victims



Current Activities

August 2014 – February 2016 we surveyed attorneys and non-attorneys to evaluate 128 judges eligible to stand for retention in 2016



READ THE NEWS:


Multi-Year Contract Signed to Conduct Evaluation Surveys of Colorado Judges

Judge surveys are on-line.

8/13/2015

Qualtrics Survey Software

Intro



CO

OJPE

Colorado

Office of Judicial
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Judicial Branch

Evaluation of Judge Nathaniel Mildner

If we have made a mistake and you either were not in Judge Mildner's courtroom or you feel that you do not have sufficient experience with Judge Mildner to have an opinion on the judge's judicial performance, please respond "no" to the question below to stop any further requests to evaluate the judge.

Have you worked with Nathaniel Mildner enough to feel qualified to evaluate his or her performance?

☐ Yes
 ☐ No

Case Type

Which of the following types of cases have you observed Judge Mildner's performance? Please check all that apply.

☐ Civil
 ☐ Criminal other than traffic
 ☐ Traffic
 ☐ Domestic
 ☐ Juvenile
 ☐ Probate
 ☐ Other (Please specify)

Case Management

Case Management:

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge [Last Name] on the following. If, for a specific question you feel that you do not have enough information to grade the judge, please check DKNA for Don't Know/Not Applicable.

	A	B	C	D	F	DKNA
Promptly issuing a decision on the case after trial.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Maintaining appropriate control over proceedings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Promptly ruling on pre-trial motions.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Setting reasonable schedules for cases.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Survey Report Publication

- Retention and Interim reports (that are available) are published with the evaluations at www.ojpe.org on August 9 at 12:01 AM



Recommendations

Rule 12

A commission shall consider the final survey report, courtroom observation, case information, self-evaluation, review of decisions, interviews, and any other written or oral information received, and then shall prepare a recommendation regarding the retention of each judge or justice being evaluated.



Recommendations

Recommendation of:

- Retain
- Do Not Retain
- No Opinion
 - Only given if the commission is equally divided – Commissioners cannot vote “No Opinion”

Recommendations

Rule 12

If a commission has identified one or more areas of significantly poor performance, regardless of its recommendation regarding retention, it may recommend that the judge or justice participate in a performance improvement plan.

Narrative

4 short paragraphs - 500 words

- Retention recommendation
 - Includes vote count
- Biographical data
 - Undergraduate and law schools
 - Previous substantial legal or public employment
 - Relevant professional activities or awards
 - Volunteer or other community work
 - Any other relevant biographical information the commission believes may be of assistance to the public in making an informed voting decision.

Narrative

- 3rd Paragraph:
 - Evaluation Methods Used
 - The combined percentage of survey responses from each group recommending a judge be
 - Retain
 - Not retained
 - Or, making no recommendation as to whether a judge or justice be retained
 - A Commission may report the number of survey respondents from each surveyed group, if the commission believes the information may be of assistance to the public in making an informed voting decision.



Narrative

- Description of performance
 - And any areas of notably strong or weak performance
 - Any deficiencies identified in the interim and the extent to which such deficiency has been satisfactorily addressed, and
 - Any additional information that the commission believes may be of assistance to the public in making an informed voting decision

Note: information from comments in survey reports, self-evaluations, and additional oral or written information may be summarized in the narrative

Publication

- The day after justices/judges must declare intent to stand for retention with the Secretary of State (August 8), narratives/recommendations/survey reports are posted at:
 - www.ojpe.org
(www.coloradojudicialperformance.gov)
- Published in the Legislative Council's Voter Information Guide (the Blue Book) mailed mid-October to every Colorado household with a registered voter



Now on Social Media



@COJudPerfEval

Twitter profile for @COJudPerfEval. The profile picture shows a building with columns. The bio says "CO Judicial Perf @COJudPerfEval". Statistics: 15 TWEETS, 4 FOLLOWING, 7 FOLLOWERS. A tweet is visible with the text: "#AltimaWeekendContest Guess their 5 stops for a chance to win your own week. #RWC2 Former RWC tie 287K T. #1 Stand 26.4K T. #Nation Where t National 63.2K T. #babyd 'Baby D Just sta. #consti Just sta."

Facebook page for Colorado Judicial Performance Evaluation. The page features a cover photo of a building with columns. The bio says "Colorado Judicial Performance Evaluation Legal/Law". A post is visible with the text: "Colorado Judicial Performance Evaluation shared their photo. September 11 at 3:54pm. Bryan Lopez, Judicial Branch employee".

www.ojpe.org

Website for Colorado Judicial Performance Evaluation. The header includes the OJPE logo and the text "COLORADO Office of Judicial Performance Evaluation Judicial Branch". Navigation links: Home, Evaluations, Judge Feedback. A search bar for "Find a Judge" is present. A section titled "Judicial Performance Evaluations" contains the text: "In our work, we all deserve to be judged on our skills and performance. Judges are no different. So our state developed a process to fairly and accurately evaluate each judge's work and report that back to you. Then you can make an informed decision when you vote." Below this, it states: "Judicial evaluations are based on courtroom observations, a review of written decisions, an interview with the judge, case management reports, and judicial evaluations responses from attorneys and non-attorneys who have experience before the judge. A performance commission conducts the evaluation and makes a recommendation to voter about retention and provides voters information about the judge's experience and performance on the bench. Voters can also review the results of the judicial surveys at www.OJPE.org". A graphic with the text "JUSTICE IS BLIND. YOU DON'T HAVE TO BE." is also visible.

Facebook logo Colorado Judicial Performance Evaluation –

Retention Elections

Retention Elections — After a two-year period of service, and thereafter at regular intervals, each judge stands for retention. This is a non-partisan election with no party affiliation and the judges do not campaign. Instead, the public votes on whether the judge has performed his or her judicial duties effectively and may continue serving the people of Colorado.

In retention elections, the incumbent judge is not being evaluated against an opponent. Rather, he or she simply receives votes of "yes" to retain or "no", do not retain.

If you have any questions,
please contact me at:

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