

General Assembly Will Have Judicial Performance Survey Data for 2009 Session

by Dawn Chase

In fall 2008 the Supreme Court of Virginia's Judicial Performance Evaluation Program will send the General Assembly aggregate evaluative survey data about seven district judges who are up for reappointment in 2009.

This will be the first time legislators will have that information, which is compiled from surveys completed by attorneys who appeared before each judge in the preceding year. The surveys evaluate each judge's performance based on factors found in Virginia's Canons of Judicial Conduct.

That data will be collected this year, said Suzanne K. Fulton, director of the Judicial Performance Evaluation Program since it began in 2006.

Each of the seven judges has received the results of previous surveys for self-improvement purposes. Only cumulative assessments from the final survey, conducted the year before a judge's term expires, are shared with the Assembly.

Attorneys who appeared before the judge in the prior year will be sent the questionnaires, on which they rank the judge's performance in twenty-two categories and, if they choose, write additional comments.

Throughout the process, the survey responses and summary reports are considered confidential and are not subject to disclosure.

The Judicial Performance Evaluation Program was developed by a commission appointed by the Court and chaired by Justice Barbara Milano Keenan. The program was a response to concerns by legislators that they had no objective data to rely on when deciding whether a judge should be re-appointed.

To shepherd the program through its first years, the Court's Office of the Executive Secretary hired Fulton, then recently retired as a general district court judge in the Thirtieth District (Lee, Scott, and Wise counties and the city of Norton). Fulton has traveled across the commonwealth to introduce the program to judges and attorneys.

To attorneys, she stresses the importance that they participate. "The lawyer who has an issue with a judge is going to respond to the survey immediately," she said. Lawyers with different experiences should respond as well for the survey to be representative.

The response to earlier performance surveys has been strong. Eighty percent of attorneys who were sent surveys have returned them. Eighteen thousand surveys about more than sixty judges have been processed by the Survey and Evaluation Research Laboratory at Virginia Commonwealth University, which holds the contract for gathering the information, sending it to the judge and a facilitator, and keeping the results confidential—even from the Court.

Fulton said confidentiality is essential. "The only way [the program] is going to work is if the lawyers feel comfortable enough to participate." The list of lawyers who are sent surveys and their responses are kept in separate computers and cannot be accessed via the Internet or other outside connection, she said.

To safeguard anonymity, "I tell the lawyers, please do not put any identifying information in your comments." The survey form states, "[P]lease word your comments so that they are not likely to identify you, either directly or indirectly."

In addition to providing data to the General Assembly, the evaluations serve

as a self-improvement tool for judges. After each evaluation, the judge discusses the results with a facilitator—a retired judge who has observed the evaluated judge in the courtroom.

When the evaluation program has run a full cycle (six years for district judges and eight for circuit judges, based on their term lengths), this will be the evaluation schedule:

- All new judges will be evaluated after their first year on the bench. Those results, including the comments, go only to the judge and his or her facilitator, and the data is shredded when the evaluation is completed.
- Every judge is evaluated midterm—year three for district judges and year four for circuit judges. Again, those results go only to the judge and a facilitator, and the data is destroyed.
- Every judge is evaluated the year before the term expires. All survey data again goes to the judge and a facilitator. An aggregate report of responses to the twenty-two surveys goes to the General Assembly. The comments do not go to the Assembly.

Neither the Court nor the Judicial Performance Evaluation Commission ever see the survey results. Results also are not disclosed to the Judicial Inquiry and Review Commission.

Currently, only lawyers are surveyed, but the commission plans in 2008 to include others present in the courtroom, such as jurors, court service unit employees, and Social Services representatives.

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Bigger Type, Briefer Briefs:

Supreme Court of Virginia Changes Format for Appeals

by Elwood Earl Sanders Jr.

The Supreme Court of Virginia has promulgated new rules that became effective February 1, 2008, and will affect every attorney who appeals in that Court.

Supreme Court Rule 5:6 requires the following format for all briefs and pleadings (petitions, briefs in opposition, and motions) filed in the Supreme Court of Virginia:

- **Margin width:** One inch around all sides of the paper. Text should consume 6 ½ by 9 inches per page. This replaces the former requirement, “approximately 6 by 9 inches.”
- **Margin content:** No text or footnotes in the margin area. Only page numbers are allowed.
- **Type size:** 14-point, rather than 12-point
- **Fonts allowed:** Courier, Arial, or Verdana. The Times New Roman font is no longer acceptable. (See illustration on page 20 for comparison.)
- **Page limit:** 50 pages for both appellant and appellee briefs and 15 pages for reply briefs. This revises the awkward and perhaps anachronistic rule that required 50 pages for typed and 36 for printed (15 and 12 pages for reply briefs).
- **Page numbers:** The rule now expressly states that the 50-page limit does not include the cover page, index, table of citations or authorities, or certificate.
- **Brief cover:** Briefs, but not appendices, must include counsel’s

- name
- Virginia bar number
- address
- telephone number
- facsimile number
- e-mail address, if applicable

• **Other briefs:** Rules 5:28 and 5:29 apply the same requirements for counsel information, 14-point type, and fonts to appellee’s and reply briefs.

• **Consequences of not adhering to format changes:** Thankfully, no appeal will be dismissed for failure to follow this rule the first time. The Court will send a letter that orders corrections and sets a deadline. But the Court can take sterner action, including dismissal of the appeal, if corrections are not made timely the first time.

Other rule changes require:

• **Number of copies:** 12, instead of 20, copies of each brief and appendix.

• **Electronic copy:** Under Rule 5:26, an electronic copy of each brief and the appendix must be

- filed contemporaneously with the written briefs
- in Microsoft Word format, preferably, although Word Perfect and PDF files are acceptable
- submitted on floppy or compact disc, or by e-mail to scvbriefs@courts.state.va.us

• **Petition for rehearing:** All petitions for rehearing must comply with requirements of Rule 5:6 above. The word

count is reduced to 3,000 from 7,500. This applies to petitions for rehearing in the event of denial of the grant of an appeal (Rule 5:20A) and petitions for rehearing after a grant of appeal and an adverse decision on the merits (Rule 5:39A).

These rules only apply to Supreme Court appeals by attorneys. Virginia Court of Appeals filings are not affected at this time, nor are pro se prisoner filings.

See typographic illustration on next page.

Elwood Earl Sanders Jr. is the appellate procedure specialist for Lantagne Legal Printing in Richmond. He served as the state’s first appellate defender from 1996 to 2000 and was an associate with the Framme Law Firm from 2000 to 2007. He is an adjunct assistant professor at the University of Richmond School of Continuing Studies, and he has been on the adjunct faculty of the UR School of Law. Sanders is a member of the appellate practice subcommittee of the Virginia State Bar Litigation Section.

Type Sizes and Fonts Required under Rule 5:6

Formerly allowed:

Times New Roman, 12-point:

COMES NOW the plaintiff in error and argues to this Honorable Court ...

New Choices:

Courier, 14-point:

COMES NOW the plaintiff in error and argues to this Honorable Court ...

Arial, 14-point:

COMES NOW the plaintiff in error and argues to this Honorable Court ...

Verdana, 14-point:

COMES NOW the plaintiff in error and argues to this Honorable Court ...

Supreme Court Waiver Forms Updated

The Supreme Court of Virginia has issued revised forms for applying for fee-cap waivers in indigent criminal defense cases. The new forms, which went into effect January 1, 2008, clarify information needed for waivers. The Court will continue to accept the July 1, 2007, version of the old forms. The new forms can be viewed at

http://www.courts.state.va.us/news/2007_0626_waivers_of_statutory_fee_caps.html.

The Court's Office of the Executive Secretary has produced a revised graphic outline that describes how the fee-cap waiver works. It is posted on the Virginia State Bar Web site at www.vsb.org/docs/Waivers-fee-caps-010208.pdf.

The waiver process, which began July 1, 2007, ended the year with 1,036 fee-cap waivers granted out of 1,104

requests. Waivers granted totaled \$254,573, out of \$286,605 requested.

— Dawn Chase



Gould Receives Award for Achievement

Karen A. Gould, executive director and chief operating officer of the Virginia State Bar, (third from left) received the 2007 Women of Achievement Award from the Metro Richmond Women's Bar Association in December. The award recognizes women who exemplify legal professionalism, and Gould was honored for her contributions to the profession as well the community. Joining Gould at a December luncheon were (l-r) Stephanie E. Grana, MRWBA past president, Leslie A.T. Haley, MRWBA 2007-08 president, and Bonnie M. Ashley, MRWBA Awards Committee chair.

SCC Expands E-filing of Case-Related Documents

The State Corporation Commission (SCC) has expanded attorneys' ability to file documents electronically in commission cases.

Beginning February 15, the SCC began allowing electronic filing of documents of up to 100 pages. Electronic filing is optional and strictly offered as a convenience to case participants.

As an incentive to encourage electronic filing, electronic submissions are exempt from the commission's rule requiring an original and fifteen printed copies.

Those interested in the new e-filing procedure are required to submit a filer authorization form, which can be down-

loaded from the SCC's Web site at scc.virginia.gov/caseinfo.htm. (Click on Electronic Filing for the form and additional information.) For further assistance, contact Ken Schrad at (804) 371-9141 or ken.schrad@scc.virginia.gov.

In Memoriam

John Alderman

Hillsville
October 1907-August 2007

Hudson Branham

Richmond
June 1921-December 2007

Robert Henry Camp

Raleigh, N.C.
October 1933-December 2007

Douglas W. Davis

Richmond
July 1945-October 2007

William J. Demik

Dunwoody, Ga.
December 1912-September 2007

Randolph Davis Eley Jr.

Pulaski
August 1946-October 2007

James Gilbert Harris

Roanoke Rapids, N.C.
December 1936-October 2007

Eldred Hill Jr.

McLean
July 1928-January 2007

Peter Anthony Kalat

New York City, N.Y.
November 1939-December 2007

The Hon. F. Nelson Light

Virginia Beach
August 1924-November 2007

Carolyn O'Neal Marsh

Richmond
December 1926-December 2007

James Edwin McKinnon

Richmond
August 1955-December 2007

Harry Russell Moore

Bedford
1921-2007

George J. Viertel

Rockville, Md.
June 1912-July 2007

John Dabney C. Walker

Knoxville, Md.
January 1953-September 2007

Richard Frederick Wheeler

Bristow
October 1951-November 2007

Clarence M. Dunnville Jr. Receives Civil Rights Award for Legal Work

Richmond lawyer Clarence M. Dunnville Jr., who has contributed his legal skills to the civil rights struggle throughout his career, has been presented with the Segal-Tweed Founders Award from the Lawyers' Committee for Civil Rights Under Law.

The award is presented annually to a Lawyers' Committee board member who has displayed outstanding leadership and service in the cause of equal justice under the law. It is named for Bernard G. Segal and Harrison Tweed, two icons of public service law who served as cochairs of the committee in its first years.

Dunnville, 74, began his civil rights activism in the 1950s while a student at Morgan State University. He picketed segregated theaters and participated in sit-ins at lunch counters in Baltimore. As a college student, he was present at the U.S. Supreme Court to hear oral arguments in *Brown v. Board of Education*.

As a new lawyer, Dunnville volunteered with Lawyers' Committee projects in Mississippi. He faced death when a sheriff's deputy pointed a shotgun at his head and ordered him out of Marks, Mississippi.

After the Rev. Martin Luther King Jr. was assassinated, Dunnville cofounded the Council of Concerned Black Executives and the Association for Integration in Management to encourage major corporations to hire and promote minorities and to elect minorities to their boards of directors.

Dunnville, a native of Virginia, continued his volunteer civic work throughout his career, which included serving as an assistant U.S. attorney for the Southern District of New York.



Above: Virginia State Bar President-elect Manuel A. Capsalis (left) congratulates Dunnville (center) and his son Andrew Dunnville of Arlington, a member of the Air Force Judge Advocate General's staff. Left: Dunnville's granddaughter, Alexandra Dunnville (talking with Capsalis), also attended, along with Dunnville's wife and sons Chris and Peter.

He was a volunteer for Vice President Hubert H. Humphrey's Task Force on Youth Motivation, and he was named a Black Achiever in Industry by the YMCA in Harlem, New York.

Now, as a lawyer in Richmond, Dunnville is a driving force behind the Oliver White Hill Foundation, which has purchased Hill's boyhood home in Roanoke and is developing a center that will work with Washington and Lee University law students to provide pro bono service to citizens of the area.

At the December 10, 2007, award ceremony at Sutherland, Asbill & Brennan LLP in Washington, D.C., Dunnville offered tribute to his wife, Norine, who he said paid the bills working for Alfred A. Knopf while he volunteered in Mississippi.

— Dawn Chase

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The list of lawyers is compiled by the court clerk in each jurisdiction from a sign-in sheet placed in the courtroom and from the Office of the Executive Secretary's Court Automated Information System. In most jurisdictions, all lawyers who recently appeared before the judge are surveyed. In large circuits and districts, a statistically representative sample of these attorneys receives the questionnaires.

Lawyers are notified by a letter from Chief Justice Leroy R. Hassell Sr. that they will be sent a survey. If a lawyer does not respond to the first survey, a second is sent. Whether an attorney has responded also is not disclosed.

The questionnaire asks attorneys to rank judges on a scale of unsatisfactory to excellent—"no opinion" is also an option on such factors as "patience displayed," "attentiveness," "consistency in treatment for all parties," "latitude the judge allows

lawyers in presentation of the case," "knowledge of the law," "promptness in rendering decisions," "competence as a judicial administrator," and "starts court on time."

Lawyers also are asked for an "overall performance" assessment, and whether the judge's performance has changed since the last evaluation.

"Judges have reacted positively to feedback from the survey," Fulton said. "They feel it's legitimate feedback." Before the program, judges told her, "We sat in our courtrooms and everybody laughed at our jokes, but they had no choice, and they told us we were brilliant, but they had no choice. The judge isn't in a position to get honest feedback."

Based on what judges have told her—Fulton never sees survey results—they have changed practices in response to the surveys.

In her presentations, she gives hypothetical examples of feedback, drawn from her

experiences in courtrooms: "Don't cut witnesses off halfway through their testimony." A judge who might use a laptop computer to research cases from the bench could be criticized for "paying her bills online." Facial expressions, such as grimaces, could be misconstrued.

"Judges need to learn," Fulton said. "This is a way to teach."

After getting the program successfully launched with much reassurance and encouragement to all participants, Fulton is resuming her retirement effective January 31, 2008, to travel and plan the next stage of her life.

The Court is advertising for a successor at www.courts.state.va.us/jbrr/jbrr.htm. Scroll to Judicial Performance Evaluation Program Director.

Fulton says her experience with the program has reinforced her ideas about the Virginia bar—"that they're good, honest people making a living." ☺