

Judicial Evaluations Fall Short of Objectives

The 1989 Santa Clara County Judiciary Poll has been published. While each individual judge in both the Municipal and Superior Courts received a copy of his or her evaluation, only the news media received complete polls evaluating all of the judges.

In addition, the following Santa Clara County judges were not even reviewed: Federal District Court Judges, Social Security administration Judges, Workers' Compensation Judges, as well as other administrative law judges.

Commentary

Furthermore, not all Santa Clara County attorneys participated in the review. Only members of the Santa Clara County Bar Association were eligible to participate, which accounts for approximately 2,954 of the county's attorneys. Of that number, only 639, or 21.6 percent, actually responded.

It is reasonable to assume that more than 639 attorneys in Santa Clara County actively practice before the Municipal and Superior Judges of the County. Furthermore, only a small percentage of government lawyers, such as public defenders and district attorneys, as members of the SCCBA. As a result, very few of them participated in the survey even though they account for the bulk of the work performed in Municipal Court. Thus, a substantial number of potential evaluators were eliminated.

The Santa Clara County Bar Association had not conducted a judicial evaluation since 1981, partly due to the controversy that has surrounded previous evaluations.

The Bar Association was extremely concerned about the potential misuse of the results. The primary concern was the possibility of a judicial candidate using the poll as a weapon against a sitting judge. The remedy, as proposed by the Bar, was to prohibit judicial candidates from using the results of the poll.

A candidate who used the results would be barred from participating in the Bar's judicial plebiscite which is normally held in contested judicial elections. In reality, though, a judicial candidates need not use the poll because the news media is more than likely to use the poll to make its own comparisons or criticisms.

Three legal newspapers all reported the poll's results, with one newspaper giving overall tallies with respect to the Superior and Municipal Courts. The local public newspaper (San Jose Mercury-News), however, published the individual results of every sitting Superior Court Judge along with the judges' pictures and a caption, "... received one of the Superior Court's most favorable ratings." Although, the Bar Association did not release the results with any kind of ranking or commentary, obviously, the news media is free to comment on the results in any fashion.

I was opposed to the judiciary poll when it was brought before the Bar's Judiciary Committee. My objection was not that judges should not be held accountable for their actions, but rather that the poll would be taken out of context or misused. My concern over the possibility of misuse was not limited to potential judicial candidates.

The Bar did have the option of keeping the poll confidential by releasing the results only to the individual judges and not to the public. Many people believed that such action would not have the desired effect of improving the judiciary. If that truly was the prime motivating factor, then why was such a large section of the judiciary not evaluated? Could it be because those judges do not have to face elections?

I have been practicing law long enough to remember a time when judicial polls were not necessary; a time when the committee chair and other senior members of the Bar would simply speak with a judge who they thought was having some difficulty. In most cases, that was enough to solve the problem. In extreme cases, however, the judge was simply contested in his or her next election.

Has Santa Clara County become so large and impersonal that these forms of interaction are no longer possible or effective? Should the judiciary now report every problem with an attorney to the State Bar? Or should the judges continue the tradition of individual counseling in all but extreme situations? Obviously, serious violations must be reported to the Bar, but minor problems should be solved at a personal level.

The County Bar spent more than \$7,000 on the Judicial Poll. That is \$7,000 that could have been used to assist the Law Foundation in providing legal assistance to the homeless, the needy, the elderly, and other disadvantaged citizens in our community.

The Judicial Poll did not achieve its desired results. Although it is possible that a balanced poll, free of bias could provide needed insight about the judiciary and serve as a guide to the future, it is clear that this most recent poll accomplishes neither objective.

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