

Colorado's judicial performance review misses key test

Hundreds of thousands of Colorado voters biennially are asked to decide whether district court judges where they live should remain on the bench.

But the state's 22 judicial district performance commissions that evaluate those judges — and whose reviews voters frequently rely on to make that decision — are missing a key piece of information: Whether the judge is actually any good at judging.

Each 10-member commission determines, and then tells voters, whether a judge “meets performance standards” or not. The commissions more directly told voters whether to “retain” or “not retain” a judge, but that changed in 2018 to the current verbiage.

The state defines performance standards as including integrity, legal knowledge, communication skills, temperament, administrative performance, and service to the legal profession and the public.

In virtually every instance, judicial performance commissions have unanimously recommended to voters that a judge be retained or had met those performance standards, frequently offering glowing accolades for their decision.

A six-month Denver Gazette investigation uncovered a critical flaw in the judicial evaluation process: The commissions make voter recommendations without ever having considered a judge's full appellate record — the frequency a judge's decisions are reversed on appeal and why, which some say is at the very core of assessing their legal knowledge.

That would include the times a judge simply got the law wrong, mangled a case so badly it required a retrial, or goofed on some other aspect of legal procedure or process that it needed to be corrected. It would also include the times a judge got it right.

District court judges are reviewed every six years following their initial retention election, which is usually about two years after they are appointed to the bench.

The Denver Gazette analyzed more than 15,700 appellate decisions from the past decade involving about 365 district court judges in Colorado and found dozens of them — many still on the bench — were being reversed so frequently for errors they made that it left some legal experts the newspaper consulted breathless.

More than 50 judges — none with fewer than 20 cases appealed — were reversed about a third of the time. Eight were reversed at least 40% of the time, the investigation found.

The mistakes they made varied from the shocking — first-degree murder convictions overturned because judges wrongly allowed defendants' statements into trial despite basic Miranda-rights problems — to the embarrassing, such as a judge whose math was so bad the appellate judges sent the case back because they couldn't figure it out.



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In one instance, a retired Colorado district court judge who, at the newspaper's request, reviewed more than a dozen appellate reversals involving the same sitting judge, said it succinctly: "This judge shouldn't even be a lawyer much less a judge."

The retired judge asked that his name and that of the sitting judge not be used because of the sensitivity of one judge criticizing another. The sitting judge was retained last year by voters after performance commissioners unanimously recommended it.

In another case, a different retired Colorado jurist, while reviewing the newspaper's findings, several times muttered softly: "Oh my dear God."

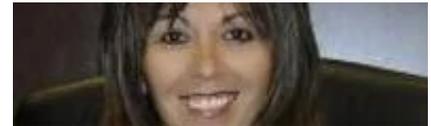
The commissions do get to review at least one case in which a judge was reversed on appeal — they request one appellate reversal, one affirmation and a copy of an order the judge authored over the previous six years — but the judge gets to decide which those will be, according to the rules under which the commissions must operate.

Said one sitting district court judge who only would speak openly about the process anonymously: "It's not as if we give them cases that'll make us look bad. It's sort of the running joke among the judges."

For some, the idea that performance review commissions would take a look at a judge's appellate record is welcomed — and perhaps necessary.

"Having that full picture for a voter should include that appellate record," said Katherine Delgado, who spent 20 years as an Adams County District Court Judge until her retirement this year and before that as Boulder County's chief deputy district attorney.

"If there's a problem with (a judge's) decision making, then that's something the commissions should know, the public should know and be able to consider."



Former 17th Judicial District Judge Katherine Delgado

Others caution against relying on a judge's appellate record too much.

"Appellate outcomes can have too many variables," said Jordan Singer, a law professor at New England School of Law in Boston and former director of research at the Institute for the Advancement of the American Legal System at the University of Denver. "Whether a judge is reversed or not can be from so many things that sometimes are outside the control of the judge."

Giving voters a better sense of whether their judges know what they're doing is vital to the election process, several voters told The Denver Gazette.

"I think they're looking at how nice the judge is, his demeanor in court, but I don't think they look too closely at his record. How do I know who the bad judges are?" said Rip Blaisdell, a Teller County resident and election judge who said he's frustrated by how little performance commissions are telling him.

"Just seeing what it is (judges) are getting wrong would be so very important to me as a voter," he said. "The commissions seem to always rate the judges as excellent, but if you're reversed a lot, how can you be excellent?"

Reversed on appeal

The impact of a judge's poor decision can be far-reaching.

Civil trial reversals simply add to the already mind-numbing cost and time of litigation, according to several attorneys.

In criminal matters, judicial errors at the minimum needlessly cost taxpayers tens of thousands of extra dollars to redo the bungled cases, whether just a portion or, in the worst instances, entire trials that took months to prepare and days to conduct.

Prosecutors point to cases that never seem to conclude, plunging victims into painful recurring cycles of court hearings and witnesses into exhausting repetitions of testimony, each bearing long delays to reaching emotional closure.

Defense attorneys say their clients are forced to spend needless extra time — sometimes months — incarcerated in prison or jail while awaiting new trials or rulings.

In only a handful of cases reviewed by The Denver Gazette were the reversals by the appellate court not unanimous, meaning an appellate judge dissented and sided with the district court judge. Each appellate decision is made by a panel of three judges randomly selected from the compliment of 22.

Appellate rates are determined by the number of cases that are appealed to a higher court and reversed. Judges might see only a small percentage of all the cases they handle get appealed.

Several judges interviewed for this story said they considered 10% to be a fair reversal rate. One judge thought 5% was acceptable. There is no professional standard.

Many quietly agreed that assessing the legal knowledge a judge is expected to apply fairly and impartially is best done through appellate cases that affirmed or reversed their decisions.

Without them, performance commissions — and by extension voters — are only getting a piece of a judge's actual record on the bench.

“The only way you can determine legal knowledge is by including the appellate record in the performance evaluation. It's the only objective way to assess it,” said Dennis Maes, a Pueblo County district judge who retired after 24 years on the bench, 17 of them as its chief judge. “Not including it means that saying a judge meets performance standards is not entirely accurate. It amounts to an evaluation of what people think about the judge (more) than an evaluation about what the judge actually knows.”

What's more, no one within the Colorado Judicial Department — not the Supreme Court that oversees it, not the Court of Appeals that reviews cases, and not the State Court Administrator's Office that manages it all — has a clue which district judge has the best or worst appellate record on the bench.

When asked by The Denver Gazette, the Judicial Department said there was no information it kept that could provide that data.

Only recently has the department gathered data on how frequently district court cases are overturned on appeal, an analysis that began after The Denver Gazette started making inquiries but which the department now says was planned all along.

Reversed

Here are the district court judges with the highest number of cases overturned by the Colorado Court of Appeals in the past decade. Reversals can be partial or whole and for a variety of reasons that can include judicial error, prosecutorial misconduct, or ineffective defense counsel. A judge's entire appellate record is currently not considered by the state's performance review commissions for retention.

District Judge	Decisions Appealed*	% Overturned**	Status	County (District)
C. Michelle Brinegar	21	51.4%	Retained 2016, 2020	Larimer (8th)
Francis C. Wasserman	23	52.2%	Retired 2016	Adams (17th)
Christopher C. Zenisek	53	43.4%	Retained 2014, 2020	Jefferson (1st)
Carl S. McGuire, III	31	41.9%	Retained 2008, 2012, 2018	Logan (13th)
Ingrid S. Bakke	24	41.7%	Retained 2014, 2020	Boulder (20th)
Denise K. Lynch	32	40.6%	Retained 2008, 2014, 2020	Garfield (9th)
Todd L. Vriesman	52	40.4%	Retained 2016, 2022	Jefferson (1st)
David H. Goldberg	26	38.5%	Retained 2018	Denver (2nd)
Michael A. Martinez	34	38.2%	Retained 2004, 2010, 2016, 2022	Denver (2nd)
John L. Wheeler	32	37.5%	Retired 2021	Arapahoe (18th)
Shelly A. Hill	24	37.5%	Retired 2021	Routt (14th)
Jann P. Dubois	15	36.6%	Retained 2008, 2014, 2020	El Paso (14th)

* Since January 2010

** Includes all reversals

Statewide, there were 1,343 appeals of civil and criminal cases in 2022, according to the Judicial Department analysis. It is the only year the department has reviewed.

In that time, the cases on average were reversed in some fashion — either just a piece of a case or outright — 28% of the time, according to the department's statistics. They were reversed more frequently, nearly 34% of the time, in criminal cases and about 25% of the time for civil matters.

The state's analysis, however, did not look to the reasons for why a reversal occurred, such as judicial error, only that it had.

"That's just distressing to me, to know it's happening that frequently and no one bothers to look at it more closely to see what's going on," Blaisdell said. "And I'm the one being told to vote for them."

The Denver Gazette analysis dug deeper.

'Judges don't criticize other judges'

Because a case can be reversed for a variety of reasons not involving the judge, prosecutorial misconduct or an inadequate defense among them, as well as for reasons beyond a judge's control, such as a new Supreme Court precedent, The Denver Gazette read nearly 500 separate appellate decisions to determine whether judicial error was the cause of a reversal.

Not all cases were reversed entirely. Many were partial reversals where a portion of a judge's decision was actually upheld.

The vast majority of the appellate cases reviewed by The Denver Gazette were reversals because of an error the judge made. To confirm its analysis, the newspaper asked six different legal professionals — two retired judges, two law school professors and two attorneys — to read the cases to determine the reason for the reversals.

All agreed to be interviewed for this story, but only if they spoke generally and not about a specific judge or case. Two said they would only speak on the condition of anonymity because they were concerned about the broader personal impact of criticizing the judiciary system.

"There were so many cases of structural errors and abuses, that the judge was wrong on so many levels and in clear ways that suggested they did not really understand the law or were careful," said Derek Kiernan-Johnson, a professor of law at the University of Colorado

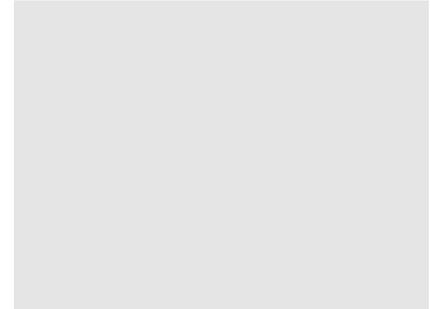
School of Law who reviewed the newspaper's findings along with several cases. "I'd absolutely want the commission to address it in their report."

Kiernan-Johnson said commissions ought to be able to discuss what they read with the judge.

"It's worth suggesting the commission explicitly look at reversals in some context with the judge, to have the opportunity to talk about it," he said. "By only looking at three now, and I know they're volunteers, but just to have a 30,000-foot view of all the instances of reversal would be helpful. It seems a bit unbalanced that some aspects of the process are very thorough and this one is not."

Retired Judge Maes initially was not in favor of using a judge's appellate record as part of the evaluation process — until he read a selection of cases provided by The Denver Gazette.

"Some of the things I read were very troubling," Maes said. "What concerns me is once you're on the bench for a while, you need to pay attention and I'm not seeing that here. It just seems to me the judge simply isn't doing the necessary work. It's bothersome since it doesn't appear to be a novel question of law they're dealing with, but rather is just laziness."



Dennis Maes

Maes said his years as a chief judge in Pueblo County did not include reviewing the appellate decisions of judges in his jurisdiction. While he read the opinions issued weekly by the Colorado Court of Appeals, he made little connection to which judge it was.

His reason: It didn't matter.

"Judges simply don't criticize other judges," he said. "It's not done, so you pay attention to the case precedents that are being established and look past the name that's on the case."

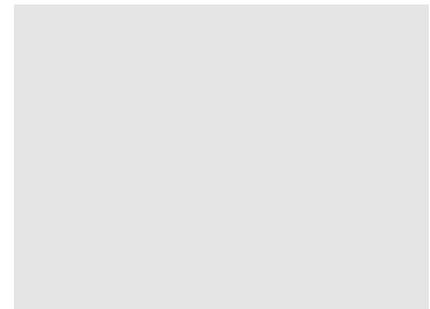
On trial for murder ... again

In Arapahoe County, prosecutors are gearing up for the first-degree murder trial of Yury Sudakov — again.

The work that went into Sudakov's first trial, a six-day affair that ended with a jury convicting him of the same charge in 2018, cost taxpayers more than \$75,000, according to the 18th Judicial District Attorney's office that prosecuted it.

It seemed like a slam-dunk.

Sudakov allegedly shot his estranged wife, Svetlana Igolkin, in front of their 13-year-old son in the master bedroom of the couple's Centennial home in February 2018, the appellate record shows.



Yury Sudakov
Arapahoe County District Attorney

Sudakov, 43 at the time, then shot himself in the chest, staggered down the stairs and collapsed in the garage. Police found him there and he was taken to a hospital.

Sudakov was interrogated days later at the police station for nearly two hours in his native Russian and was interpreted by a sheriff's deputy who spoke the language. Sudakov told them of his deteriorating marriage, how his wife had cheated on him and that he'd been

sleeping in a different room of the house for nearly four years.

Sudakov told police that after a night of drinking, he came home and confronted the 40-year-old Igolkin as she painted her nails, pleading for her to give him enough money so he could move out. She refused.

Their son had been watching a movie in the room with his mother and was asleep.

Sudakov left, returned with a loaded gun and, saying to the effect that “If you want me to live like that ... I will not live like that ... and I will not let you live as well,” began firing, according to the appellate decision.

He told officers he did not intend to hit his wife and was unsure if he had. She was shot four times in the head. His son called 911 after Sudakov shot himself and left the room.

Defense attorneys asked Arapahoe County District Judge Jeffrey Holmes to suppress the statements Sudakov made during his interrogation. He was not properly advised of his Miranda rights, they said, and he had not knowingly or voluntarily waived them before he spoke to police.

Holmes denied the motion after a hearing and the jury convicted Sudakov on all charges. He faced life in prison.

Although his appellate lawyers argued seven different factors that went wrong in the trial, the appellate court never got past the first one: Holmes goofed when he denied the motion to suppress Sudakov’s statements. He was entitled to a new trial.

Sudakov remains in custody and a new judge has been assigned to the case.

Along with a new trial, District Attorney John Kellner said there are “intangible costs that can’t be quantified” in any new trial aside from the extra cost to taxpayers, including the impact on victims and witnesses.

“Retraumatizing people who have tried to put these cases behind them,” Kellner said in an email. “Calling more jurors to hear the same case again. It’s very disruptive on peoples’ lives.”

Besides the Sudakov case, Colorado’s Court of Appeals reversed 14 more of Holmes’s decisions between November 2016 and May 2022 — the period a performance commission would have reviewed during its evaluation for the 2022 ballot — all because of some type of judicial error, The Denver Gazette analysis found.

Among them were errors for failing to suppress an illegal search, wrongly dismissing a case, wrongly awarding damages, unconstitutionally allowing a defendant to be tried on the same charge, and simply goofing on a sentence.

In its review of Holmes’ performance for the 2022 ballot, the 18th Judicial District Judicial Performance Commission unanimously said Holmes met its performance standards.

He was given glowing marks for conducting himself professionally, for having a “fair and consistent” demeanor, as well as being “a team player” who volunteers to help other judges.

The commission also said Holmes “has a strong knowledge of the law.”

Surveys of lawyers and non-lawyers largely agreed.

So did voters: Holmes was retained for another six-year term with 67.6% of the electorate in favor.

Holmes refused comment for this story.

He announced his retirement from the bench on Wednesday.

DAs admit judge erred

Sometimes prosecutors can be the reason for a judge to be reversed — even if the judge got it wrong in their favor.

That happened in a case involving Dustin Bardill, 43, a longtime criminal offender who was convicted by a jury in 2017 for a variety of drug, gun, and money offenses following a three-day trial in El Paso County.

At his trial, Bardill's defense attorney admitted during opening statements to the jury that his client was guilty of the drug charges.

Bardill loudly objected almost immediately and the jury was taken out of the courtroom. Bardill said he hadn't admitted to anything and didn't tell his lawyer that he wanted to, either.

El Paso District Court Judge Jann DuBois told Bardill that “admitting guilt was a tactical decision up to his lawyer,” according to the appellate opinion.

Bardill didn't budge.

DuBois let him choose between keeping his lawyer or handling the case on his own. Either way, the trial was to continue.

Bardill fired his lawyer and represented himself.

He lost.

In his appeal, Bardill said DuBois erred by allowing his lawyer to admit his guilt over his objection, tainting any decision the jury could make.

The Court of Appeals didn't have to decide anything. El Paso County prosecutors conceded Bardill's point, admitting he should get a new trial.

One of the lawyers to review the case for The Denver Gazette said he couldn't overstate the importance of prosecutors admitting the judge made a mistake that was made in their favor: “Wow,” was his reaction.

For his part, Bardill chose to plead guilty in March 2021 to a lesser charge of drug possession and 18 other charges were dismissed — including the ones he was initially convicted of — and was sentenced to three years in prison.

Because of the long delays on the appeal, he was credited for much of the time as already served. He was released in less than a year.

Today, Bardill is awaiting trial on first-degree assault and strangulation charges for an incident that occurred in April 2022.

Records show he likely would have been in prison on the earlier drug and weapons convictions had DuBois got it right.

It wasn't the only time prosecutors admitted DuBois got it wrong.

In June 2020, the appellate court tossed a jury conviction on seven related charges for sex assault on a child against Afrow Stidham, 48. He was sentenced to a prison term of 48 years to life.

The Colorado attorney general's office conceded that DuBois erred by denying a motion Stidham filed challenging his original sentence. DuBois wrongly said Stidham had waited too long to complain.

The result of her error: Stidham was resentenced to half the original penalty.

In all, DuBois had 14 cases reversed on appeal between January 2015 and June 2020, all for judicial error; 23 were affirmed, the analysis found, a 38% reversal rate.

The Fourth Judicial District Performance Commission in 2020 said DuBois was "one of the highest-rated jurists" they had reviewed that year. She had already been a judge for 15 years who voters had retained twice before.

The commission unanimously decided voters should again keep her on the bench because she met performance standards that included her legal knowledge. Voters agreed, with 76.6% in favor that November 2020 election.

DuBois retired less than a year later in October 2021. She did not respond to efforts by The Denver Gazette to reach her.

Murder becomes manslaughter

In December 2014, a Jefferson County jury convicted Carol Weigum, then a 73-year-old woman who simply couldn't take being married to Wallace Weigum, 83, any longer.

So, she hit him on the head with a pair of hammers — 34 times.

He died.

Police testified that Carol Weigum told them she simply started wailing on her husband of 53 years for "no real reason except for the stress and she really didn't want him to continue to drive this rickety old pickup truck."

The trial took 12 days and the jury quickly convicted her of first-degree murder despite her insanity defense. She faced life in prison.

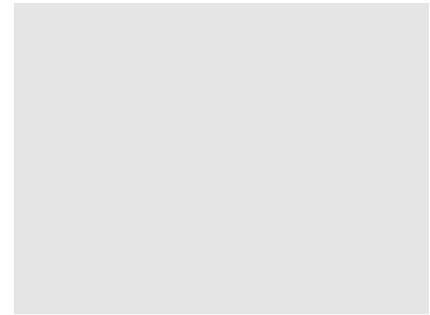
On appeal, Weigum's lawyers said Jefferson County District Court Judge Christopher Zenisek wrongly allowed her involuntary statements to police to be admitted as evidence.

The Court of Appeals agreed in June 2019 and ordered Weigum to have a new trial.

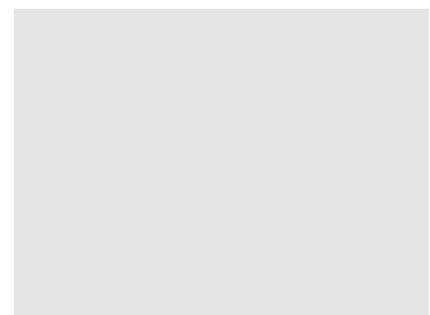
Instead, Weigum pleaded guilty to reckless manslaughter and tampering with physical evidence.

Zenisek resentenced her to five years of probation.

Between September 2017 and August 2020, the analysis found Zenisek was reversed 15 times by the Court of Appeals, all for judicial error, and affirmed 22 times for a reversal rate of 40%.



Afrow Stidham
Colorado Department of Corrections



Carol Weigum
Lakewood Police Department

He's been on the bench since 2011.

In 2020, the First District Judicial Performance Commission unanimously told voters that Zenisek met its performance standards. It said the judge was “viewed as organized, well prepared for hearings and very good at listening to both sides of a case.”

It added that Zenisek “is viewed by those that practice before him as one of the best judges in the district. He is perceived as very bright, hardworking, and committed to serving litigants that appear before him.”

Voters agreed, with 73.9% approving.

Zenisek did not respond to a request for comment for this story.

Since his retention in November 2020, Zenisek has been affirmed 11 times by the Court of Appeals, the analysis shows.

He's been reversed six other times, all because of judicial error.

Legislature should have said so

In 2017, Colorado legislators revamped the laws that deal with judicial evaluations, limiting to six categories the areas performance commissions can consider in determining whether a judge meets performance standards.

The second standard, legal knowledge, is to be evaluated on whether a judge “demonstrates, through well-reasoned opinions and courtroom conduct, an understanding of substantive law and relevant rules of procedure and evidence.”

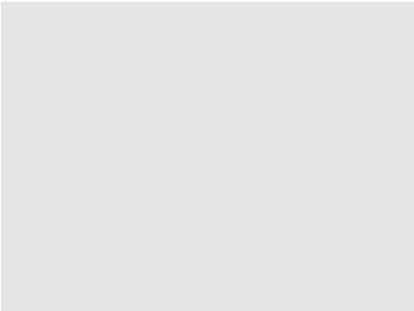
In that same vein, the commission is to decide if the judge “adheres to precedent or clearly explains the legal basis for departure from precedent and appropriately applies statutes or other sources of legal authority.”

The legislature in 2017 left to the Colorado Commission of Judicial Performance, the overarching body that oversees the state's other judicial district performance commissions, to come up with the rules for how the evaluations would be conducted. It considers rules proposed by the Judicial Department but isn't required to get its final approval. Previously, the rules were approved and adopted by the Supreme Court.

The commission's main office is in the same building as the Supreme Court and Colorado Court of Appeals in downtown Denver.

The 11-member state commission decided that a judge's legal knowledge would be determined by asking each jurist to provide two appellate opinions of their choice — one in which the judge was reversed and the other affirmed, along with the judge's underlying written opinions.

Whatever appellate case a judge chooses to provide to the commission is the only information it will see. Commissions by rule are only allowed to look at other opinions the judge wrote if it asks to see them, but there's no allowance for relying on any other decisions by the Colorado Court of Appeals or the Colorado Supreme Court as part of the evaluation.



Jefferson County District Judge Christopher Zenisek
Colorado Judicial Department

The point of the rule, according to a state official in charge of the process, is for commissioners to see how well a judge crafts an opinion, not whether they're actually getting the law right or wrong.

"The focus is on the judge's writing," Kent Wagner, the executive director of the Colorado Office of Judicial Performance Evaluation, told The Denver Gazette in an email. "The commission's focus is on the judge being evaluated and their written work provides the evidence needed to evaluate strength and weakness under the evaluation criteria."

Wagner noted that it was up to legislators to have been more specific.

"If the legislature intended commissions to review appellate decisions or the appellate record of judges, they would have included those measures in the statute," Wagner wrote.

But legislators who sponsored the law said the rule-makers got it wrong.

"I was pretty sure (an appellate record) would come into play and it's consistent with what we were trying to do," said former Sen. Pete Lee, D-Colorado Springs who was the bill's lead co-sponsor. "As a lawyer and voter, it's important what's being recommended by the commissions and I would want to know if a judge was reversed with some regularity and why. I simply presumed they were doing that."

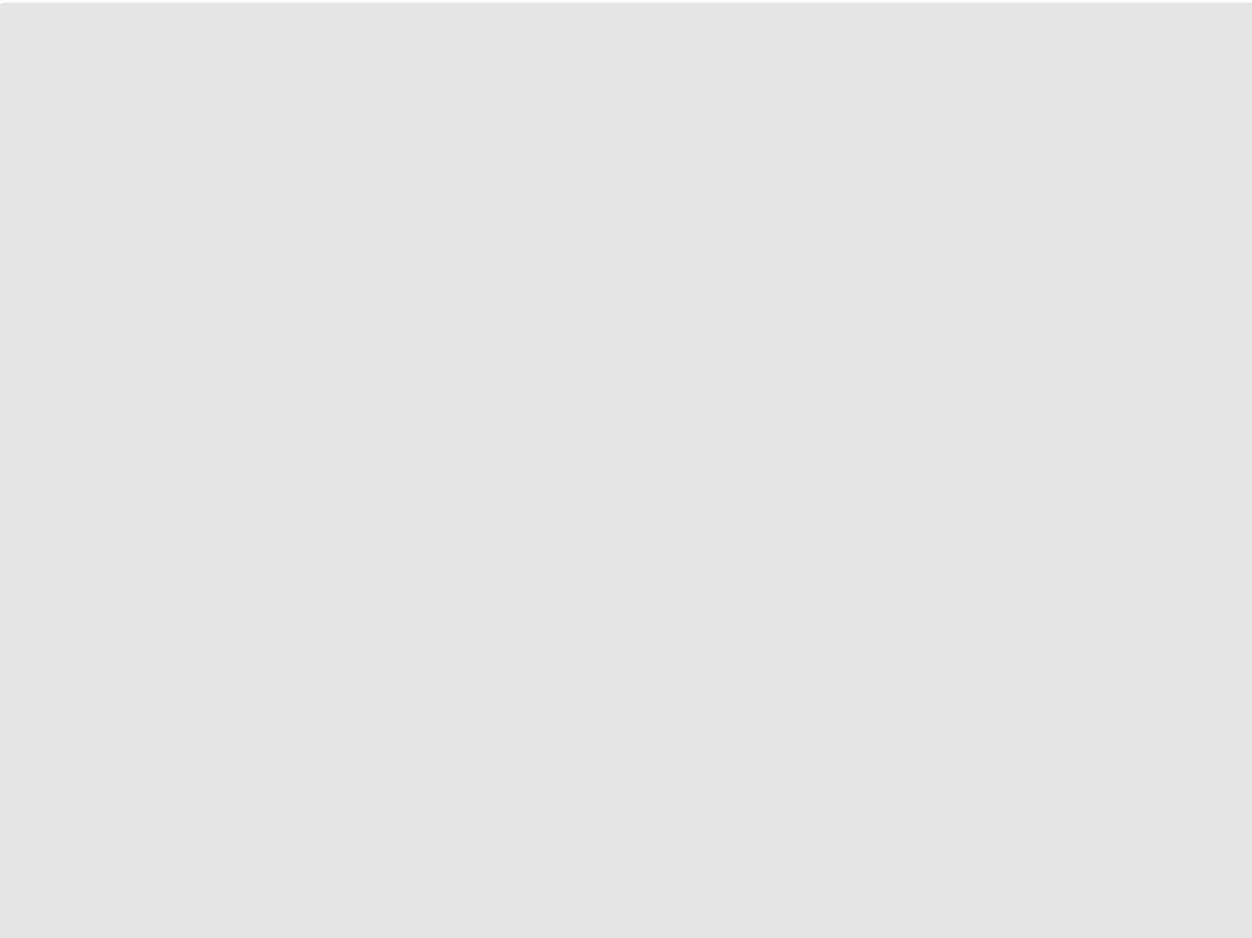
Lee agreed that allowing judges to choose the appellate cases that performance commissioners get to see, and limiting it to just one reversal, is contrary to the legislation's intent.

"A reasonable person would say that probably the judge is not picking their worst cases," Lee said. "But just because a judge is reversed doesn't mean he's wrong. As one of the factors, commissions were supposed to have that appellate record come into consideration. It only makes sense."

Evan Wyloge contributed to this report.

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