

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday, the 8th day of October, 2026.

On August 18, 2026, came the Judicial Ethics Advisory Committee and presented to the Court Opinion 26-2 pursuant to its authority established in this Court's order of April 18, 2019. Upon consideration whereof, the Court approves the opinion as set out below.

Judicial Ethics Advisory Committee Opinion 26-2

Whether an active judge included among those being evaluated in the JPE process may encourage attorney participation in the JPE process.

ISSUE:

May a judge being evaluated as part of the Judicial Performance Evaluation ("JPE") process encourage his or her local bar members to participate in the JPE process by sending an email to those bar members encouraging participation?

Answer: Yes. As worded, the proposed email from the judge encouraging his or her local bar members to participate in the JPE process, including as to that judge's evaluation, does not violate the Canons of Judicial Conduct for the Commonwealth of Virginia (the "Canons").

FACTS:

An active judge, who serves on the JPE Advisory Committee, seeks to increase attorney participation in the JPE process. The JPE Advisory Committee is appointed by the Chief Justice to advise on the operation of the program.

The JPE program was established by Virginia Code § 17.1-100 and the Rules of the Supreme Court of Virginia, Part Nine. The program "provide[s] a self-improvement mechanism for judges and a source of information for the reelection process." Va. Code § 17.1-100(A). "All records created or maintained by or on behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge are confidential and shall not be disclosed, except that any report provided to the General Assembly pursuant to this section shall be a public record that is open to inspection." *Id.* § 17.1-100(C).

As set forth in the "Judicial Performance Evaluation Program Questions and Answers for Attorneys," posted on the Virginia courts' website, an independent contractor distributes "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." Judicial Performance Evaluation Program, Questions and Answers for Attorneys, at 2 (Office of the Executive Secretary, revised June 2026), *available at* <https://www.vacourts.gov/static/programs/jpe/faqs.pdf>. The pool of potential attorney evaluators for a judge also includes attorney names obtained from courts' case management systems and

attorney staff listings from relevant Commonwealth's Attorneys' offices and Public Defender offices. *Id.* at 3.

From the pool of potential attorney evaluators, the independent contractor randomly selects 250 attorneys to complete a survey for each judge. *Id.* In some jurisdictions, there may be fewer than 250 potential evaluators, in which case all potential attorney evaluators may receive a survey. *Id.* Attorneys selected to evaluate a judge then "receive a hard copy letter, on Supreme Court of Virginia letterhead," informing them of their selection and that an email with a link to the evaluation will follow. *Id.*

"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." *Id.* at 2.

Attorney comments are not collected as part of the process for the end-of-term evaluation reports provided to the General Assembly. Attorneys provide comments only on initial and mid-term evaluations for the sole purpose of judge self-improvement. *Id.* at 6. "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." *Id.* "The judges are not told what particular attorneys are included in their evaluation pool, or which of those attorneys completed surveys." *Id.*

The judge has proposed that judges being evaluated consider sending an email to their local bar members to encourage attorney participation in the JPE process. The proposed email reads:

Dear Bar Member:

I am being evaluated this year as part of the Judicial Performance Evaluation ("JPE") process. Feedback of whatever type or description is helpful for all judges, so I would be most appreciative if you would participate in the JPE process, and encourage your colleagues to similarly participate.

The judge has asked whether the proposed email to local bar members violates the Canons.

DISCUSSION:

The Canons recognize that judges need not separate themselves from the communities in which they live and serve. The Canons are also guided by the purpose of ensuring public confidence in the judicial system.

Intrinsic to these Canons are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. Judges should engage and serve their communities, and these Canons should not be construed as requiring judges to live and work in isolation from their communities. Judges

should aspire at all times to live a life that ensures the greatest possible public confidence in the judge's independence, impartiality, integrity, and competence.

Va. Sup. Ct. R., Part 6, § III, Preamble.

1. Applicable Canons

Canon 1A prohibits a judge from “allow[ing] family, social, political, economic, or other relationships to influence the judge’s judicial conduct or judgment. A judge must use discretion in maintaining social, personal, or business relationships with people, entities, or counsel who may appear before the judge in judicial proceedings in order to reduce the possibility that the judge will be disqualified.”

Canon 1C(2) requires a judge to “avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others.”

Canon 1H requires a judge to “perform judicial duties without bias or prejudice. A judge must not, in the performance of judicial duties, by words or conduct manifest bias or prejudice”

Canon 2A requires judges to “govern their public and private behavior to ensure the greatest public confidence in the judge’s independence, impartiality, integrity, and competence.”

Canon 2D(3) requires a judge to refrain from political activity “except on behalf of measures to improve the law, the legal system, or the administration of justice.”

Other Canons likewise make exceptions to certain prohibitions when the purpose of the activity is improvement of the law, the legal system, or the administration of justice. For example, Canon 2H(1) allows a judge to serve on boards where the organization is “devoted to the improvement of the law, the legal system, or the administration of justice.” Likewise, under Canon 2L(2), “[a] judge may engage in extrajudicial activities designed to improve the law, the legal system, and the administration of justice” The same is true with respect to a judge’s service on a governmental committee or commission. *See* Canon 2N.

2. Analysis

Whether an active judge included among those being evaluated in the JPE process may encourage attorney participation in the JPE process is a question of first impression for the Committee.

The Preamble, cited above, sets the tone for application of the Canons. It cautions against construing the Canons to require judges to isolate themselves from their communities. A judge’s community includes the local bar. Thus, an email from a judge to the local bar, by itself, does not violate the Canons.

Moreover, widespread attorney participation in the JPE process serves the principle set forth in the Preamble that judges should aspire to “ensure[] the greatest possible public confidence in the judge’s independence, impartiality, integrity, and competence.” It is also harmonious with the various Canons permitting a judge to engage in certain activities designed to improve the law, the legal system, and the administration of justice. In large part through attorney evaluations of judges, the JPE program improves public confidence in the judiciary by providing mechanisms through which judges can self-improve and through which the General Assembly can make informed reelection decisions. In the absence of any favoritism to particular members or areas of practice, a general email to all local bar members encouraging participation in the JPE process is consistent with the purpose of the Canons.

As worded, the proposed email to local bar members does not suggest any special treatment, positive or negative, to attorneys who answer the request to participate in the JPE process and, potentially, evaluate the judge’s performance. Thus, it does not violate Canons requiring a judge to be impartial and uphold the public trust.

Accordingly, the Committee is of the opinion that there is nothing in the Canons prohibiting a judge being evaluated as part of the JPE process from sending the proposed email, as worded, to his or her local bar members to encourage their participation in the evaluation process.

CONCLUSION

The Committee finds that under the facts presented, the specific proposed email sent by a judge subject to the JPE process to his or her local bar members does not violate the Canons.

REFERENCES:

Canons of Judicial Conduct for the Commonwealth of Virginia, Preamble, Canon 1A, Canon 1C(2), Canon 1H, Canon 2A, Canon 2D(3), Canon 2H(1), Canon 2L(2), and Canon 2N.

Virginia Code § 17.1-100.

Rules of the Supreme Court of Virginia, Part Nine.

Judicial Performance Evaluation Program, Questions and Answers for Attorneys (Office of the Executive Secretary, revised June 2026), *available at* <https://www.vacourts.gov/static/programs/jpe/faqs.pdf>.

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AUTHORITY:

The [Judicial Ethics Advisory] Committee is [] established to render advisory opinions concerning the compliance of proposed future conduct with the Canons of Judicial Conduct A request for an advisory opinion may be made by any judge or any person whose conduct is subject to the Canons of Judicial Conduct. The Judicial Inquiry and Review Commission and the Supreme Court of Virginia may, in their discretion, consider compliance with an advisory opinion by the requesting individual to be a good faith effort to comply with the Canons of Judicial Conduct provided that compliance with an opinion issued to one judge shall not be considered evidence of good faith of another judge unless the underlying facts are substantially the same. Order of the Supreme Court of Virginia entered April 18, 2019