

1 **Rule 3-111 Performance evaluation of senior judges and court commissioners.**

2 Intent:

3 To establish a performance evaluation, including the criteria upon which senior
4 judges and court commissioners will be evaluated, the standards against which
5 performance will be measured and the methods for fairly, accurately and reliably
6 measuring performance.

7 To generate and to provide to senior judges and court commissioners information
8 about their performance.

9 To establish the procedures by which the Judicial Council will evaluate and certify
10 senior judges and court commissioners for reappointment.

11 Applicability:

12 This rule shall apply to presiding judges, the Board of Justice Court Judges and the
13 Judicial Council, and to the active senior judges and court commissioners of the Court
14 of Appeals, courts of record and courts not of record.

15 Statement of the Rule:

16 (1) Performance evaluations.

17 (1)(A) On forms provided by the administrative office, the presiding judge of the
18 district a court commissioner primarily serves shall complete an annual evaluation of the
19 court commissioner's performance.

20 (1)(B) On forms provided by the administrative office, the presiding judge of the
21 Court of Appeals shall complete an evaluation of the appellate senior judge's
22 performance every eighteen months starting after the senior judge's initial term.

23 (1)(C) On forms provided by the administrative office, the presiding judge of the
24 district an active senior judge primarily serves shall complete an evaluation of the senior
25 judge's performance every eighteen months starting after the senior judge's initial term.

26 (1)(D) On forms provided by the administrative office, the chair of the Board of
27 Justice Court Judges shall complete an evaluation of the active senior justice court
28 judge's performance every eighteen months starting after the senior judge's initial term.

29 (1)(E) The presiding judge shall provide a copy of each commissioner evaluation to
30 the Judicial Council.

31 (1)(F) If a senior judge receives an overall “Needs Improvement” rating on the
32 performance evaluation, the evaluator shall provide a copy of the evaluation to the
33 Judicial Council.

34 ~~(24)~~ Active S senior judges and court commissioners shall be evaluated and certified
35 upon the following criteria:

36 ~~(24)(A)~~ integrity demonstration of understanding of the substantive law and any
37 relevant rules of procedure and evidence;

38 ~~(24)(B)~~ knowledge and understanding of the law and procedures attentiveness to
39 factual and legal issues before the court;

40 ~~(24)(C)~~ ability to communicate adherence to precedent and ability to clearly explain
41 departures from precedent;

42 ~~(24)(D)~~ preparation, attentiveness, dignity and control over proceedings grasp of the
43 practical impact on the parties of the commissioner’s or senior judge’s rulings, including
44 the effect of delay and increased litigation expense;

45 ~~(24)(E)~~ skills as a manager ability to write clear judicial opinions;

46 ~~(24)(F)~~ punctuality ability to clearly explain the legal basis for judicial opinions;

47 ~~(24)(G)~~ service to the profession and the public demonstration of courtesy toward
48 attorneys, court staff, and others in the commissioner’s or senior judge’s court; and

49 ~~(24)(H)~~ effectiveness in working with other court personnel maintenance of decorum
50 in the courtroom;

51 ~~(2)(I)~~ demonstration of judicial demeanor and personal attributes that promote public
52 trust and confidence in the judicial system;

53 ~~(2)(J)~~ preparation for hearings or oral argument;

54 ~~(2)(K)~~ avoidance of impropriety or the appearance of impropriety;

55 ~~(2)(L)~~ display of fairness and impartiality toward all parties;

56 ~~(2)(M)~~ ability to clearly communicate, including the ability to explain the basis for
57 written rulings, court procedures, and decisions;

58 ~~(2)(N)~~ management of workload;

59 ~~(2)(O)~~ willingness to share proportionally the workload within the court or district, or
60 regularly accepting assignments; and

61 (2)(P) issuance of opinions and orders without unnecessary delay.

62 (3) Senior judges shall also be evaluated on their ability and willingness to use the
63 court's case management systems in all cases.

64 ~~(42)~~ Standards of performance.

65 ~~(42)~~(A) Survey of attorneys.

66 ~~(42)~~(A)(i) The Council shall measure satisfactory performance by a sample survey of
67 the attorneys appearing before the senior judge or court commissioner during the period
68 for which the senior judge or court commissioner is being evaluated. The Council shall
69 measure satisfactory performance based on the results of the final survey conducted
70 during a court commissioner's term of office, subject to the discretion of a court
71 commissioner serving an abbreviated initial term not to participate in a second survey
72 under Section (2)(A)(vi) of this rule.

73 ~~(42)~~(A)(ii) Survey scoring. The survey shall be scored as follows.

74 ~~(42)~~(A)(ii)(a) Each question of the attorney survey will have six possible responses:
75 Excellent, More Than Adequate, Adequate, Less Than Adequate, Inadequate, or No
76 Personal Knowledge. A favorable response is Excellent, More Than Adequate or
77 Adequate.

78 ~~(42)~~(A)(ii)(b) Each question shall be scored by dividing the total number of favorable
79 responses by the total number of all responses, excluding the "No Personal Knowledge"
80 responses. A satisfactory score for a question is achieved when the ratio of favorable
81 responses is 70% or greater.

82 ~~(42)~~(A)(ii)(c) A court commissioner's performance is satisfactory if:

83 ~~(42)~~(A)(ii)(c)(1) at least 75% of the questions have a satisfactory score; and

84 ~~(42)~~(A)(ii)(c)(2) the favorable responses when divided by the total number of all
85 responses, excluding "No Personal Knowledge" responses, is 70% or greater.

86 ~~(32)~~(A)(ii)(d) The Judicial Council shall determine whether the senior judge's survey
87 scores are satisfactory.

88 ~~(42)~~(A)(iii) Survey respondents. The Administrative Office of the Courts shall identify
89 as potential respondents all lawyers who have appeared before the court commissioner
90 during the period for which the commissioner is being evaluated.

91 ~~(42)~~(A)(iv) Exclusion from survey respondents.

92 ~~(42)~~(A)(iv)(a) A lawyer who has been appointed as a judge or court commissioner
93 shall not be a respondent in the survey. A lawyer who is suspended or disbarred or who
94 has resigned under discipline shall not be a respondent in the survey.

95 ~~(42)~~(A)(iv)(b) With the approval of the Management Committee, a court
96 commissioner may exclude an attorney from the list of respondents if the court
97 commissioner believes the attorney will not respond objectively to the survey.

98 ~~(42)~~(A)(v) Number of survey respondents. The Surveyor shall identify 180
99 respondents or all attorneys appearing before the court commissioner, whichever is
100 less. All attorneys who have appeared before the senior judge shall be sent a survey
101 questionnaire as soon as possible after the hearing.

102 ~~(42)~~(A)(vi) Administration of the survey. Court commissioners shall be the subject of
103 a survey approximately six months prior to the expiration of their term of office. Court
104 commissioners shall be the subject of a survey during the second year of each term of
105 office. Newly appointed court commissioners shall be the subject of a survey during the
106 second year of their term of office and, at their option, approximately six months prior to
107 the expiration of their term of office.

108 ~~(42)~~(A)(iv) Survey report. The Surveyor shall provide to the subject of the survey, the
109 subject's presiding judge, and the Judicial Council the number and percentage of
110 respondents for each of the possible responses on each survey question and all
111 comments, retyped and edited as necessary to redact the respondent's identity.

112 ~~(42)~~(B) Survey of presiding judges and court staff. The Council shall measure
113 performance of senior judges by a survey of all presiding judges and trial court
114 executives of districts in which the senior judge has been assigned. The Administrative
115 Office of the Courts shall distribute survey forms with instructions to return completed
116 surveys to the Surveyor. The Surveyor shall provide to the subject of the survey, the
117 subject's presiding judge, and the Judicial Council the number and percentage of
118 respondents for each of the possible responses on each survey question and all
119 comments, retyped and edited as necessary to redact the respondent's identity. The

120 Judicial Council shall determine whether the senior judge's survey scores are
121 satisfactory.

122 ~~(42)~~(C) Case under advisement standard. A case is considered to be under
123 advisement when the entire case or any issue in the case has been submitted to the
124 senior judge or court commissioner for final determination. The Council shall measure
125 satisfactory performance by the self-declaration of the senior judge or court
126 commissioner or by reviewing the records of the court.

127 (4)(C)(i) A senior judge or court commissioner in a trial court demonstrates
128 satisfactory performance by holding:

129 ~~(42)~~(C)(i)(a) no more than three cases per calendar year under advisement more
130 than 60 days after submission; and

131 ~~(42)~~(C)(i)(b) no case under advisement more than 180 days after submission.

132 (4)(C)(ii) A senior judge in the court of appeals demonstrates satisfactory
133 performance by:

134 (4)(C)(ii)(a) circulating no more than an average of three principal opinions per
135 calendar year more than six months after submission with no more than half of the
136 maximum exceptional cases in any one calendar year; and

137 (4)(C)(ii)(b) achieving a final average time to circulation of a principal opinion of no
138 more than 120 days after submission.

139 ~~(42)~~(D) Compliance with education standards. Satisfactory performance is
140 established if the senior judge or court commissioner annually complies with the judicial
141 education standards of this Code, subject to the availability of in-state education
142 programs. The Council shall measure satisfactory performance by the self-declaration
143 of the senior judge or court commissioner or by reviewing the records of the state court
144 administrator.

145 ~~(42)~~(E) Substantial compliance with Code of Judicial Conduct. Satisfactory
146 performance is established if the response of the senior judge or court commissioner
147 demonstrates substantial compliance with the Code of Judicial Conduct, if the Council
148 finds the responsive information to be complete and correct and if the Council's review
149 of formal and informal sanctions lead the Council to conclude the court commissioner is

150 in substantial compliance with the Code of Judicial Conduct. Under Rule 11-201 and
151 Rule 11-203, any sanction of a senior judge disqualifies the senior judge from
152 reappointment.

153 (42)(F) Physical and mental competence. Satisfactory performance is established if
154 the response of the senior judge or court commissioner demonstrates physical and
155 mental competence to serve in office and if the Council finds the responsive information
156 to be complete and correct. The Council may request a statement by an examining
157 physician.

158 (53)(A) At its meeting in August, the Council shall begin the process of determining
159 whether the senior judges and court commissioners whose terms of office expire that
160 year meet the standards of performance provided for in this rule. The Administrative
161 Office of the Courts shall assemble all evaluation information, including:

162 (53)(A)(i) survey scores;

163 (53)(A)(ii) judicial education records;

164 (53)(A)(iii) self-declaration forms;

165 (53)(A)(iv) records of formal and informal sanctions; and

166 (53)(A)(v) performance evaluations, if the commissioner or senior judge received an
167 overall rating of Needs Improvement; and

168 (5)(A)(vi) any information requested by the Council.

169 (53)(B) Prior to the meeting the Administrative Office of the Courts shall deliver the
170 records to the Council and to the senior judges and court commissioners being
171 evaluated.

172 (53)(C) In a session closed in compliance with Rule 2-103, the Council shall
173 consider the evaluation information and make a preliminary finding of whether a senior
174 judge or court commissioner has met the performance standards.

175 (53)(D) If the Council finds the senior judge or court commissioner has met the
176 performance standards, it is presumed the Council will certify the senior judge or court
177 commissioner for reappointment. If the Council finds the senior judge or court
178 commissioner did not meet the performance standards, it is presumed the Council will
179 not certify the senior judge or court commissioner for reappointment. The Council may

180 certify the senior judge or court commissioner or withhold decision until after meeting
181 with the senior judge or court commissioner.

182 (53)(E) A presumption against certification may be overcome by a showing of good
183 cause to the contrary. A presumption in favor of certification may be overcome by:

184 (53)(E)(i) reliable information showing non-compliance with a performance standard;
185 or

186 (53)(E)(ii) formal or informal sanctions of sufficient gravity or number or both to
187 demonstrate lack of substantial compliance with the Code of Judicial Conduct.

188 (53)(F) At the request of the Council the senior judge or court commissioner shall
189 meet with the Council in September. At the request of the Council the presiding judge
190 shall report to the Council any meetings held with the senior judge or court
191 commissioner, the steps toward self-improvement identified as a result of those
192 meetings, and the efforts to complete those steps. Not later than 5 days after the August
193 meeting, the Administrative Office of the Courts shall deliver to the senior judge or court
194 commissioner being evaluated notice of the Council's action and any records not
195 already delivered to the senior judge or court commissioner. The notice shall contain an
196 adequate description of the reasons the Council has withheld its decision and the date
197 by which the senior judge or court commissioner is to deliver written materials. The
198 Administrative Office of the Courts shall deliver copies of all materials to the Council and
199 to the senior judge or court commissioner prior to the September meeting.

200 (53)(G) At its September meeting in a session closed in accordance with Rule 2-103,
201 the Council shall provide to the senior judge or court commissioner adequate time to
202 present evidence and arguments in favor of certification. Any member of the Council
203 may present evidence and arguments of which the senior judge or court commissioner
204 has had notice opposed to certification. The burden is on the person arguing against the
205 presumed certification. The Council may determine the order of presentation.

206 (53)(H) At its September meeting in open session, the Council shall approve its final
207 findings and certification regarding all senior judges and court commissioners whose
208 terms of office expire that year.

209 ~~(53)~~(l) The Judicial Council shall communicate its certification decision to the senior
210 judge or court commissioner. The Judicial Council shall communicate its certification
211 decision for senior judges to the Supreme Court and for court commissioners to the
212 presiding judge of the district the commissioner serves.