

1 ~~Rule 2-106.03. Information for judicial self improvement.~~

2 Intent:

3 ~~To specify the information to be generated for judicial self improvement.~~

4 Applicability:

5 ~~This rule shall apply to the Judicial Council and to judges and commissioners of the~~
6 ~~courts of record.~~

7 Statement of the Rule:

8 ~~(1) Survey of attorneys.~~

9 ~~(A) Survey scoring. The survey shall be scored as follows.~~

10 ~~(i) Each question of the attorney survey will have six possible responses: Excellent,~~
11 ~~More Than Adequate, Adequate, Less Than Adequate, Inadequate, or No Personal~~
12 ~~Knowledge. A favorable response is Excellent, More Than Adequate or Adequate.~~

13 ~~(ii) Each question shall be scored by dividing the total number of favorable~~
14 ~~responses by the total number of all responses, excluding the "No Personal Knowledge"~~
15 ~~responses. A satisfactory score for a question is achieved when the ratio of favorable~~
16 ~~responses is 70% or greater.~~

17 ~~(B) Surveyor. As used in this Code, the term "Surveyor" means the organization or~~
18 ~~individual awarded a contract through procedures established by the state procurement~~
19 ~~code to survey respondents regarding the performance of judges.~~

20 ~~(C) Survey respondents. The clerk for the judge or commissioner or the~~
21 ~~Administrative Office of the Courts shall identify as potential respondents all lawyers~~
22 ~~who have appeared before the judge or commissioner at a hearing or trial during the~~
23 ~~preceding two year period or such shorter period for which the judge or commissioner is~~
24 ~~being evaluated. The judge or commissioner shall not review the list of potential~~
25 ~~respondents.~~

26 ~~(D) Exclusion from survey respondents.~~

27 ~~(i) A lawyer who has been appointed as a judge or commissioner shall not be a~~
28 ~~respondent in the survey.~~

29 ~~(ii) By certifying that one or more of the following conditions applies, the judge or~~
30 ~~commissioner may exclude an attorney from the list of respondents: The judge or~~
31 ~~commissioner~~

32 ~~(a) has referred the lawyer to the Utah State Bar for discipline,~~
33 ~~(b) has found the lawyer in contempt of court,~~
34 ~~(c) has sanctioned the lawyer pursuant to rules of procedure,~~
35 ~~(d) has held the lawyer=s law firm jointly responsible under Utah Rule of Civil~~

36 ~~Procedure 11(c)(1)(A),~~

37 ~~(e) has presided in a civil or criminal proceeding to which the lawyer is a party, or~~

38 ~~(f) has been the subject of an affidavit of bias or prejudice under Utah Rule of Civil~~
39 ~~Procedure 63 or Utah Rule of Criminal Procedure 29 filed by the attorney in which the~~
40 ~~attorney alleges animus of the judge or commissioner toward the attorney.~~

41 ~~(iii) Other exclusions.~~

42 ~~(a) A judge may request that the Judicial Council exclude from the survey an~~
43 ~~attorney who does not qualify for exclusion under (ii) if the judge believes the attorney~~
44 ~~will not respond objectively to the survey. The request must be submitted within 14 days~~
45 ~~after receiving the form for excluding lawyers under (ii).~~

46 ~~(b) In the request, the judge shall explain why the attorney will not respond~~
47 ~~objectively to the survey. The judge shall explain why the attorney's behavior has not~~
48 ~~subjected the attorney to sanction under the rules of procedure, contempt or referral to~~
49 ~~the Bar.~~

50 ~~(c) If the Management Committee determines that the attorney will not respond~~
51 ~~objectively to the survey, the Management Committee shall inform the Judicial Council~~
52 ~~for ratification. If the Judicial Council ratifies the determination, the Administrative Office~~
53 ~~of the Courts shall notify the Surveyor and the Surveyor shall exclude the attorney from~~
54 ~~the judge's respondent pool. The determination applies only to the pending attorney~~
55 ~~survey.~~

56 ~~(E) Number of survey respondents. For each judge or commissioner who is the~~
57 ~~subject of a survey, the Surveyor shall identify 180 respondents or all attorneys~~
58 ~~appearing before the judge or commissioner whichever is less.~~

59 ~~(F) Factors in selecting respondents; response rate. In selecting respondents from~~
60 ~~potential respondents, the Surveyor should favor attorneys with a greater number of~~
61 ~~appearances and attorneys with more recent appearances, and the Surveyor should~~
62 ~~limit to 12 the number of survey questionnaires to which an attorney is asked to~~

63 ~~respond. The Surveyor may balance these factors in assigning respondents to particular~~
64 ~~judges or commissioners. The Surveyor should pursue a response rate of 70% or more~~
65 ~~for each judge or commissioner. The goals of this paragraph are advisory and failure to~~
66 ~~meet the goals shall not invalidate the survey.~~

67 ~~(G) Administration of the survey. Judges with a six-year term of office shall be the~~
68 ~~subject of a survey in the third year of the term. Justices of the Supreme Court shall be~~
69 ~~the subject of a survey in the third and seventh years of the term. Newly appointed~~
70 ~~judges shall be the subject of a survey during their second year in office. Court~~
71 ~~Commissioners shall be the subject of a survey approximately three years prior to the~~
72 ~~expiration of their term of appointment.~~

73 ~~(2) Survey of jurors. A survey of jurors for all district court judges who preside over~~
74 ~~jury trials shall be conducted during the third and fourth years prior to evaluation for~~
75 ~~retention election. However, a survey of jurors for district court judges serving prior to~~
76 ~~their initial retention election shall be conducted during the two years prior to evaluation~~
77 ~~for retention election.~~

78 ~~(A) Survey responses. Each question will have four possible responses: Yes, No, No~~
79 ~~Opinion, and No Opportunity to Observe. A note card on which the juror can provide~~
80 ~~anonymous comments to the judge shall be attached to the survey questionnaire.~~

81 ~~(B) Survey scoring. The survey shall be scored as follows:~~

82 ~~(i) A favorable response is Yes.~~

83 ~~(ii) Each question shall be scored by dividing the total number of Yes responses by~~
84 ~~the total number of Yes plus No responses.~~

85 ~~(iii) A satisfactory score for a question is achieved when the ratio of favorable~~
86 ~~responses is 70% or greater.~~

87 ~~(iv) A judge's performance is satisfactory if:~~

88 ~~(a) At least 75% of the questions on the survey have a satisfactory score; and~~

89 ~~(b) The Yes responses to all questions when divided by the total number of Yes plus~~
90 ~~No responses to all questions is 70% or greater.~~

91 ~~(C) Administration of the survey. All jurors rendering a verdict in a case and all~~
92 ~~jurors, including alternate jurors, with at least three hours of trial time with the judge~~
93 ~~shall have the opportunity to respond to the survey questionnaire.~~

94 ~~(i) For jurors rendering a verdict. While the jurors are waiting for court to convene~~
95 ~~after declaring that they have reached a verdict, or as soon as possible after the jury~~
96 ~~has been discharged, the bailiff or clerk in charge of the jury shall provide the jurors with~~
97 ~~the evaluation questionnaires and comment note cards and two envelopes. One~~
98 ~~envelope will be preprinted with the mailing address of the Surveyor; the other will be~~
99 ~~preprinted with the name of the judge. The forms will instruct the jurors to place the~~
100 ~~comment note cards in the envelope with the judge's name, to place the survey~~
101 ~~questionnaires, completed and uncompleted, in the envelope with the Surveyor's name,~~
102 ~~and to seal the envelopes. The bailiff or clerk shall deliver the sealed envelopes to the~~
103 ~~respective addressees.~~

104 ~~(ii) For jurors not rendering a verdict. If a juror or alternate juror is discharged prior to~~
105 ~~rendering a verdict but after at least three hours of trial time with the judge, the bailiff or~~
106 ~~clerk in charge of the jury shall administer the questionnaire to the discharged juror in~~
107 ~~the same manner as in paragraph (i) above.~~

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