

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

3       Intent:

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

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

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

12       Applicability:

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

17       Statement of the Rule:

18       (1) Performance evaluations.

19       (1)(A) On forms provided by the administrative office, the presiding judge of  
20 the appellate courts shall complete an evaluation of the appellate senior  
21 judge's performance at the end of each three-year term.

22       (1)(B) On forms provided by the administrative office, the presiding judge of  
23 the district a court commissioner primarily serves shall complete an annual  
24 evaluation of the court commissioner's performance.

25       (1)(B) On forms provided by the administrative office, the presiding judge of  
26 the district an active senior judge primarily serves shall complete an

27 evaluation of the senior judge's performance every eighteen months starting  
28 after the senior judge's initial term.

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

33 (1)(D) The presiding judge shall provide a copy of each commissioner  
34 evaluation to the Judicial Council.

35 (1)(E) If a senior judge receives an overall "Needs Improvement" rating on  
36 the performance evaluation, the evaluator shall provide a copy of the  
37 evaluation to the Judicial Council.

38 ~~(24)~~ Active ~~§~~ senior judges and court commissioners shall be evaluated  
39 and certified upon the following criteria:

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

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

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

46 ~~(24)~~ (D) preparation, attentiveness, dignity and control over  
47 proceedings grasp of the practical impact on the parties of the commissioner's  
48 or senior judge's rulings, including the effect of delay and increased litigation  
49 expense;

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

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

53 ~~(21)(G) service to the profession and the public~~demonstration of courtesy  
54 toward attorneys, court staff, and others in the commissioner's or senior  
55 judge's court; and

56 ~~(21)(H) effectiveness in working with other court personnel.~~maintenance of  
57 decorum in the courtroom;

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

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

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

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

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

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

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

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

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

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

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

73 ~~(42)(A)(i) The Council shall measure satisfactory performance by a sample~~  
74 ~~survey of the attorneys appearing before the senior judge or court~~  
75 ~~commissioner during the period for which the senior judge or court~~  
76 ~~commissioner is being evaluated. The Council shall measure satisfactory~~  
77 ~~performance based on the results of the final survey conducted during a court~~  
78 ~~commissioner's term of office, subject to the discretion of a court~~

79 commissioner serving an abbreviated initial term not to participate in a second  
80 survey under Section (2)(A)(vi) of this rule.

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

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

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

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

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

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

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

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

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

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

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

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

113 (42)(A)(vi) Administration of the survey. Court commissioners shall be the  
114 subject of a survey approximately six months prior to the expiration of their  
115 term of office. Court commissioners shall be the subject of a survey during the  
116 second year of each term of office. Newly appointed court commissioners  
117 shall be the subject of a survey during the second year of their term of office  
118 and, at their option, approximately six months prior to the expiration of their  
119 term of office.

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

125 (42)(B) Survey of presiding judges and court staff. The Council shall  
126 measure performance of senior judges by a survey of all presiding judges and  
127 trial court executives of districts in which the senior judge has been assigned.  
128 The Administrative Office of the Courts shall distribute survey forms with  
129 instructions to return completed surveys to the Surveyor. The Surveyor shall  
130 provide to the subject of the survey, the subject's presiding judge, and the  
131 Judicial Council the number and percentage of respondents for each of the  
132 possible responses on each survey question and all comments, retyped and

133 edited as necessary to redact the respondent's identity. The Judicial Council  
134 shall determine whether the senior judge's survey scores are satisfactory.

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

140 ~~(42)~~(C)(i) A senior judge or court commissioner in a trial court demonstrates  
141 satisfactory performance by holding:

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

144 ~~(42)~~(C)(ii)(b) no case under advisement more than 180 days after  
145 submission.

146 ~~(42)~~(C)(ii) A senior judge in the court of appeals demonstrates satisfactory  
147 performance by:

148 ~~(42)~~(C)(ii)(a) circulating no more than an average of three principal opinions  
149 per calendar year more than six months after submission with no more than  
150 half of the maximum exceptional cases in any one calendar year; and

151 ~~(42)~~(C)(ii)(b) achieving a final average time to circulation of a principal  
152 opinion of no more than 120 days after submission.

153 ~~(42)~~(D) Compliance with education standards. Satisfactory performance is  
154 established if the senior judge or court commissioner annually complies with  
155 the judicial education standards of this Code, subject to the availability of in-  
156 state education programs. The Council shall measure satisfactory  
157 performance by the self-declaration of the senior judge or court commissioner  
158 or by reviewing the records of the state court administrator.

159 (42)(E) Substantial compliance with Code of Judicial Conduct. Satisfactory  
160 performance is established if the response of the senior judge or court  
161 commissioner demonstrates substantial compliance with the Code of Judicial  
162 Conduct, if the Council finds the responsive information to be complete and  
163 correct and if the Council's review of formal and informal sanctions lead the  
164 Council to conclude the court commissioner is in substantial compliance with  
165 the Code of Judicial Conduct. Under Rule 11-201 and Rule 11-203, any  
166 sanction of a senior judge disqualifies the senior judge from reappointment.

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

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

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

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

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

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

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

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

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

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

191 (53)(D) If the Council finds the senior judge or court commissioner has met  
192 the performance standards, it is presumed the Council will certify the senior  
193 judge or court commissioner for reappointment. If the Council finds the senior  
194 judge or court commissioner did not meet the performance standards, it is  
195 presumed the Council will not certify the senior judge or court commissioner  
196 for reappointment. The Council may certify the senior judge or court  
197 commissioner or withhold decision until after meeting with the senior judge or  
198 court commissioner.

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

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

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

207 (53)(F) At the request of the Council the senior judge or court  
208 commissioner shall meet with the Council in September. At the request of the  
209 Council the presiding judge shall report to the Council any meetings held with  
210 the senior judge or court commissioner, the steps toward self-improvement

211 identified as a result of those meetings, and the efforts to complete those  
212 steps. Not later than 5 days after the August meeting, the Administrative  
213 Office of the Courts shall deliver to the senior judge or court commissioner  
214 being evaluated notice of the Council's action and any records not already  
215 delivered to the senior judge or court commissioner. The notice shall contain  
216 an adequate description of the reasons the Council has withheld its decision  
217 and the date by which the senior judge or court commissioner is to deliver  
218 written materials. The Administrative Office of the Courts shall deliver copies  
219 of all materials to the Council and to the senior judge or court commissioner  
220 prior to the September meeting.

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

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

231 ~~(53)~~(I) The Judicial Council shall communicate its certification decision to  
232 the senior judge or court commissioner. The Judicial Council shall  
233 communicate its certification decision for senior judges to the Supreme Court  
234 and for court commissioners to the presiding judge of the district the  
235 commissioner serves.