

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

2 **Intent:**

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

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

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

10 **Applicability:**

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

14 **Statement of the Rule:**

15 (1) **Performance evaluations.**

16 (1)(A) **Court commissioners.**

17 (1)(A)(i) On forms provided by the administrative office, the presiding judge of the a district or
18 court level a court commissioner primarily serves shall complete an annual evaluation of the court
19 commissioner's performance by June 1 of each year. If a commissioner serves multiple districts or
20 court levels, the presiding judge of each district or court level shall complete an evaluation.

21 (1)(A)(ii) The presiding judge shall survey judges and court personnel seeking feedback for the
22 evaluation. During the evaluation period, the presiding judge shall review at least five of the
23 commissioner's active cases. The review shall include courtroom observation.

24 (1)(A)(iii) The presiding judge shall provide a copy of each commissioner evaluation to the
25 Judicial Council. Copies of plans under paragraph (3)(G) and all evaluations shall also be maintained
26 in the commissioner's personnel file in the administrative office.

27 (1)(B) **Active senior judges.** On forms provided by the administrative office, the presiding judge of
28 the Court of Appeals shall complete an evaluation of the appellate senior judge's performance every
29 eighteen months starting after the senior judge's initial term. An active senior judge's performance shall be
30 evaluated by attorneys as provided in paragraph (3)(A) and by presiding judges and court staff as
31 provided in paragraph (3)(B).

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

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

38 ~~(1)(E) The presiding judge shall provide a copy of each commissioner evaluation to the Judicial~~
39 ~~Council.(1)(F) If a senior judge receives an overall "Needs Improvement" rating on the performance~~
40 ~~evaluation, the evaluator shall provide a copy of the evaluation to the Judicial Council.~~

41 (2) **Evaluation and certification criteria.** Active senior judges and court commissioners shall be
42 evaluated and certified upon the following criteria:

43 (2)(A) demonstration of understanding of the substantive law and any relevant rules of procedure and
44 evidence;

45 (2)(B) attentiveness to factual and legal issues before the court;

46 (2)(C) adherence to precedent and ability to clearly explain departures from precedent;

47 (2)(D) grasp of the practical impact on the parties of the commissioner's or senior judge's rulings,
48 including the effect of delay and increased litigation expense;

49 (2)(E) ability to write clear judicial opinions;

50 (2)(F) ability to clearly explain the legal basis for judicial opinions;

51 (2)(G) demonstration of courtesy toward attorneys, court staff, and others in the commissioner's or
52 senior judge's court;

53 (2)(H) maintenance of decorum in the courtroom;

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

56 (2)(J) preparation for hearings or oral argument;

57 (2)(K) avoidance of impropriety or the appearance of impropriety;

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

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

61 (2)(N) management of workload;

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

64 (2)(P) issuance of opinions and orders without unnecessary delay; ~~and~~

65 ~~(2)(Q) Senior judges shall also be evaluated on their ability and willingness to use the court's case~~
66 ~~management systems in all cases.~~

67 ~~(34)~~ **Standards of performance.**

68 ~~(34)~~(A) **Survey of attorneys.**

69 ~~(34)~~(A)(i) The Council shall measure satisfactory performance by a sample survey of the
70 attorneys appearing before the active senior judge or court commissioner during the period for which
71 the active senior judge or court commissioner is being evaluated. The Council shall measure
72 satisfactory performance based on the results of the final survey conducted during a court
73 commissioner's term of office, subject to the discretion of a court commissioner serving an
74 abbreviated initial term not to participate in a second survey under Section ~~(32)~~(A)(vi) of this rule.

75 ~~(34)~~(A)(ii) **Survey scoring.** The survey shall be scored as follows.

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

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

83 ~~(34)~~(A)(ii)(c) A court commissioner's performance is satisfactory if:

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

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

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

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

92 ~~(34)~~(A)(iv) **Exclusion from survey respondents.**

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

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

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

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

108 (34)(A)(vii) **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 respondents for
110 each of the possible responses on each survey question and all comments, retyped and edited as
111 necessary to redact the respondent's identity.

112 (34)(B) **Non-attorney Surveys.**

113 (3)(B)(i) **Surveys of presiding judges and court staff regarding non-appellate senior judges.**
114 The Council shall measure performance of active senior judges by a survey of all presiding judges
115 and trial court executives, or in the justice courts, the Justice Court Administrator, of districts in which
116 the senior judge has been assigned. The presiding judge and trial court executive will gather
117 information for the survey from anonymous questionnaires completed by court staff on the calendars
118 to which the senior judge is assigned and by jurors on jury trials to which the senior judge is assigned.
119 The Administrative Office of the Courts shall distribute survey forms with instructions to return
120 completed surveys to the Surveyor. The survey questions will be based on the non-legal ability
121 evaluation criteria in paragraph (2). The Surveyor shall provide to the subject of the survey, the
122 subject's presiding judge, and the Judicial Council the ~~number and percentage of respondents for~~
123 ~~each of the possible responses on each survey question and all comments, retyped and edited as~~
124 ~~necessary to redact the respondent's identity.~~ The Judicial Council shall determine whether the
125 qualitative assessment of the senior judge's judge indicates satisfactory performance~~survey scores~~
126 ~~are satisfactory.~~

127 (3)(B)(ii) Surveys of Court of Appeals presiding judge and clerk of court. The Council shall
128 measure performance of active appellate senior judges by a survey of the presiding judge and clerk
129 of court of the Court of Appeals. The presiding judge and clerk of court will gather information for the
130 survey from anonymous questionnaires completed by the other judges on each panel to which the
131 appellate senior judge is assigned and by the appellate law clerks with whom the appellate senior
132 judge works. The Administrative Office of the Courts shall distribute the survey forms with instructions
133 to return completed surveys to the Surveyor. The survey questions will be based on the non-legal
134 ability evaluation criteria in paragraph (2). The Surveyor shall provide to the subject of the survey, the
135 subject's presiding judge, and the Judicial Council the responses on each survey question. The
136 Judicial Council shall determine whether the qualitative assessment of the senior judge indicates
137 satisfactory performance.

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

142 (34)(C)(i) A senior judge or court commissioner in a trial court demonstrates satisfactory
143 performance by holding:

144 (34)(C)(i)(a) no more than three cases per calendar year under advisement more than 60
145 days after submission; and

146 (34)(C)(i)(b) no case under advisement more than 180 days after submission.

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

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

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

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

158 (34)(E) **Substantial compliance with Code of Judicial Conduct.** Satisfactory performance is
159 established if the response of the senior judge or court commissioner demonstrates substantial
160 compliance with the Code of Judicial Conduct, if the Council finds the responsive information to be

161 complete and correct and if the Council's review of formal and informal sanctions lead the Council to
162 conclude the court commissioner is in substantial compliance with the Code of Judicial Conduct. Under
163 Rule 11-201 and Rule 11-203, any sanction of a senior judge disqualifies the senior judge from
164 reappointment.

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

169 (3)(G) Performance and corrective action plans for court commissioners.

170 (3)(G)(i) The presiding judge of the district a court commissioner serves shall prepare a
171 performance plan for a new court commissioner within 30 days of the court commissioner's
172 appointment. If a court commissioner serves multiple districts or court levels, the presiding judge of
173 each district and court level shall prepare a performance plan. The performance plan shall
174 communicate the expectations set forth in paragraph (2) of this rule.

175 (3)(G)(ii) If a presiding judge issues an overall "Needs Improvement" rating on a court
176 commissioner's annual performance evaluation as provided in paragraph (1), that presiding judge
177 shall prepare a corrective action plan setting forth specific ways in which the court commissioner can
178 improve in deficient areas.

179 (45) Judicial Council certification process

180 (4)(A) July Council meeting. At its meeting in ~~August~~ July, the Council shall begin the process of
181 determining whether the senior judges and court commissioners whose terms of office expire that year
182 meet the standards of performance provided for in this rule. The Administrative Office of the Courts shall
183 assemble all evaluation information, including:

184 (45)(A)(i) survey scores;

185 (45)(A)(ii) judicial education records;

186 (45)(A)(iii) self-declaration forms;

187 (45)(A)(iv) records of formal and informal sanctions;

188 (45)(A)(v) performance evaluations, if the commissioner or senior judge received an overall rating
189 of Needs Improvement; and

190 (45)(A)(vi) any information requested by the Council.

191 (45)(B) Records delivery. Prior to the meeting the Administrative Office of the Courts shall deliver
192 the records to the Council and to the senior judges and court commissioners being evaluated.

193 (45)(C) **July Council meeting closed session.** In a session closed in compliance with Rule 2-103,
194 the Council shall consider the evaluation information and make a preliminary finding of whether a senior
195 judge or court commissioner has met the performance standards.

196 (45)(D) **Certification presumptions.** If the Council finds the senior judge or court commissioner has
197 met the performance standards, it is presumed the Council will certify the senior judge or court
198 commissioner for reappointment. If the Council finds the senior judge or court commissioner did not meet
199 the performance standards, it is presumed the Council will not certify the senior judge or court
200 commissioner for reappointment. The Council may certify the senior judge or court commissioner or
201 withhold decision until after meeting with the senior judge or court commissioner.

202 (45)(E) **Overcoming presumptions.** A presumption against certification may be overcome by a
203 showing of good cause to the contrary. A presumption in favor of certification may be overcome by:

204 (45)(E)(i) reliable information showing non-compliance with a performance standard; or

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

207 (45)(F) **August Council meeting.** At the request of the Council the senior judge or court
208 commissioner challenging a non-certification decision shall meet with the Council in ~~September~~August. At
209 the request of the Council the presiding judge shall report to the Council any meetings held with the
210 senior judge or court commissioner, the steps toward self-improvement identified as a result of those
211 meetings, and the efforts to complete those steps. Not later than 5 days after the ~~August~~July meeting,
212 the Administrative Office of the Courts shall deliver to the senior judge or court commissioner being
213 evaluated notice of the Council's action and any records not already delivered to the senior judge or court
214 commissioner. The notice shall contain an adequate description of the reasons the Council has withheld
215 its decision and the date by which the senior judge or court commissioner is to deliver written materials.
216 The Administrative Office of the Courts shall deliver copies of all materials to the Council and to the senior
217 judge or court commissioner prior to the ~~September~~August meeting.

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

224 (45)(H) **Final certification decision.** At its ~~September~~August meeting in open session, the Council
225 shall approve its final findings and certification regarding all senior judges and court commissioners
226 whose terms of office expire that year.

227 ~~(45)~~(l) **Communication of certification decision.** The Judicial Council shall communicate its
228 certification decision to the senior judge or court commissioner. The Judicial Council shall communicate
229 its certification decision for senior judges to the Supreme Court and for court commissioners to the
230 presiding judge of the district the commissioner serves.