

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
4 and court commissioners will be evaluated, the standards against which performance will be
5 measured and the methods for fairly, accurately and reliably measuring performance.

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

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

10 **Applicability:**

11 This rule shall apply to presiding judges, the Board of Justice Court Judges, and the Judicial
12 Council, and to the active senior judges and court commissioners of the Court of Appeals,
13 courts of record, and courts 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
18 a district or court level a court commissioner serves shall complete an
19 evaluation of the court commissioner's performance by June 1 of each
20 year. If a commissioner serves multiple districts or court levels, the
21 presiding judge of each district or court level shall complete an
22 evaluation.

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

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

- 31 (1)(B) **Active senior judges.** An active senior judge's performance shall be evaluated
32 by attorneys as provided in paragraph (3)(A) and by presiding judges and court
33 staff as provided in paragraph (3)(B).
- 34 (2) **Evaluation and certification criteria.** Active senior judges and court commissioners shall
35 be evaluated and certified upon the following criteria:
- 36 (2)(A) demonstration of understanding of the substantive law and any relevant rules of
37 procedure and evidence;
- 38 (2)(B) attentiveness to factual and legal issues before the court;
- 39 (2)(C) adherence to precedent and ability to clearly explain departures from precedent;
- 40 (2)(D) grasp of the practical impact on the parties of the commissioner's or senior
41 judge's rulings, including the effect of delay and increased litigation expense;
- 42 (2)(E) ability to write clear judicial opinions;
- 43 (2)(F) ability to clearly explain the legal basis for judicial opinions;
- 44 (2)(G) demonstration of courtesy toward attorneys, court staff, and others in the
45 commissioner's or senior judge's court;
- 46 (2)(H) maintenance of decorum in the courtroom;
- 47 (2)(I) demonstration of judicial demeanor and personal attributes that promote public
48 trust and confidence in the judicial system;
- 49 (2)(J) preparation for hearings or oral argument;
- 50 (2)(K) avoidance of impropriety or the appearance of impropriety;
- 51 (2)(L) display of fairness and impartiality toward all parties;
- 52 (2)(M) ability to clearly communicate, including the ability to explain the basis for written
53 rulings, court procedures, and decisions;
- 54 (2)(N) management of workload;
- 55 (2)(O) willingness to share proportionally the workload within the court or district, or
56 regularly accepting assignments;
- 57 (2)(P) issuance of opinions and orders without unnecessary delay; and
- 58 (2)(Q) ability and willingness to use the court's case management systems in all cases.
- 59 (3) **Standards of performance.**
- 60 (3)(A) **Survey of attorneys.**
- 61 (3)(A)(i) The Council shall measure satisfactory performance by a sample
62 survey of the attorneys appearing before the active senior judge or
63 court commissioner during the period for which the active senior judge
64 or court commissioner is being evaluated. The Council shall measure

65 satisfactory performance based on the results of the final survey
66 conducted during a court commissioner's term of office, subject to the
67 discretion of a court commissioner serving an abbreviated initial term
68 not to participate in a second survey under Section (3)(A)(vi) of this
69 rule.

70 (3)(A)(ii) **Survey scoring.** The survey shall be scored as follows.

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

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

82 (3)(A)(ii)(c) A court commissioner's performance is satisfactory if:
83 at least 75% of the questions have a satisfactory score;
84 and the favorable responses when divided by the total
85 number of all responses, excluding "No Personal
86 Knowledge" responses, is 70% or greater.

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

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

93 (3)(A)(iv) **Exclusion from survey respondents.**

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

- 99 (3)(A)(iv)(b) With the approval of the Management Committee, a
100 court commissioner may exclude an attorney from the
101 list of respondents if the court commissioner believes
102 the attorney will not respond objectively to the survey.
- 103 (3)(A)(v) **Number of survey respondents.** The Surveyor shall identify 180
104 respondents or all attorneys appearing before the court commissioner,
105 whichever is less. All attorneys who have appeared before the active
106 senior judge shall be sent a survey questionnaire as soon as possible
107 after the hearing.
- 108 (3)(A)(vi) **Administration of the survey.** Court commissioners shall be the
109 subject of a survey approximately six months prior to the expiration of
110 their term of office. Court commissioners shall be the subject of a
111 survey during the second year of each term of office. Newly appointed
112 court commissioners shall be the subject of a survey during the
113 second year of their term of office and, at their option, approximately
114 six months prior to the expiration of their term of office.
- 115 (3)(A)(vii) **Survey report.** The Surveyor shall provide to the subject of the
116 survey, the subject's presiding judge, and the Judicial Council the
117 number and percentage of respondents for each of the possible
118 responses on each survey question and all comments, retyped and
119 edited as necessary to redact the respondent's identity.
- 120 (3)(B) **Non-attorney surveys.**
- 121 (3)(B)(i) **Surveys of presiding judges and court staff regarding non-**
122 **appellate senior judges.** The Council shall measure performance of
123 active senior judges by a survey of all presiding judges and trial court
124 executives, or in the justice courts, all presiding justice court judges
125 and the justice court administrator~~Justice Court Administrator~~, of
126 districts in which the senior judge has been assigned. The presiding
127 judge and trial court executive will gather information for the survey
128 from anonymous questionnaires completed by court staff on the
129 calendars to which the senior judge is assigned and by jurors on jury
130 trials to which the senior judge is assigned. The Administrative Office
131 of the Courts shall distribute survey forms with instructions to return
132 completed surveys to the Surveyor. The survey questions will be

133 based on the non-legal ability evaluation criteria in paragraph (2).The
134 Surveyor shall provide to the subject of the survey, the subject's
135 presiding judge, and the Judicial Council the responses on each
136 survey question. The Judicial Council shall determine whether the
137 qualitative assessment of the senior judge indicates satisfactory
138 performance.

139 (3)(B)(ii) **Surveys of Court of Appeals presiding judge and clerk of court.**

140 The Council shall measure performance of active appellate senior
141 judges by a survey of the presiding judge and clerk of court of the
142 Court of Appeals. The presiding judge and clerk of court will gather
143 information for the survey from anonymous questionnaires completed
144 by the other judges on each panel to which the appellate senior judge
145 is assigned and by the appellate law clerks with whom the appellate
146 senior judge works. The Administrative Office of the Courts shall
147 distribute the survey forms with instructions to return completed
148 surveys to the Surveyor. The survey questions will be based on the
149 non-legal ability evaluation criteria in paragraph (2). The Surveyor
150 shall provide to the subject of the survey, the subject's presiding
151 judge, and the Judicial Council the responses on each survey
152 question. The Judicial Council shall determine whether the qualitative
153 assessment of the senior judge indicates satisfactory performance.

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

159 (3)(C)(i) A senior judge or court commissioner in a trial court demonstrates
160 satisfactory performance by holding:

161 (3)(C)(i)(a) no more than three cases per calendar year under
162 advisement more than 60 days after submission; and

163 (3)(C)(i)(b) no case under advisement more than 180 days after
164 submission.

165 (3)(C)(ii) A senior judge in the court of appeals demonstrates satisfactory
166 performance by:

167 (3)(C)(ii)(a) circulating no more than an average of three principal
168 opinions per calendar year more than six months after
169 submission with no more than half of the maximum
170 exceptional cases in any one calendar year; and
171 (3)(C)(ii)(b) achieving a final average time to circulation of a
172 principal opinion of no more than 120 days after
173 submission.

174 (3)(D) **Compliance with education standards.** Satisfactory performance is
175 established if the senior judge or court commissioner annually complies with the
176 judicial education standards of this Code, subject to the availability of in-state
177 education programs. The Council shall measure satisfactory performance by the
178 self-declaration of the senior judge or court commissioner or by reviewing the
179 records of the state court administrator.

180 (3)(E) **Substantial compliance with Code of Judicial Conduct.** Satisfactory
181 performance is established if ~~the response of~~ the senior judge or court
182 commissioner demonstrates substantial compliance with the Code of Judicial
183 Conduct, if the Council finds the responsive information to be complete and
184 correct and if the Council's review of formal and informal sanctions lead the
185 Council to conclude the court commissioner is in substantial compliance with the
186 Code of Judicial Conduct. Under Rule 11-201 and Rule 11-203, any sanction of a
187 senior judge disqualifies the senior judge from reappointment.

188 (3)(F) **Physical and mental competence.** Satisfactory performance is established if
189 ~~the response of~~ the senior judge or court commissioner demonstrates physical
190 and mental competence to serve in office and if the Council finds the responsive
191 information to be complete and correct. The Council may request a statement by
192 an examining physician.

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

194 (3)(G)(i) The presiding judge of the district a court commissioner serves shall
195 prepare a performance plan for a new court commissioner within 30
196 days of the court commissioner's appointment. If a court
197 commissioner serves multiple districts or court levels, the presiding
198 judge of each district and court level shall prepare a performance
199 plan. The performance plan shall communicate the expectations set
200 forth in paragraph (2) of this rule.

201 (3)(G)(ii) If a presiding judge issues an overall “Needs Improvement” rating on
202 a court commissioner’s annual performance evaluation as provided in
203 paragraph (1), that presiding judge shall prepare a corrective action
204 plan setting forth specific ways in which the court commissioner can
205 improve in deficient areas.

206 (4) **Judicial Council certification process.**

207 (4)(A) **July Council meeting.** At its meeting in July, the Council shall begin the process
208 of determining whether the senior judges and court commissioners whose terms
209 of office expire that year meet the standards of performance provided for in this
210 rule. The Administrative Office of the Courts shall assemble all evaluation
211 information, including:

212 (4)(A)(i) survey scores;

213 (4)(A)(ii) judicial education records;

214 (4)(A)(iii) self-declaration forms;

215 (4)(A)(iv) records of formal and informal sanctions;

216 (4)(A)(v) performance evaluations, if the commissioner or senior judge received
217 an overall rating of Needs Improvement; and

218 (4)(A)(vi) any information requested by the Council.

219 (4)(B) **Records delivery.** Prior to the meeting the Administrative Office of the Courts
220 shall deliver the records to the Council and to the senior judges and court
221 commissioners being evaluated.

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

226 (4)(D) **Certification presumptions.** If the Council finds the senior judge or court
227 commissioner has met the performance standards, it is presumed the Council will
228 certify the senior judge or court commissioner for reappointment. If the Council
229 finds the senior judge or court commissioner did not meet the performance
230 standards, it is presumed the Council will not certify the senior judge or court
231 commissioner for reappointment. The Council may certify the senior judge or
232 court commissioner or withhold decision until after meeting with the senior judge
233 or court commissioner.

- 234 (4)(E) **Overcoming presumptions.** A presumption against certification may be
235 overcome by a showing of good cause to the contrary. A presumption in favor of
236 certification may be overcome by:
- 237 (4)(E)(i) reliable information showing non-compliance with a performance
238 standard; or
- 239 (4)(E)(ii) formal or informal sanctions of sufficient gravity or number or both to
240 demonstrate lack of substantial compliance with the Code of Judicial
241 Conduct.
- 242 (4)(F) **August Council meeting.** At the request of the Council the senior judge or court
243 commissioner challenging a non-certification decision shall meet with the Council
244 in August. At the request of the Council the presiding judge shall report to the
245 Council any meetings held with the senior judge or court commissioner, the steps
246 toward self-improvement identified as a result of those meetings, and the efforts
247 to complete those steps. Not later than 5 days after the July meeting, the
248 Administrative Office of the Courts shall deliver to the senior judge or court
249 commissioner being evaluated notice of the Council's action and any records not
250 already delivered to the senior judge or court commissioner. The notice shall
251 contain an adequate description of the reasons the Council has withheld its
252 decision and the date by which the senior judge or court commissioner is to
253 deliver written materials. The Administrative Office of the Courts shall deliver
254 copies of all materials to the Council and to the senior judge or court
255 commissioner prior to the August meeting.
- 256 (4)(G) **August Council meeting closed session.** At its August meeting in a session
257 closed in accordance with Rule 2-103, the Council shall provide to the senior
258 judge or court commissioner adequate time to present evidence and arguments
259 in favor of certification. Any member of the Council may present evidence and
260 arguments of which the senior judge or court commissioner has had notice
261 opposed to certification. The burden is on the person arguing against the
262 presumed certification. The Council may determine the order of presentation.
- 263 (4)(H) **Final certification decision.** At its August meeting in open session, the Council
264 shall approve its final findings and certification regarding all senior judges and
265 court commissioners whose terms of office expire that year.
- 266 (4)(I) **Communication of certification decision.** The Judicial Council shall
267 communicate its certification decision to the senior judge or court commissioner.

268 The Judicial Council shall communicate its certification decision for senior judges
269 to the Supreme Court and for court commissioners to the presiding judge of the
270 district the commissioner serves.

271 *Effective May 1, 2019*