

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 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 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) Appellate senior judges.** On forms provided by the administrative office, the presiding judge
28 of 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.

30 **(1)(C) District and juvenile court senior judges.** On forms provided by the administrative office, the
31 presiding judge of the district an active senior judge primarily serves shall complete an evaluation of the
32 senior judge's performance every eighteen months starting after the senior judge's initial term.

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

36 | ~~(1)(E) The presiding judge shall provide a copy of each commissioner evaluation to the Judicial~~
37 ~~Council.~~(1)(FE) **Senior judges and "Needs Improvement" ratings.** If a senior judge receives an overall
38 "Needs Improvement" rating on the performance evaluation, the evaluator shall provide a copy of the
39 evaluation to the Judicial Council.

40 | (2) **Evaluation and Certification Criteria.** Active senior judges and court commissioners shall be
41 evaluated and certified upon the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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

60 (2)(N) management of workload;

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

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

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

66 | **(34) Standards of performance.**

67 | **(34)(A) Survey of attorneys.**

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

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

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

78 | (34)(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 responses
81 | is 70% or greater.

82 | (34)(A)(ii)(c) A court commissioner's performance is satisfactory if:

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

84 | (34)(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 | (34)(A)(ii)(d) The Judicial Council shall determine whether the senior judge's survey scores
87 | are satisfactory.

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

91 | **(34)(A)(iv) Exclusion from survey respondents.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

139 | (34)(E) **Substantial compliance with Code of Judicial Conduct.** Satisfactory performance is
 140 | established if the response of the senior judge or court commissioner demonstrates substantial
 141 | compliance with the Code of Judicial Conduct, if the Council finds the responsive information to be
 142 | complete and correct and if the Council's review of formal and informal sanctions lead the Council to
 143 | conclude the court commissioner is in substantial compliance with the Code of Judicial Conduct. Under
 144 | Rule 11-201 and Rule 11-203, any sanction of a senior judge disqualifies the senior judge from
 145 | reappointment.

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

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

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

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

160 | **(4) Judicial Council certification process**

161 | **(4)(A) July Council meeting.** At its meeting in ~~August~~ July, the Council shall begin the process of
 162 | determining whether the senior judges and court commissioners whose terms of office expire that year

163 meet the standards of performance provided for in this rule. The Administrative Office of the Courts shall
164 assemble all evaluation information, including:

165 | (45)(A)(i) survey scores;

166 | (45)(A)(ii) judicial education records;

167 | (45)(A)(iii) self-declaration forms;

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

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

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

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

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

177 | (45)(D) **Certification presumptions.** If the Council finds the senior judge or court commissioner has
178 met the performance standards, it is presumed the Council will certify the senior judge or court
179 commissioner for reappointment. If the Council finds the senior judge or court commissioner did not meet
180 the performance standards, it is presumed the Council will not certify the senior judge or court
181 commissioner for reappointment. The Council may certify the senior judge or court commissioner or
182 withhold decision until after meeting with the senior judge or court commissioner.

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

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

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

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

196 senior judge or court commissioner is to deliver written materials. The Administrative Office of the Courts
197 shall deliver copies of all materials to the Council and to the senior judge or court commissioner prior to
198 the ~~September~~ August meeting.

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

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

208 (45)(I) **Communication of certification decision.** The Judicial Council shall communicate its
209 certification decision to the senior judge or court commissioner. The Judicial Council shall communicate
210 its certification decision for senior judges to the Supreme Court and for court commissioners to the
211 presiding judge of the district the commissioner serves.

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