



TRANSPARENT  
COURTHOUSE™

## A Blueprint for Judicial Performance Evaluation

INSTITUTE FOR THE  
ADVANCEMENT  
OF THE AMERICAN  
LEGAL SYSTEM

 UNIVERSITY OF DENVER

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The Institute for the Advancement of the American Legal System (IAALS)  
at the University of Denver is a non-partisan legal reform organization devoted to targeting  
dysfunctional areas of the system and offering innovative, real-world solutions.

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# SECTION ONE



Building a Transparent Courthouse



### INTRODUCTION

The Transparent Courthouse™ is an umbrella concept for the proactive court system of the 21st century – a system that is dedicated to the goals of accountability, accessibility, and action. All three goals are intended to help courts be responsive to the needs of their constituents by demystifying the courts and the legal process.

The materials in this booklet are intended to help you design a program to enhance the first goal – accountability – through judicial performance evaluation (JPE). The public demand for judicial accountability has risen considerably in recent years, and never has it been more important for courts to acknowledge that demand and take ownership of it. Indeed, if courts do not innovate ways to hold themselves accountable, the public will do it for them, often through drastic means such as jurisdiction-stripping.

Judicial performance evaluation programs are a proven approach to promoting accountability without unnecessarily restricting judicial independence. Judges are evaluated on neutral criteria related to the process of judging, rather than the specific case outcomes. JPE programs can be shaped in many different ways, to meet the specific needs of a state's judiciary and citizenry.

These materials will guide you through the process of establishing a new judicial performance evaluation system (or refining an existing one). Using the accompanying checklist, you should consider each of the fifteen questions in the order presented and make the best choice for your jurisdiction. The result should be a coherent, cohesive blueprint for a JPE system.

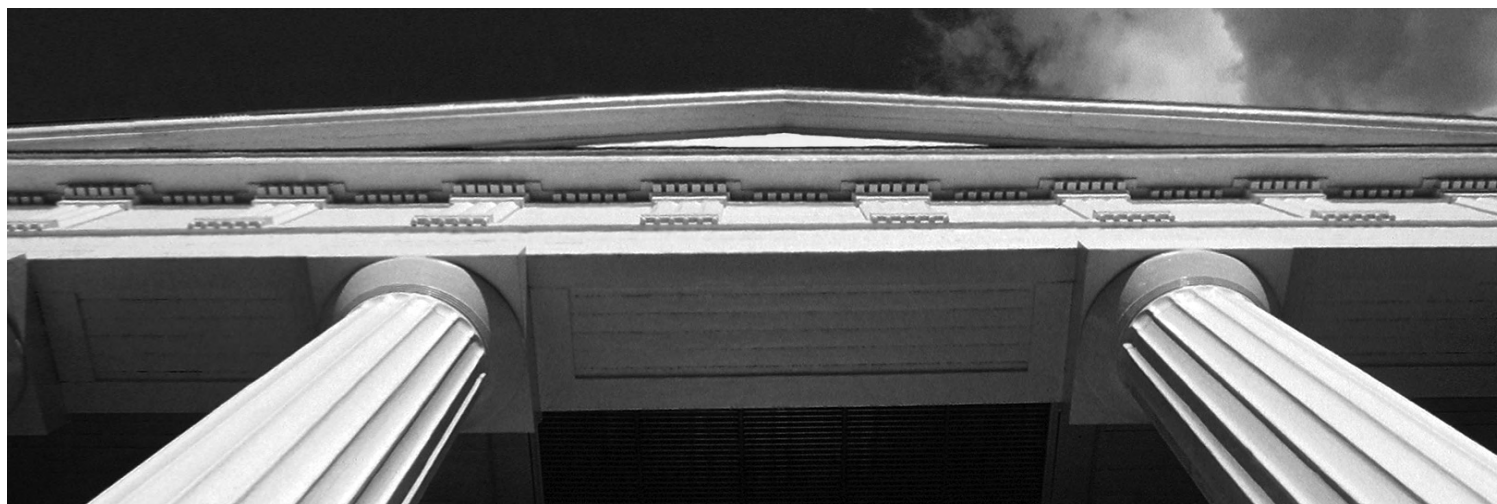
### PRINCIPLES OF JUDICIAL PERFORMANCE EVALUATION

A well-constructed judicial performance evaluation program, like a well-constructed courthouse, requires high quality materials. For JPE those materials take the form of four core principles. These principles are:

- **Transparency** – The system should be designed so that all involved – the judges, the evaluation commission, survey respondents, and the public – fully understand and trust the evaluation process.
- **Fairness** – Evaluations should be fair in design and result.
- **Thoroughness** – Evaluations should take into account all relevant information, and be done frequently enough so that the data is meaningful. The data upon which evaluations rely must be as comprehensive as possible.
- **Shared expectations** – Evaluations should teach judges about their strengths and weaknesses on the bench, and promote improved performance. At the same time, evaluations should teach the public about the proper way to evaluate a judge, based on process-oriented measures, not individual case outcomes.

As you proceed in designing your own JPE system, remember that each building block should remain true to these principles.

### THE BUILDING BLOCKS



There are fifteen building blocks for a judicial performance evaluation program:

1. **Authorization:** How should a judicial performance evaluation program be legally authorized?
2. **Implementation:** What will the rules governing the program say?
3. **Placement:** What branch of government, if any, should oversee the program?
4. **Reach:** Should there be local performance commissions for local judges?
5. **Composition:** What should the make-up of the performance commission be, and how should its members be chosen?
6. **Timing:** How frequently should evaluations be conducted?
7. **Confidentiality:** When, if at all, should evaluations be kept confidential?
8. **Deliberation:** Should the commission's meetings be open to the public?
9. **Criteria:** What are the appropriate bases for evaluating judges?
10. **Data Collection:** What information do we want on the judges?
11. **Benchmarks:** What threshold standards should be expected of every judge?
12. **Recommendation:** Should the commission issue a formal recommendation on retention, if applicable?
13. **Appeal:** What process should a judge have to appeal the evaluation results?
14. **Publication:** What information should the commission make available to the public?
15. **Dissemination:** How should the commission's work be made available to the public?

### ASSEMBLING THE BUILDING BLOCKS

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#### 1

#### *Authorization*

Many states with existing JPE programs have chosen to authorize them by statute. Statutory authorization represents a balanced approach, combining a certain degree of permanence with the flexibility to implement changes at the legislature's discretion.

Another option is to mandate judicial performance evaluation in the state constitution. This approach is obviously more rigid than a statutory scheme, but it may be appropriate under some circumstances. For example, if you are considering a constitutional change from election of judges to merit selection, inclusion of a JPE requirement as part of the merit selection scheme may satisfy voters that appointed judges will be held accountable. Similarly, placing the fundamentals of a JPE program in the state constitution may make sense if there is a desire to protect the program from legislative amendment. Currently, only Arizona requires performance review of its judges in its constitution.

In contrast to the rigidity of constitutional authorization, the most flexible approach is to authorize judicial performance evaluation by court rule or some other judicial mechanism. Several states have used this method, but it is less preferable than a statute because it leads to the public perception that no outside source is promoting judicial accountability. In other words, if JPE is authorized solely at the discretion of the judiciary, the public may perceive that it is designed purely to benefit judges, not to provide an accurate and impartial assessment of their performance.

Representative samples of authorizing statutes and court rules are included in Appendix A.

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#### *Implementation*

#### 2

In addition to an authorizing document, most states have rules governing the judicial performance evaluation process. Such rules can implement the operating procedures of the performance commission as well as the standards the commission should apply. To the extent not spelled out in the authorizing statute, the governing rules should detail the composition of the commission, the information it must collect on each judge, the criteria used to evaluate judges, and the form of the commission's final evaluation or report. The rules should also set forth information on the frequency of evaluations and the extent to which they will be kept confidential.

Arizona and Colorado have developed two of the most comprehensive sets of rules, which are included as models in Appendix B.

### 3

#### *Placement*

Several states, including Alaska and Colorado, currently house their performance commissions within the judicial branch – for budgetary as well as staffing purposes. This is a reasonable choice to protect judicial independence and avoid politicization of the evaluation process. However, there must be great care taken to assure that the commission and its staff are themselves independent from the rest of the judiciary and from the state court administrator. This means that the commission should have a separate line-item budget within the judicial branch budget, its own staff and its own autonomy. Otherwise, the commission necessarily falls prey to the criticism that it may be influenced by the very judges it must evaluate.

A better solution may be to create a separate office altogether to conduct judicial performance evaluations. An office with a budget, staffing, and a physical location away from the judiciary or the state court administrator is most likely to be viewed as independent of judicial influence.

Some have suggested placing the performance commission within the legislative or executive branches, ostensibly to assure that it will not be unduly pressured by ties to the judiciary. These approaches, however, pose too great a risk of infecting the commission with partisan politics, which violates the core principle of fairness.

#### *Reach*

### 4

Every state with a current JPE program uses a statewide commission for evaluating judges. Colorado additionally uses 22 local commissions, corresponding to each of the state's judicial districts. The local commissions evaluate trial judges in each of their respective districts, while the statewide commission is charged with evaluating all of the state's appellate judges.

Local commissions are expected to have a greater familiarity with the judges they evaluate, making them better equipped to draw lessons about judicial performance on an individual basis. More local commissions also reduces the workload of a statewide commission, which might otherwise have to review dozens of judges during each evaluation cycle.

Local commissions, however, may not be practical in some jurisdictions, for three reasons. First, additional commissions require more commission members, and some states may find themselves hard-pressed to find enough committed volunteers to serve. Second, there is an added administrative challenge associated with coordinating multiple commissions. Third, multiple commissions may cause incremental cost increases.

The appropriateness of local commissions depends on each state's political landscape and the means by which its judges are chosen. Colorado's use of state and local commissions is successful in part because Colorado uses the same structure in its judicial nominating process. In a state like Kansas, however, where the process of selecting trial court judges is not homogenous (i.e., some judges are appointed and others elected), it may be simpler and more effective to have one statewide body oversee all evaluations.

### 5

### *Composition*

Performance commissions vary significantly by size and composition. Historical operation suggests that the size of the commission is immaterial to its ability to conduct thorough performance reviews. For example, Alaska's seven-member commission and Arizona's thirty-member commission have both worked well in practice. Commission size can be selected based on the pool of qualified volunteers and the commission's workload.

The composition of the commission does matter. Many states require a rough balance of attorneys and non-attorneys among the commission membership. Both types of members are necessary: attorneys play an important role as relative experts on the legal system, while non-attorneys contribute an important outsiders' perspective. The inclusion of non-attorneys also builds public confidence that judges are not just being evaluated by those in their own profession.

Several states require partisan balance on the commission, so that judges and the public are comfortable that evaluations are not driven by the party affiliation of the judges or that of the governor who appointed them. Here perception is as important as reality; even thorough and neutral evaluations will be discounted if the commission is seen as partisan. Accordingly, it is recommended that the evaluation commission be balanced along partisan lines.

States should be cautious, however, about setting too many requirements for balancing commission membership. Although some have argued for requiring commissions to have geographic, gender, ethnic or racial balance as well, in practice it may be difficult to fill a commission with competent, dedicated volunteers if there are too many factors to balance. Ultimately, the most important characteristics of any successful commission member are dedication, care and an open mind.

There are many different models for appointing members to the commission, including appointments by various state officials, local officials, and/or the state bar association. It is recommended that states adopt an appointment system similar to that used in Colorado, which divides appointment authority more or less equally between the three branches of state government. Under that scheme, the governor and the chief justice of the supreme court each appoint one attorney and two non-attorneys to the commission, and the speaker of the house and president of the senate each appoint one attorney and one non-attorney. The involvement of all three branches of government assures that the judicial branch is simultaneously accountable and protected.

Commissioners' terms of office should be set either in the authorizing statute or the governing rules. It is recommended that terms of office be staggered to preserve institutional memory between evaluation periods.



### 6

#### *Timing*

Evaluations become more valuable when they occur more often. Frequent, regular evaluations assist judges by identifying areas of weakness early and allowing them to work toward professional self-improvement. Frequent evaluations also provide the commission with a larger amount of data with which to work, lowering the chance that an evaluation will be seen as an aberration.

Costs and commission fatigue must be taken into account when increasing the frequency of evaluations. For example, instituting mid-term evaluations with a review and publication process identical to term-end evaluations would double the time spent by the commission, and would also double the cost of evaluation. It is possible to reduce costs and volunteer time, however, by modifying the process or the distribution of mid-term evaluations. For instance, mid-term evaluations may be conducted according to the full review process, but the results not disseminated until the next election cycle.

#### *Confidentiality*

### 7

Transparency is the fundamental goal of judicial evaluations, both with respect to the process used to evaluate each judge and the results of each evaluation. Several states have satisfied this principle, by transmitting comprehensive information about each judge's evaluation to the public. Some jurisdictions, however, have chosen to keep evaluations entirely confidential, or have disseminated only general, court-wide results to the public, without providing any information on individual judges.

Under no circumstances should evaluation results always be kept confidential. Failure to provide evaluation results to the public is a missed opportunity to educate voters about the proper criteria for evaluating judges, as well as a failed occasion to praise excellent judges and hold less-than-excellent judges accountable. Furthermore, in the absence of official performance evaluations, the public is apt to rely on less comprehensive substitutes such as bar polls or judge rankings.

Evaluations should always be made public when the judge being evaluated is facing an election. When done properly, JPE provides the public with impartial, comprehensive information about judges on the ballot – the only such information voters are likely to receive. Indeed, in the absence of evaluation results, voters are left to rely on information entirely unrelated to the judge's job performance in determining whether to retain the judge in office, such as name recognition, ethnicity, or gender.

On the other hand, confidentiality may be appropriate where the judge is not scheduled to face voters immediately. For example, if an appellate judge with an eight-year term is evaluated every two years, keeping the mid-term evaluations confidential allows the judge to identify – and acknowledge – areas of professional strength and weakness without the accompanying pressure of an election. Confidential mid-term evaluations would also be somewhat less expensive than public evaluations, because there would be no related cost of disseminating the information.

If full transparency is not practical, the Institute recommends an amalgamated approach, in which mid-term evaluations are initially shared only with the judge, but during election years all previous mid-term reports and the election year report are publicly disseminated. This approach allows a judge to work toward professional self-improvement out of the public eye, but holds the judge accountable to the voters for whether that improvement was actually achieved.

In states where judges are appointed and do not face retention elections, evaluations should be made public at regular intervals.

### 8

#### *Deliberation*

Public meetings enhance public trust and confidence. Like every other part of the evaluation process, the more the public understands the commission's role and thinking, the more likely it is to accept the commission's conclusions.

Open meetings also enhance judicial trust. If the commission's deliberations are open to the public, judges can feel comfortable that the commission's final evaluation was the result of a good faith discussion, not a closed-door effort to damage specific judges' reputations.

Open meetings, however, are not without risks. There may be a chilling effect on commission members who are afraid to speak candidly about a judge in public, especially if they are likely to appear before that judge again. On the other hand, should a commission member be prone to grandstanding, a public forum invites it all the more. There is also some risk that public attendees themselves will attempt to disrupt the proceedings. In practice, however, there have been no reports of open meetings being any less efficient or productive than closed meetings. Also as a practical matter, meetings are likely to pull relatively few public attendees, meaning they can serve the public interest without the risk of commotion.

#### *Criteria*

### 9

The right criteria for evaluation are a critical part of the decision process. The criteria for trial judges must differ from the criteria for appellate judges. For example, a trial judge should be evaluated generally on the basis of case management skills, fairness and demeanor, and teamwork. Appellate judges should be evaluated on the basis of clarity of opinions, adherence to the facts and law of the case and workload management. A proposed set of evaluation criteria is set out in the accompanying checklist. In addition, model surveys are attached as Appendices C through H.

### 10

#### *Data Collection*

Data collection is a matter of best practices. As detailed in the accompanying checklist, the commission should generally collect anonymous, reliable survey data from a variety of sources (including attorneys, jurors, litigants, witnesses, court staff, and others who have interacted with the judge in a professional setting); information gleaned from courtroom observation; sample opinions and orders from each judge; case management statistics; and public comments. The Institute recommends that the data be somewhat different for trial judges than for appellate judges. Alaska's use of court observers for trial judges is recommended, as is New Mexico's broad surveys related to appellate judges.

Surveys should be sent to a wide range of sources in part because the volume of raw data is important. Many survey recipients will not complete and return the surveys when they receive them. Accordingly, reminders and follow-ups may be appropriate. In the interest of collecting more raw data, states may also want to explore making public questionnaires or comment cards available at the courthouse and online. While such data would be anecdotal and not as reliable as scientific surveys, it still could be made available to the evaluation commission as additional information on public perception of the judge's performance. The Institute cautions that it is not aware that any state or jurisdiction has used public questionnaires or comment cards to date.

One of the most significant challenges in data collection is protecting the confidentiality of survey participants. If survey recipients fear that the judge will identify them by their comments, they may limit their comments to positive traits or decline to comment altogether. Accordingly, written comments on surveys should be carefully scrutinized for identifying information (such as names, case numbers, or unique facts about the case) before they are submitted to the judge, and survey participants should be assured that their identities will not be revealed. Identity can be further masked by having survey data compiled by an third party unaffiliated with the judicial branch.

## 11

*Benchmarks*

It is important that the commission set benchmarks for judicial performance prior to beginning the evaluation process. Such benchmarks serve as guideposts for both the commission and the judges, and reduce the risk that the commission will reach a conclusion about a judge that is inconsistent with the totality of the information collected. Closely tying the commission's evaluation to predetermined benchmarks also adds credibility to the evaluation.

The Institute proposes the following set of sample benchmarks for evaluation of judges:

1. At minimum, an average performance on at least 80% of all survey questions ("average performance" meaning, for example, a score of 3.0 on a 1-5 scale, or at least 75% of respondents answering "yes" to a yes/no question);
2. For trial judges, no cases with issues under advisement more than 90 days, unless the judge's particular docket assignment justifies exceptions;
3. For appellate judges, the authorship of a proportionate number of opinions authored by that court on average in a given calendar year, taking into account both particularly complex cases and concurring or dissenting opinions authored during the same period;
4. All or nearly all written opinions clearly and accurately describe the relevant facts and applicable law, and clearly state the court's order; and
5. No findings by a body charged with judicial discipline that the judge has violated the applicable code of judicial conduct.

*Recommendation*

## 12

The majority of states that conduct evaluations ask the performance commission to offer a recommendation on whether the evaluated judge should be retained in office. Alaska and Colorado also publicly announce the results of the commission's vote, so that voters can determine whether the commission reached its recommendation unanimously. In most cases, the recommendation is simply to retain or not retain the judge. Colorado also has a rarely used category of recommendations designated "No Opinion," meaning that the commission could not reach a recommendation based on the information available to it.

Studies suggest that voters tend to follow the commission's recommendations. Anecdotal evidence also suggests that most voters will use the recommendations as a shortcut on how to vote, and may ignore the underlying details or rationale. In other words, voters treat the commission's work as a proxy for their own investigation into judicial performance, and vote accordingly. This underscores the importance of the commission reaching its recommendation based on carefully defined procedures and rules.

Perhaps because voters attach overwhelming weight to formal recommendations, commissions in two states simply issue statements as to whether each judge has met pre-approved benchmarks. In Arizona, the commission members vote on whether each judge "meets" or "does not meet" judicial performance standards, and the vote total is made public. In Utah, the commission also issues a determination as to whether the judge has exceeded the standard for acceptable performance, based on rigid performance standards. It does not make a recommendation, and there is no publication of vote totals.

It is of course inappropriate for a commission to issue a formal recommendation on a candidate for a contested judicial election; however, the commission may certainly state whether the candidate meets the threshold standards for acceptable performance.

## 13

*Appeal*

A number of states provide for an appeal process by which the judge can challenge the commission's conclusions. That is clearly the preferred alternative in order to protect the fairness of the process.

Appeals can work in slightly different ways, but whatever method is adopted should allow the judge to review the evaluation before the public does, and challenge conclusions that he deems inaccurate. In Arizona, for example, the judge may review a draft of the commission's report before it is disseminated to the public, and he may submit oral or written comments to the commission if he disagrees with the evaluation. New Mexico embraces the same concept, but requires that comments from the judge be written. Colorado similarly allows a judge who is concerned with the commission's report and retention recommendation to request an additional interview. If the commission still recommends that the judge should not be retained, the judge may include with the commission's published recommendation a written statement setting out his own position.

You may also wish to permit the judge (or a commission member) to appeal the decision to an outside body if he is concerned that the commission's governing rules were not followed properly. This option is currently available in Colorado.

*Publication*

## 14

Historically, one of the biggest challenges for performance commissions has been determining the amount of information that it should provide to the public. Providing too little information prevents the public from making informed judgments about the judiciary, and undercuts a central purpose of performance evaluation. Providing too much information, however, tends to overwhelm the public, and they simply disregard it.

The Institute recommends a multi-tiered approach to disseminating evaluation results. The lowest tier is appropriate for "quick reads" such as voter guides and newspapers, and should include basic biographical information on the judge, a summary of his strengths and weaknesses, and the recommendation of the commission (if any). A second tier might include a slightly more detailed analysis, with summaries of survey data and case management statistics. Finally, at the highest tier, the entire evaluation (including all data at the commission's disposal) should be made available to public upon demand.

Different members of the public will require different levels of information about their judges. Rather than guessing at who would like what information, the commission should be sure that higher-tier, more detailed information is available and easy to access. Posting such information on a commission website is one easy and cost-effective solution.

While survey data should be made available, the commission should think carefully about publishing written comments about the judge received from survey participants or the public. Written comments should be shared with the judge and taken into account by the commission, of course, but past experience has shown that many such comments are mean-spirited, or otherwise inappropriate, and would not benefit the public.

For every tier of information, the commission should publish a clear, concise explanation of the evaluation process, including an exposition on the criteria used to evaluate each judge, the data collected, and the procedure by which the commission's recommendation (if any) was reached. A model explanation is attached at Appendix I.

## 15

## *Dissemination*

To serve the purpose of educating and informing the electorate, the commission's conclusions must be widely disseminated. A commitment to public judicial performance evaluation involves a concomitant commitment to assuring that the results are widely known: by the use of websites, press coverage and even advertisements.

To this end, the commission should strive to place evaluation information in the hands of voters in as many ways as possible. In election cycles, evaluation reports should be included in voter guides and available on a specific commission website. The commission may also want to explore newspaper ads, as well as making reports available in hard copy in courthouses and selected public buildings.

The commission may also want to promote a voter education campaign in connection with the release of evaluation results. Such a campaign might include working with the local media to inform voters about the evaluation process, and/or with public interest groups that provide voter education services. The Alaska Judicial Council has even run radio advertisements to inform voters that judicial evaluations have been conducted, and where voters can get more information. Regardless of the approach used, at the end of the evaluation process, the public should know three things: (1) that information on the performance of their judges is available; (2) where the information is available; and (3) what information they can expect to find.



*For further information on the purpose and fundamentals of judicial performance evaluation, you may download a free report entitled “Shared Expectations: Judicial Accountability in Context” from the Institute’s website, [www.du.edu/legalinstitute](http://www.du.edu/legalinstitute).*

## SECTION TWO



# Building Blocks

for Judicial Performance Evaluation



### *A Checklist for Creating or Improving a JPE Program*

#### 1. How will the judicial performance program be legally authorized?

- ☐ Statute (recommended)
- ☐ Constitutional provision
- ☐ Court opinion or court rule
- ☐ Other ( \_\_\_\_\_ )

#### 2. What will the rules governing the program say?

It is recommended that any subject matter listed below be addressed in the governing rules if it is not included in the JPE program's authorizing document.

#### *Check all that apply:*

- ☐ Commission membership
  - ☐ Appointment of commission members
  - ☐ Qualifications for membership
  - ☐ Term of office
    - ☐ Length of term
    - ☐ Staggered or concurrent terms?
  - ☐ Requirements of overall commission composition (if applicable)
  - ☐ Process for choosing a chair or co-chairs
- ☐ Frequency of judicial evaluations
- ☐ Criteria for evaluations
- ☐ Data to be collected for evaluations
- ☐ Judge's right of appeal (if applicable)
- ☐ Frequency and form of published evaluation results
- ☐ Other ( \_\_\_\_\_ )

### 3. What branch of government, if any, should oversee the program?

- ☐ Program administered, funded and staffed by the judicial branch
- ☐ Program included in judicial budget, but with independent staff
- ☐ Separate governmental office with staff and line-item budget independent of the judiciary
- ☐ Wholly independent from state government
- ☐ Other ( \_\_\_\_\_ )

### 4. Should there be local commissions for local judges?

- ☐ One statewide commission for all judges
- ☐ Statewide commission for appellate judges and local commissions for trial judges
- ☐ Other ( \_\_\_\_\_ )

### 5. What should the makeup of the commission be, and how should its members be chosen?

Will any of following be required with respect to the composition of the commission?

- ☐ Partisan balance (recommended)
- ☐ Geographic balance
- ☐ Gender balance
- ☐ Racial or ethnic balance
- ☐ Other ( \_\_\_\_\_ )

Complete the chart, indicating the number of commission members in each category on the left to be appointed by each branch of government on the top.

	<i>CHIEF JUSTICE</i>	<i>GOVERNOR</i>	<i>LEGISLATURE</i>	<i>OTHER</i>
<b>ATTORNEYS</b>				
<b>JUDGES</b>				
<b>PUBLIC</b>				
<b>OTHER</b>				



### 6. How frequently should evaluations be conducted?

- ☐ Only prior to a retention election or a contested judicial election
- ☐ In election years and at least one other time during the judge's term (recommended)
  - ☐ Full-scale evaluation (as in election years)
  - ☐ Modified or limited evaluation (Explain: \_\_\_\_\_)
- ☐ Annually
  - ☐ Full-scale evaluation (as in election years)
  - ☐ Modified or limited evaluation (Explain: \_\_\_\_\_)
- ☐ Other ( \_\_\_\_\_ )

### 7. When, if at all, should evaluations be kept confidential?

- ☐ Never, all results made public
- ☐ Results made public only in election years
- ☐ Other ( \_\_\_\_\_ )

### 8. Should the commission's meetings be open to the public?

- ☐ All meetings open to the public
- ☐ Selected meetings open to public (indicate which: \_\_\_\_\_)
- ☐ No meetings open to the public

### 9. What are the appropriate criteria for evaluating judges?

*For trial judges, check all that apply:*

- ☐ Legal knowledge
  - ☐ Demonstrated understanding of substantive law and relevant rules of procedure and evidence
  - ☐ Awareness and attentiveness to the factual and legal issues before the court
  - ☐ Proper application of statutes, judicial precedents, and other appropriate sources of legal authority

## SECTION 2: Building Blocks for Judicial Performance Evaluation

☐ **Integrity**

- ☐ Avoids impropriety or the appearance of impropriety
- ☐ Displays fairness and impartiality toward all parties
- ☐ Avoids ex parte communications

☐ **Communications skills**

- ☐ Clearly explains all oral decisions
- ☐ Issues clear written orders and opinions
- ☐ Clearly explains relevant information to the jury

☐ **Judicial temperament**

- ☐ Shows courtesy toward attorneys, court staff, and others in the courtroom
- ☐ Maintains and requires order and decorum in the courtroom
- ☐ Shows and expects professionalism from everyone in the courtroom
- ☐ Demonstrates appropriate demeanor on the bench

☐ **Administrative performance**

- ☐ Appears prepared for all hearings and trials
- ☐ Uses court time efficiently
- ☐ Issues opinions and orders without unnecessary delay
- ☐ Effectively manages cases
- ☐ Offers help to fellow judges where appropriate
- ☐ Shares burden of court workload

☐ **Public outreach**

- ☐ Participates in programs designed to educate the public about the judicial system
- ☐ Participates in activities designed to improve the legal system

☐ Other ( \_\_\_\_\_ )

## SECTION 2: Building Blocks for Judicial Performance Evaluation

*For appellate judges, check all that apply:*

- ☐ **Legal knowledge**
  - ☐ Opinions demonstrate understanding of substantive law and relevant rules of procedure and evidence
  - ☐ Opinions demonstrate attentiveness to factual and legal issues before court
  - ☐ Opinions adhere to precedent or clearly explain legal basis for departure from precedent
- ☐ **Integrity**
  - ☐ Avoids impropriety or the appearance of impropriety both in court and out of court
  - ☐ Displays fairness and impartiality toward all parties
  - ☐ Avoids ex parte communications
- ☐ **Communication skills**
  - ☐ Opinions are clearly written and understandable
- ☐ **Judicial temperament**
  - ☐ Demonstrates courtesy toward attorneys, court staff, and others in the courtroom
  - ☐ Maintains and requires decorum in the courtroom
  - ☐ Demonstrates preparedness for oral argument
- ☐ **Administrative performance**
  - ☐ Effective workload management
  - ☐ Offers help to fellow judges where appropriate
  - ☐ Shares burden of court workload
- ☐ **Public outreach**
  - ☐ Participates in programs designed to educate the public about the judicial system
  - ☐ Participates in activities designed to improve the legal system
- ☐ Other (\_\_\_\_\_)

### 10. What information do we want on judges?

*Check all that apply:*

- ☐ Data from anonymous surveys
  - ☐ Attorneys
  - ☐ Jurors (trial judges only)
  - ☐ Litigants
  - ☐ Court staff
  - ☐ Law clerks
  - ☐ Peer judges with the same bench assignment
  - ☐ Police and probation officers (trial judges only)
  - ☐ Social workers (trial judges only)
  - ☐ Court-appointed special advocates (trial judges only)
  - ☐ Guardians ad litem (trial judges only)
  - ☐ Courtroom interpreters (trial judges only)
  - ☐ Lay and expert witnesses (trial judges only)
  - ☐ Law professors (appellate judges only)
  - ☐ Trial judges (appellate judges only)
  - ☐ Other ( \_\_\_\_\_ )
- ☐ Individual case management data
- ☐ Representative opinions and orders
- ☐ Detailed interviews or questionnaires to selected attorneys
- ☐ Written comments from the public
- ☐ Public hearings
- ☐ Courtroom observation
  - ☐ By the performance commission
  - ☐ By independent observers
  - ☐ By videotape

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- ☐ Judicial self-evaluation
- ☐ Interview(s) with the judge
- ☐ Other statistical data ( \_\_\_\_\_ )
- ☐ Information from unsolicited public questionnaires
- ☐ Other ( \_\_\_\_\_ )

### 11. What threshold standards should be expected of every judge?

*Check all that apply:*

- ☐ Survey ratings indicating at least average performance on at least 80% of survey questions
- ☐ No cases with issues under advisement more than 90 days, unless the judge's particular docket justifies exceptions (trial judges only)
- ☐ Authorship of a proportionate number of opinions authored by the court as a whole in a given calendar year, taking into account both particularly complex cases and concurring and dissenting opinions authored during the same period (appellate judges only)
- ☐ All or nearly all written opinions clearly and accurately describe the relevant facts and applicable law, and clearly state the court's order
- ☐ No findings by a body charged with judicial discipline that the judge has violated the applicable code of judicial conduct
- ☐ Other ( \_\_\_\_\_ )

### 12. Should the commission issue a formal recommendation on retention, if applicable?

- ☐ Formal recommendation indicating commission's vote count
- ☐ Formal recommendation without vote count
- ☐ Statement as to whether judge meets benchmarks, with vote count
- ☐ Statement as to whether judge meets benchmarks, without vote count
- ☐ No statement issued by commission
- ☐ Not applicable (judges not subject to retention elections)

### 13. What process should be available to judges have to appeal the recommendation?

*Check all that apply:*

- ☐ Request for additional interview with commission
- ☐ Opportunity to submit written comments to commission
- ☐ Opportunity to submit statement for inclusion in voter guide
- ☐ Formal appeal to outside body

### 14. What information should the commission make available to the public?

*Check all that apply:*

- ☐ Recommendation on retention or statement of qualification (see #12)
- ☐ Judge's biographical data
- ☐ Summary of strengths and weaknesses
- ☐ Summaries of survey data
- ☐ Complete survey data

### 15. How should the commission's work be made available to the public?

*Check all that apply:*

- ☐ Voter guides (when applicable)
- ☐ Newspapers
- ☐ Commission website or other website
- ☐ Distribution at public places (courthouses, grocery stores, libraries, etc.)
- ☐ Direct mail
- ☐ Television or radio
- ☐ Educational collaboration with other organizations
- ☐ Other ( \_\_\_\_\_ )

# APPENDIX A



### APPENDIX A: *Sample Statutes and Court Orders*



Source: *Colorado Revised Statutes Article 5.5*

#### Commissions on Judicial Performance

- 13-5.5-101. Legislative declaration.
- 13-5.5-102. State Commission on judicial performance.
- 13-5.5-103. Powers and duties of the state commission.
- 13-5.5-104. District commissions on judicial performance.
- 13-5.5-105. Powers and duties of district commissions.
- 13-5.5-106. Recommendations on retention of justices and judges.
- 13-5.5-107. Acceptance of private or federal grants – general appropriations.
- 13-5.5-108. Implementation of article.
- 13-5.5-109. Repeal of article.

**13-5.5-101. Legislative declaration.** The general assembly hereby finds and declares that it is in the public interest to establish a system of evaluating judicial performance to provide persons voting on the retention of justices and judges with fair, responsible, and constructive information about judicial performance and to provide justices, judges, and magistrates with useful information concerning their own performances. The general assembly further finds and declares that the evaluation of judicial performance should be conducted statewide and within each judicial district using uniform criteria and procedures established by a state commission on judicial performance pursuant to the provisions of this article.

**Source:** L. 88: Entire article added, p. 596, § 1, effective May 12. L. 97: Entire section amended, p. 1647, § 1, effective June 5.

**13-5.5-102. State commission on judicial performance. (1) (a)** There is hereby established the state commission on judicial performance, referred to in this article as the “state commission”. The state commission shall consist of ten members. The speaker of the house of representatives and the president of the senate shall each appoint one attorney and one non-attorney. The governor and the chief justice of the supreme court shall each appoint one attorney and two non-attorneys. All members of the state commission shall serve terms of four years; except that, of those first appointed, one person appointed by each appointing authority shall serve for a term of two years. All initial appointments shall be completed by July 1, 1988. The term of any member of the state commission serving as of June 30, 1997, shall expire on November 30 of the year in which the term is scheduled to expire. The term of any member appointed on or after July 1, 1997, to replace a member of the state commission at the end of his or her term shall commence on December 1 of the year in which the previous member’s term is scheduled to expire.

**(b)** Any vacancy on the state commission shall be filled by the original appointing authority, but no member shall serve more than two full terms plus any balance remaining on an unexpired term if the initial appointment was to fill a vacancy. Within five days after a vacancy arises on the state commission, the state commission shall notify the appointing authority of the vacancy, and the appointing authority shall make an appointment within forty-five days after the date of the vacancy. If the original appointing authority fails to make the appointment, or appointments if more than one vacancy, within forty-five days after the date of the vacancy, the state commission shall make the appoint mentor appointments. Justices and judges actively performing judicial duties may not be appointed to serve on the state commission. Retired justices and judges are eligible to be appointed as attorney members; except that no retired justice or judge may be assigned or appointed to perform judicial duties while serving on the state commission.

**(c)** The chair of the state commission shall be elected by its members every two years.



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(2) Members and employees of the state commission shall be immune from suit in any action, civil or criminal, based upon official acts performed in good faith as members of the state commission.

**Source:** L. 88: Entire article added, p. 596, § 1, effective May 12. L. 93: (1)(a) and (1)(b) amended, p. 658, § 1, effective April 30. L. 97: (1)(a) and (1)(b) amended, p. 1647, § 2, effective June 5.

**13-5.5-103. Powers and duties of the state commission.** (1) In addition to other powers conferred and duties imposed upon the state commission by this article, the state commission has the following powers and duties:

(a) To develop techniques for evaluating district and county judges, justices of the supreme court, and judges of the court of appeals on relevant performance criteria, which include, but are not limited to: Integrity; knowledge and understanding of substantive, procedural, and evidentiary law; communication skills; preparation, attentiveness, and control over judicial proceedings; sentencing practices; docket management and prompt case disposition; administrative skills; punctuality; effectiveness in working with participants in the judicial process; and service to the legal profession and the public;

(b) To develop surveys for lawyers, jurors, litigants, law enforcement personnel, attorneys within the district attorney's and public defender's offices, employees of local departments of social services, and victims of crimes, as defined in section 24-4.1-302 (5), determine the statistical validity of completed surveys, report to the district commissions on the statistical validity of the surveys for their district, and specify when and how statistically invalid surveys may be used and to recommend judicial performance evaluations by peers, chief judges, court personnel, and others who have direct and continuing contact with justices and judges;

(c) To prepare alternatives to surveys where sample populations are inadequate to produce valid results;

(d) To develop and determine the validity of comprehensive evaluation profiles for judges;

(d.5) To develop criteria and standards that are to be utilized in determining whether to recommend retention;

(e) To develop guidelines for disseminating and publishing the results of judicial performance evaluations;

(f) To consult with district commissions on judicial performance evaluation criteria, techniques, and sources;

(g) Repealed.

(h) To develop statewide evaluation forms and uniform criteria and procedures;

(i) To produce and distribute to the public a narrative profile and such other information as may be permitted by the rules of the state commission concerning each appellate justice or judge subject to retention election;

(j) To hire an executive director and such other employees as it deems necessary;

(k) To promulgate, subject to approval by the supreme court, rules necessary to implement and effectuate the provisions of this article, including rules to be followed by the district commissions;

(l) To develop procedures for the review of the deliberation procedures established by the district commissions. The state commission shall not have the power or duty to review actual determinations made by the district commissions.

(m) To fill vacancies on the state commission on judicial performance pursuant to section 13-5.5-102 (1) (b) or on a district commission on judicial performance pursuant to section 13-5.5-104 (1) (b).

**Source:** L. 88: Entire article added, p. 597, § 1, effective May 12. L. 93: (1)(k) amended and (1)(l) added, p. 659, § 2, effective April 30. L. 97: (1)(g) repealed, p. 1482, § 39, effective June 3; (1)(b), (1)(c), (1)(e), and (1)(i) amended and (1)(d.5) and (1)(m) added, p. 1648, § 3, effective June 5.

**13-5.5-104. District commission on judicial performance.** (1) (a) There is hereby established in each judicial district a district commission on judicial performance, referred to in this article as the "district commission". The district commission shall consist of ten members. The speaker of the house of representatives and the president of the senate shall each appoint one attorney and one non-attorney. The governor and the chief justice of the supreme court shall each appoint one attorney and two non-attorneys. All members of the district commission shall

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serve terms of four years; except that, of those first appointed, one person appointed by each appointing authority shall serve for a term of two years. All initial appointments shall be completed by July 1, 1989. The appointing authority may remove members of the district commissions for cause. The term of any member of a district commission serving as of June 30, 1997, shall expire on November 30 of the year in which the term is scheduled to expire. The term of any member appointed on or after July 1, 1997, to replace a member of a district commission at the end of his or her term shall commence on December 1 of the year in which the previous member's term is scheduled to expire.

(b) Any vacancy on the district commission shall be filled by the original appointing authority, but no member shall serve more than two full terms plus any balance remaining on an unexpired term if the initial appointment was to fill a vacancy. Within five days after a vacancy arises on a district commission, the district commission shall notify the appointing authority and the state commission of the vacancy, and the appointing authority shall make an appointment within forty-five days after the date of the vacancy. If the original appointing authority fails to make the appointment, or appointments if more than one vacancy, within forty-five days after the date of the vacancy, the state commission shall make the appointment or appointments. Justices and judges actively performing judicial duties may not be appointed to serve on the district commission. Retired justices and judges are eligible to be appointed as attorney members; except that no retired justice or judge may be assigned or appointed to perform judicial duties while serving on the district commission.

(c) The chair of the district commission shall be elected by its members every two years.

(2) The district administrator of each judicial district and his staff shall serve as the staff for the district commission.

(3) Members and employees of a district commission shall be immune from suit in any action, civil or criminal, based upon official acts performed in good faith as members of the district commission.

**Source:** L. 88: Entire article added, p. 598, § 1, effective May 12. L. 93: (1)(a) and (1)(b) amended, p. 659, § 3, effective April 30. L. 97: (1)(a) and (1)(b) amended, p. 1649, § 4, effective June 5.

**13-5.5-105. Powers and duties of district commissions.** (1) In addition to other powers conferred and duties imposed upon a district commission by this article, a district commission has the following powers and duties subject to and in conformity with the rules promulgated by the state commission and the state commission's review of deliberation procedures pursuant to section 13-5.5-103 (1) (l):(a) To distribute surveys, interview judges, and, to the extent deemed appropriate by the district commission, interview other appropriate persons, accept information and documentation from interested parties, and, following at least ten days' notice, conduct public hearings; and

(b) To draft, produce, and distribute to the public a narrative profile on each district and county judge and magistrate required to be evaluated under section 13-5.5-106 (2) or (3).

**Source:** L. 88: Entire article added, p. 598, § 1, effective May 12. L. 93: Entire section amended, p. 660, § 4, effective April 30. L. 97: Entire section amended, p. 1650, § 5, effective June 5.

**13-5.5-106. Recommendations on retention of justices and judges.** (1) (a) The state commission shall conduct an evaluation of each justice of the supreme court and each judge of the court of appeals whose term is to expire following the next general election but not before July 1, 1989. Evaluations shall be completed and the narrative profile prepared for communication to the appellate justice or judge no later than forty-five days prior to the last day available for the appellate justice or judge to declare such justice's or judge's intent to stand for retention. The appellate justice or judge shall have the opportunity to meet with the state commission or otherwise respond to the evaluation no later than ten days following such justice's or judge's receipt of such evaluation. If such meeting is held or response is made, the state commission may revise its evaluation.

(b) After the requirement of paragraph (a) of this subsection (1) is met, the state commission shall make a recommendation regarding the retention of each appellate justice or judge who declares his intent to stand for retention, which recommendation shall be stated as "retain", "do not retain", or "no opinion". A "no opinion" recommendation shall be made only when the state commission concludes that results are not sufficiently clear to make a firm recommendation and shall be accompanied by a detailed explanation.

(c) The state commission shall release the narrative profile, the recommendation, and any other relevant information to the public no later than forty-five days prior to the retention election. The state commission shall arrange to have a summary of the narrative profile and recommendation printed in the ballot information booklet prepared pursuant to section 1-40-124.5, C.R.S., and mailed to electors pursuant to section 1-40-125, C.R.S.

(2) (a) The district commission shall conduct an evaluation of each district and county judge whose term is to expire following the next

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general election but not before July 1, 1989. Evaluations shall be completed and the narrative profile prepared for communication to the judge no later than forty-five days prior to the last day available for the judge to declare such judge's intent to stand for retention. The judge shall have the opportunity to meet with the district commission or otherwise respond to the evaluation no later than ten days following such judge's receipt of such evaluation. If such meeting is held or response is made, the district commission may revise its evaluation.

(b) After the requirement of paragraph (a) of this subsection (2) is met, the district commission shall make a recommendation regarding the retention of each district or county judge who declares his intent to stand for retention, which recommendation shall be stated as "retain", "do not retain", or "no opinion". A "no opinion" recommendation shall be made only when the district commission concludes that results are not sufficiently clear to make a firm recommendation and shall be accompanied by a detailed explanation.

(c) The district commission shall release the narrative profile, the recommendation, and any other relevant information to the public no later than forty-five days prior to the retention election. The district commission shall arrange to have a summary of the narrative profile and recommendation printed in the ballot information booklet prepared pursuant to section 1-40-124.5, C.R.S., and mailed to electors within the judicial district pursuant to section 1-40-125, C.R.S.

(3) (a) In addition to the evaluations conducted pursuant to subsection (2) of this section:

(I) The district commission shall conduct evaluations and prepare narrative profiles pursuant to this subsection(3) of each district or county judge during each even-numbered year in which the judge is not scheduled for a retention election.

(II) The district commission shall conduct evaluations and prepare narrative profiles pursuant to this subsection(3) of each magistrate each odd-numbered year.

(b) Evaluations and the narrative profile developed under this subsection (3) shall be delivered to the judge or magistrate on or before July 1 of the year in which the evaluation is performed. The judge or magistrate shall have the opportunity to meet with the district commission or otherwise respond to the evaluation no later than ten days following receipt of such evaluation. If such meeting is held or response is made, the district commission may revise its evaluation.

(c) The district commission shall release the narrative profile and any other relevant information developed under this subsection (3) to the chief judge of the court and to the judge or magistrate no later than September 1 of the year in which the evaluation is performed. By September 1 of the year in which the evaluation is performed, the narrative profile and any other relevant information developed under this subsection (3) shall also be available to the public; except that narrative profiles prepared pursuant to this subsection (3) shall not be mailed to registered voters.

**Source:** L. 88: Entire article added, p. 598, § 1, effective May 12. L. 93: (1)(a), (1)(c), (2)(a), and (2)(c) amended, p. 660, § 5, effective April 30. L. 97: (1)(c) and (2)(c) amended and (3) added, p. 1650, § 6, effective June 5.

**13-5.5-107. Acceptance of private or federal grants - general appropriations.** The state commission is authorized to accept any grants of federal or private funds made available for any purpose consistent with the provisions of this article. Any funds received pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the state commission on judicial performance cash fund, which is hereby created. Moneys in the fund may be expended by the state commission, subject to annual appropriation by the general assembly, for the purposes of this article. In addition, the general assembly may make annual appropriations from the general fund for the purposes of this article.

**Source:** L. 88: Entire article added, p. 598, § 1, effective May 12. L. 99: Entire section amended, p. 167, § 2, effective March 25.

**13-5.5-108. Implementation of article.** The implementation of this article shall be subject to the availability of funds received pursuant to section 13-5.5-107. If funds received pursuant to said section are insufficient to fully implement this article, the state commission shall reduce the number of judicial districts in which district commissions are established by section 13-5.5-104.

**Source:** L. 88: Entire article added, p. 599, § 1, effective May 12. L. 90: Entire section amended, p. 860, § 1, effective May 23.

**13-5.5-109. Repeal of article.** (1) This article is repealed, effective June 30, 2009. (2) Repealed.

**Source:** L. 88: Entire article added, p. 600, § 1, effective May 12. L. 93: Entire section amended, p. 661, § 6, effective April 30. L. 97: (2) repealed, p. 1482, § 40, effective June 3. L. 99: (1) amended, p. 167, § 1, effective March 25.



Source: *Hawaii Supreme Court Rule 19*

### **Rule 19. JUDICIAL PERFORMANCE PROGRAM.**

#### **19.1. Purposes of Judicial Performance Program.**

The courts, the public and the legal profession have a vital interest in a responsive and respected judiciary. In its supervisory role and pursuant to its power over the court system and judges, the supreme court has determined that the periodic evaluation of a judge's performance is a reliable method to promote judicial excellence and competence. Accordingly, the supreme court hereby establishes the Judicial Performance Program (herein called "program"). The purposes of the program are:

- (a) Improving individual judges' performance by providing information to the Chief Justice concerning their performance;
- (b) Providing a potential source of information for application and retention decisions by the Judicial Selection Commission of the State of Hawai'i;
- (c) Facilitating the Chief Justice's effective assignment and use of judges within the judiciary;
- (d) Improving the design and content of judicial education programs; and
- (e) Assisting the Chief Justice in discharging his or her responsibilities to administer the judiciary.

*(Amended effective June 14, 1996.)*

#### **19.2. Jurisdiction.**

All full-time, part-time and specially appointed justices and judges (herein called "judges") are subject to the exclusive evaluation processes of the supreme court and the special committee to be appointed by the Chief Justice to implement and administer the program.

However, nothing in this rule shall be construed to attempt to limit or infringe upon the proper proceedings or authority of the Commission on Judicial Conduct or the Judicial Selection Commission.

*(Amended June 19, 2002, effective July 1, 2002.)*

#### **19.3. Special committee to implement and administer the program.**

The Chief Justice shall appoint a special committee to implement and administer the program according to such procedures deemed necessary by the committee and approved by the supreme court. The committee shall consist of thirteen members - three non-lawyers, the administrative director of the judiciary, six members of the bar of the supreme court, and three judges. The Chief Justice shall designate the chair and vice-chair of the committee and the length of terms of all committee members.

The committee shall have the following powers and duties:

- (a) To promulgate, subject to the supreme court's approval, the procedures to be followed by the committee in implementing and administering the program;
- (b) To conduct periodic evaluation of performance of judges by use of appropriate evaluation procedures approved by the supreme court; and
- (c) To take any other action reasonably related to the committee's powers and duties.

The administrative director of the judiciary shall provide staff and other assistance to the committee to enable the committee to fulfill its duties under this rule. The chair of the committee may appoint subcommittees (comprised only of committee members) as may be appropriate.

The committee shall act only with the concurrence of seven of its members. Members shall receive no compensation for their services but may be reimbursed for their travelling and other expenses incidental to the performance of their duties.

### 19.4. Judicial performance evaluation criteria.

The committee shall develop, implement and administer the program to ensure that judges are evaluated according to the following criteria:

- (a) Legal ability;
- (b) Judicial management skills;
- (c) Comportment; and
- (d) Any other criteria established by the committee and approved by the supreme court.

### 19.5. Confidentiality.

(a) **Respondent confidentiality.** The program shall be implemented and administered so that the identity of any person responding to the evaluation process is kept confidential from all judges. Further, the identity of persons responding to the evaluation process shall be privileged from discovery in any lawsuit, and shall not be available to any tribunal, board, agency, governmental entity, or person.

(b) **Confidentiality of information and data.** All information, questionnaires, notes, memoranda, data, and/or reports obtained, used, or prepared in the implementation and administration of the program shall be privileged from discovery in any lawsuit, and shall not be made available to any tribunal, board, agency, governmental entity, or person, other than the Chief Justice. Except as otherwise provided herein, the Chief Justice shall have the sole discretion and authority to determine how the above information can be used to fulfill the purposes of the program.

The committee members, and all persons who implement, administer, or tabulate data for the program shall be immune from subpoena with regard to their involvement in the program.

(c) **Furnishing of information and data to the judicial selection commission.** The Chief Justice shall provide such information and data concerning the performance of a judge to the Judicial Selection Commission as the Commission may request in writing. All information and data furnished the Commission pursuant to this provision shall remain confidential.

(d) **Furnishing of summary to the evaluated judge.** The Chief Justice shall in a manner consistent with the requirements of paragraph (a) of this section relating to respondent confidentiality, furnish the judge evaluated a summary of the judge's performance as determined by the evaluation process established by this rule.

*(Amended August 9, 1991, effective August 9, 1991; further amended and effective June 14, 1996.)*

### 19.6. Immunity.

All documents and information obtained by or submitted to the committee or to the Chief Justice and all results of judicial evaluations are absolutely privileged and no lawsuit predicated thereon may be brought. Members of the committee and staff shall be immune from suit and liability for any conduct in the course of their duties.

### 19.7. Effective date.

These rules shall take effect on January 1, 1991, and shall continue in effect until further order of the court. At the end of the first two years of operation of the program, the committee shall make appropriate recommendations to the court concerning any necessary modifications, amendments or alterations of the program.

*(Added November 27, 1990, effective January 1, 1991; amended August 9, 1991, effective August 9, 1991.)*





Source: *Utah Code § 78-3-21*

### 21-21-21. Judicial Council -- Creation -- Members -- Terms and election -- Responsibilities -- Reports.

(1) The Judicial Council, established by Article VIII, Section 12, Utah Constitution, shall be composed of:

- (a) the chief justice of the Supreme Court;
- (b) one member elected by the justices of the Supreme Court;
- (c) one member elected by the judges of the Court of Appeals;
- (d) five members elected by the judges of the district courts;
- (e) two members elected by the judges of the juvenile courts;
- (f) three members elected by the justice court judges; and
- (g) a member or ex officio member of the Board of Commissioners of the Utah State Bar who is an active member of the Bar in good standing elected by the Board of Commissioners.

(2) (a) The chief justice of the Supreme Court shall act as presiding officer of the council and chief administrative officer for the courts. The chief justice shall vote only in the case of a tie.

(b) All members of the council shall serve for three-year terms. If a council member should die, resign, retire, or otherwise fail to complete a term of office, the appropriate constituent group shall elect a member to complete the term of office. In courts having more than one member, the members shall be elected to staggered terms. The person elected to the Judicial Council by the Board of Commissioners shall be a member or ex officio member of the Board of Commissioners and an active member of the Bar in good standing at the time the person is elected. The person may complete a three-year term of office on the Judicial Council even though the person ceases to be a member or ex officio member of the Board of Commissioners. The person shall be an active member of the Bar in good standing for the entire term of the Judicial Council.

(c) Elections shall be held under rules made by the Judicial Council.

(3) The council is responsible for the development of uniform administrative policy for the courts throughout the state. The presiding officer of the Judicial Council is responsible for the implementation of the policies developed by the council and for the general management of the courts, with the aid of the administrator. The council has authority and responsibility to:

- (a) establish and assure compliance with policies for the operation of the courts, including uniform rules and forms; and
- (b) publish and submit to the governor, the chief justice of the Supreme Court, and the Legislature an annual report of the operations of the courts, which shall include financial and statistical data and may include suggestions and recommendations for legislation.

(4) (a) The Judicial Council shall make rules establishing:

- (i) standards for judicial competence; and
- (ii) a formal program for the evaluation of judicial performance containing the elements of and meeting the requirements of this Subsection (4).

(b) The Judicial Council shall ensure that the formal judicial performance evaluation program has improvement in the performance of individual judges, court commissioners, and the judiciary as its goal.

(c) The Judicial Council shall ensure that the formal judicial performance evaluation program includes at least all of the following elements:

- (i) a requirement that judges complete a certain number of hours of approved judicial education each year;
- (ii) a requirement that each judge certify that he is:
  - (A) physically and mentally competent to serve; and

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(B) in compliance with the Codes of Judicial Conduct and Judicial Administration; and

(iii) a requirement that the judge receive a satisfactory score on questions identified by the Judicial Council as relating to judicial certification on a survey of members of the Bar developed by the Judicial Council in conjunction with the American Bar Association.

(d) The Judicial Council shall ensure that the formal judicial performance evaluation program considers at least the following criteria:

- (i) integrity;
- (ii) knowledge;
- (iii) understanding of the law;
- (iv) ability to communicate;
- (v) punctuality;
- (vi) preparation;
- (vii) attentiveness;
- (viii) dignity;
- (ix) control over proceedings; and
- (x) skills as a manager.

(e) (i) The Judicial Council shall provide the judicial performance evaluation information and the disciplinary data required by Subsection 20A-7-702(2) to the Lieutenant Governor for publication in the voter information pamphlet. (ii) Not later than August 1 of the year before the expiration of the term of office of a justice court judge, the Judicial Council shall provide the judicial performance evaluation information required by Subsection 20A-7-702(2) to the appointing authority of a justice court judge.

(5) The council shall establish standards for the operation of the courts of the state including, but not limited to, facilities, court security, support services, and staff levels for judicial and support personnel.

(6) The council shall by rule establish the time and manner for destroying court records, including computer records, and shall establish retention periods for these records.

(7) (a) Consistent with the requirements of judicial office and security policies, the council shall establish procedures to govern the assignment of state vehicles to public officers of the judicial branch.

(b) The vehicles shall be marked in a manner consistent with Section 41-1a-407 and may be assigned for unlimited use, within the state only.

(8) (a) The council shall advise judicial officers and employees concerning ethical issues and shall establish procedures for issuing informal and formal advisory opinions on these issues.

(b) Compliance with an informal opinion is evidence of good faith compliance with the Code of Judicial Conduct.

(c) A formal opinion constitutes a binding interpretation of the Code of Judicial Conduct.

(9) (a) The council shall establish written procedures authorizing the presiding officer of the council to appoint judges of courts of record by special or general assignment to serve temporarily in another level of court in a specific court or generally within that level. The appointment shall be for a specific period and shall be reported to the council.

(b) These procedures shall be developed in accordance with Subsection 78-3-24(10) regarding temporary appointment of judges.

(10) The Judicial Council may by rule designate municipalities in addition to those designated by statute as a location of a trial court of record. There shall be at least one court clerk's office open during regular court hours in each county. Any trial court of record may hold court in any municipality designated as a location of a court of record. Designations by the Judicial Council may not be made between July 1, 1997, and July 1, 1998.

(11) The Judicial Council shall by rule determine whether the administration of a court shall be the obligation of the administrative office of the courts or whether the administrative office of the courts should contract with local government for court support services.

(12) The Judicial Council may by rule direct that a district court location be administered from another court location within the county.

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(13) The Judicial Council shall establish and supervise the Office of Guardian Ad Litem Director, in accordance with the provisions of Sections 78-3a-911 and 78-3a-912, and assure compliance of the guardian ad litem program with state and federal law, regulation, and policy, and court rules.

(14) The Judicial Council shall establish and maintain, in cooperation with the Office of Recovery Services within the Department of Human Services, the part of the state case registry that contains records of each support order established or modified in the state on or after October 1, 1998, as is necessary to comply with the Social Security Act, 42 U.S.C. Sec. 654a.

(15) (a) On or before November 1, 2003, the Judicial Council, by rule, shall select one or more districts as pilot districts for purposes of Sections 78-3a-115, 78-3a-115.1, and 78-3a-116.

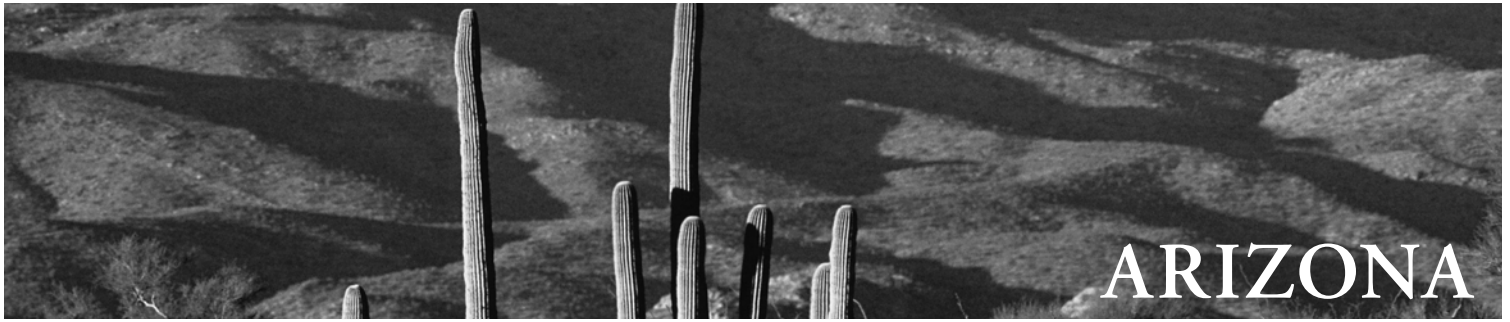
(b) Prior to the 2005 Annual General Session, the Judicial Council shall report to the Child Welfare Legislative Oversight Panel and the Judiciary Interim Committee on the effects of Chapter 332, Laws of Utah 2003 and recommend whether the provisions of Chapter 332, Laws of Utah 2003 should be continued, modified, or repealed.



# APPENDIX B



### APPENDIX B: *Sample Governing Rules*



*Source: Arizona Commission on Judicial Performance Review*

#### **Rule 1. Purpose**

Ariz. Const. Art. 6, §42, which was adopted by the voters at the November 1992 general election, requires the Court to adopt, and administer for all judges and justices who stand for retention, a process for evaluating judicial performance. These rules are intended to implement Art. 6, §42 through adoption of a judicial performance review process which will assist voters in evaluating the performance of judges and justices standing for retention; facilitate self-improvement of all judges and justices subject to retention; promote appropriate judicial assignments; assist in identifying needed judicial education programs; and otherwise generally promote the goals of judicial performance review, which are to protect judicial independence while fostering public accountability of the judiciary.

#### **Rule 2. Commission on Judicial Performance Review**

A system of periodic review of the performance of each judge and justice subject to retention shall be administered by the Commission on Judicial Performance Review. The activities and operations of the Commission shall be governed by the following provisions:

(a) **Composition of the Commission.** The Commission shall be composed of not more than 34 members appointed by the Supreme Court. The Commission shall be composed of members of the public, attorneys, judges and legislators. No more than two legislative members may be from the same political party. Legislators shall serve as advisory non-voting members and may otherwise fully participate in all commission activities. The majority of the members of the Commission shall be members of the public who are not attorneys, judges, or legislators, and there shall be no more than 6 judges and 6 attorneys among the non-public, non-legislative members.

(b) **Chairperson.** The Chief Justice of Arizona shall select the Chairperson of the Commission. The Chairperson shall preside at all meetings of the Commission. The Chairperson shall select a Vice Chairperson who shall not be from the same member group (public, judge, or attorney) as the Chairperson.

(c) **Terms.** Each non-legislative member of the Commission shall serve for a term of four years and be eligible for reappointment. In the case of a vacancy which occurs before expiration of a term, the member appointed to fill such vacancy shall serve for the duration of the unexpired term. Legislative advisory members shall be appointed for a term to coincide with their term of legislative office and may be reappointed if still eligible.

(d) **Meetings; Quorum; Majority.** The Commission shall meet at the call of the Chairperson not less than two times each year and shall conduct no business except upon the attendance of a quorum of the commission members. A quorum is constituted by 1/2+1 of the total commission membership in office at the time of the meeting and eligible to vote. Members shall be permitted to attend and participate in meetings by telephone or video-conference. All meetings shall be open to the public except as provided in paragraph (e) below. Except as otherwise provided by these rules and Rule 6(e)(3), all actions shall require a majority vote of 1/2+1 of those present and eligible to vote.

(e) **Executive Session.** The Commission shall meet in executive session with respect to any agenda item which would involve disclosure of matters made confidential by these rules, any other court rules, or by law. In addition, in order to promote open and frank discussion

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and accuracy in the performance evaluation process, the Commission shall meet in executive session at the time of: (1) discussion (not including voting) of the Commission's finding as to whether a judge or justice "meets" or "does not meet" judicial performance standards; (2) presentation and discussion of a judge's or justice's written comment submitted in response to a finding that the judge or justice "does not meet" judicial performance standards; and (3) a judge's or justice's appearance before the Commission, provided, however, that an executive session in which a judge or justice appears shall be held prior to the public vote meeting. The Commission may meet in executive session at any other time upon a majority vote of the Commission members then in attendance. The substance of deliberations in executive session shall not be disclosed. All voting shall be in public session.

**(f) Membership on Conference Teams.** Any member of the Commission may be a member of a Conference Team as described in Rule 4 below.

**(g) Powers and Duties of the Commission.** The powers and duties of the Commission shall be as follows subject to approval by the Supreme Court:

(1) (a) To develop, review and recommend amendments on written performance standards, to be approved by the Supreme Court and made available to the public, by which judicial performance is to be evaluated; (b) to formulate policies and procedures for collecting information and conducting reviews; and (c) to create and supervise a program of periodic review of the performance of each judge and justice who is subject to the merit selection system. The Commission shall directly review the performance of justices of the Supreme Court, judges of the Court of Appeals, and judges of the Superior Court subject to retention. Before retention elections, the Commission shall publicly announce whether each judge or justice standing for retention "meets" or "does not meet" judicial performance standards, in accordance with the provisions of Rule 6 below.

(2) To identify key areas where improvement is needed and work with the Committee on Judicial Education and Training to prioritize areas and offer required courses to meet educational needs.

(3) To request public comment and hold public hearings on the performance of all judges and justices subject to retention at announced times prior to the public vote meeting. Public comment by anyone other than a member of the Commission regarding a judge or justice under review shall be prohibited at the public vote meeting.

**(h) Minutes/Correspondence.** The Chairperson shall assure that minutes are kept and approved at each subsequent meeting. Minutes of meetings of the Commission shall be made available to the public. Either the Chairperson or Vice Chairperson at the direction of the Chairperson shall sign all correspondence for the Commission.

**(i) Spokesperson.** The Chairperson of the Commission may select a member of the Commission to serve as a spokesperson to speak for the Commission in any of its contacts with the media concerning actions it has taken regarding reviewed judges or justices.

**(j) Failure to Attend Meetings.** Any member who fails to attend fifty per cent (50%) of the scheduled meetings during a calendar year may be removed from the Commission on recommendation of the Chairperson at the discretion of the Chief Justice.

### Rule 3. Subcommittees

The Commission may create as many subcommittees from its members as needed to meet its responsibilities and accomplish its purpose.

### Rule 4. Conference Teams

During each mid-term and retention election performance review period of a judge or justice, the Commission shall arrange for a conference between each judge or justice and a Conference Team. The purpose of this conference shall be to assist in identifying aspects of the judge's or justice's performance that may need improvement and to help the judge or justice to develop plans for self-improvement. The activities and operations of the Conference Teams shall be governed by the following provisions:

**(a) Composition.** Each Conference Team shall be appointed by the Chairperson of the Commission or his or her designee and shall be

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composed of a member of the public, an attorney who is a member of the State Bar of Arizona, and a judge or justice (active or retired). No more than one member of a Conference Team may be a member of the Commission.

(b) **Chairperson.** A member selected by the Conference Team shall serve as Conference Team Chairperson and shall preside at all meetings.

(c) **Secretary.** A member selected by the Conference Team shall serve as secretary and prepare and keep a record of the action taken at each meeting. Either the Conference Team Chairperson or the Secretary at the direction of the Chairperson shall sign all correspondence for the applicable Conference Team.

(d) **Terms.** A Conference Team may review more than one judge or justice during any review period. Conference Team members shall be recruited to serve for each judicial review cycle and service will terminate at the end of the specific review cycle.

(e) **Meetings.** Meetings shall be at the call of the Conference Team Chairperson. All meetings shall be confidential. No meeting shall take place unless all three (3) members are present.

(f) **Self-Evaluation Form.** Prior to meeting with the Conference Team, each judge or justice shall complete a self-evaluation form approved by the Commission reflecting his or her perception of his or her performance as to each judicial performance criterion. The completed self-evaluation form is confidential and plays no role in the evaluation/retention process. It shall be furnished only to the Conference Team before its meeting with the judge or justice, and then to his or her Presiding Judge or Chief Judge, and to the Chief Justice, along with the self-improvement plan described in Paragraph (h) below.

(g) **Peremptory Challenge.** Each reviewed judge or justice shall have the right to peremptorily challenge one member of the Conference Team. The peremptory challenge shall be filed with the office of the Commission within 5 days of actual notice to the judge or justice of the members of the Conference Team. Where necessary, the Chairperson of the Commission shall rule upon any questions under this subparagraph.

(h) **Conference Team Report.** A written plan for self-improvement shall be developed at the conference and, after being put into final form, signed by the judge or justice and the Conference Team members. In connection with development of the self-improvement plan, the judge or justice and the Conference Team shall consider previous and current survey results and narrative comments, the previous self-improvement plan, and objective data which demonstrates completion of the previous plan. The self-improvement plan shall be distributed only to the judge or justice being reviewed, to his or her presiding judge or chief judge, and to the Chief Justice. In addition, the self-improvement plan, with the name of the judge or justice redacted, may be distributed to the Administrative Office of the Courts for use in development of judicial education programs. Neither the Conference Team Report nor the self-improvement plan shall be distributed to the Commission or used in the Commission's deliberations as to whether a judge or justice "meets" or "does not meet" judicial performance standards.

### Rule 5. General Provisions

The following general provisions shall govern the activities and operations of the Commission and the Conference Teams:

(a) **Diversity.** The Supreme Court shall solicit recommendations from the public to assist it in appointing persons to the Commission. The Chairperson of the Commission shall solicit recommendations from the public to assist in appointing persons to the Conference Teams. These persons shall have outstanding competence and reputation and shall also be sensitive to the needs of and held in high esteem by the communities they will serve. The persons appointed shall reflect, to the extent possible, the geographic, ethnic, racial and gender diversity of those communities. Competence and diversity among the members will enhance fairness and public confidence in the judicial performance review process.

(b) **Reimbursement for Expenses.** Members of the Commission or any Conference Team shall receive no compensation for services but shall be reimbursed for their travel expenses in accordance with applicable statutes.

(c) **Impartiality.**

- (1) A Commissioner or Conference Team member shall perform his or her duties in an impartial, objective manner.
- (2) A Commissioner or Conference Team member shall disclose to the Commission any relationship with a reviewed judge or justice (business, personal, attorney-client) or any other cause for conflict of interest, bias or prejudice. A Commissioner or Conference Team member is disqualified from taking any action with respect to a judge who is a family member within the third degree of consanguinity. A judge member of the Commission shall not be eligible to vote in the determination of whether the judge member meets or does not meet judicial performance standards. The voter information pamphlet shall reference when a judge member was ineligible to vote with respect to the judge's own performance or that of a family member within the third degree of consanguinity.
- (3) A Commissioner or Conference Team member shall not be influenced other than by facts or opinions which are relevant to the judicial performance of the reviewed judge or justice. A Commissioner or Conference Team member shall promptly report to the Commission Chairperson any attempt by any person or organization to influence him or her other than by fact or opinion.
- (4) Each reviewed judge or justice shall have the right to challenge for cause any Commissioner or Conference Team member as to whom the reviewed judge or justice alleges that there is a cause for conflict of interest, bias or prejudice. Any such challenge to a Commissioner shall be in writing and filed with the office of the Commission at least 60 days before the Commission's public vote during the year in which the reviewed judge or justice is standing for retention. Any such challenge to a Conference Team member shall be filed with the office of the Commission within 5 days of actual notice to the judge or justice of the Conference Team members. The Supreme Court, or a justice designated by the Court to do so, shall rule upon such challenge for cause, on the written challenge, and the written response thereto, if any.
- (d) **Background Checks.** Background checks pursuant to A.R.S. § 41- 1750(G)(2) may be required of all Commissioners and Conference Team members.

### Rule 6. Review Process; Dissemination of Findings

The review process administered by the Commission, with the assistance of the Conference Teams, shall consist of the following:

- (a) **Data Center.** The Court shall employ a qualified contractor or an in-house unit, hereinafter referred to as the Data Center, whose duty it shall be to prepare the survey forms referred to in paragraph(b) below, process the survey responses, and compile the statistical reports of the survey results in a manner designed to ensure the confidentiality and accuracy of the process.
- (b) **Survey Forms.** Mid-way through the judge or justice's term and again no less than 9 months prior to his or her retention election, anonymous survey forms eliciting performance evaluations shall be distributed to attorneys, litigants, witnesses, jurors, other judges and justices and other persons who have been in direct contact with each judge or justice surveyed and who have first-hand knowledge of his or her judicial performance during the evaluation period. The survey forms shall seek evaluations of the judge or justice in accordance with the written performance standards of judicial performance approved by the Supreme Court, such as knowledge of the law and procedure, integrity, impartiality, judicial temperament, administrative skill, punctuality and communication skills, and shall elicit narrative comments regarding the judge's or justice's performance. The survey forms shall be processed in a manner to assure confidentiality.
- (c) **Anonymous Narrative Comments.** The narrative comments contained in the survey forms, which shall be anonymous, shall be extracted and provided to the judge or justice, to his or her Conference Team for the purpose of self- improvement, to his or her presiding judge or chief judge, and to the Chief Justice. In addition, such anonymous narrative comments, with the name of the judge or justice redacted, may be distributed to the Administrative Office of the Courts for use in development of judicial education programs. Narrative comments shall not be accessible to the public, shall be confidential, and shall be used only in connection with the preparation of a plan of self-improvement of the judge or justice by the Conference Team. The submission of a survey form containing an anonymous narrative comment does not preclude the attorney, litigant, witness, juror, judge or other person surveyed from submitting a public comment, whether in writing or at public hearing pursuant to Rule 6(d), or otherwise.
- (d) **Public Comment and Hearings.** In each election year prior to the public vote meeting, the Commission shall request written public comments and hold public hearings with respect to judges or justices standing for retention. The public hearings shall be recorded. The names and addresses of the speakers shall be required in order to speak. Written comments will not be considered unless legible and unless



the name and address of the author is included. Telephone numbers, day and evening, are requested. Comments of the public shall be considered by the Commission in formulating its findings as to whether the judge or justice meets judicial performance standards.

### (e) Reports.

(1) **Data Report.** In April of each election year, Commission staff shall disseminate a compiled data report (including confidential comments made on the survey forms), together with any public comments, to the judge or justice being reviewed, his or her presiding judge or chief judge, and the Chief Justice. The data reports (excluding the confidential comments made on survey forms), and any public comments, encoded by judge number, will be made available to the Commission members for review. In formulating its findings as to whether a justice or judge “meets” or “does not meet” judicial performance standards, the members of the Commission shall consider and weigh carefully the evaluation data developed in the survey process, public hearings, and written public comment. While statistical summaries of evaluation data regarding a judge’s or justice’s performance may be compared to the performance of comparable judges or justices, that comparison shall not be given dispositive effect in arriving at a conclusion. In all aspects of the Commission’s reporting, to the fullest extent practicable, generally accepted statistical methods and techniques shall be utilized. If it is impracticable for the Commission to utilize generally accepted statistical methods and techniques in any aspect of its reporting, the Commission shall so disclose.

(2) **Written Notice.** A written notice shall be submitted to any judge or justice standing for retention who has a score in any category designated by the Commission that does not meet the threshold standard adopted by the Commission. The judge or justice shall have the right to submit written comments there onto the Commission and to appear and be heard by the Commission at a date and time set by the Commission prior to the public vote, pursuant to Rule 2(e).

(3) **Public Vote.** Except as otherwise provided by these rules and Rule 2(d), in each election year, the Commission shall vote in a public meeting on whether a judge or justice who is standing for retention “meets” or “does not meet” judicial performance standards. A Commissioner may vote in person, by telephone, by video-conference, or by written ballot.

(4) **Factual Report.** In each election year, the Commission shall compile a factual report on the judicial performance of each judge or justice standing for retention, which shall include: a summary of the results of the survey forms as to the judge or justice; a summary of any written or oral public comments received by the Commission pursuant to Rule 2( g)(3) that the Commission deems pertinent; any biographical or other data on such judge or justice which are deemed pertinent by the Commission; the Commission’s finding as to whether the judge or justice has failed to cooperate with the judicial performance review process; and the Commission’s finding as to whether the judge or justice “meets” or “does not meet” judicial performance standards. The report shall be formatted in such a manner that judges whom the commission determines “do not meet” judicial performance standards shall be segregated and listed before those that “do meet” standards. Should the Commission find that a judge or justice has failed to cooperate during the judicial performance review process, the report shall identify the conduct upon which the finding is based. The Commission shall disseminate its report and, except as provided in Rule 7, any other information which the Commission deems relevant to the retention decision, to the public and the judge or justice being reviewed not earlier than the public vote and not later than the earliest date for receipt by registered voters of any requested early ballots for the general election pursuant to A.R.S. § 16-542(a). The Commission’s report shall be distributed to the public by publication in the Secretary of State’s voter information pamphlet pursuant to A.R.S. § 19-123(5), through the judicial performance review website, and by other means deemed necessary to reach voters in the state.

## Rule 7. Confidentiality and Disclosure of Records

All information, survey forms, letters, notes, memoranda, and other data obtained and used in the course of any judicial performance evaluation shall be strictly confidential and shall not be disclosed except as provided herein and in accordance with court rules relating to public dissemination of such information. All survey forms and other evaluation information shall be anonymous. The identity of the judge being reviewed shall be coded and encrypted until the Commission has completed its public vote. However, any judge or justice regarding whom there is a finding that he or she “does not meet” judicial performance standards shall have the right to review the original survey forms including the narrative comments.

Under no circumstances shall the data collected or the results of the evaluation be used to discipline an individual judge or justice or be disclosed to authorities charged with disciplinary responsibility, unless required by law or by the Code of Judicial Conduct.

Notwithstanding the foregoing, information disclosing a criminal act may be provided to law enforcement authorities at the direction of the Arizona Supreme Court. Requests for such information in the possession of the Commission shall be made by written petition setting forth with particularity the need for such information. All information and data provided to law enforcement authorities pursuant to this paragraph shall no longer be deemed confidential.

### **Rule 8. Admissibility as Evidence**

Except as disclosed as provided herein, or in connection with an action under Rule 9 below, all information, survey forms, notes, memoranda or other data declared to be confidential hereby shall not be admissible as evidence, and shall not be discoverable in any action of any kind in any court or before any tribunal, board, agency or person.

### **Rule 9. Immunity**

No person participating in the judicial performance review process in any capacity should be held to answer for any actions taken or statements of fact made during the process except for statements of fact known to be false when made.



*Source: Colorado Commissions on Judicial Performance*

Pursuant to section 13-5.5-103(1)(k), C.R.S., the State Commission on Judicial Performance (state commission) establishes the following rules. These rules have been approved by the Supreme Court and shall be applicable to the state and district commissions.

### **Rule 1. Duties of Commissions**

Commissions shall elect one member as a chair, or two members as co-chairs, to serve for two years, who will direct the business of the commissions, pursuant to statute, rule or guideline of the state commission.

Commissions on judicial performance evaluate the professional performance of justices, judges or magistrates and make recommendations to the electorate regarding the retention of individual justices or judges who stand for retention during any general election. In addition to other procedures and duties set forth in these rules, the commissions shall prepare and provide to the public a narrative profile and retention recommendation for each district, county and appellate justice or judge subject to retention. The state commission shall arrange to have the narrative profiles and recommendations of the state and district commissions printed in the ballot information booklet that is prepared pursuant to section 1-40-124.5, C.R.S.

### **Rule 2. Sources of Information**

Each commission, in evaluating the professional performance of any justice, judge or magistrate, shall rely on official sources of information, including:(a) Questionnaires. The state commission shall develop a questionnaire that will be used by all commissions to survey attorneys (including district attorneys and public defenders), jurors, litigants, court personnel, probation officers, social services caseworkers, crime

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victims, guardians ad litem, court appointed special advocate volunteers and law enforcement personnel who have appeared before or have professional contacts with the judge or magistrate being evaluated. In addition, deputy sheriffs assigned to the courthouse will be surveyed. These persons will be randomly selected in numbers designed to achieve a random, statistically valid sample. These persons will be surveyed by direct mail questionnaires. The results of the surveys shall be provided to the commissions for use in evaluating the justices and judges.

(b) Interview with justices, judges or magistrates. Judicial district administrators will schedule interview sessions for judges and magistrates with district commissions. The state commission staff will schedule interview sessions for the appellate justices and judges with the state commission. All efforts to accommodate court dockets and calendars of commission members will be exercised.

(c) Statistics. Information concerning the caseload and case types of a judge or magistrate being evaluated will be gathered and provided to the chair of the district commission by the district administrator. Information concerning the caseload of a justice or judge being evaluated by the state commission will be gathered and provided to the chair of the state commission by the clerk of the Colorado Supreme Court and the clerk of the Colorado Court of Appeals.

If requested by the commission, the district administrator or state court administrator shall promptly provide information kept or collected by the district administrator or state court administrator on individual judges or magistrates, which may include the number of court trials and court trial days; the number of jury trials and jury trial days; and sentence modifications pursuant to section 16-11-309, C.R.S.

Effective for the 2006 judicial performance evaluation and performance evaluations thereafter, the district administrator shall also provide open case reports and case aging reports if requested by the commission.

(d) Oral Interviews. The state and district commissions may conduct interviews with other persons who have appeared before the judge or magistrate on a regular basis. The district commissions shall ensure that the persons interviewed have had professional contact with the judge or magistrate. Such oral interviews shall be completed no later than fifteen (15) days prior to the scheduled interview between the commission and the judge or magistrate. The judge or magistrate shall be provided with a written summary of the interview that preserves the anonymity of the interviewee but informs the judge or magistrate of the substance of the interview no later than ten (10) days prior to the scheduled interview with the commission. (e) Documentation from interested parties. Written information concerning a judge or magistrate received from an interested party may be considered by the state and district commissions provided it contains the author's name and address and is received no later than fifteen (15) days prior to the scheduled interview with the justice, judge or magistrate. The commissions may make the determination whether to include the author's name and address in the copy of the document that is forwarded to the justice, judge or magistrate.

(f) Public hearings. The state and district commissions may conduct public hearings to solicit public comment on justices, judges or magistrates being evaluated. Commissions are encouraged to conduct public hearings. Public hearings shall be completed no later than fifteen (15) days prior to the scheduled interview with the justice, judge or magistrate. The district commission shall give notice of the hearing not less than ten (10) days prior to such hearing. Public notice shall be given by the posting of a sign in a conspicuous place in each courthouse within the judicial district, and by notifying local news media in each county within the judicial district. The state and district commissions shall conduct public hearings pursuant to the Colorado Open Meetings Law, section 24-6-401, et seq., C.R.S.

(g) Self-evaluations. The state commission shall develop self-evaluation forms that shall be completed by each justice, judge or magistrate being evaluated. The self-evaluation requirements may include, but are not limited to a self assessment of the justice's, judge's or magistrate's strengths and weaknesses, goals for development and reputation in the legal community in the following areas: legal ability; integrity; communication skills; judicial temperament; administrative skills; settlement activities; judicial philosophy; community reputation; overall performance; and community service. The self-evaluation information is for the purposes of requiring the judge to conduct an appraisal of his or her performance and to provide information to the commission that may be useful for the interview or during the course of the evaluation. The self-evaluation information shall not be quoted, unless otherwise agreed to by the judge, in the narrative profile.

(h) Courtroom observation. In order to become knowledgeable of the responsibilities and duties of the judges and to enable commissions to conduct more accurate evaluations, each commission member shall make at least one unannounced onsite visit to the courtroom to observe at least one of the justices, judges or magistrates he or she is evaluating.

(i) Review of opinions. In the case of justices of the supreme court or judges of the court of appeals, each justice or judge shall submit to the state commission three opinions he or she authored along with a list of all opinions authored in the past two years. At least one of the



opinions submitted shall be either a separate concurrence or dissent. The members of the state commission shall review the three opinions, in addition to three other opinions selected at the members' discretion, prior to the interview with the justice or judge. The opinions should be reviewed for clarity of expression, logical reasoning, and adherence to controlling precedent.

(j) Additional information. Information resulting from the justice's, judge's or magistrate's interview may be considered and included in the evaluation if deemed appropriate by the majority of the commission members. Summaries of this new information shall be sent to the judge no later than ten (10) days following the scheduled interview.

### **Rule 3. Role of Chief Justice of Supreme Court and Chief Judge of the Court of Appeals**

(a) The state commission shall request a meeting with the Chief Justice of the Supreme Court and the Chief Judge of the Court of Appeals to be held prior to beginning the evaluation process and receiving any sources of evaluation information listed in Rule 2 for any supreme court justice or court of appeals judge being evaluated. The purpose of the meeting is to allow the Chief Justice or Chief Judge of the Court of Appeals the opportunity to provide information and an overview of the appellate courts to the state commission. The meeting shall not constitute an evaluation of any justice's or judge's performance but shall be for informational purposes only, unless a justice or judge presently being evaluated was identified in the course of a prior judicial evaluation as having one or more particular weaknesses pursuant to Rule 3(c).

(b) After the state commission has completed its evaluation and approved the final version of the narrative profile and recommendation for a justice or judge, it shall provide the Chief Justice or the Chief Judge of the Court of Appeals with the independent survey analysis report specified in Rule 5, which shall include the verbatim comments, and the narrative profile and recommendation for each justice or court of appeals judge evaluated.

(c) After the state commission has completed its evaluation and approved the final version of the narrative profile and recommendation for a justice or judge, if the state commission has identified one or more particular weaknesses of the justice or judge under review, it may forward recommendations for improvement to the Chief Justice or Chief Judge of the Court of Appeals together with the report specified in Rule 3(b). The state commission shall also provide a copy of the recommendation for improvement to the justice or judge who is the subject of the recommendation.

### **Rule 4. Role of Chief Judge of each Judicial District**

(a) The district commissions shall request a meeting with the Chief Judge of their judicial district to be held prior to beginning the evaluation process and receiving any sources of evaluation information listed in Rule 2. The purpose of the meeting is to allow the Chief Judge the opportunity to provide to the commission members an overview of the judicial district including information such as caseloads, case types and the role of judges in the courts. The meeting shall not constitute an evaluation of any judge's performance but shall be for informational purposes only, unless the judge presently being evaluated was identified in the course of a prior judicial evaluation as having one or more particular weaknesses pursuant to Rule 3(c).

(b) After the commission has completed its evaluation and approved the final version of the narrative profile and recommendation for a judge, it shall provide the Chief Judge of the commission's judicial district with the independent survey analysis reports, specified in Rule 5, which shall include the verbatim comments, and the narrative profile and recommendation prepared for each judge evaluated.

(c) After the commission has completed its evaluation and approved the final version of the narrative profile and recommendation for a judge, if the commission has identified one or more particular weaknesses of the judge or magistrate under review, it may forward recommendations for improvement to the Chief Judge together with the report specified in Rule 3(b). The commission shall also provide a copy of the recommendation for improvement to the judge or magistrate who is the subject of the recommendation.

### **Rule 5. Commission Administrative Procedures**

(a) Evaluation and meeting procedures. At the beginning of each performance evaluation process, the commission shall outline the evaluation procedures they will follow for the evaluations. Such procedures shall be consistent with these rules and state statute. Such procedures shall:

- Establish the right of the majority to rule;
- Establish a quorum as a majority of members;
- Provide for motions to be made, seconded, amended, discussed, voted on and recorded accurately in the minutes;
- Protect the right of individuals to be heard, unless discussion is closed by a two-thirds vote;
- Protect the body from disruptive persons;
- Permit an agenda which may be approved by a majority;
- Require written minutes which shall be approved by a majority; and
- Permit the members to overrule the chair by a two-thirds vote.

(b) Confidentiality of meetings and attendance of non-commission members. Consistent with Rule (9), all interviews or deliberations directly concerning the retention of any justice or judge are confidential and shall be closed to the public. For the purposes of this Rule 5(b), public shall include other district commission members who are not a member of said commission and commission staff, which include the district administrator and his or her staff.

(c) Commission staff. The function of commission staff is to enable and assist the commission in the performance of its duties. Staff shall not participate in interviews or deliberations conducted by the commission concerning the evaluation of any justice or judge. Further, staff shall not draft the narrative profiles for a justice or judge.

### **Rule 6. Commission Training Responsibilities**

In addition to all other duties set forth in these rules, all commission members shall attend at least one training session per term, or the equivalent thereof as determined by the State Commission, such as reviewing a training video provided by the State Commission. To the extent possible, the State Commission shall endeavor to provide training on an annual basis that is reasonably accessible and convenient to all commission members.

A commission member who did not attend a training session as required under this rule (6), may not vote on a commission's recommendation for retention unless authorized to do so by a majority vote of the commission members who did fulfill the training requirements.

### **Rule 7. Compilation of Retention Evaluation Data**

All completed surveys will be collected and statistically analyzed by the independent firm conducting the survey as authorized and approved by the state commission. For the survey results regarding retention in both the non-attorney and attorney survey questionnaires, the percentage of responses to the "Undecided or don't know enough to make recommendation", shall not be included in or factored into the final results and as such shall not be counted against or for retention. Demographic information shall be separated from standard questions and comments to ensure the anonymity of the respondent. Commissions shall not receive the original questionnaires. All evaluation reports generated from the questionnaires shall be based on aggregate data. The information shall be supplied only as a composite report. Commissions shall not receive demographic information, unless the analysis of such information by the state commission or its agent proves to be statistically significant and affects evaluation of the overall professional performance of the justice, judge or magistrate being evaluated. Commissions will not receive questionnaire responses concerning any justice, judge or magistrate being evaluated if a statistically valid sample has not been collected, as determined by the state commission or its agent.

All written comments from the survey shall be reproduced verbatim, unless confidentiality cannot be assured. If confidentiality cannot be preserved, the commission may summarize the substance of the comment in order to provide it to the justice, judge or magistrate. All comments shall also be forwarded to the justice, judge or magistrate whom each comment concerns.

### **Rule 8. Disclosure of Retention Evaluation Data to Commission Members and Justice, Judge or Magistrate Being Evaluated**

The final report prepared by the independent firm that conducts the evaluation survey is public but shall not be released until such time as the retention recommendation is made public; except that the comments included in the report are not public and shall not be released

to the public. Any comments included with questionnaires and written information received by the commission are not public and will be made available only to commission members and the justice, judge or magistrate being evaluated. Comments are solicited in an effort to provide feedback to the justice, judge or magistrate and to assist the justice, judge or magistrate in a self-evaluation process. Commission members have access to comments in order to assist the commission in the interview of the justice, judge or magistrate. Commission members shall not reveal the contents of any comment concerning a justice, judge or magistrate being evaluated to anyone other than other commission members, and the justice, judge or magistrate during an interview.

Any justice, judge or magistrate being evaluated will be provided with the same information that is provided to commission members concerning that justice, judge or magistrate. The justice, judge or magistrate will receive the information no later than ten (10) days prior to any scheduled interview.

### **Rule 9. Information Otherwise Entitled to Protection**

Sensitive, personal information otherwise entitled to protection under the personnel files exemption of the Public Records Act, section 24-72-204(3)(a)(II), C.R.S., shall remain confidential.

Members of commissions and staff shall maintain confidentiality with regard to those materials and communications so designated as confidential.

All interviews or deliberations directly concerning the retention of any justice or judge are confidential and shall be closed to the public.

### **Rule 10. Disclosure of Retention Evaluation Data to Third Parties**

In addition to the disclosures authorized under Rule 8, upon a two-thirds majority vote of approval of the members of the state commission, the state and district commissions may release confidential information concerning a justice, judge or magistrate to:

- (a) A news-gathering organization that initiates an inquiry about a matter that has become the subject of widespread concern and the release of information would benefit the justice, judge or magistrate and the public, and the justice, judge or magistrate signs a waiver for this purpose;
- (b) A government agency or nominating commission that requests information concerning the appointment of a justice, judge or magistrate or former justice, judge or magistrate to another judicial position, and the justice, judge or magistrate signs a waiver for this purpose;
- (c) An agency authorized to investigate the qualifications of persons for admission to practice law that requests information in order to evaluate a justice's, judge's or magistrate's application for admission to the bar of another state, and the justice, judge or magistrate signs a waiver for this purpose;
- (d) The Chief Justice of the Supreme Court, if such information is requested with respect to the appoint mentor assignment of a retired justice or judge to judicial duties, and the justice, judge or magistrate signs a waiver for this purpose; (e) The Supreme Court Attorney Regulation Committee, if an allegation is made against a justice, judge or magistrate in the course of the evaluation process which, if true, would constitute a violation of the code of professional responsibility; or (f) The Commission on Judicial Discipline, if an allegation is made against a justice, judge, or magistrate in the course of the evaluation process, which, if true, would constitute a violation of the code of judicial conduct, or which would constitute extra-judicial conduct that reflects adversely on the judiciary.
- (g) Confidential information is the information listed in Rules 2 and 9 and includes current and past data collected for the evaluation of justices, judges and magistrates, except for sensitive, personal information subject to protection pursuant to section 24-72-204(3)(a)(II), C.R.S.

### Rule 11. Interview

Commissions are required to schedule and conduct an interview with each justice, judge or magistrate being evaluated after the commission's initial review of information is complete. Neither the commission, nor the justice, judge or magistrate may waive the initial interview process.

- (a) Commissions must follow all guidelines provided by the state commission regarding the personal interview of justices, judges or magistrates being evaluated.
- (b) The interview shall be conducted for such a period of time as is necessary to address the concerns of the commission members and the justice, judge or magistrate being evaluated. Prior to the interview, the justice, judge or magistrate may submit written information to the commission if he or she so desires.

### Rule 12. Preparation of Narrative Profile

Within ten (10) days following an interview with a justice, judge or magistrate, and in any event no later than seventy-five (75) days prior to the last date available for the justice or judge to declare such justice's or judge's intent to stand for retention, the chair of the commission shall provide the justice, judge or magistrate a complete written draft of the narrative profile. The narrative profile shall conform to the format designed by the state commission. Preparation of the narrative profile may not be delegated to any court employee or judicial officer. It is recommended that all commission members be involved and participate in the drafting of the narrative profile. A draft of the narrative profile is not to be released to any person other than the justice, judge or magistrate whom it concerns.

### Rule 13. Recommendation

- (a) In addition to the information published as a narrative profile, the commission shall make a recommendation regarding the retention of each justice or judge who has declared intent to stand for retention. The recommendation shall be "Retain," "Do Not Retain," or "No Opinion." "The recommendation of "No Opinion" shall not be counted against or for retention.
- (b) In order to concentrate its resources on the determination of which judges are not performing their jobs as they should, the commission shall strongly consider a recommendation of "Retain" for any judge who receives more than an average of 2.0 or more in response to questions 1 through 5 of both the attorney and non-attorney survey questionnaires. If a judge receives less than an average of 2.0 in response to the questions 1 through 5 in either the attorney or non-attorney survey questionnaires, the Commission shall strongly consider a "Do Not Retain", unless one or more of the following applies:
  - (I) The nature or high number of cases of a judge's docket or caseload is such that the judge cannot appropriately manage his or her cases in a timely manner. This may be particularly true for provisional judges, who when appointed to the bench may inherit a significantly high number of cases that cannot be managed quickly.
  - (II) The commission believes that with additional experience on the bench and a commitment to improve his or her judicial skills, the judge should be given more time to develop his or her judicial skills and be retained for another term. The judge must agree to the recommendations contained in a performance plan that identifies areas of weaknesses in the judge's performance and makes specific recommendations for improvement.
  - (III) The judge's survey sample was either so small or lacking in appropriate respondent categories as to render the survey results inaccurate. If a commission believes that the results of the survey are inaccurate, it shall so notify the state commission. The state commission shall review the statistics, which review may include consultation with the independent firm that conducted the survey, and make a finding concerning the validity and use of the statistics. The decision by the State Commission concerning the accuracy and applicability of the survey results shall be forwarded to the District Commission making the request. If the state commission finds the survey inaccurate, that determination shall be binding upon the commission.
  - (IV) Any evaluation information obtained by the commission under Rule 2 that the commission believes justifies a "Do Retain" recommendation.

(c) In order to concentrate its resources on the determination of which appellate judges are not performing their jobs as they should, the state commission shall strongly consider a recommendation of “Retain” for any judge who receives more than an average of 2.0 or more in response to questions 1 through 12 of the attorney appellate questionnaire or 1 through 14 of the trial judge appellate questionnaire. If a judge receives less than an average of 2.0 in response to the questions 1 through 12 of the attorney appellate questionnaire or 1 through 14 in the trial judge appellate questionnaires, the state commission shall strongly consider a “Do Not Retain”, unless one or more of the factors set forth in Rule 13 (b) (1), (II), (III) or (IV) apply.

(d) A recommendation of “No Opinion” shall be given only when the commission concludes that the results of information gathered are not sufficiently clear to make a firm recommendation, and as such shall be accompanied by a detailed explanation.

(e) A commission member who did not participate in the judge’s scheduled interview or perform the minimum required courtroom observation, may not vote on the commission’s recommendation for retention unless authorized to do so by a majority vote of the commission members who were present at the scheduled interview and performed the requirement minimum courtroom observation.

### Rule 14. Narrative Profile Requirements

Narrative profiles shall be reports of three to four short paragraphs describing the justice, judge or magistrate, judicial assignment, number of years on the bench and the retention recommendation. Narrative profiles shall provide the vote count recorded for each justice, judge or magistrate’s recommendation and shall include comments explaining the reasons for such vote count. Narrative profiles should include information specific to the work of the justice, judge or magistrate. Narrative profiles may contain information concerning the justice’s, judge’s or magistrate’s professional association activities, recent awards and honors, and volunteer or other community work. Narrative profiles of those judges who are not licensed to practice law in Colorado shall reflect such. Narrative profiles need not contain biographical data, such as undergraduate school information, educational degrees, or other historical information not directly related to the practice of law. Narrative profiles for justices or judges standing for retention may include a statement of the groups of respondents surveyed, the percentage of responses received from each group who recommend that a justice or judge be retained, the percentage of responses received from each group who have no opinion as to the retention of the justice or judge, and the percentage of responses received from each group who recommend that a justice or judge should not be retained. The commission may also include the following information in the narrative profiles: the justice’s or judge’s contribution to the community, strengths and weaknesses, which may include emphasizing areas of exemplary or distinguishing performance or describing areas of significantly poor performance, and any additional information that the commission believes may be of assistance to the public in making an informed voting decision on the justice or judge.

District commissions shall prepare and provide the narrative profiles to the state commission no later than one hundred and twenty (120) days prior to the general election.

In addition to the information published as a narrative profile, the commission shall make a recommendation regarding the retention of each justice or judge who has declared intent to stand or retention. The recommendation shall be “Retain,” “Do Not Retain,” or “No Opinion.” A “No Opinion” shall be given only when the commission concludes that the results of information gathered are not sufficiently clear to make a firm recommendation, and such shall be accompanied by a detailed explanation. A commission member who did not participate in the judge’s scheduled interview may not vote on the commission’s recommendation for retention unless authorized to do so by a majority vote of the commission members who were present at such interview.

### Rule 15. Response to Narrative Profile

(a) Any judge or magistrate being evaluated pursuant to section 13-5.5-106(3)(a), C.R.S., may respond to a draft of a narrative profile, in writing, within ten (10) days of receipt of the draft. Such a response must be directed to the chair of the commission.

(b) Any justice or judge being evaluated pursuant to section 13-5.5-106 (1)(a) or (2)(a), C.R.S., may respond to a draft of the narrative profile, in writing, within ten (10) days of receipt of the draft. If the responding justice or judge requests an additional interview with the commission, the justice or judge shall be given an opportunity to meet with the commission to address the contents of the narrative profile. Any additional interview shall be held within ten (10) days of the request. The commission may, after such a meeting with the justice or judge being evaluated, revise its evaluation. Additionally, any commission issuing a “Do Not Retain” recommendation shall, at the justice

or judge's request, include language in the narrative profile stating the justice's or judge's position. The justice or judge may, upon review of the statement, elect to withdraw the statement from inclusion in the narrative profile. The chair of the commission shall provide the justice or judge with any redraft of the narrative profile, in writing, within ten (10) days following the additional interview, or, absent an additional interview, within ten (10) days of the receipt of the justice's or judge's response.

### **Rule 16. Release of Interim Evaluations**

The district commission shall release the narrative profile and any other relevant information developed pursuant to section 13-5.5-106(3), C.R.S., to the chief judge of the court and to the judge or magistrate no later than September 1 of the year in which the evaluation is performed. By September 1 of the year in which the evaluation is performed, the narrative profile and any other relevant information developed under this section shall also be available to the public, except that narrative profiles prepared pursuant to this section shall not be mailed to registered voters.

### **Rule 17. Release of the Narrative Profile and Recommendation**

When possible, the state commission shall release the narrative profile and the recommendation on retention prepared by the commissions to the public on the first day following the deadline for judges to declare their intent to stand for retention but no later than forty-five (45) days prior to the retention election.

### **Rule 18. Removal for Cause**

(a) Any member of any judicial performance commission may be removed for cause by the appointing authority pursuant to section 13-5.5-104, C.R.S. The state commission may recommend to the appointing authority that a member of a judicial performance commission be removed for cause. "Cause" means any malfeasance or nonfeasance in carrying out the duties and responsibilities of any judicial performance commission.

(b) A commission member shall disclose to the commission any professional or personal relationship with the judge that may affect an unbiased evaluation of that judge, including any litigation involving the judge and the commission member, the commission member's family or commission member's business and any past or current application to fill a judge vacancy in the judicial district. Failure to disclose such information may be cause for removal by the appointing authority or as recommended by the state commission.

### **Rule 19. Complaints**

When a member of any district judicial performance commission or justice, judge or magistrate under evaluation believes that the judicial performance commission is operating in violation of these rules or the statute governing judicial performance commissions, such member, justice, judge, or magistrate shall notify the state commission. The state commission shall notify the chair of the particular district commission and request a written response regarding the complaint. Upon receipt of such a response, the state commission shall make an independent review and determine whether a violation of rule or statute has occurred. Findings of the state commission will be communicated to the district commission along with any instructions that are necessary to ensure that the district commission operates within these rules and the statute governing judicial performance commissions. In no event may the state commission overrule a recommendation regarding retention of any judge, but the state commission may provide a rebuttal recommendation to the district commission's recommendation regarding retention of any judge when the district commission fails to comply with any instructions issued by the state commission pursuant to this Rule.

### **Rule 20. Participation by Commission Members in Activities Subsequent to Dissemination of Narrative Profiles and Recommendations on Retention**

A commission member or the commission may publicly discuss only the narrative profile, the retention recommendation, the numerical data, information from public hearings, and such information as has been made public under Rule 10.



### Rule 21. Recusal

An attorney who is serving as a commission member for a district or state judicial performance commission shall not, during the term of such service, request that a justice, judge or magistrate being evaluated by the commission be recused from hearing a case in which the attorney appears as counsel of record, or request permission to withdraw from the case pending before a justice, judge or magistrate being evaluated, solely on the basis that the attorney is serving on such performance commission.

Any attorney who appears in a matter where opposing counsel of record serves as a member of the judicial performance commission which is evaluating the justice, judge or magistrate before whom the matter is set, may not request that the attorney be required to withdraw from the matter, or that the justice, judge or magistrate be recused from the matter on the basis that opposing counsel is serving on such performance commission.

A justice, judge or magistrate being evaluated by a judicial performance commission may not recuse himself or herself from a case in which an attorney member of a state or district judicial performance commission is counsel of record, nor should a justice, judge or magistrate grant a request to withdraw from a case by an attorney commission member, solely on the basis that the attorney is serving on the judicial performance commission conducting the evaluation.

A commission member shall disclose to the state's and member's commission, any professional or personal relationship with the justice, judge or magistrate that may affect an unbiased evaluation of that justice, judge or magistrate.

A member may abstain from voting on the recommendation of the commission.

### Rule 22. Notice

(a) The district administrator shall cause to be published and posted at all times in a conspicuous location in each county courthouse of each judicial district affected by such commission, the names of members of the district judicial performance commission and a name, address, telephone number and e-mail address (if available) as a public contact.

(b) The state commission shall cause to be published and posted at all times in a conspicuous location in the Colorado State Judicial Building the names of members of the state commission and a name, address, telephone number and e-mail address of the state commission director for public contact.

### Rule 23. Dissemination of Information

The following shall apply to the dissemination of narrative profiles and recommendations on retention of justices or judges standing for retention in office:

(a) General Distribution. Commissions may prepare and may make available, narrative profiles at the county courthouse, local libraries, major grocery outlets, and other practical public outlets.

(b) Newspaper. Narrative profiles may be provided for publication in the local newspapers.

(c) Radio/TV. Commissions may contract for public service announcement airtime on local radio/ TV. Public service announcements will direct the listener to the publication of retention recommendations. (Sample: 15 second PSA announcing that the results and recommendations concerning the election of judges standing for retention in the judicial district will be available in the [publication] on [date]. Narrative profiles are included in the ballot analysis distributed to all registered voters.)

### Rule 24. Records

The program director shall create a set of guidelines in cooperation with the district administrators for the purpose of the collection and retention of a summary of each state and district commission review process, data collected and appropriate notes for each review cycle. The information shall be provided to the commissions in subsequent judicial performance evaluation review cycles.



# APPENDIX C



**APPENDIX C: *Model Attorney Survey For Appellate Judge Evaluations***

This questionnaire seeks your input on the quality of Judge X's performance on the appellate bench. Your responses will remain anonymous. Please fill out and return this survey if you have appealed a case and Judge X participated in the decision. If you have not had experience with Judge X, please so indicate immediately below, leave the remaining questions blank and return the survey. Your participation is appreciated.

☐ Judge X has not heard the appeal of any of my cases for the survey period.

1. Which of the following types of cases have you appealed in which Judge X participated in the decision? Select all that apply.

- a. Civil
- b. Criminal
- c. Domestic
- d. Juvenile
- e. Other

2. Please evaluate Judge X's job performance on the issues below, using the following scale:

- 1 Inadequate
- 2 Less than Adequate
- 3 Adequate
- 4 More than Adequate
- 5 Excellent
- NA Cannot Evaluate

If you do not feel you have adequate *first hand knowledge* to evaluate Judge X on a specific question, select NA ("Cannot Evaluate").

- |  |   |   |   |   |   |    |
|--|---|---|---|---|---|----|
| a. Behaves in a manner that is free from impropriety or the appearance of impropriety                | 1 | 2 | 3 | 4 | 5 | NA |
| b. Treats people equally regardless of race, gender, ethnicity, economic status, or any other factor | 1 | 2 | 3 | 4 | 5 | NA |
| c. Displays fairness and impartiality toward each side of the case                                   | 1 | 2 | 3 | 4 | 5 | NA |
| d. Avoids ex parte communications  | 1 | 2 | 3 | 4 | 5 | NA |
| e. Allows parties to present their arguments and answer questions                                    | 1 | 2 | 3 | 4 | 5 | NA |
| f. Maintains the quality of questions and comments during oral argument                              | 1 | 2 | 3 | 4 | 5 | NA |

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g.	Is courteous toward attorneys	1	2	3	4	5	NA
h.	Is courteous toward court staff	1	2	3	4	5	NA
i.	Demonstrates appropriate demeanor on the bench	1	2	3	4	5	NA

3. Did Judge X author or co-author one or more opinions in your case(s)?

4. If you answered Question 3 in the affirmative, please evaluate the judge on the topics below, using the same 1-5 scale as in Question 2:

a.	Opinions are clearly written	1	2	3	4	5	NA
b.	Opinions are issued without unnecessary delay	1	2	3	4	5	NA
c.	Opinions clearly explain the basis of the Court's decision	1	2	3	4	5	NA
d.	Opinions demonstrate scholarly legal analysis	1	2	3	4	5	NA
e.	Opinions demonstrate knowledge of the substantive law	1	2	3	4	5	NA
f.	Opinions reflect sufficient familiarity with relevant facts of the case	1	2	3	4	5	NA
g.	Opinions demonstrate knowledge of the rules of evidence and procedure	1	2	3	4	5	NA
h.	Opinions are rendered without regard for possible public criticism	1	2	3	4	5	NA
i.	Opinions refrain from reaching issues that need not be decided	1	2	3	4	5	NA

5. Please add any comments about Judge X relating to any of your responses above. Please use additional pages as necessary.

6. Your years in practice:                      0-5                      6-10                      11 or more

# APPENDIX D



**APPENDIX D: *Model Attorney Survey For Trial Judge Evaluations***

This questionnaire seeks your input on the quality of Judge X's performance on the bench. Your responses will remain anonymous. Please fill out and return this survey if you have had courtroom interaction of any sort with Judge X during the survey period, including but not limited to jury trials, bench trials, and motion hearings. If you have not had experience with Judge X during the survey period, please so indicate immediately below, leave the remaining questions blank and return the survey. Your participation is appreciated.

☐ Judge X has not presided over any of my cases for the survey period.

1. Which of the following types of cases have you had before Judge X? Select all that apply.

- a. Civil
- b. Criminal
- c. Domestic
- d. Juvenile
- e. Other

2. Please evaluate Judge X's job performance on the issues below, using the following scale:

- 1 Inadequate
- 2 Less Than Adequate
- 3 Adequate
- 4 More than Adequate
- 5 Excellent
- NA Cannot Evaluate

If you do not feel you have adequate *first hand knowledge* to evaluate Judge X on a specific question, select NA ("Cannot Evaluate").

- |  |   |   |   |   |   |    |
|--|---|---|---|---|---|----|
| a. Behaves in a manner that is free from impropriety or the appearance of impropriety                | 1 | 2 | 3 | 4 | 5 | NA |
| b. Treats people equally regardless of race, gender, ethnicity, economic status, or any other factor | 1 | 2 | 3 | 4 | 5 | NA |
| c. Displays fairness and impartiality toward each side of the case                                   | 1 | 2 | 3 | 4 | 5 | NA |
| d. Avoids ex parte communications  | 1 | 2 | 3 | 4 | 5 | NA |
| e. Is prepared for hearings and trials   | 1 | 2 | 3 | 4 | 5 | NA |

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f.	Allows parties latitude to present their arguments	1	2	3	4	5	NA
g.	Allows parties sufficient time to present case	1	2	3	4	5	NA
h.	Is courteous toward attorneys	1	2	3	4	5	NA
i.	Is courteous toward court staff	1	2	3	4	5	NA
j.	Maintains and requires proper order and decorum in the courtroom	1	2	3	4	5	NA
k.	Shows and expects professionalism from everyone in the courtroom	1	2	3	4	5	NA
l.	Demonstrates appropriate demeanor on the bench	1	2	3	4	5	NA
m.	Understands substantive law	1	2	3	4	5	NA
n.	Understands rules of procedure and evidence	1	2	3	4	5	NA
o.	Weighs all evidence fairly and impartially before rendering a decision	1	2	3	4	5	NA
p.	Clearly explains all oral decisions	1	2	3	4	5	NA
q.	Written opinions and orders are clear	1	2	3	4	5	NA
r.	Issues opinions and orders without unnecessary delay	1	2	3	4	5	NA
s.	Starts court on time	1	2	3	4	5	NA
t.	Uses court time efficiently	1	2	3	4	5	NA
u.	Effective as an administrator	1	2	3	4	5	NA
v.	Effectively uses pretrial procedures to narrow and define the issues	1	2	3	4	5	NA
w.	Overall performance	1	2	3	4	5	NA

3. Please add any comments about Judge X relating to any of your responses above. Please use additional pages as necessary.

4. Your years in practice:                      0-5                      6-10                      11 or more

# APPENDIX E





**APPENDIX E: *Model Attorney Survey for Trial Judge Candidate Evaluations in Contested Elections***

Candidate X has declared his intent to run for judicial office. This questionnaire seeks your input on the quality of Candidate X's performance as an attorney related to skills he will be expected to use on the bench. Your responses will remain anonymous. Please fill out and return this survey if you have had professional interaction in a litigation setting with Candidate X during the survey period, including but not limited to trials, court hearings, depositions, discovery conferences, settlement conferences, or alternative dispute resolution. If you have not had experience with Candidate X during the last ten years, please so indicate immediately below, leave the remaining questions blank and return the survey. Your participation is appreciated.

☐ I have not interacted professionally with Candidate X on any litigation matters in the last ten years.

1. In which of the following types of cases have you interacted with Candidate X? Select all that apply.

- a. Civil
- b. Criminal
- c. Domestic
- d. Juvenile
- e. Other

2. In which types of settings you have interacted with Candidate X? Select all that apply.

- |                         |                                     |
|-------------------------|-------------------------------------|
| a. Jury trial           | h. Settlement conference            |
| b. Bench trial          | i. Mediation                        |
| c. Motion hearing       | j. Arbitration                      |
| d. Evidentiary hearing  | k. Contact by telephone only        |
| e. Other hearing        | l. Contact my letter or e-mail only |
| f. Deposition           | m. Other contact                    |
| g. Discovery conference |                                     |

3. Did you work on the same litigation team (i.e., representing the same client or clients) as Candidate X in any of the litigation matters listed above? If so, identify which matters:

## SECTION 3: Appendices

### 4. Please evaluate Candidate X on the issues below, using the following scale:

- 1 Inadequate
- 2 Less Than Adequate
- 3 Adequate
- 4 More than Adequate
- 5 Excellent

If you do not feel you have adequate *first hand knowledge* to evaluate Candidate X on a specific question, select NA (“Cannot Evaluate”).

a. Behaves in a manner that is free from impropriety or the appearance of impropriety	1	2	3	4	5	NA
b. Treats people equally regardless of race, gender, ethnicity, economic status, or any other factor	1	2	3	4	5	NA
c. Avoids ex parte communications	1	2	3	4	5	NA
d. Is prepared for hearings, trials, and the like	1	2	3	4	5	NA
e. Is courteous toward other attorneys	1	2	3	4	5	NA
f. Is courteous toward court staff	1	2	3	4	5	NA
g. Maintains proper decorum in the courtroom	1	2	3	4	5	NA
h. Shows professionalism in the courtroom	1	2	3	4	5	NA
i. Demonstrates appropriate demeanor	1	2	3	4	5	NA
j. Understands substantive law	1	2	3	4	5	NA
k. Understands rules of procedure and evidence	1	2	3	4	5	NA
l. Acknowledges weaknesses in argument where appropriate	1	2	3	4	5	NA
m. Briefs and motions are clearly written	1	2	3	4	5	NA
n. Meets court and discovery deadlines without unnecessary delay	1	2	3	4	5	NA
o. Ready for court and depositions on time	1	2	3	4	5	NA
p. Uses court time efficiently	1	2	3	4	5	NA
q. Effectively uses pretrial procedures to narrow and define the issues	1	2	3	4	5	NA
r. Overall performance	1	2	3	4	5	NA

## SECTION 3: Appendices

5. Please add any comments about Candidate X relating to any of your responses above. Please use additional pages as necessary.

6. Your years in practice:      0-5      6-10      11 or more

# APPENDIX F



**APPENDIX F: *Model Juror Survey for Trial Judge Evaluations***

As a juror, you have been in a position to observe the functions of the court system. Your opinion of the system is important to us. Please take a few minutes to complete this survey regarding your observations of Judge X. Your responses will be kept anonymous, and will help maintain a system that runs efficiently and effectively. Thank you for your service.

**Please answer the following questions:**

- |     |   |     |    |
|-----|---|-----|----|
| 1.  | Did the judge treat people equally regardless of race, gender, ethnicity, economic status, or any other factor? | Yes | No |
| 2.  | Did the judge's behavior appear to be free from bias or prejudice?  | Yes | No |
| 3.  | Did the judge conduct proceedings in a fair and impartial manner?   | Yes | No |
| 4.  | Did the judge act in a dignified manner?  | Yes | No |
| 5.  | Did the judge treat people with courtesy?   | Yes | No |
| 6.  | Did the judge act with patience and self-control?   | Yes | No |
| 7.  | Did the judge act with humility and avoid arrogance?  | Yes | No |
| 8.  | Did the judge pay attention to the proceedings throughout?  | Yes | No |
| 9.  | Did the judge build your confidence in the judicial system?   | Yes | No |
| 10. | Did the judge clearly explain court procedure?  | Yes | No |
| 11. | Did the judge clearly explain the responsibility of the jury?   | Yes | No |
| 12. | Did the judge clearly explain reasons for any delay?  | Yes | No |
| 13. | Did the judge start court on time?  | Yes | No |
| 14. | Did the judge maintain control over the courtroom?  | Yes | No |
| 15. | Would you be comfortable having your case tried before this judge if you ever had a case in court?              | Yes | No |

# APPENDIX G



**APPENDIX G: *Model Litigant Survey for Trial Judge Evaluations (Civil Cases)***

We are interested in learning about your recent experience with our court system. Please take a few minutes to complete this survey regarding your perceptions of Judge X and the court's handling of your case. Your responses will be kept anonymous, and will help us maintain a system that is efficient, effective, and fair.

**Please answer the following questions about your case:**

- |    |   |           |                   |
|----|---|-----------|-------------------|
| 1. | Were you the plaintiff or defendant in your case?           | Plaintiff | Defendant         |
| 2. | If a trial was held, how long did it last?                  | <hr/>     |                   |
| 3. | Do you win or lose the case, or did it settle out of court? | Won       | Lost      Settled |

**Please answer the following questions about the judge:**

- |    |   |     |    |
|----|---|-----|----|
| 1. | Did the judge appear well-prepared for your case?             | Yes | No |
| 2. | Did the judge deal with your case promptly?                   | Yes | No |
| 3. | Was the judge respectful to you?                              | Yes | No |
| 4. | Was the judge respectful to the other parties?                | Yes | No |
| 5. | If there was a trial, did the judge manage it efficiently?    | Yes | No |
| 6. | Did the judge manage the entire case efficiently?             | Yes | No |
| 7. | Do you feel that the judge listened to your side of the case? | Yes | No |
| 8. | Were the judge's rulings clear?                               | Yes | No |
| 9. | Do you understand why the judge ruled the way he/she did?     | Yes | No |

**Please add any other comments you would like to make about the judge or the way your case was handled in court:**



# APPENDIX H



APPENDIX H: *Model Court Staff Survey for Trial Judge Evaluations*

This questionnaire seeks your input on the quality of Judge X's performance. Your responses will remain anonymous. Please fill out and return this survey. If you have not had experience with Judge X, please so indicate immediately below, leave the remaining questions blank and return the survey. Your participation is appreciated.

## 1. Please evaluate Judge X's job performance on the issues below, using the following scale:

- 1 Inadequate
- 2 Less Than Adequate
- 3 Adequate
- 4 More than Adequate
- 5 Excellent
- NA Cannot Evaluate

If you do not feel you have adequate *first hand knowledge* to evaluate Judge X on a specific question, select NA ("Cannot Evaluate").

a. Behaves in a manner that encourages respect for the courts and is free from impropriety or the appearance of impropriety	1	2	3	4	5	NA
b. Displays fairness and impartiality toward each side of the case	1	2	3	4	5	NA
c. Avoids ex parte communications	1	2	3	4	5	NA
d. Allows parties to present their arguments and answers questions	1	2	3	4	5	NA
e. Demonstrates appropriate demeanor on the bench	1	2	3	4	5	NA
f. Is prepared for each day's docket	1	2	3	4	5	NA
g. Is courteous toward attorneys	1	2	3	4	5	NA
h. Offers to assist other judges and is generally a team player	1	2	3	4	5	NA
i. Is courteous toward court staff	1	2	3	4	5	NA
j. Writes rulings/opinions clearly	1	2	3	4	5	NA
k. Issues rulings/opinions promptly	1	2	3	4	5	NA

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2. Please add any comments about Judge X relating to any of your responses above. Please use additional pages as necessary.

3. Your years with the court:                      0-5                      6-10                      11 or more

4. Is the judge your supervisor?

# APPENDIX I



## APPENDIX I: *Model Explanation of Ratings and Short-form Report*

Our state has adopted a judicial performance evaluation program, which is overseen by the State Judicial Performance Commission. The program has two purposes:

To provide each judge with information to promote professional self-improvement; and

To provide voters with information upon which to make informed and knowledgeable decisions regarding judicial elections.

Each state judge is evaluated every two years by the State Judicial Performance Commission. The Commission examines the judge's caseload, reviews written opinions for clarity and faithfulness to the law, conducts unscheduled visits to the judge's courtroom to observe the proceedings, and collects public comments on the judge's performance. The Commission also conducts an interview with the judge. Finally, the Commission considers survey responses about the judge's performance.

### *How surveys are conducted*

An independent organization surveys attorneys, jurors, witnesses, and court staff, and others who interact professionally with the judge, and reports the results of those surveys to the Commission. All survey participants except jurors are asked to rate the judge by responding to questions in five categories:

**Legal knowledge**—(1) understanding the substantive law and relevant rules of procedure and evidence; (2) awareness and attentiveness to the factual and legal issues before the court; (3) proper application of statutes, judicial precedents, and other appropriate sources of legal authority.

**Integrity**—(1) avoiding impropriety or the appearance of impropriety; (2) displaying fairness and impartiality toward all parties; (3) avoiding ex parte communications.

**Communication skills**—(1) clearly explains all oral decisions; (2) issues clear written orders and/or opinions; (3) for trial judges, clearly explains relevant information to the jury.

**Judicial temperament**—(1) courtesy toward attorneys, court staff, and others in the courtroom; (2) maintains and requires order and decorum in the courtroom; (3) shows and expects professionalism from everyone in the courtroom; (4) demonstrates appropriate demeanor on the bench.

**Administrative performance**—(1) being prepared for all hearings and/or trials; (2) using court time efficiently; (3) issuing opinions or orders without unnecessary delay; (4) effective overall case management.

For each survey question, the judge is rated from 5 (Excellent) to 1 (Poor). An overall rating of 3.0 is therefore considered average, and a rating of 4.0 or higher is considered outstanding. Survey participants can also provide written comments on the judge in any category, which are considered by the Commission.

### *Juror and litigant surveys*

Jurors and litigants usually only observe the judge for one case, so their surveys are somewhat different from surveys for attorneys or others who observe the judge more regularly. At the end of their service, jurors are asked to provide “yes” or “no” answers to several questions concerning the judge's integrity, communication skills, and judicial temperament. Jurors do not give numerical ratings to the judge. Because appeals do not involve juries, no juror surveys are given for appellate judges.

Litigants are also asked to complete a survey at the end of their case, and to answer “yes” or “no” questions concerning the judge's integrity, temperament, and communication skills during the course of their case.

### *The Commission's vote*

Once the Commission has collected and reviewed all available information on each judge, it votes on whether the judge has met the state's judicial performance standards. The current standards are as follows:

- 1) A rating of at least 3.0 on 80% of total non-juror and non-litigant survey questions;
- 2) A favorable answer at least 75% of the time on all juror and litigant survey questions;
- 3) For trial judges, no cases with issues under advisement more than 90 days, unless the judge's particular docket justifies exceptions;
- 4) All or nearly all written opinions clearly and accurately describe the relevant facts and applicable law, and clearly state the court's order; and
- 5) No findings by a body charged with judicial discipline that the judge has violated the applicable code of judicial conduct.

Any judge who meets these standards is presumed to be qualified to continue to serve on the state judiciary. If a judge does not meet one or more of these standards, the judge is presumed not to be qualified. However, each member of the Commission may vote against the presumption if he or she feels that other information about the judge makes the presumption inaccurate.

The Commission's vote only relates to whether a judge is qualified to serve. It is not a recommendation as to whether that judge should continue to serve. Whether a judge remains in office rests with you, the voter.

## SECTION 3: Appendices

### *How to read each judge's report*

The reports in your voter guide summarize the information available to the Commission and state the results of the Commission's vote on each judge.

The two boxes in the top left of each report identify the court in which the judge sits, and the Commission's vote on whether the judge is qualified.

The large box in the top right provides biographical information about the judge. It also identifies the judge's major strengths and weaknesses, as determined from survey responses and public comments.

The bottom series of boxes provides the survey data for each judge. The data is broken down by attorneys, jurors, and all other survey participants. For attorneys and other participants, the box provides the judge's average score in each of the five categories. The box also provides an "approval percent," which indicates the percentage of survey questions in each category in which the judge received a score of 3 or higher. For juror surveys, the "approval percent" reflects the percentage of survey questions in each category for which the judge received a positive response.

*The full report on each judge is available to the public at the State Commission's website, [www.statejudicialperformance.com](http://www.statejudicialperformance.com), or by contacting the Commission directly.*

#### **Judge Armistead O. Hull**

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT  
(Washington, Adams and  
Jefferson Counties)

By a Vote of 10-2, the  
Commission Concludes that  
**Judge Hull is  
QUALIFIED**  
to Serve on the  
District Court

Judge Armistead O. Hull was appointed to the Fourth District Court in November 1999. He received his law degree from the University of Chicago in 1978. Before he was appointed to the bench, Judge Hull served as an Assistant District Attorney, and also practiced law privately. Judge Hull is married and has three children. He is active in several civic organizations.

#### **STRENGTHS OF JUDGE HULL'S PERFORMANCE**

- **Legal knowledge.** Judge Hull received high marks for his strong command of the law, as well as his understanding of the rules of evidence and procedure.
- **Efficiency.** Judge Hull was praised for managing cases efficiently and with minimal delay. He issues written orders promptly.
- **Clarity.** Jurors and attorneys rated Judge Hull highly on the clarity of his orders and instructions.

#### **WEAKNESSES OF JUDGE HULL'S PERFORMANCE**

- **Temperament on the bench.** Several survey respondents commented that Judge Hull too frequently treats attorneys with condescension and has a short temper.

<u>Judicial Performance Evaluation Categories</u>	<u>Attorney Responses</u> Surveys Distributed: 204 Surveys Returned: 88		<u>Juror Responses</u> Distributed: 86 Returned: 76	<u>Litigant Responses</u> Distributed: 31 Returned: 13	<u>Other Responses</u> Surveys Distributed: 103 Surveys Returned: 26	
	<u>Avg. Score</u>	<u>Approval%</u>	<u>Approval%</u>	<u>Approval%</u>	<u>Avg. Score</u>	<u>Approval%</u>
Legal Ability	4.8	98%	—	—	4.7	91%
Integrity	4.6	95%	95%	77%	4.4	85%
Communication Skills	4.1	88%	94%	92%	4.5	93%
Judicial Temperment	3.1	71%	87%	77%	3.8	82%
Administrative Perf.	4.3	92%	—	—	4.2	88%



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