

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

2
3 **Intent:**

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

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

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

11 **Applicability:**

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

15 **Statement of the Rule:**

16
17 **(1) Performance evaluations.**

18 ~~(1)(A) Court commissioners.~~

19 (1)(A)(i) On forms provided by the Aadministrative Office, the presiding judge of a
20 district ~~or court level~~ of which a court commissioner serves shall complete an evaluation
21 of the court commissioner's performance by ~~June~~ July 1 of each year. If a commissioner
22 serves multiple districts or court levels, the presiding judge of each district ~~or court level~~
23 shall complete an evaluation.

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

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

31
32 ~~(1)(B) Active senior judges. An active senior judge's performance shall be evaluated~~
33 ~~by attorneys as provided in paragraph (3)(A) and by presiding judges and court staff as~~
34 ~~provided in paragraph (3)(B).~~

35
36 **(2) Evaluation and certification criteria.** ~~Active senior judges and~~ Ccourt commissioners shall
37 be evaluated and certified upon the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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

56 (2)(N) management of workload;

57 (2)(O) willingness to share proportionally the workload within the court or district, or
58 regularly accepting assignments;

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

60 (2)(Q) ability and willingness to use the court's case management systems in all cases.

61
62 **(3) Standards of performance.**

63 **(3)(A) Survey of attorneys.**

64 (3)(A)(i) The Council shall measure satisfactory performance by a sample survey
65 of the attorneys appearing before the ~~active senior judge or~~ court commissioner
66 during the period for which the ~~active senior judge or~~ court commissioner is being
67 evaluated. The Council shall measure satisfactory performance based on the
68 results of the final survey conducted during a court commissioner's term of office,
69 subject to the discretion of a court commissioner serving an abbreviated initial
70 term not to participate in a second survey under Section (3)(A)(vi) of this rule.

71
72 **(3)(A)(ii) Survey scoring.** The survey shall be scored as follows.

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

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

81 (3)(A)(ii)(c) A court commissioner's performance is satisfactory if:

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

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

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

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

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

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

99 (3)(A)(iv)(b) With the approval of the Management Committee, a court
100 commissioner may exclude an attorney from the list of respondents if the
101 court commissioner believes the attorney will not respond objectively to
102 the survey.

103
104 (3)(A)(v) **Number of survey respondents.** The Surveyor shall identify 180
105 respondents or all attorneys appearing before the court commissioner, whichever
106 is less. ~~All attorneys who have appeared before the active senior judge shall be
107 sent a survey questionnaire as soon as possible after the hearing.~~

108
109 (3)(A)(vi) **Administration of the survey.** Court commissioners shall be the
110 subject of a survey approximately six months prior to the expiration of their term
111 of office. Court commissioners shall be the subject of a survey during the second
112 year of each term of office. Newly appointed court commissioners shall be the
113 subject of a survey during the second year of their term of office and, at their
114 option, approximately six months prior to the expiration of their term of office.

115
116 (3)(A)(vii) **Survey report.** The Surveyor shall provide to the subject of the survey,
117 the subject's presiding judge(s), and the ~~Judicial~~ Council the number and
118 percentage of respondents for each of the possible responses on each survey
119 question and all comments, retyped and edited as necessary to redact the
120 respondent's identity.

121
122 ~~(3)(B) Non-attorney surveys.~~

123 ~~(3)(B)(i) Surveys of presiding judges and court staff regarding non-
124 appellate senior judges. The Council shall measure performance of active
125 senior judges by a survey of all presiding judges and trial court executives, or in
126 the justice courts, the Justice Court Administrator, of districts in which the senior
127 judge has been assigned. The presiding judge and trial court executive will~~

gather information for the survey from anonymous questionnaires completed by court staff on the calendars to which the senior judge is assigned and by jurors on jury trials to which the senior judge is assigned. The Administrative Office of the Courts shall distribute survey forms with instructions to return completed surveys to the Surveyor. The survey questions will be based on the non-legal ability evaluation criteria in paragraph (2). The Surveyor shall provide to the subject of the survey, the subject's presiding judge, and the Judicial Council the responses on each survey question. The Judicial Council shall determine whether the qualitative assessment of the senior judge indicates satisfactory performance.

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

(3)(BC) **Case under advisement standard.**

(3)(BC)(i) A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the ~~senior judge or~~ court commissioner for final determination. For purposes of this rule, "submitted to the ~~senior judge or~~ court commissioner" or "submission" is defined as follows:

(3)(BC)(i)(a) When a matter requiring attention is placed by staff in the ~~senior judge's or~~ court commissioner's personal electronic queue, inbox, personal possession, or equivalent;

(3)(BC)(i)(b) If a hearing or oral argument is set, at the conclusion of all hearings or oral argument held on the specific motion or matter; or

(3)(BC)(i)(c) If further briefing is required after a hearing or oral argument, when all permitted briefing is completed, a request to submit is filed, if required, and the matter is placed by staff in the ~~senior judge's or~~ court commissioner's personal electronic queue, inbox, personal possession, or equivalent.

(3)(B)(ii) A case is no longer under advisement when the ~~senior judge or~~ court commissioner makes a decision on the issue that is under advisement or on the entire case.

(3)(BC)(iii) The Council shall measure satisfactory performance by the self-declaration of the ~~senior judge or~~ court commissioner or by reviewing the records of the court.

174 (3)(~~BC~~)(iv~~ii~~) A ~~senior judge or~~ court commissioner in a trial court demonstrates
175 satisfactory performance by holding:

176 (3)(~~BC~~)(iv~~ii~~)(a) no more than three cases per calendar year under
177 advisement more than two months after submission; and

178 (3)(~~BC~~)(iv~~ii~~)(b) no case under advisement more than 180 days after
179 submission.

180 ~~(3)(C)(iv) A senior judge in the court of appeals demonstrates satisfactory~~
181 ~~performance by:~~

182 ~~(3)(C)(iv)(a) circulating no more than an average of three principal~~
183 ~~opinions per calendar year more than six months after submission with no~~
184 ~~more than half of the maximum exceptional cases in any one calendar~~
185 ~~year; and~~

186 ~~(3)(C)(iv)(b) achieving a final average time to circulation of a principal~~
187 ~~opinion of no more than 120 days after submission.~~

188
189 (3)(~~CD~~) **Compliance with education standards.** Satisfactory performance is
190 established if the ~~senior judge or~~ court commissioner annually complies with the judicial
191 education standards of this Code, subject to the availability of in-state education
192 programs. The Council shall measure satisfactory performance by the self-declaration of
193 the ~~senior judge or~~ court commissioner or by reviewing the records of the state court
194 administrator.

195
196 (3)(~~DE~~) **Substantial compliance with Code of Judicial Conduct.** Satisfactory
197 performance is established if the response of the ~~senior judge or~~ court commissioner
198 demonstrates substantial compliance with the Code of Judicial Conduct, if the Council
199 finds the responsive information to be complete and correct and if the Council's review of
200 formal and informal sanctions lead the Council to conclude the court commissioner is in
201 substantial compliance with the Code of Judicial Conduct. ~~Under Rule 11-201 and Rule~~
202 ~~11-203, any sanction of a senior judge disqualifies the senior judge from reappointment.~~

203
204 (3)(~~EF~~) **Physical and mental competence.** Satisfactory performance is established if
205 the response of the ~~senior judge or~~ court commissioner demonstrates physical and
206 mental competence to serve in office and if the Council finds the responsive information
207 to be complete and correct. The Council may request a statement by an examining
208 physician.

209
210 (3)(~~EG~~) **Performance and corrective action plans for court commissioners.**

211 (3)(~~EG~~)(i) The presiding judge of the district a court commissioner serves shall
212 prepare a performance plan for a new court commissioner within 30 days of the
213 court commissioner's appointment. If a court commissioner serves multiple
214 districts or court levels, the presiding judge of each district and court level shall
215 prepare a performance plan. The performance plan shall communicate the
216 expectations set forth in paragraph (2) of this rule.

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

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222

(4) Judicial Council certification process

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

- 227 (4)(A)(i) survey scores;
- 228 (4)(A)(ii) judicial education records;
- 229 (4)(A)(iii) self-declaration forms;
- 230 (4)(A)(iv) records of formal and informal sanctions;
- 231 (4)(A)(v) performance evaluations, if the court commissioner ~~or senior judge~~
232 received an overall rating of Needs Improvement; and
- 233 (4)(A)(vi) any information requested by the Council.

234

235 (4)(B) **Records delivery.** Prior to the meeting the Administrative Office ~~of the Courts~~
236 shall deliver the records to the Council and to the ~~senior judges and~~ court
237 commissioners being evaluated.

238

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

243

244 (4)(D) **Certification presumptions.** If the Council finds the ~~senior judge or~~ court
245 commissioner has met the performance standards, it is presumed the Council will certify
246 the ~~senior judge or~~ court commissioner for reappointment. If the Council finds the ~~senior~~
247 ~~judge or~~ court commissioner did not meet the performance standards, it is presumed the
248 Council will not certify the ~~senior judge or~~ court commissioner for reappointment. The
249 Council may certify the ~~senior judge or~~ court commissioner or withhold decision until
250 after meeting with the ~~senior judge or~~ court commissioner.

251

252 (4)(E) **Overcoming presumptions.** A presumption against certification may be
253 overcome by a showing that a ~~senior judge's or~~ court commissioner's failure to comply
254 with paragraphs (3)(~~B~~~~G~~) and (3)(~~C~~~~D~~) were beyond the ~~senior judge's or~~ court
255 commissioner's personal control. A presumption in favor of certification may be
256 overcome by:

257 (4)(E)(i) reliable information showing non-compliance with a performance
258 standard, except as otherwise provided in paragraph (4)(E); or

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

261

262 (4)(F) **August Council meeting.** At the request of the Council the ~~senior judge or~~ court
263 commissioner challenging a non-certification decision shall meet with the Council in
264 August. At the request of the Council the presiding judge(~~s~~) shall report to the Council
265 any meetings held with the ~~senior judge or~~ court commissioner, the steps toward self-
266 improvement identified as a result of those meetings, and the efforts to complete those

267 steps. Not later than 5 days after the July meeting, the Administrative Office ~~of the~~
268 ~~Courts~~ shall deliver to ~~the senior judge or~~ court commissioner being evaluated notice of
269 the Council's action and any records not already delivered to the ~~senior judge or~~ court
270 commissioner. The notice shall contain an adequate description of the reasons the
271 Council has withheld its decision and the date by which the ~~senior judge or~~ court
272 commissioner is to deliver written materials. The Administrative Office ~~of the Courts~~ shall
273 deliver copies of all materials to the Council and to the ~~senior judge or~~ court
274 commissioner prior to the August meeting.

275
276 (4)(G) **August Council meeting closed session.** At its August meeting in a session
277 closed in accordance with ~~r~~Rule 2-103, the Council shall provide to the ~~senior judge or~~
278 court commissioner adequate time to present evidence and arguments in favor of
279 certification. Any member of the Council may present evidence and arguments of which
280 the ~~senior judge or~~ court commissioner has had notice opposed to certification. The
281 burden is on the person arguing against the presumed certification. The Council may
282 determine the order of presentation.

283
284 (4)(H) **Final certification decision.** At its August meeting in open session, the Council
285 shall approve its final findings and certification regarding all ~~senior judges and~~ court
286 commissioners whose terms of office expire that year.

287
288 (4)(I) **Communication of certification decision.** The ~~Judicial~~ Council shall
289 communicate its certification decision to the ~~senior judge or~~ court commissioner and to
290 the presiding judge(s) of the district(s) the commissioner serves. ~~The Judicial Council~~
291 ~~shall communicate its certification decision for senior judges to the Supreme Court and~~
292 ~~for court commissioners to the presiding judge of the district the commissioner serves.~~

293
294 *Effective: ~~November~~ May 1, 20240*