

1 **Rule 3-111. Performance evaluation of court commissioners.**

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3 **Intent:**

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

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9 To generate and provide to court commissioners information about their performance.

10  
11 To establish the procedures by which the Council will evaluate and certify court commissioners  
12 for reappointment.

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14 **Applicability:**

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16 This rule ~~shall apply~~ applies to presiding judges, the Council, and court commissioners.

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18 **Statement of the Rule:**

19  
20 **(1) Performance evaluations.**

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22 (1)(A) On forms provided by the Administrative Office, the presiding judge of a district of  
23 which a court commissioner serves ~~shall~~ will complete an evaluation of the court  
24 commissioner's performance by July 1 of each year. If a commissioner serves multiple  
25 districts or court levels, the presiding judge of each district ~~shall~~ will complete an  
26 evaluation.

27  
28 (1)(B) The presiding judge(s) ~~shall~~ will survey judges and court personnel seeking  
29 feedback for the evaluation. During the evaluation period, the presiding judge(s) ~~shall~~ will  
30 review at least five of the commissioner's active cases. The review ~~shall~~ will include  
31 courtroom observation.

32  
33 (1)(C) The presiding judge(s) ~~shall~~ will provide a copy of each commissioner evaluation  
34 to the Council. Copies of plans under paragraph (3)(G) and all evaluations ~~shall~~ will also  
35 be maintained in the commissioner's personnel file in the Administrative Office.

36  
37 **(2) Evaluation and certification criteria.** Court commissioners ~~shall~~ must be evaluated and  
38 certified upon the following criteria:

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

42  
43 (2)(B) attentiveness to factual and legal issues before the court;

44  
45 (2)(C) adherence to precedent and ability to clearly explain departures from precedent;

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

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

51

- 52 (2)(F) ability to clearly explain the legal basis for judicial opinions;  
53  
54 (2)(G) demonstration of courtesy toward attorneys, court staff, and others in the  
55 commissioner's court;  
56  
57 (2)(H) maintenance of decorum in the courtroom;  
58  
59 (2)(I) demonstration of judicial demeanor and personal attributes that promote public  
60 trust and confidence in the judicial system;  
61  
62 (2)(J) preparation for hearings or oral argument;  
63  
64 (2)(K) avoidance of impropriety or the appearance of impropriety;  
65  
66 (2)(L) display of fairness and impartiality toward all parties;  
67  
68 (2)(M) ability to clearly communicate, including the ability to explain the basis for written  
69 rulings, court procedures, and decisions;  
70  
71 (2)(N) management of workload;  
72  
73 (2)(O) willingness to share proportionally the workload within the court or district, or  
74 regularly accepting assignments;  
75  
76 (2)(P) issuance of opinions and orders without unnecessary delay; and  
77  
78 (2)(Q) ability and willingness to use the court's case management systems in all cases.  
79

80 **(3) Standards of performance.**  
81

82 (3)(A) **Survey of attorneys.** ~~(3)(A)(i)~~ The Council ~~shall~~will measure satisfactory  
83 performance by a sample survey of the attorneys appearing before the court  
84 commissioner during the period for which the court commissioner is being evaluated.  
85 The Council ~~shall~~will measure satisfactory performance based on the results of the final  
86 survey conducted during a court commissioner's term of office, subject to the discretion  
87 of a court commissioner serving an abbreviated initial term not to participate in a second  
88 survey under ~~Section-paragraph~~ (3)(A)(vi) of this rule.  
89

90 (3)(A)(ii) **Survey scoring.** The survey ~~shall~~must be scored as follows.  
91

92 (3)(A)(ii)(a) Each question of the attorney survey will have six possible  
93 responses: Excellent, More Than Adequate, Adequate, Less Than  
94 Adequate, Inadequate, or No Personal Knowledge. A favorable response  
95 is Excellent, More Than Adequate, or Adequate.  
96

97 (3)(A)(ii)(b) Each question ~~shall~~must be scored by dividing the total  
98 number of favorable responses by the total number of all responses,  
99 excluding the "No Personal Knowledge" responses. A satisfactory score  
100 for a question is achieved when the ratio of favorable responses is 70%  
101 or greater.  
102

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

104  
105 (3)(A)(ii)(c)(1) at least 75% of the questions have a satisfactory  
106 score; and

107  
108 (3)(A)(ii)(c)(2) the favorable responses when divided by the total  
109 number of all responses, excluding "No Personal Knowledge"  
110 responses, is 70% or greater.

111  
112 (3)(A)(iii) **Survey respondents.** The Administrative Office ~~shall~~must identify as  
113 potential respondents all lawyers who have appeared before the court  
114 commissioner during the period for which the commissioner is being evaluated.

115  
116 (3)(A)(~~iii~~iv) **Exclusion from survey respondents.** ~~(3)(A)(iv)(a)~~ A lawyer who has  
117 been appointed as a judge or court commissioner ~~shall~~must not be a respondent  
118 in the survey. A lawyer who is suspended or disbarred or who has resigned under  
119 discipline ~~shall~~must not be a respondent in the survey.

120  
121 ~~(3)(A)(iv)(b) With the approval of the Management Committee, a court~~  
122 ~~commissioner may exclude an attorney from the list of respondents if the~~  
123 ~~court commissioner believes the attorney will not respond objectively to~~  
124 ~~the survey.~~

125 (3)(A)(iv) **Number of survey respondents.** The Surveyor ~~shall~~must identify 180  
126 respondents or all attorneys appearing before the court commissioner, whichever  
127 is less.

128  
129 (3)(A)(v) **Administration of the survey.** Court commissioners ~~shall~~will be the  
130 subject of a survey approximately six months prior to the expiration of their term  
131 of office. Court commissioners ~~shall~~will be the subject of a survey during the  
132 second year of each term of office. Newly appointed court commissioners ~~shall~~  
133 will be the subject of a survey during the second year of their term of office and,  
134 at their option, approximately six months prior to the expiration of their term of  
135 office.

136  
137 (3)(A)(vii) **Survey report.** The Surveyor ~~shall~~will provide to the subject of the  
138 survey, the subject's presiding judge(s), and the Council the number and  
139 percentage of respondents for each of the possible responses on each survey  
140 question and all comments, retyped and edited as necessary to redact the  
141 respondent's identity.

142  
143 (3)(B) **Case under advisement standard.**

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

149  
150 (3)(B)(i)(a) When a matter requiring attention is placed by staff in the court  
151 commissioner's personal electronic queue, inbox, personal possession, or  
152 equivalent;

153

- 154 (3)(B)(i)(b) If a hearing or oral argument is set, at the conclusion of all  
155 hearings or oral argument held on the specific motion or matter; or  
156
- 157 (3)(B)(i)(c) If further briefing is required after a hearing or oral argument,  
158 when all permitted briefing is completed, a request to submit is filed, if  
159 required, and the matter is placed by staff in the court commissioner's  
160 personal electronic queue, inbox, personal possession, or equivalent.  
161
- 162 (3)(B)(ii) A case is no longer under advisement when the court commissioner  
163 makes a decision on the issue that is under advisement or on the entire case.  
164
- 165 (3)(B)(iii) The Council ~~shall~~will measure satisfactory performance by the self-  
166 declaration of the court commissioner or by reviewing the records of the court.  
167
- 168 (3)(B)(iv) A court commissioner in a trial court demonstrates satisfactory  
169 performance by holding:  
170
- 171 (3)(B)(iv)(a) no more than three cases per calendar year under  
172 advisement more than two months after submission; and  
173
- 174 (3)(B)(iv)(b) no case under advisement more than 180 days after  
175 submission.  
176
- 177 (3)(C) **Compliance with education standards.** Satisfactory performance is established  
178 if the court commissioner annually complies with the judicial education standards of this  
179 Code, subject to the availability of in-state education programs. The Council ~~shall~~will  
180 measure satisfactory performance by the self-declaration of the court commissioner or  
181 by reviewing the records of the state court administrator.  
182
- 183 (3)(D) **Substantial compliance with Code of Judicial Conduct.** Satisfactory  
184 performance is established if the response of the court commissioner demonstrates  
185 substantial compliance with the Code of Judicial Conduct, if the Council finds the  
186 responsive information to be complete and correct and if the Council's review of formal  
187 and informal sanctions lead the Council to conclude the court commissioner is in  
188 substantial compliance with the Code of Judicial Conduct.  
189
- 190 (3)(E) **Physical and mental competence.** Satisfactory performance is established if the  
191 response of the court commissioner demonstrates physical and mental competence to  
192 serve in office and if the Council finds the responsive information to be complete and  
193 correct. The Council may request a statement by an examining physician.  
194
- 195 (3)(F) **Performance and corrective action plans for court commissioners.**  
196
- 197 (3)(F)(i) The presiding judge of the district a court commissioner serves ~~shall~~will  
198 prepare a performance plan for a new court commissioner within 30 days of the  
199 court commissioner's appointment. If a court commissioner serves multiple  
200 districts or court levels, the presiding judge of each district and court level ~~shall~~  
201 will prepare a performance plan. The performance plan ~~shall~~must communicate  
202 the expectations set forth in paragraph (2) of this rule.  
203

204 (3)(F)(ii) If a presiding judge issues an overall “Needs Improvement” rating on a  
205 court commissioner’s annual performance evaluation as provided in paragraph  
206 (1), that presiding judge ~~shall~~will prepare a corrective action plan setting forth  
207 specific ways in which the court commissioner can improve in deficient areas.  
208

#### 209 (4) **Judicial Council certification process**

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211 (4)(A) **July Council meeting.** At its meeting in July, the Council ~~shall~~will begin the  
212 process of determining whether the court commissioners whose terms of office expire  
213 that year meet the standards of performance provided for in this rule. The Administrative  
214 Office ~~shall~~must assemble all evaluation information, including:

- 215 (4)(A)(i) survey scores;
- 216
- 217 (4)(A)(ii) judicial education records;
- 218
- 219 (4)(A)(iii) self-declaration forms;
- 220
- 221 (4)(A)(iv) records of formal and informal sanctions;
- 222
- 223 (4)(A)(v) performance evaluations, if the court commissioner received an overall  
224 rating of Needs Improvement; and
- 225
- 226 (4)(A)(vi) any information requested by the Council.  
227

228  
229 (4)(B) **Records delivery.** Prior to the meeting the Administrative Office ~~shall~~must deliver  
230 the records to the Council and to the court commissioners being evaluated.  
231

232 (4)(C) **July Council meeting closed session.** In a session closed in compliance with  
233 rule 2-103, the Council ~~shall~~will consider the evaluation information and make a  
234 preliminary finding of whether a court commissioner has met the performance standards.  
235

236 (4)(D) **Certification presumptions.** If the Council finds the court commissioner has met  
237 the performance standards, it is presumed the Council will certify the court commissioner  
238 for reappointment. If the Council finds the court commissioner did not meet the  
239 performance standards, it is presumed the Council will not certify the court commissioner  
240 for reappointment. The Council may certify the court commissioner or withhold decision  
241 until after meeting with the court commissioner.  
242

243 (4)(E) **Overcoming presumptions.** A presumption against certification may be  
244 overcome by a showing that a court commissioner’s failure to comply with paragraphs  
245 (3)(B) and (3)(C) were beyond the court commissioner’s personal control. A presumption  
246 in favor of certification may be overcome by:

- 247 (4)(E)(i) reliable information showing non-compliance with a performance  
248 standard, except as otherwise provided in paragraph (4)(E); or
- 249
- 250 (4)(E)(ii) formal or informal sanctions of sufficient gravity or number or both to  
251 demonstrate lack of substantial compliance with the Code of Judicial Conduct.  
252  
253

254 (4)(F) **August Council meeting.** At the request of the Council the court commissioner  
255 challenging a non-certification decision ~~shall~~will meet with the Council in August. At the  
256 request of the Council the presiding judge(s) shall report to the Council any meetings  
257 held with the court commissioner, the steps toward self-improvement identified as a  
258 result of those meetings, and the efforts to complete those steps. Not later than 5 days  
259 after the July meeting, the Administrative Office ~~shall~~must deliver to court commissioner  
260 being evaluated notice of the Council's action and any records not already delivered to  
261 the court commissioner. The notice ~~shall~~must contain an adequate description of the  
262 reasons the Council has withheld its decision and the date by which the court  
263 commissioner is to deliver written materials. The Administrative Office ~~shall~~must deliver  
264 copies of all materials to the Council and to the court commissioner prior to the August  
265 meeting.  
266

267 (4)(G) **August Council meeting closed session.** At its August meeting in a session  
268 closed in accordance with Rule 2-103, the Council ~~shall~~will provide to the court  
269 commissioner adequate time to present evidence and arguments in favor of certification.  
270 Any member of the Council may present evidence and arguments of which the court  
271 commissioner has had notice opposed to certification. The burden is on the person  
272 arguing against the presumed certification. The Council may determine the order of  
273 presentation.  
274

275 (4)(H) **Final certification decision.** At its August meeting in open session, the Council  
276 ~~shall~~will approve its final findings and certification regarding all court commissioners  
277 whose terms of office expire that year.  
278

279 (4)(I) **Communication of certification decision.** The Council ~~shall~~will communicate its  
280 certification decision to the court commissioner and to the presiding judge(s) of the  
281 district(s) the commissioner serves.  
282

283 *Effective: May ~~130~~, 20264*