

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

2 **Intent:**

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

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

7 To establish the procedures by which the Council will evaluate and certify court commissioners  
8 for reappointment.

9 **Applicability:**

10 This rule applies to presiding judges, the Council, and court commissioners.

11 **Statement of the Rule:**

12 **(1) Performance evaluations.**

13 (1)(A) On forms provided by the Administrative Office, the presiding judge of a district of  
14 which a court commissioner serves will complete an evaluation of the court  
15 commissioner's performance by July 1 of each year. If a commissioner serves multiple  
16 districts or court levels, the presiding judge of each district will complete an evaluation.

17 (1)(B) The presiding judge(s) will survey judges and court personnel seeking feedback  
18 for the evaluation. During the evaluation period, the presiding judge(s) will review at least  
19 five of the commissioner's active cases. The review will include courtroom observation.

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

23 **(2) Evaluation and certification criteria.** Court commissioners must be evaluated and certified  
24 upon the following criteria:

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

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

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

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

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

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

- 33 (2)(G) demonstration of courtesy toward attorneys, court staff, and others in the  
34 commissioner's court;
- 35 (2)(H) maintenance of decorum in the courtroom;
- 36 (2)(I) demonstration of judicial demeanor and personal attributes that promote public  
37 trust and confidence in the judicial system;
- 38 (2)(J) preparation for hearings or oral argument;
- 39 (2)(K) avoidance of impropriety or the appearance of impropriety;
- 40 (2)(L) display of fairness and impartiality toward all parties;
- 41 (2)(M) ability to clearly communicate, including the ability to explain the basis for written  
42 rulings, court procedures, and decisions;
- 43 (2)(N) management of workload;
- 44 (2)(O) willingness to share proportionally the workload within the court or district, or  
45 regularly accepting assignments;
- 46 (2)(P) issuance of opinions and orders without unnecessary delay; and
- 47 (2)(Q) ability and willingness to use the court's case management systems in all cases.

48 **(3) Standards of performance.**

49 (3)(A) **Survey of attorneys.** The Council will measure satisfactory performance by a  
50 sample survey of the attorneys appearing before the court commissioner during the  
51 period for which the court commissioner is being evaluated. The Council will measure  
52 satisfactory performance based on the results of the final survey conducted during a  
53 court commissioner's term of office, subject to the discretion of a court commissioner  
54 serving an abbreviated initial term not to participate in a second survey under paragraph  
55 (3)(A)(v) of this rule.

56 (3)(A)(i) **Survey scoring.** The survey must be scored as follows:

57 (3)(A)(i)(a) Each question of the attorney survey will have six possible  
58 responses: Excellent, More Than Adequate, Adequate, Less Than  
59 Adequate, Inadequate, or No Personal Knowledge. A favorable response  
60 is Excellent, More Than Adequate, or Adequate.

61 (3)(A)(i)(b) Each question must be scored by dividing the total number of  
62 favorable responses by the total number of all responses, excluding the  
63 "No Personal Knowledge" responses. A satisfactory score for a question  
64 is achieved when the ratio of favorable responses is 70% or greater.

65 (3)(A)(i)(c) A court commissioner's performance is satisfactory if:

66 (3)(A)(i)(c)(1) at least 75% of the questions have a satisfactory  
67 score; and

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

71 (3)(A)(ii) **Survey respondents.** The Administrative Office must identify as  
72 potential respondents all lawyers who have appeared before the court  
73 commissioner during the period for which the commissioner is being evaluated.

74 (3)(A)(iii) **Exclusion from survey respondents.** A lawyer who has been  
75 appointed as a judge or court commissioner must not be a respondent in the  
76 survey. A lawyer who is suspended or disbarred or who has resigned under  
77 discipline must not be a respondent in the survey.

78 (3)(A)(iv) **Number of survey respondents.** The Surveyor must identify 180  
79 respondents or all attorneys appearing before the court commissioner, whichever  
80 is less.

81 (3)(A)(v) **Administration of the survey.** Court commissioners will be the subject  
82 of a survey approximately six months prior to the expiration of their term of office.  
83 Court commissioners will be the subject of a survey during the second year of  
84 each term of office. Newly appointed court commissioners will be the subject of a  
85 survey during the second year of their term of office and, at their option,  
86 approximately six months prior to the expiration of their term of office.

87 (3)(A)(vi) **Survey report.** The Surveyor will provide to the subject of the survey,  
88 the subject's presiding judge(s), and the Council the number and percentage of  
89 respondents for each of the possible responses on each survey question and all  
90 comments, retyped and edited as necessary to redact the respondent's identity.

91 (3)(B) **Case under advisement standard.**

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

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

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

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

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

107 (3)(B)(iii) The Council will measure satisfactory performance by the self-  
108 declaration of the court commissioner or by reviewing the records of the court.

109 (3)(B)(iv) A court commissioner in a trial court demonstrates satisfactory  
110 performance by holding:

111 (3)(B)(iv)(a) no more than three cases per calendar year under  
112 advisement more than two months after submission; and

113 (3)(B)(iv)(b) no case under advisement more than 180 days after  
114 submission.

115 (3)(C) **Compliance with education standards.** Satisfactory performance is established  
116 if the court commissioner annually complies with the judicial education standards of this  
117 Code, subject to the availability of in-state education programs. The Council will  
118 measure satisfactory performance by the self-declaration of the court commissioner or  
119 by reviewing the records of the state court administrator.

120 (3)(D) **Substantial compliance with Code of Judicial Conduct.** Satisfactory  
121 performance is established if the response of the court commissioner demonstrates  
122 substantial compliance with the Code of Judicial Conduct, if the Council finds the  
123 responsive information to be complete and correct and if the Council's review of formal  
124 and informal sanctions lead the Council to conclude the court commissioner is in  
125 substantial compliance with the Code of Judicial Conduct.

126 (3)(E) **Physical and mental competence.** Satisfactory performance is established if the  
127 response of the court commissioner demonstrates physical and mental competence to  
128 serve in office and if the Council finds the responsive information to be complete and  
129 correct. The Council may request a statement by an examining physician.

130 (3)(F) **Performance and corrective action plans for court commissioners.**

131 (3)(F)(i) The presiding judge of the district a court commissioner serves will  
132 prepare a performance plan for a new court commissioner within 30 days of the  
133 court commissioner's appointment. If a court commissioner serves multiple  
134 districts or court levels, the presiding judge of each district and court level will  
135 prepare a performance plan. The performance plan must communicate the  
136 expectations set forth in paragraph (2) of this rule.

137 (3)(F)(ii) If a presiding judge issues an overall "Needs Improvement" rating on a  
138 court commissioner's annual performance evaluation as provided in paragraph  
139 (1), that presiding judge will prepare a corrective action plan setting forth specific  
140 ways in which the court commissioner can improve in deficient areas.

141 (4) **Judicial Council certification process**

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

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

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

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

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

150 (4)(A)(v) performance evaluations, if the court commissioner received an overall  
151 rating of Needs Improvement; and

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

153 (4)(B) **Records delivery.** Prior to the meeting the Administrative Office must deliver the  
154 records to the Council and to the court commissioners being evaluated.

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

158 (4)(D) **Certification presumptions.** If the Council finds the court commissioner has met  
159 the performance standards, it is presumed the Council will certify the court commissioner  
160 for reappointment. If the Council finds the court commissioner did not meet the  
161 performance standards, it is presumed the Council will not certify the court commissioner  
162 for reappointment. The Council may certify the court commissioner or withhold decision  
163 until after meeting with the court commissioner.

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

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

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

172 (4)(F) **August Council meeting.** At the request of the Council the court commissioner  
173 challenging a non-certification decision will meet with the Council in August. At the  
174 request of the Council the presiding judge(s) shall report to the Council any meetings  
175 held with the court commissioner, the steps toward self-improvement identified as a  
176 result of those meetings, and the efforts to complete those steps. Not later than 5 days  
177 after the July meeting, the Administrative Office must deliver to court commissioner  
178 being evaluated notice of the Council's action and any records not already delivered to

179 the court commissioner. The notice must contain an adequate description of the reasons  
180 the Council has withheld its decision and the date by which the court commissioner is to  
181 deliver written materials. The Administrative Office must deliver copies of all materials to  
182 the Council and to the court commissioner prior to the August meeting.

183 (4)(G) **August Council meeting closed session.** At its August meeting in a session  
184 closed in accordance with Rule 2-103, the Council will provide to the court commissioner  
185 adequate time to present evidence and arguments in favor of certification. Any member  
186 of the Council may present evidence and arguments of which the court commissioner  
187 has had notice opposed to certification. The burden is on the person arguing against the  
188 presumed certification. The Council may determine the order of presentation.

189 (4)(H) **Final certification decision.** At its August meeting in open session, the Council  
190 will approve its final findings and certification regarding all court commissioners whose  
191 terms of office expire that year.

192 (4)(I) **Communication of certification decision.** The Council will communicate its  
193 certification decision to the court commissioner and to the presiding judge(s) of the  
194 district(s) the commissioner serves.

195 *Effective: May 18, 2026*