

Rule 3-111. Performance evaluation of court commissioners.**Intent:**

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

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

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

Applicability:

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

Statement of the Rule:**(1) Performance evaluations.**

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

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

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

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

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

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

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

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

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

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

(3) Standards of performance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3)(B)(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)(B)(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 court commissioner's personal electronic queue, inbox, personal possession, or equivalent.

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

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

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

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

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

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

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

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

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

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

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

(4) Judicial Council certification process

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

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

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

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

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

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

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

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

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

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

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

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

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

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*