

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 active senior judges  
4 and court commissioners will be evaluated, the standards against which performance will be  
5 measured and the methods for fairly, accurately and reliably measuring performance.

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

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

10 **Applicability:**

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

14 **Statement of the Rule:**

15 (1) **Performance evaluations.**

16 (1)(A) **Court commissioners.**

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

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

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

- 31 (1)(B) **Active senior judges.** An active senior judge's performance shall be evaluated  
32 by attorneys as provided in paragraph (3)(A) and by presiding judges and court  
33 staff as provided in paragraph (3)(B).
- 34 (2) **Evaluation and certification criteria.** Active senior judges and court commissioners shall  
35 be evaluated and certified upon the following criteria:
- 36 (2)(A) demonstration of understanding of the substantive law and any relevant rules of  
37 procedure and evidence;
- 38 (2)(B) attentiveness to factual and legal issues before the court;
- 39 (2)(C) adherence to precedent and ability to clearly explain departures from precedent;
- 40 (2)(D) grasp of the practical impact on the parties of the commissioner's or senior  
41 judge's rulings, including the effect of delay and increased litigation expense;
- 42 (2)(E) ability to write clear judicial opinions;
- 43 (2)(F) ability to clearly explain the legal basis for judicial opinions;
- 44 (2)(G) demonstration of courtesy toward attorneys, court staff, and others in the  
45 commissioner's or senior judge's court;
- 46 (2)(H) maintenance of decorum in the courtroom;
- 47 (2)(I) demonstration of judicial demeanor and personal attributes that promote public  
48 trust and confidence in the judicial system;
- 49 (2)(J) preparation for hearings or oral argument;
- 50 (2)(K) avoidance of impropriety or the appearance of impropriety;
- 51 (2)(L) display of fairness and impartiality toward all parties;
- 52 (2)(M) ability to clearly communicate, including the ability to explain the basis for written  
53 rulings, court procedures, and decisions;
- 54 (2)(N) management of workload;
- 55 (2)(O) willingness to share proportionally the workload within the court or district, or  
56 regularly accepting assignments;
- 57 (2)(P) issuance of opinions and orders without unnecessary delay; and
- 58 (2)(Q) ability and willingness to use the court's case management systems in all cases.
- 59 (3) **Standards of performance.**
- 60 (3)(A) **Survey of attorneys.**
- 61 (3)(A)(i) The Council shall measure satisfactory performance by a sample  
62 survey of the attorneys appearing before the active senior judge or  
63 court commissioner during the period for which the active senior judge  
64 or court commissioner is being evaluated. The Council shall measure

65 satisfactory performance based on the results of the final survey  
66 conducted during a court commissioner's term of office, subject to the  
67 discretion of a court commissioner serving an abbreviated initial term  
68 not to participate in a second survey under Section (3)(A)(vi) of this  
69 rule.

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

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

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

82 (3)(A)(ii)(c) A court commissioner's performance is satisfactory if:  
83 at least 75% of the questions have a satisfactory score;  
84 and the favorable responses when divided by the total  
85 number of all responses, excluding "No Personal  
86 Knowledge" 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 (3)(A)(iii) **Survey respondents.** The Administrative Office of the Courts shall  
90 identify as potential respondents all lawyers who have appeared  
91 before the court commissioner during the period for which the  
92 commissioner is being evaluated.

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

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

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

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

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

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

120 (3)(B) **Non-attorney surveys.**

121 (3)(B)(i) **Surveys of presiding judges and court staff regarding non-**  
122 **appellate senior judges.** The Council shall measure performance of  
123 active senior judges by a survey of all presiding judges and trial court  
124 executives, or in the justice courts, all presiding justice court judges  
125 and the justice court administrator, of districts in which the senior  
126 judge has been assigned. The presiding judge and trial court  
127 executive will gather information for the survey from anonymous  
128 questionnaires completed by court staff on the calendars to which the  
129 senior judge is assigned and by jurors on jury trials to which the senior  
130 judge is assigned. The Administrative Office of the Courts shall  
131 distribute survey forms with instructions to return completed surveys  
132 to the Surveyor. The survey questions will be based on the non-legal

133 ability evaluation criteria in paragraph (2). The Surveyor shall provide  
 134 to the subject of the survey, the subject's presiding judge, and the  
 135 Judicial Council the responses on each survey question. The Judicial  
 136 Council shall determine whether the qualitative assessment of the  
 137 senior judge indicates satisfactory performance.

138 (3)(B)(ii) **Surveys of Court of Appeals presiding judge and clerk of court.**

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

153 (3)(C) **Case under advisement standard.** A case is considered to be under  
 154 advisement when the entire case or any issue in the case has been submitted to  
 155 the senior judge or court commissioner for final determination. The Council shall  
 156 measure satisfactory performance by the self-declaration of the senior judge or  
 157 court commissioner or by reviewing the records of the court.

158 (3)(C)(i) A senior judge or court commissioner in a trial court demonstrates  
 159 satisfactory performance by holding:

160 (3)(C)(i)(a) no more than three cases per calendar year under  
 161 advisement more than ~~60 days~~ two months after  
 162 submission; and

163 (3)(C)(i)(b) no case under advisement more than 180 days after  
 164 submission.

165 (3)(C)(ii) A senior judge in the court of appeals demonstrates satisfactory  
 166 performance by:

167 (3)(C)(ii)(a) circulating no more than an average of three principal  
168 opinions per calendar year more than six months after  
169 submission with no more than half of the maximum  
170 exceptional cases in any one calendar year; and  
171 (3)(C)(ii)(b) achieving a final average time to circulation of a  
172 principal opinion of no more than 120 days after  
173 submission.

174 (3)(D) **Compliance with education standards.** Satisfactory performance is  
175 established if the senior judge or court commissioner annually complies with the  
176 judicial education standards of this Code, subject to the availability of in-state  
177 education programs. The Council shall measure satisfactory performance by the  
178 self-declaration of the senior judge or court commissioner or by reviewing the  
179 records of the state court administrator.

180 (3)(E) **Substantial compliance with Code of Judicial Conduct.** Satisfactory  
181 performance is established if the senior judge or court commissioner  
182 demonstrates substantial compliance with the Code of Judicial Conduct, if the  
183 Council finds the responsive information to be complete and correct and if the  
184 Council's review of formal and informal sanctions lead the Council to conclude  
185 the court commissioner is in substantial compliance with the Code of Judicial  
186 Conduct. Under Rule 11-201 and Rule 11-203, any sanction of a senior judge  
187 disqualifies the senior judge from reappointment.

188 (3)(F) **Physical and mental competence.** Satisfactory performance is established if  
189 the senior judge or court commissioner demonstrates physical and mental  
190 competence to serve in office and if the Council finds the responsive information  
191 to be complete and correct. The Council may request a statement by an  
192 examining physician.

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

194 (3)(G)(i) The presiding judge of the district a court commissioner serves shall  
195 prepare a performance plan for a new court commissioner within 30  
196 days of the court commissioner's appointment. If a court  
197 commissioner serves multiple districts or court levels, the presiding  
198 judge of each district and court level shall prepare a performance  
199 plan. The performance plan shall communicate the expectations set  
200 forth in paragraph (2) of this rule.

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

206 (4) **Judicial Council certification process.**

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

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

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

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

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

216 (4)(A)(v) performance evaluations, if the commissioner or senior judge received  
217 an overall rating of Needs Improvement; and

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

219 (4)(B) **Records delivery.** Prior to the meeting the Administrative Office of the Courts  
220 shall deliver the records to the Council and to the senior judges and court  
221 commissioners being evaluated.

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

226 (4)(D) **Certification presumptions.** If the Council finds the senior judge or court  
227 commissioner has met the performance standards, it is presumed the Council will  
228 certify the senior judge or court commissioner for reappointment. If the Council  
229 finds the senior judge or court commissioner did not meet the performance  
230 standards, it is presumed the Council will not certify the senior judge or court  
231 commissioner for reappointment. The Council may certify the senior judge or  
232 court commissioner or withhold decision until after meeting with the senior judge  
233 or court commissioner.

- 234 (4)(E) **Overcoming presumptions.** A presumption against certification may be  
235 overcome by a showing of good cause to the contrary. A presumption in favor of  
236 certification may be overcome by:
- 237 (4)(E)(i) reliable information showing non-compliance with a performance  
238 standard; or
- 239 (4)(E)(ii) formal or informal sanctions of sufficient gravity or number or both to  
240 demonstrate lack of substantial compliance with the Code of Judicial  
241 Conduct.
- 242 (4)(F) **August Council meeting.** At the request of the Council the senior judge or court  
243 commissioner challenging a non-certification decision shall meet with the Council  
244 in August. At the request of the Council the presiding judge shall report to the  
245 Council any meetings held with the senior judge or court commissioner, the steps  
246 toward self-improvement identified as a result of those meetings, and the efforts  
247 to complete those steps. Not later than 5 days after the July meeting, the  
248 Administrative Office of the Courts shall deliver to the senior judge or court  
249 commissioner being evaluated notice of the Council's action and any records not  
250 already delivered to the senior judge or court commissioner. The notice shall  
251 contain an adequate description of the reasons the Council has withheld its  
252 decision and the date by which the senior judge or court commissioner is to  
253 deliver written materials. The Administrative Office of the Courts shall deliver  
254 copies of all materials to the Council and to the senior judge or court  
255 commissioner prior to the August meeting.
- 256 (4)(G) **August Council meeting closed session.** At its August meeting in a session  
257 closed in accordance with Rule 2-103, the Council shall provide to the senior  
258 judge or court commissioner adequate time to present evidence and arguments  
259 in favor of certification. Any member of the Council may present evidence and  
260 arguments of which the senior judge or court commissioner has had notice  
261 opposed to certification. The burden is on the person arguing against the  
262 presumed certification. The Council may determine the order of presentation.
- 263 (4)(H) **Final certification decision.** At its August meeting in open session, the Council  
264 shall approve its final findings and certification regarding all senior judges and  
265 court commissioners whose terms of office expire that year.
- 266 (4)(I) **Communication of certification decision.** The Judicial Council shall  
267 communicate its certification decision to the senior judge or court commissioner.



268                   The Judicial Council shall communicate its certification decision for senior judges  
269                   to the Supreme Court and for court commissioners to the presiding judge of the  
270                   district the commissioner serves.

271    *Effective May/November 1, 20\_\_\_\_*