

R597. Judicial Performance Evaluation Commission, Administration.

R597-3. Judicial Performance Evaluations.

R597-3-1. Evaluation Cycles.

- (1) Subject to R597-3-1(3), the evaluation cycles for judges not serving on the supreme court include:
 - (a) the midterm evaluation cycle, beginning upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ending on September 30 of the third year preceding the year of the judge's next retention election; and
 - (b) the retention evaluation cycle, beginning the day after the midterm evaluation cycle is finished and ending on September 30 of the year preceding the year of the judge's next retention election.
- (2) Subject to R597-3-1(3), the evaluation cycles for justices serving on the supreme court include:
 - (a) the initial evaluation cycle, beginning upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ending on September 30 of the seventh year preceding the year of the justice's next retention election;
 - (b) the midterm evaluation cycle, beginning the day after the initial evaluation cycle is finished and ending on September 30 of the third year preceding the year of the justice's next retention election; and
 - (c) the retention evaluation cycle, beginning the day after the midterm evaluation cycle is finished and ending on September 30 of the year preceding the year of the justice's next retention election.
- (3) The commission will not conduct evaluations during the first six months of the retention evaluation cycle, in order to allow judges time to incorporate feedback from midterm evaluations into their practices.

R597-3-2. Survey.

- (1) For the purpose of judicial performance evaluations, the commission shall:
 - (a) conduct surveys as described in R597-3-1; and
 - (b) post on its website the survey questionnaires upon which the judge shall be evaluated at the beginning of the survey cycle.
- (2) For the purpose of judicial performance evaluations, the commission may:
 - (a) conduct periodic reviews to ensure compliance with administrative rules governing the survey process; and
 - (b) consider narrative survey comments that cannot be reduced to a numerical score.
- (3) Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify attorneys who have appeared before the judge during the evaluation cycle a minimum of one hearing or trial.
- (4) Identified attorneys may be included in the attorney survey pool for the evaluated judge, except if the attorney has been:
 - (a) confirmed as a judge during the evaluation cycle; or
 - (b) referred by the judge to the Office of Professional Conduct for allegations of misconduct.
- (5) Within 10 business days of the end of the evaluation cycle, the Office of Professional Conduct shall identify all judges who have referred an attorney for allegations of misconduct.
- (6) A third-party contractor engaged as a surveyor by the commission shall:
 - (a) design the survey to comply with generally-accepted principles of surveying;
 - (b) determine the maximum number of survey requests to send to a survey respondent, except that no survey respondent shall receive more than nine survey requests;
 - (c) identify the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5% for each judge who is the subject of a survey;
 - (d) survey all attorneys with one trial appearance before the evaluated judge, in accordance with R597-3-2(6)(b);
 - (e) consider all attorneys with at least five total appearances before the evaluated judge as eligible to be surveyed;
 - (f) supplement the survey pool with other attorneys who have appeared before the judge during the evaluation cycle in the event that the attorney appearance list from the Administrative Office of the Courts contains an insufficient number of attorneys with one trial appearance or at least five total appearances before the evaluated judge to achieve the required confidence level.
 - (g) distribute the surveys to the appropriate survey respondent;
 - (h) redact all written comments from survey responses to remove any information that identifies the person commenting and deliver the redacted comments to the commission; and
 - (i) redact all written comments from survey responses to remove any information that discloses the identity of any crime victims and deliver the redacted comments to the commission.
- (7) The surveyor may distribute surveys in paper form to those survey respondents who do not have access to email.
- (8) Prior to the jury being dismissed, the bailiff or clerk in charge of a jury shall:
 - (a) collect email addresses from all jurors;
 - (b) collect street addresses from all jurors who don't have an email address; and
 - (c) transmit all such addresses to the surveyor within 24 hours of collection.

- (9) Survey respondents eligible to receive a survey include:
 - (a) attorneys, as described in R597-3-2(3) and R597-3-2(4);
 - (b) jurors who participate in jury deliberation, where applicable;
 - (c) court staff who have worked with the judge, but are not limited to:
 - (i) judicial assistants;
 - (ii) case managers;
 - (iii) clerks of court;
 - (iv) trial court executives;
 - (v) interpreters;
 - (vi) bailiffs;
 - (vii) law clerks;
 - (viii) central staff attorneys;
 - (ix) juvenile probation and intake officers;
 - (x) other courthouse staff, as appropriate;
 - (xi) Administrative Office of the Courts staff; and
 - (xii) treatment providers for specialty courts;
 - (d) juvenile court professionals, where applicable:
 - (i) Division of Child and Family Services ("DCFS") child protection services workers;
 - (ii) Division of Child and Family Services ("DCFS") case workers;
 - (iii) Juvenile Justice Services ("JJS") Observation and Assessment Staff;
 - (iv) Juvenile Justice Services ("JJS") case managers;
 - (v) Juvenile Justice Services ("JJS") secure care staff; and
 - (vi) others who provide substantive professional services on a regular basis to the juvenile court.
- (10) Any survey respondent may submit a public comment in writing pursuant to section 78A-12-203(2)(e), regardless of the submission of a survey response containing an anonymous narrative comment.
- (11) The raw form of survey results consists of quantitative survey data that contributes to the minimum score on the judicial performance survey.
- (12) The summary form of survey results consists of quantitative survey data in aggregated form.

R597-3-3. Courtroom Observation.

- (1) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and R597-3-1(2).
- (2) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.
- (3) For the purpose of courtroom observation, commission staff shall:
 - (a) notify each judge at the beginning of each survey cycle of the courtroom observation process and of the observation instrument to be used by the courtroom observers;
 - (b) select courtroom observers based on written applications and an interview process; and
 - (c) track and report the method by which each observation was conducted, as outlined in Subsection R597-3-3(8).
- (4) Only the summary of the individual courtroom observation reports shall be included in the retention report published for each judge.
- (5) Individuals with a broad and varied range of life experiences shall be sought to volunteer as courtroom observers, except that the following individuals may be excluded from eligibility:
 - (a) individuals who currently have, or have previously had, professional or personal involvement with the court system, or the judge;
 - (b) individuals with a fiduciary relationship with the judge;
 - (c) individuals within a third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);
 - (d) individuals lacking computer access or basic computer literacy skills;
 - (e) individuals currently involved in litigation in state or justice courts; or
 - (f) individuals whose background or experience suggests they may have a bias that would prevent them from objectively serving in the courtroom observation program.
- (6) Courtroom observers shall:
 - (a) serve at the will of the commission staff;
 - (b) refrain from disclosing the content of their courtroom evaluations in any form or to any person except as designated by the commission;
 - (c) satisfactorily complete a courtroom observation training program developed by the commission before engaging in courtroom observation;

(d) conduct courtroom observations of in-court proceedings for each judge they are assigned to observe, for a minimum of two hours; and

(e) upon completion of the observation of a judge, complete the observation instrument, which will be electronically transferred to commission staff.

(7) Courtroom observations may be completed in one sitting or over several courtroom calendars.

(8) Courtroom observations may be conducted using the following methods, as necessary to complete the required number of observations for a judge:

(a) in-person;

(b) by video, including web conferencing, live-streamed video, and pre-recorded video;

(c) by audio recordings; or

(d) a combination of the methods.

(9) The commission shall develop a courtroom observation training program that shall include:

(a) orientation and overview of commission processes and the courtroom observation program;

(b) classroom training addressing each level of court;

(c) in-court group observations, with subsequent classroom discussions, for each level of court;

(d) training on proper use of the observation instrument;

(e) training on confidentiality and non-disclosure issues;

(f) training on electronic access methods to conduct observations;

(g) training on observation dynamics based on type of method; and

(h) such other periodic trainings as are necessary for effective observations.

(10) During each midterm and retention evaluation cycle, a minimum of four different courtroom observers shall observe each judge subject to that evaluation cycle.

(11) Courtroom observers may observe a judge sitting in more than one geographic location or a justice court judge serving in more than one jurisdiction, in any location or combination of locations in which the judge holds court.

(12) Courtroom observers, though volunteers, may be eligible to receive compensation in exchange for successful completion of a specified amount of additional courtroom observation work.

(13) Courtroom observers shall evaluate the judicial behavior observed in court as it relates to procedural fairness by responding in narrative form to principles and behavioral standards which shall include:

(a) neutrality, including but not limited to the judge:

(i) displaying fairness and impartiality toward all court participants;

(ii) acting as a fair and principled decision maker who applies rules consistently across court participants and cases;

(iii) explaining transparently and openly how rules are applied and how decisions are reached; and

(iv) listening carefully and impartially;

(b) respect, including but not limited to the judge:

(i) demonstrating courtesy toward attorneys, court staff, and others in the court;

(ii) treating all people with dignity;

(iii) helping interested parties understand decisions and what the parties must do as a result;

(iv) maintaining decorum in the courtroom;

(v) demonstrating adequate preparation to hear scheduled cases;

(vi) acting in the interests of the parties, not out of demonstrated personal prejudices;

(vii) managing caseload efficiently and demonstrating awareness of the effect of delay on court participants; and

(viii) demonstrating interest in the needs, problems, and concerns of court participants;

(c) voice, including but not limited to the judge:

(i) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;

(ii) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents; and

(iii) attending, where appropriate, to the participants' comprehension of the proceedings;

(d) any other questions necessary to help the commission assess the overall performance of the judge with respect to procedural fairness.

R597-3-4. Minimum Performance Standards.

(1) In addition to the minimum performance standards specified by statute, the judge shall:

(a) demonstrate by the totality of the circumstances that the judge's conduct in court promotes procedural fairness for court participants;

(b) meet all performance standards established by the Judicial Council, including but not limited to:

(i) annual judicial education hourly requirements;

(ii) case-under-advisement standards; and

(iii) physical and mental competence to hold office.

(2) No later than October 1 of the year preceding each general election year, the Judicial Council shall certify to the

commission whether each judge standing for retention election in the next general election has satisfied its performance standards.

(3) To determine if the judge meets the minimum performance standard of procedural fairness, the commission shall:

(a) consider only data collected as part of the judge's performance evaluation, pursuant to section 78A-12-203(2);

(b) apply a standard commensurate with the standard for scored minimum performance standards on the judicial performance survey, as in section 78A-12-205(1)(b)(i); and

(c) determine by a majority of the quorum vote whether the judge meets the minimum performance standard of procedural fairness, the outcome of which shall establish the rebuttable presumption as it applies to procedural fairness, in accordance with section 78A-12-203(4)(b).

(4) A rebuttable presumption to recommend a judge for retention arises when the judge meets all minimum performance standards.

(5) A rebuttable presumption not to recommend a judge for retention arises when the judge fails to meet one or more minimum performance standards.

(6) A commissioner may vote to overcome the presumption for or against a retention recommendation on any judge if the commissioner concludes that substantial countervailing evidence outweighs the presumption.

R597-3-5. Public Comments.

(1) Persons desiring to comment about a particular judge with whom they have had experience may do so at any time, either by submitting such comments on the commission website or by submitting them to commission staff.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than March 1 of the year in which the judge's name appears on the ballot.

(3) Comments received after March 1 of the year in which the judge's name appears on the ballot will be included as part of the judge's midterm report in the subsequent evaluation cycle.

(4) Comments received about a judge after the midterm evaluation cycle ends will be included in the judge's next retention report.

(5) Persons submitting comments may choose whether to include their name and contact information with their submission.

(6) All public comments are subject to GRAMA, pursuant to section 78A-12-206(1).

R597-3-6. Judicial Retirements and Resignations.

(1) For purposes of judicial performance evaluation, the commission shall evaluate each judge unless the judge:

(a) provides written notice of resignation or retirement to the appointing authority;

(b) is removed from office;

(c) becomes subject to mandatory judicial retirement due to age;

(d) otherwise vacates the judicial office; or

(e) fails to properly file for retention.

(2) For purposes of judicial performance evaluation, when one of the events in Subsection R597-3-6(1) occurs, then the commission shall end its evaluation of the judge when the judge's last day in office will be:

(a) on or before December 31 of the year of the judge's retention election, if the judge's evaluation is a retention evaluation, or

(b) on or before April 1 of the year following the judge's midterm survey, if the judge's evaluation is a midterm evaluation.

(3) The retention evaluation for a judge who provides written notice of resignation or retirement following completion of the retention evaluation but before distribution of the retention evaluation, shall be sent to the Judicial Council.

(4) If, pursuant to Subsections R597-3-6(1)(a) and R597-3-6(2), the commission ends the evaluation of a judge, and the judge does not leave office as indicated, the commission may choose to publish only the data collected prior to ending the evaluation, or to complete the evaluation, and

(a) if the judge is subject to a retention evaluation, the commission may elect not to issue a retention recommendation, if it also notes the reason for the election in the judge's report, as in Subsection 78A-12-206(4)(e); or

(b) if the judge is subject to a midterm evaluation, the commission may send the report to the judge without qualifying it as a partial midterm, as in Subsection 78A-12-203(7)(d).

R597-3-7. Publication of Retention Reports.

No later than sixty days prior to Election Day, the commission shall post on its website the retention reports of all judges who have filed for that election.

R597-3-8. Judicial Written Statements.

If, pursuant to section 78A-12-206(3), a judge is eligible to provide a written statement to be included in the judge's retention report, the statement shall be due to commission staff, in writing, no later than one week after the deadline for the judge to file a declaration

of the judge's candidacy in the retention election.

R597-3-9. Judicial Discipline.

(1) For the purposes of judicial performance evaluation and pursuant to section 78A-12-205, the commission shall consider any public sanction of a judge issued by the Supreme Court during the judge's current term, including any public sanctions:

(a) issued during the judge's midterm and retention evaluation cycles; and

(b) issued after the end of the judge's retention evaluation cycle until the commission votes whether to recommend the judge for retention.

(2) If the Utah Supreme Court issues a public sanction of a judge after the reconsideration period is no longer available, as set forth in Subsection 78A-12-203(6), but before Election Day, the commission may elect to reconsider the commission's recommendation, using the reconsideration process outlined in Subsection 78A-12-203(6), even if the results of the reconsideration cannot be printed in the Voter Information Pamphlet, so long as the reconsideration is communicated through some public means.

(3) If the Utah Supreme Court issues a public sanction of a judge after the retention election of the judge, but before the end of the judge's term of office, and if the judge is retained by voters, the commission shall consider the public sanction as part of the judge's next judicial performance evaluation.

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