

**R597. Judicial Performance Evaluation Commission, Administration.**

**R597-1. General Provisions.**

**R597-1-1. Purpose and Intent.**

(1) The commission adopts these rules to describe how it intends to conduct judicial performance evaluations.

(2) The purpose of this rule is to ensure that:

(a) voters have information about the judges standing for retention election;

(b) judges have notice of the standards against which they will be evaluated; and

(c) the commission has the time necessary to fully develop the program mandated by Utah

Code Ann. 78A-12-101 et seq.

**R597-1-2. Definitions.**

(1) Closed case.

(a) For purposes of administering a survey to a litigant, a case is "closed":

(i) in a district or justice court, on the date on which the court enters an order from which an appeal of right may be taken;

(ii) in a juvenile court, on the date on which the court enters a disposition;

(iii) in an appellate court, on the date on which the remittitur is issued.

(b) For purposes of administering a survey to a juror, a case is "closed" when the verdict is rendered or the jury is dismissed.

(2) Evaluation cycle. "Evaluation cycle" means a time period during which a judge is evaluated. Judges not on the supreme court are subject to two evaluations cycles over a six-year judicial term. Justices of the supreme court are subject to three evaluation cycles over a ten-year judicial term.

(3) Survey. "Survey" means the aggregate of questionnaires, each targeting a separate classification of survey respondents, which together are used to assess judicial performance.

(4) Surveyor. "Surveyor" means the organization or individual awarded a contract through procedures established by the state procurement code to survey respondents regarding judicial performance.

(5) Rebuttable presumption.

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

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

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

**KEY: performance evaluations, judicial performance evaluations, judiciary, judges**

**Date of Enactment or Last Substantive Amendment: ~~August 18, 2010~~2013**

**Authorizing, and Implemented or Interpreted Law: 78A-12**

**R597. Judicial Performance Evaluation Commission, Administration.**

**R597-2. Administration of the Commission.**

**R597-2-1. Internal Operating Procedures.**

(1) The commission may adopt procedures governing internal operations relating to judicial performance evaluation and meeting protocol, consistent with state statute and these rules.

(2) Proposed amendments to internal operating procedures shall be submitted in writing to all members of the commission in advance of the next regular meeting, at which time a majority of the commission is required for the adoption of the amendment. Amendments become effective immediately upon ratification.

**R597-2-2. Disclosure, Recusal, and Disqualification.**

(1) Disclosure.

(a) Commissioners shall make disclosures at the monthly commission meeting prior to the first scheduled meeting at which the retention evaluation reports for a given class of judges will be discussed or, in any event, no later than the beginning of the meeting at which a particular judge's evaluation is considered.

(b) Each commissioner shall disclose to the commission any professional or personal relationship or conflict of interest with a judge that may affect an unbiased evaluation of the judge.

(c) Relationships that may affect an unbiased evaluation of the judge include any contact or association that might influence a commissioner's ability to fairly and reasonably evaluate the performance of any judge or to assess that judge without bias or prejudice, including but not limited to:

(i) family relationships to a state, municipal, or county judge within the third degree (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(ii) any business relationship between the commissioner and the judge.

(iii) any personal litigation directly or indirectly involving the judge and the commissioner, the commissioner's family or the commissioner's business;

(d) A commissioner exhibits bias or prejudice when the commissioner is predisposed to decide a cause or an issue in a way that does not leave the commissioner's mind open to exercising the commissioner's duties impartially in a particular case.

(e) Disclosures made with respect to a judge subject to evaluation constitute a protected record pursuant to §78A-12-203(5)(e).

(2) Recusal.

(a) As used in this rule, recusal is a voluntary act of self-disqualification by a commissioner.

(b) Recusal encompasses exclusion both from participating in the commission's evaluation of judge and from voting on whether to recommend the judge for retention.

(c) After making a disclosure, a commissioner may voluntarily recuse if the commissioner believes the relationship with the judge will affect an unbiased evaluation of the judge.

(3) Disqualification.

(a) A commissioner may move to vote on the disqualification of another commissioner if:

- (i) the other commissioner makes a disclosure and does not voluntarily recuse, and that commissioner's impartiality might reasonably be questioned; or
  - (ii) the other commissioner does not make a disclosure, but known circumstances suggest that the commissioner's impartiality might reasonably be questioned.
- (b) A commissioner may not be disqualified from voting on whether to recommend that the voters retain a judge solely because the member appears before the judge as an attorney, a fact witness, or an expert, pursuant to §78A-12-203(5)(e)(i).
- (b) A motion to disqualify must be seconded in order to proceed.
- (c) During the discussion concerning possible disqualification, any commissioner may raise any facts concerning another commissioner's ability to fairly and reasonably evaluate the performance of any judge without bias or prejudice.
- (d) A two-thirds vote of those present is required to disqualify any commissioner.
- (e) Disqualification encompasses exclusion both from participating in the commission's evaluation of a judge and from voting on whether to recommend the judge for retention.

**R597-2-3. Reporting Improper Attempts to Influence.**

A commissioner shall report to the executive committee any form of communication that attempts to influence the evaluation process by improper means, including but not limited to undue pressure, duress, or coercion.

**R597-2-4. Confidentiality.**

- (1) The commission enacts this rule to avoid the risk of inconsistent statements by commissioners and to maintain the credibility of the commission and the integrity of its work product.
- (2) Only the commission's designated spokesperson may publicly discuss the evaluation of any particular judge or justice.
- (3) No commissioner may publicly advocate for or against the retention of any particular judge or justice.
- (4) Notwithstanding other provisions of this subsection, commissioners may publicly discuss the evaluation process, including but not limited to discussion of respondent groups, survey instruments, and the operation of the commission.

**R597-2-5. Data Publicity.**

In response to requests for the commission's data set, the commission shall choose appropriate methods to protect respondent confidentiality. The commission may:

- (1) Elect to collapse data elements,
- (2) Elect to withhold data elements from release, and
- (3) Take other reasonable measures as necessary.

**R597. Judicial Performance Evaluation Commission, Administration.**

**R597-3. Judicial Performance Evaluations.**

**R597-3-1. Evaluation Cycles.**

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. Except as provided in subsection (3) the mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends on September 30th of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends on September 30th of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends on September 30th of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends on September 30th of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends on September 30th of the year preceding the year of the justice's next retention election.

(3) Timing of evaluations within cycles. In order to allow judges time to incorporate feedback from midterm evaluations into their practices, no evaluations shall be conducted during the first six months of the retention cycle.

**R597-3-2. Survey.**

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission may provide a partial midterm evaluation to any judge whose appointment date precludes the collection of complete midterm evaluation data.

(c) The commission shall post on its website the survey questionnaires upon which the judge shall be evaluated at the beginning of the survey cycle.

(d) The commission may select retention survey questions from among the midterm survey questions.

(e) Periodically, reviews may be conducted to ensure compliance with administrative rules governing the survey process.

(f) The commission may consider narrative survey comments that cannot be reduced to a numerical score.

(g) Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey. The contractor shall determine the maximum number of survey requests sent to a respondent, but in no event shall any respondent receive more than nine survey requests.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents. 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 as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle. Attorneys who have been confirmed as judges during the evaluation cycle shall be excluded from the attorney pool.

(ii) Number of survey respondents.

(A) For each judge who is the subject of a survey, the surveyor shall 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%.

(B) 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 three total appearances before the evaluated judge to achieve the required confidence level, then the surveyor shall supplement the survey pool with other attorneys who have appeared before the judge during the evaluation cycle.

(iii) Sampling. The surveyor shall design the survey to comply with generally-accepted principles of surveying. All attorneys with one trial appearance or at least three total appearances before the evaluated judge shall be surveyed.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be eligible to receive an online juror survey.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall collect email addresses from all jurors. If email addresses are not available, street addresses shall be collected. The bailiff or clerk shall transmit all such addresses to the surveyor within 24 hours of collection. The surveyor shall administer the survey online and deliver survey results electronically to each judge. Paper surveys may be sent to those jurors who do not have access to email.

(c) Court Staff

(i) Definition of court staff who have worked with the judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge include, but are not limited to:

- (A) judicial assistants;
  - (B) case managers;
  - (C) clerks of court;
  - (D) trial court executives;
  - (E) interpreters;
  - (F) bailiffs;
  - (G) law clerks;
  - (H) central staff attorneys;
  - (I) juvenile probation and intake officers;
  - (J) other courthouse staff, as appropriate;
  - (K) Administrative Office of the Courts staff.
- (d) Juvenile Court Professionals

(i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.

(ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:

(A) Division of Child and Family Services ("DCFS") child protection services workers;

(B) Division of Child and Family Services ("DCFS") case workers;

(C) Juvenile Justice Services ("JJS") Observation and Assessment Staff;

(D) Juvenile Justice Services ("JJS") case managers;

(E) Juvenile Justice Services ("JJS") secure care staff;

(F) Others who provide substantive professional services on a regular basis to the juvenile court.

(iii) Beginning with juvenile court judges standing for retention in 2014, juvenile court professionals shall be included as an additional survey respondent group for both the midterm and retention evaluation cycles.

(3) Anonymity and Confidentiality

(a) Definitions

(i) Anonymous.

(A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.

(B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.

(C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.

(ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.

(iii) The raw form of survey results consists of quantitative survey data that contributes to the minimum score on the judicial performance survey.

(iv) The summary form of survey results consists of quantitative survey data in aggregated form.

**R597. Judicial Performance Evaluation Commission, Administration.**

**R597-3. Judicial Performance Evaluations.**

**R597-3-3. Courtroom Observation.**

(1) General Provisions.

(a) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and (2), supra.

(b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.

(c) Only the content analysis of the individual courtroom observation reports shall be included in the retention report for each judge.

(2) Courtroom Observers.

(a) Selection of Observers

(i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.

(ii) Courtroom observers shall be selected by the commission staff, based on written applications and an interview process.

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

(b) Selection Criteria. Observers with a broad and varied range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

(i) persons with a professional involvement with the state court system, the justice courts, or the judge;

(ii) persons with a fiduciary relationship with the judge;

(iii) persons within the 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);

(iv) persons lacking computer access or basic computer literacy skills;

(v) persons currently involved in litigation in state or justice courts;

(vi) persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.

(c) Terms and Conditions of Service

(i) Courtroom observers shall serve at the will of the commission staff.

(ii) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.

(d) Training of Observers

(i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.

(ii) Elements of the training program shall include:

(A) Orientation and overview of the commission process 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 observation instrument;
- (E) Training on confidentiality and non-disclosure issues;
- (F) Such other periodic trainings as are necessary for effective observations.

(3) Courtroom Observation Program.

(a) Courtroom Requirements

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

(ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.

(iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.

(iv) When the observer completes the observation of a judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.

(b) Travel and Reimbursement

(i) All travel must be preapproved by the executive director.

(ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.

(iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

(iv) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is sought.

(v) Overnight lodging

(A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

(B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

(vi) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

(4) Principles and Standards used to evaluate the behavior observed.

(a) Procedural fairness, which focuses on the treatment judges accord people in their courts, shall be used to evaluate the judicial behavior observed in the courtroom observation program.

(b) To assess a judge's conduct in court with respect to procedural fairness, observers shall respond in narrative form to the following principles and behavioral standards:

(i) Neutrality, including but not limited to:

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

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

(C) explaining transparently and openly how rules are applied and how decisions are reached.

(D) listening carefully and impartially;

(ii) Respect, including but not limited to:

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



- (B) treating all people with dignity;
  - (C) helping interested parties understand decisions and what the parties must do as a result;
  - (D) maintaining decorum in the courtroom.
  - (E) demonstrating adequate preparation to hear scheduled cases;
  - (F) acting in the interests of the parties, not out of demonstrated personal prejudices;
  - (G) managing the caseload efficiently and demonstrating awareness of the effect of delay on court participants;
  - (H) demonstrating interest in the needs, problems, and concerns of court participants.
- (iii) Voice, including but not limited to:
- (A) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;
  - (B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.
  - (C) attending, where appropriate, to the participants' comprehension of the proceedings.
- (c) Courtroom observers may also be asked questions 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 or administrative rule, the judge shall:
- (a) Demonstrate by a preponderance of the evidence, based on courtroom observations and relevant survey responses, 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 requirement;
    - (ii) case-under-advisement standard; and
    - (iii) physical and mental competence to hold office.
- (2) No later than October 1st 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.

#### **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 mailing them to the executive director.
- (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<sup>st</sup> of the year in which the judge's name appears on the ballot.
- (3) Comments received after March 1<sup>st</sup> of the year in which the judge's name appears on the ballot will be included as part of the judge's mid-term evaluation report in the subsequent evaluation cycle.
- (4) Comments received about a judge after the mid-term evaluation cycle ends will be included in the judge's next retention evaluation report.
- (5) Persons submitting comments pursuant to this section must include their full name, address, and telephone number with the submission.

**R597-3-6. Judicial Retirements and Resignations.**

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

- (a) provides written notice of resignation or retirement to the Governor;
- (b) is removed from office;
- (c) otherwise vacates the judicial office; or
- (d) fails to properly file for retention.

(2) For judges who provide written notice of resignation or retirement after a retention evaluation has been conducted but before it is distributed, the retention evaluation shall be sent to the Judicial Council.

**R597-3-7. Publication of Retention Reports.**

No later than three months after the filing deadline for a retention election, 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 Utah Code Ann. §78A-12-206(3), a judge is eligible to provide a written statement to be included in the judge's evaluation 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 Utah Code Ann. §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:

- (a) During the judge's midterm and retention evaluation cycles and
- (b) After the end of the judge's retention evaluation cycle until the commission votes whether to recommend the judge for retention.

**KEY: judicial performance evaluations, judges, evaluation cycles, surveys**

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eff. June 2014

**R597. Judicial Performance Evaluation Commission, Administration.**

**R597-4. Justice Courts.**

**R597-4-1. Classification of Justice Court Judges.**

(a) As used in this section, a qualified attorney is an attorney with at least one trial appearance or three total appearances before the evaluated judge during the evaluation cycle.

(b) Classification Determination. Each judge's classification shall be made by the commission following the judge's retention election, except that newly-appointed judges shall be classified upon appointment.

(c) Basis of classification.

(1) Classification shall be based on weighted caseload data and attorney appearance data provided by the Administrative Office of the Courts for the 12 months preceding the judge's most recent election or appointment.

(2) Notwithstanding section R597-4-1 (b) and (c)(1), for judges standing for retention in 2018, classification shall be based on weighted caseload data and attorney appearance data provided by the Administrative Office of the Courts for the calendar year 2013.

(3) If the data specified in subsection R597-4-1(c)(1) is unavailable or inapplicable, classification shall be based on the best data available from the Administrative Office of the Courts.

(d) Once classified, the judge retains the classification for the judge's term of office.

(e) Judicial classification categories. Justice court judges shall be classified into one of three categories for purposes of judicial evaluation, based on the timeframes specified in section R597-4-1(c).

(1) Full Evaluation Judges must have a total of 50 or more qualified attorneys in the combined jurisdictions in which they serve.

(2) Mid-level Evaluation Judges must have fewer than 50 qualified attorneys in the combined jurisdictions in which they serve and a weighted caseload, as defined by the Administrative Office of the Courts, of .2 or more in at least one jurisdiction.

(3) Basic Evaluation Judges must not qualify for full evaluation and must have a weighted caseload of less than .2 in every jurisdiction in which they serve.

**R597-4-2. Justice Court Judges Serving in Multiple Courts.**

(a) For judges serving in multiple courts:

(1) Once a judge is classified, the judge may be evaluated in any court in which the judge serves, regardless of retention year.

(2) Evaluation data gathered from different courts served by a single judge shall be aggregated into a single midterm evaluation and a single retention report.

(b) For judges serving in multiple courts who stand for retention election in multiple years:

(1) Each judge shall be assigned to a single controlling evaluation cycle.

(2) The retention evaluation report compiled pursuant to the controlling evaluation cycle shall be used for all other subsequent retention elections for which that judge stands within the controlling cycle.

**KEY: justice court evaluations, justice court multiple jurisdictions, justice court classifications, justice court multiple election years**

**Date of Enactment or Last Substantive Amendment: 2014**

**Authorizing, and Implemented or Interpreted Law: 78A-12-201 through 78A-12-206**

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