

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

### **R597-1. General Provisions.**

#### **R597-1-1. Authorization and Purpose.**

- (1) As authorized by Section 78A-12-101 et seq., this rule establishes procedures for:
  - (a) implementing judicial performance evaluations;
  - (b) informing voters about judges standing for retention election; and
  - (c) notifying judges of the standards by which they will be evaluated.

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

(1) "Controlling cycle" means the single retention election year which, when assigned to a judge, establishes the time frames for performance evaluation.

(2) "Courtroom observation report" means the individual narrative report a courtroom observer authors after observing the judge.

(3) "Courtroom observer" means a volunteer, recruited by commission staff through public outreach and advertising, who has the duties described in R597-3-3(6).

(4) "Court staff" means employees of the judiciary, as identified in R597-3-2(9)(c), who have regular contact with the judge as the judge performs judicial duties. Court staff also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

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

(6) "Disqualification," as used in R597-2-2, means the involuntary disqualification of a commissioner by other commissioners, in accordance with R597-2-2(6) and R597-2-2(7).

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

(8) "Juvenile court professional" means an individual, as identified in R597-3-2(9)(d), whose professional duties place that individual in juvenile court on a regular and continuing basis.

(9) "Observation instrument" means the form approved for use by courtroom observers to evaluate the judicial behavior observed in court.

(10) "Procedural fairness" means the type of treatment judges should afford people in their courts and includes the principles and behavioral standards identified in R597-3-3(12).

(11) "Recusal," as used in R597-2-2, means a voluntary self-disqualification by a commissioner.

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

(13) "Survey respondent" means an individual, as identified in R597-3-2(9), eligible to author a survey response.

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

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

**Date of Enactment or Last Substantive Amendment: 2019**

**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) For purposes of disclosure, commissioners shall:

(a) 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; and

(b) 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.

(2) 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:

(a) 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);

(b) any business relationship between the commissioner and the judge;

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

(3) 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.

(4) After making a disclosure, a commissioner may voluntarily recuse him or herself if the commissioner believes the relationship with the judge will impact an unbiased evaluation of the judge.

(5) Recusal will preclude a commissioner from participating in the commission's evaluation of the judge and from voting on whether to recommend the judge for retention.

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

(a) the other commissioner makes a disclosure and does not voluntarily recuse, and that commissioner's impartiality might reasonably be questioned; or

(b) the other commissioner does not make a disclosure, but known circumstances suggest that the commissioner's impartiality might reasonably be questioned.

(7) To disqualify a commissioner:

(a) a motion to disqualify must be seconded; and

(b) ratified by a two-thirds vote of those present.

(8) 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.

(9) 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.

**KEY: internal operative procedures, reporting improper attempts to influence, conflicts of interest, confidentiality**

**Date of Enactment or Last Substantive Amendment: 2019**

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

**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; and

- (b) select courtroom observers based on written applications and an interview process.

(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 in-person courtroom observations for each judge they are assigned to observe, for a minimum of two hours while court is in session; 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 visits.

(8) 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; and

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

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

(10) 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.

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

(12) 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 until the judge:

- (a) provides written notice of resignation or retirement to the Governor;
- (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) 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.

**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.

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

**Date of Enactment or Last Substantive Amendment: 2019**

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

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

**R597-4. Justice Courts.**

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

(1) 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.

(2) Classification shall be based on:

(a) the dates of required retention elections for the court or courts in which the judge serves and;

(b) the 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.

(3) If the data specified in subsection R597-4-1(2)(b) is unavailable or inapplicable, classification shall be based on the best data available from the Administrative Office of the Courts.

(4) Justice court judges shall be classified into a single controlling cycle for the purposes of evaluation timing.

(5) Justice court judges shall be classified into one of three categories for purposes of judicial evaluation, based on the timeframes specified in sections R597-4-1(2)(b) and R597-4-1(3):

(a) full evaluation judges must have a total of 50 or more attorneys with at least one trial appearance or three total appearances in the combined jurisdictions in which they serve;

(b) mid-level evaluation judges must have fewer than 50 attorneys with at least one trial appearance or three total appearances 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; and

(c) 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.

(6) Once classified, the judge retains the classification for the duration of the judge's controlling cycle term of office.

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

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

(9) For judges who stand for retention election in multiple years, the retention report compiled pursuant to the controlling 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: 2019**

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

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

**R597-5. Electronic Meetings.**

**R597-5-1. Authority and Purpose.**

(1) This rule is authorized by Section 52-4-207(2)(a) which requires any public body that convenes or conducts an electronic meeting to adopt a rule governing the use of electronic meetings.

(2) The purpose of this rule is to establish procedures for the public bodies created in Title 63M, Chapter 7 and Title 77, Chapter 32 to hold open meetings by electronic means.

**R597-5-2. Procedures.**

(1) The following provisions govern any meeting at which one or more commissioners appear telephonically or electronically pursuant to Utah Code Section 52-4-207:

(a) If one or more members of the commission may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the commission not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to the commissioners at least 24 hours before the meeting. In addition, the notice shall describe how a commissioner may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a commissioner appearing electronically or telephonically, any commissioner may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the commission. At the commencement of the meeting, or at such time as any commissioner initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the commission who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the Commission on Criminal and Juvenile Justice, located in the Utah State Capitol Complex, in suite 330 of the Senate Building, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

**KEY: electronic meetings, procedures**

**Date of Enactment or Last Substantive Amendment: August 21, 2017**

**Authorizing, and Implemented or Interpreted Law: 52-4-207**