

## **Proposed Rules Governing Commissions on Judicial Performance**

*Adopted \_\_, 2022*

The State Commission on Judicial Performance adopts the following rules pursuant to section 13-5.5-106, C.R.S.

### **Rule 1 Scope, Standards, and Title**

(a) Scope. The Rules Governing Commissions on Judicial Performance (the “Rules”) apply to all of the responsibilities and proceedings of the Commissions on Judicial Performance (the “commissions”), pursuant to Title 13, Article 5.5 of the Colorado Revised Statutes. Judicial performance evaluations provide judges and justices with useful information concerning their own performance, provide voters with fair, responsible, and constructive information about individual jurists, and help maintain the quality of the judiciary.

(b) Standards. In conducting judicial performance evaluations, commissions have the authority to review available case management data and statistics, review written judicial opinions and orders, collect information from courtroom observations, interview judges and justices, accept information from interested persons, review confidential summary information from the Colorado Commission on Judicial Discipline, and engage in other methods to help form recommendations and prepare narratives that reflect the results of performance evaluations of judges and justices. Commissioners shall conduct evaluations with fairness and impartiality and without regard to a judge’s or justice’s race, color, national origin, gender, age, sexual orientation, religion, socioeconomic status, or disability. The evaluations must only include the performance evaluation criteria set forth in 13-5.5-107 C.R.S.

(c) Title. These Rules shall be known and cited as the Rules Governing Commissions on Judicial Performance.

### **Rule 2. Appointments**

(a) State and district commissioners shall be appointed to four-year terms, expiring on November 30 in odd-numbered years. To the extent practicable, appointments must include residents from throughout the state or judicial district and persons with disabilities, and appointments should take into consideration gender as well as the race and ethnic diversity of the state or district. A commissioner who resigns shall advise the chair of the commission, the appointing authority, and/or the executive director of the Office of Judicial Performance Evaluation. The chair of a commission shall advise the executive director of the Office of Judicial Performance Evaluation of any vacancy, and the date of the vacancy, if known. The executive director of the Office of Judicial Performance Evaluation shall within five days, in writing, advise the appropriate appointing authority of the vacancy, whether the vacancy must be filled with an attorney or a non-attorney, and that if no appointment is made within forty-five days of the vacancy, the State Commission shall make the appointment.

(b) A commissioner shall not serve more than two full terms including any balance remaining on an unexpired term if the initial appointment was to fill a vacancy. When there is a break in a commissioner’s service of at least one year, or the appointment is to a different commission than the one the commissioner previously served on, appointing authorities may consider those past commissioners for appointment to a district commission or the State Commission.

(c) The executive director of the Office of Judicial Performance Evaluation shall cause to be

published and posted at all times on the office's website the names of the state and district commissioners and the name, address, telephone number, and e-mail address of the executive director of the Office of Judicial Performance Evaluation.

(d) The State Commission may recommend to the appointing authority that a member of any commission be removed for cause pursuant to section 13-5.5-104(5)(c), C.R.S. "Cause" means any malfeasance or nonfeasance in carrying out the commissioner's official duties and responsibilities, including improper disclosure of confidential information, failure to disclose any basis for recusal or to recuse when appropriate, publicly advocating for or against the retention of any particular justice or judge, failure to participate in evaluation activities (e.g., observations, interviews or written decision reviews), and failure to participate in three consecutive meetings.

(e) Commissioner Terms. Commission appointments shall be made in compliance with section 13-5.5-104, C.R.S.

### **Rule 3. Officers**

Commissions shall elect a chair and a vice-chair, one of whom should be an attorney, and one of whom should not be an attorney, to serve two-year terms. Terms will end on the two-year anniversary of the appointment or at the end of an existing commissioner's term, whichever comes first.

### **Rule 4. Procedures**

(a) A majority of the total number of appointed members of a commission shall constitute a quorum. The rules, guidelines, and procedures adopted by the State Commission shall be used for the conduct of all meetings, evaluations, and other business, except as otherwise provided by these rules or statute.

(b) The State Commission shall, prior to final promulgation of any proposed rule, post a notice of the proposed rule, allow for a period of public comment, and give the public an opportunity to address the commission concerning the proposed rule at a public hearing.

### **Rule 5. Meetings**

(a) Commissions on Judicial Performance are not subject to the Colorado open meetings law, section 24-6-402, C.R.S.

(b) The State Commission must post a notice on its website not less than twenty-four hours prior to the holding of a meeting only if the meeting is one at which the State Commission expects to implement rules or regulations.

(c) The State Commission's rulemaking and regulation development is conducted publicly, unless it has decided to proceed in executive session in accordance with these rules. No proposed rule or regulation shall be adopted at any executive session.

### **Rule 6. Executive Sessions**

(a) A motion to enter executive session must be approved by a two-thirds vote of the commissioners, and for only the following purposes:

(1) Consideration of confidential materials as part of an evaluation of a judge or justice, including deliberations. Members of other commissions and staff may not be present during such consideration.

- (2) Conferences with an attorney representing the commission concerning disputes involving the commission.
- (3) Investigation of charges or complaints against an employee or consideration of dismissal, discipline, promotion, demotion, or compensation of an employee; or
- (4) Any other matter required to be kept confidential by state or federal statutes or rules, including these rules.

#### **Rule 7. Recusal**

(a) A commissioner shall:

- (1) Disclose to the commission any professional or personal relationship or interest with respect to a judge or justice that may affect an unbiased evaluation of the judge or justice, including any litigation involving the judge or justice and the commissioner, the commissioner's family, or the commissioner's financial interest. A commission may require recusal of one of its members on account of such relationship or interest upon a two-thirds vote of the other commissioners.
  - (2) Recuse himself or herself from any evaluation of the person who appointed the commissioner.
  - (3) Recuse himself or herself from participating in the consideration and vote on any matter involving the evaluation of a judge or justice if the commissioner failed to meet the responsibilities provided by these rules concerning training, courtroom observation, interview, opinion review, or completion of a performance standards matrix, unless excused by a two-thirds vote of the other commissioners; and
  - (4) Once recused, not be present during any part of the evaluation of the judge or justice.
- (b) A judge or justice being evaluated by a judicial performance commission may not recuse himself or herself from a case solely on the basis that an attorney, party, or witness in the case is a commissioner on the evaluating commission.

#### **Rule 8. Staff**

- (a) The executive director of the Office of Judicial Performance Evaluation, court executives, and their staffs shall assist their respective commissions in the performance of their duties, including making meeting and interview arrangements, obtaining, and distributing information, and posting notices. Neither court executives nor their staff shall participate in interviews or deliberations conducted by the commission concerning the evaluation of any judge or justice or assist in the drafting of narratives.
- (b) The executive director of the Office of Judicial Performance Evaluation may attend meetings, interviews, and deliberations in an advisory capacity when requested or agreed to by a commission. The executive director shall not vote on the recommendation of a judge or justice or participate in the initial drafting of a narrative.

#### **Rule 9. Chief Justice or Chief Judge**

Prior to beginning any evaluations, each commission shall meet with the chief justice or chief judge of the court for which there is a judge or justice to be evaluated that year. The meeting is to allow the chief justice or chief judge to provide an overview of the court. The chief justice or chief judge may discuss the performance of a judge on their court or in their district but are not required to unless there has been a recommendation that a judge on their court or in their district participate

in a performance improvement plan that is being supervised by the chief justice or chief judge. To encourage the provision of candid and forthright information to judicial performance commissions, the statements of the chief judge and chief justice are confidential and shall not be shared with any person outside the commission.

#### **Rule 10. Commissioner Training**

The Office of Judicial Performance Evaluation shall provide training as necessary that is reasonably accessible and convenient to all commissioners. Each commissioner shall attend one training session, or an appropriate alternative as developed by the Office of Judicial Performance Evaluation, each year in which the commissioner is to evaluate a judge or justice eligible to stand for a retention election.

#### **Rule 11. Courtroom Volunteer Observation Program**

Courtroom volunteer observers are recruited by the Office of Judicial Performance Evaluation through public outreach and advertising.

- (a) Courtroom observers shall be selected by the Office based on written application and an interview process.
- (b) Selection Criteria. Volunteer observers with a broad and varied range of life experience shall be sought. The following persons shall be excluded from eligibility as courtroom observers:
  - (1) Persons with a professional involvement with the state court system, or with a justice or judge;
  - (2) Persons with a third degree of relationship with a state justice or judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);
  - (3) Persons lacking computer access or basic computer literacy skills;
  - (4) Persons currently involved in litigation in state courts; and
  - (5) 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:
  - (1) Volunteer courtroom observers shall serve at the will of the Office of Judicial Performance Evaluation.
  - (2) Volunteer courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the Office.
- (d) Training Observers. Volunteer courtroom observers must satisfactorily complete a training program developed by the Office before engaging in courtroom observation.
- (e) Courtroom Requirements:
  - (1) Each observer shall observe each justice or judge to whom the observer is assigned while the justice or judge is in the courtroom and for a minimum of two hours while the court is in session. The observations may be completed in one sitting or over several courtroom visits.
  - (2) If the justice or judge sits in more than one geographic location the justice or judge may be observed in any location or combination of locations in which the justice or judge holds court.
  - (3) When the observer completes the observation of a judge, the observer shall complete the

observation instrument, which will be electronically transferred to the Office for processing.

(f) Travel and Reimbursement:

- (1) All travel must be preapproved by the executive director of the Office.
- (2) All per diem and lodging will be reimbursed, when appropriate, in accordance with the State Courts travel rules and regulations; and
- (3) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is being sought.

**Rule 12. Trial Judge Evaluations**

(a) The State Commission shall develop three separate survey questionnaires: one for appellate judges and justices concerning each district court judge being evaluated; one for attorneys, including prosecutors, public defenders, and private attorneys, who have interacted with the court where a trial judge is being evaluated; and one for non-attorneys, including jurors, represented and unrepresented litigants, law enforcement personnel, employees of the court, court interpreters, employees of probation offices, employees of local departments of social services, and victims of crimes, who have interacted with the court where a trial judge is being evaluated. Surveys shall be conducted on a continuing basis, with multiple requests and follow-up to prospective respondents in accordance with appropriate survey protocol as needed to ensure the highest possible response rate for each judge. The results shall be provided to the district commission and the trial judge during evaluations. To ensure the anonymity of respondents, a district commission shall not receive completed questionnaires, and all reports of the results shall be based on compiled survey responses. Comments shall be copied from individual survey responses and copied verbatim into the final survey report. Comments from each individual shall be coded with an assigned identification number and any identifying information shall be redacted.

(b) The district commission shall ensure that each trial judge being evaluated receives adequate courtroom observation. Live in-courtroom observation is preferred. If in-courtroom observation is not practicable, a district commission may authorize an alternate method of observation using the best available means to evaluate courtroom proceedings. Such means shall be calculated to permit the observer to perceive interactions between the judge and other courtroom participants in a manner as close as possible to in-person observation.

(c) To the extent possible, each trial judge being evaluated shall provide the district commission with information from the current term of office, including the judge's caseload, the types of cases, and an open case report. The judge may request assistance from the court executive or the Office of Judicial Performance Evaluation in providing this information.

(d) The State Commission shall develop self-evaluation forms that shall be completed by each trial judge being evaluated.

(e) Each trial judge being evaluated shall submit to the district commission not less than three decisions he or she issued, including, if applicable, one that was reversed on appeal, together with the reversing opinion, if applicable. The judge may choose written or transcribed decisions for submission. Each district commission shall review the three decisions or transcripts and any others authored by the trial judge that the commission in its discretion may select for compliance with the statutory criteria for legal knowledge, thoroughness of findings, clarity of expression, logical reasoning, and application of the law to the facts presented. All decisions and opinions submitted

or reviewed shall have been issued during the judge's current term.

(f) The district commission may interview judges and justices, other than the judge being evaluated, and other interested persons. The commission shall agree to meet with a representative of the District Attorney's Office and a representative of the Public Defender's Office when a request is made, provided that a meeting request is made no later than the first day of April of the relevant evaluation year. The commission shall provide adequate notice and work with the representatives to schedule a convenient date and time to meet. To encourage the provision of candid and forthright information to judicial performance commissions, information regarding specific instances of conduct or information which identifies individual attorneys shall be kept confidential.

In addition, the commission may accept information and documentation from any other interested person, provided the person (i) submits his or her name and address, and (ii) submits the information and/or documentation to the commission with their relationship to the court by the first day of April of the relevant evaluation year. To ensure the anonymity of respondents, only their relationship to the court shall be provided by the district commission to the trial judge being evaluated along with a written summary of any oral information received, and a copy of any written information, prior to his or her interview with the commission. The trial judge may submit additional written information to the commission no later than five days after the initial interview.

(g) On behalf of the State or a district commission on judicial performance, the Office of Judicial Performance Evaluation shall inquire of the Colorado Commission on Judicial Discipline (CCJD) if a judge or justice has a record of disciplinary action before the CCJD. The CCJD shall disclose a judge's or justice's record of disciplinary action on the understanding that its usage by a commission on judicial performance will be solely for consideration in its internal evaluation of a judge's or justice's overall performance and is not a recommendation for or against any performance evaluation decision by the commission on judicial performance. Disclosure will be conditioned upon the commission on judicial performance's commitment, in making such an inquiry, to maintain the confidentiality of any disciplinary measures ordered by the CCJD and to not publicly disclose any such disciplinary measures, unless the judge or justice expressly waives confidentiality.

(h) The district commission shall interview each trial judge being evaluated following its initial review of information.

(i) In evaluating each judge's performance, commissioners shall be guided by the trial judge matrix or scorecard and accompanying explanatory material. See Forms 1(a) and (b), Trial Judge Judicial Performance Standards Evaluation Retention Matrix and Trial Judge Judicial Performance Standards Evaluation Interim Matrix along with Forms 1(a)(1) and 1(b)(1), Retention Scorecard and Interim Scorecard.

### **Rule 13. Appellate Judge and Justice Evaluations**

(a) The State Commission shall develop three separate survey questionnaires: one for trial judges concerning each appellate judge or justice being evaluated; one for attorneys, including prosecutors, public defenders, private attorneys, and staff attorneys who have interacted with the court where an appellate judge or justice is being evaluated; and one for other appellate judges and justices. Surveys shall be conducted on a continuing basis, and results provided to the State Commission and the appellate judge or justice. To ensure the anonymity of respondents, the State

Commission shall not receive completed questionnaires, and all reports of the results shall be based on compiled survey responses. Comments shall be separated from completed questionnaires before the comments are forwarded in a final survey report to the appellate judge or justice.

(b) The State Commission shall ensure that each appellate judge or justice being evaluated receives adequate observation through visits to the courtroom or review of live courtroom video or archived video replay.

(c) To the extent possible, the clerk of the supreme court and the court of appeals shall provide the State Commission with information from the current term of office for each appellate judge or justice being evaluated, including a list of all opinions authored and a case on desk report.

(d) The State Commission shall develop self-evaluation forms that shall be completed by each appellate judge or justice being evaluated.

(e) Each appellate judge or justice shall submit to the State Commission five opinions he or she authored, including both civil and criminal cases. These opinions shall include, if applicable, at least one separate concurrence or dissent, at least one unpublished opinion, and at least one opinion that was reversed on appeal, together with the reversing opinion. The State Commission shall review the five opinions and any others authored by the appellate judge or justice that the commission in its discretion may select for compliance with the statutory criteria for legal knowledge, adherence to the record, clarity of expression, logical reasoning, and application of the law to the facts presented. All opinions submitted or reviewed shall have been issued during the appellate judge or justice's current term.

(f) The State Commission may interview judges and justices, other than the judge or justice being evaluated, and other interested persons and may accept information and documentation from any interested person, provided the person (i) submits his or her name and address, and (ii) submits the information and/or documentation to the commission with their relationship to the court by the first day of April of the relevant evaluation year. To ensure the anonymity of respondents, only their relationship to the court shall be provided by the State Commission to the appellate judge or justice being evaluated together with a written summary of any oral or written information received prior to his or her interview with the commission. The appellate judge or justice may submit additional written information to the commission, no later than five days after the initial interview.

(g) On behalf of the State or a district commission on judicial performance, the Office of Judicial Performance Evaluation shall inquire of the Colorado Commission on Judicial Discipline (CCJD) if a judge or justice has a record of disciplinary action before the CCJD. The CCJD shall disclose a judge's or justice's record of disciplinary action on the understanding that its usage by a commission on judicial performance will be solely for consideration in its internal evaluation of a judge's or justice's overall performance and is not a recommendation for or against any performance evaluation decision by the commission on judicial performance. Disclosure will be conditioned upon the commission on judicial performance's commitment, in making such an inquiry, to maintain the confidentiality of any disciplinary measures ordered by the CCJD and to not publicly disclose any such disciplinary measures, unless the judge or justice expressly waives confidentiality.

(h) The State Commission shall interview each appellate judge or justice being evaluated following its initial review of information.

(i) Commissioners must use the definitions, standards, and measurement principles of the adopted Guidelines for Applying Statutory Performance Evaluation Criteria to Colorado Supreme Court Justices and Colorado Court of Appeals Judges, and a matrix/scorecard based on these Guidelines to evaluate each justice's or judge's performance. See Form 2, Appellate Judge or Justice Judicial Performance Standards Evaluation Retention Matrix or Appellate Judge or Justice Judicial Performance Standards Evaluation Interim Matrix.

#### **Rule 14. Retention Election Year Recommendations**

(a) Each commissioner shall complete the appropriate matrix form or scorecard based upon information contained in the final survey report, courtroom observations, case information, the judge or justice's self-evaluation, the commissioner's review of decisions, interviews, and any other written or oral information received, and shall then prepare a recommendation regarding each judge or justice being evaluated.

(b) The commission's evaluation must include a final recommendation of "meets performance standards" or "does not meet performance standards" based on the judicial performance criteria in section 13-5.5-107, C.R.S. (integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and the public). For a judge or justice to receive a designation of "does not meet performance standards," there must be a majority vote by the serving commission members that the justice or judge should receive such a recommendation.

(c) Commissioners shall not disclose the content of their performance standards matrix or scorecard in any form or to any person except to other members of their commission during executive sessions of commission meetings when deliberating the evaluation and performance of a justice or judge. The content of the matrix/scorecard may be released as required under Rule 18(c) of these rules.

#### **Rule 15. Performance Evaluations in Retention Years**

(a) Within ten days following the interview, a commission shall provide the judge or justice a written draft of the narrative supporting the recommendation. A narrative should consist of four short paragraphs totaling not more than 500 words, as follows:

(1) The recommendation on performance, including the number of commissioners who voted for "meets performance standards" and for "does not meet performance standards";

(2) A description of the performance of the judge or justice over the past term, including any areas of notably strong or weak performance with respect to the judicial performance criteria in section 13-5.5-107, C.R.S. (integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and the public), any deficiencies reflected in the initial or interim evaluation, a review of any improvement plan pursuant to section 13-5.5-110, a statement of whether the commission concludes that any deficiency has been satisfactorily addressed or a statement from the chief justice or appropriate chief judge that an improvement plan, if any, was satisfactorily followed by the justice or judge, and any additional information that the commission believes may be of assistance to the public in making an informed voting decision;

(3) Evaluation methods used by the commission, a discussion of survey results, and any recommendations of survey respondents regarding whether a judge is meeting or not meeting



performance standards, if the commission believes the information may assist voters in making an informed voting decision. A commission should report the number of survey respondents, when the commission believes the information will inform the public of the survey results and their usefulness in evaluating a justice's or judge's performance.

(4) The State or district commission on judicial performance evaluation may not disclose confidential information received from the Colorado Commission on Judicial Discipline (CCJD) in the narrative unless the judge or justice waives confidentiality. The CCJD information provided, if any, is not to be considered as a recommendation for or against retention, but for the commission on judicial performance evaluation as one factor for its consideration.

(5) Relevant biographical information the commission believes may be of assistance to the public in making an informed voting decision, such as undergraduate and law schools attended, previous substantial legal or public employment, relevant professional activities or awards, and volunteer or other community work.

(b) The judge or justice being evaluated may respond in writing to the draft narrative within ten days of receipt of the draft. The judge or justice may provide feedback on or corrections to the draft narrative language and may request an additional interview. Any additional interview shall be held within fourteen days of the request. The commission may revise the draft narrative and shall provide the judge or justice with the final narrative within fourteen days following the written response or additional interview.

(c) A commission issuing a "does not meet performance standards" recommendation shall, at the judge or justice's request, include a response from the judge or justice of not more than 100 words as part of the commission's published narrative. The judge or justice shall have seven days from receipt of the commission's final recommendation and narrative to submit the 100-word response to the chair of the commission or the executive director of the Office of Judicial Performance Evaluation, who will forward the response to the commission. The commission may then change its vote count or revise the narrative and shall provide the judge or justice with the final narrative within seven days following the receipt of the response.

#### **Rule 16. Initial Performance Evaluations**

(a) The State Commission shall conduct an "initial" evaluation for each justice and appellate judge during their provisional term of office following the evaluation requirements established in Rule 13.

(b) A district commission shall conduct an "initial" evaluation for each county judge and district judge in the applicable district during their provisional term of office following the evaluation requirements established in Rule 12.

(c) The State Commission shall communicate its findings, including any recommendation for improvement plans, to the justice or judge who was evaluated and to either the chief justice of the supreme court, if the evaluation concerns a justice, or the chief judge of the court of appeals, if the evaluation concerns a court of appeals judge.

(d) A district commission shall communicate its findings, including any recommendation for improvement plans, to the chief judge of the district and the judge who was evaluated.

(e) Within ten days following the interview, a commission shall provide the judge or justice its findings as follows:

(1) The recommendation on performance, including the number of commissioners who voted for “meets performance standards” and for recommending a “performance improvement plan”;

(2) Descriptions of the performance of the judge or justice during the initial period of evaluation, including any areas of notably strong or weak performance with respect to the judicial performance criteria in section 13-5.5-107, C.R.S. (integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and the public), and any additional information that the commission believes may be of assistance to the justice or judge in improving judicial performance.

(f) If a commission recommends an improvement plan, the procedures developed and implemented for such a plan will follow the guidelines set forth in Rule 18 and 13-5.5-110 C.R.S.

(g) A commission shall grant each justice or judge who receives an initial evaluation the opportunity to meet with the commission or otherwise respond to the initial evaluation no later than ten days following the justice’s or judge’s receipt of the initial evaluation. Any additional interview shall be held within fourteen days of the request.

If a meeting is held or a response is made, the commission may revise its initial evaluation and shall provide the judge or justice with the final evaluation within fourteen days following the written response or additional interview.

(h) Evaluations, recommendations, and any other relevant information related to an initial evaluation shall not be released to the public, except as authorized in section 13-5.5-113(3)(a-c) C.R.S and Rule 18(c).

#### **Rule 17. Performance Evaluations in Interim Years**

(a) A commission may, at its discretion, conduct an “interim” evaluation of any judge or any justice between the years when the judge or justice stands for retention, as prescribed by the interim evaluation schedule maintained by the Office of Judicial Performance Evaluation. The commission must determine whether there are performance indications that warrant an interim evaluation. To make that determination, the commission shall consider the interim survey report and may also consider courtroom observations, prior evaluation narratives, and any written information received. If a commission decides not to conduct an interim evaluation, the commission shall notify the judge or justice in writing of that decision and the reasons therefor. If a commission decides to conduct an interim evaluation, the commission will notify the executive director, who will notify the judge or justice and provide instructions on what materials should be submitted to the commission for the evaluation. An interim evaluation requires the commission to interview the judge or justice and to consider the survey report, the judge’s or justice’s self-evaluation, submitted court decisions, review confidential summary information from the Colorado Commission on Judicial Discipline, if any, and courtroom observations. The commission shall prepare an evaluation narrative summarizing any strengths and weaknesses identified during the evaluation and, if the commission identifies performance deficiencies, the commission may recommend that the judge or justice participate in a judicial improvement plan.

(b) The State Commission shall communicate its findings, including any recommendation for improvement plans, to the justice or judge who was evaluated and to either the chief justice of the supreme court, if the evaluation concerns a justice, or the chief judge of the court of appeals, if the evaluation concerns a court of appeals judge.

(c) A district commission shall communicate its findings, including any recommendation for

improvement plans, to the chief judge of the district and the judge who was evaluated.

(d) Within ten days following the interview, a commission shall provide the judge or justice a completed draft of its findings as follows:

(1) The recommendation on performance, including the number of commissioners who voted for “meets performance standards” and for recommending a “performance improvement plan”;

(2) Descriptions of the performance of the judge or justice over the interim term, including any areas of notably strong or weak performance with respect to the judicial performance criteria in section 13-5.5-107, C.R.S. (integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and the public), and any additional information that the commission believes may be of assistance to the justice or judge in improving judicial performance.

(e) If a commission recommends an improvement plan, the procedures developed and implemented for such a plan will follow the guidelines set forth in Rule 18 and 13-5.5-110 C.R.S.

(f) A commission shall grant each justice or judge who receives an interim evaluation the opportunity to meet with the commission or otherwise respond to the interim evaluation no later than ten days following the justice’s or judge’s receipt of the interim evaluation. Any additional interview shall be held within fourteen days of the request.

(h) If a meeting is held or a response is made, the commission may revise its interim evaluation and shall provide the judge or justice with the final evaluation within fourteen days following the written response or additional interview.

(i) Evaluations, recommendations, and any other relevant information related to an interim year evaluation shall not be released to the public, except as authorized in section 13-5.5-113(3)(a-c) C.R.S. and Rule 18(c).

### **Rule 18. Individual Judicial Improvement Plans**

(a) If the state or a district commission recommends that a justice or judge receive an individual judicial improvement plan as part of the initial or interim evaluation process, the commission shall communicate such a recommendation, in writing, to the chief justice if the recommendation concerns a supreme court justice or to the appropriate chief judge if the recommendation concerns a judge, outlining the commission’s findings, including any recommendations for the content of an individual judicial improvement plan. If the state or a district commission recommends that a chief judge receive an individual judicial improvement plan as part of the initial or interim evaluation process, the commission shall communicate such a recommendation, in writing, to the chief justice, outlining its findings, including any recommendations for the content of an individual judicial improvement plan.

(b) A copy of the letter will be sent to the executive director of the Office of Judicial Performance Evaluation by the state or district commission for inclusion in the office’s files. The chief justice or appropriate chief judge, or their designee, shall develop an improvement plan for such justice or judge and shall send the improvement plan to the State Commission for review and approval by the executive director, subject to review and approval by the State Commission. After the executive director on behalf of the State Commission reviews and approves the improvement plan, the chief justice or chief judge, or their designee, is responsible for implementing and overseeing the improvement plan.

(c) Once the justice or judge has completed the improvement plan, the chief justice or chief judge, or their designee, shall convey the results of the improvement plan activities to the appropriate commission, in writing, and copy the executive director, who will maintain a copy of the improvement plan and the statement of the results in the appropriate commission files.

(d) If a justice or judge is required to complete an improvement plan pursuant to this section, and he or she fails to satisfactorily complete the requirements of such improvement plan in the judgment of the commission, the appropriate commission shall automatically issue a “does not meet performance standards” designation on his or her next retention performance evaluation narrative.

### **Rule 19. Confidentiality**

(a) Individual survey responses, all comments in survey reports, self-evaluations, personal information protected under court rule or section 24-72-204(3)(a)(II), C.R.S., additional oral or written information under Rules 12(f), 12(g), 12(h), 13(f), 13(g) and 13(h), content of performance improvement plans, and any matter discussed in executive session under Rule 5, shall remain confidential except as otherwise specifically provided in these rules. Information from comments in survey reports, self-evaluations, and additional oral or written information under Rules 12(f), 12(g), 12(h), 13(f), 13(g) and 13(h) may be summarized for use in a narrative. No commissioner may publicly discuss the substance of the evaluation of any particular judge or justice. Each commission may designate a sole or primary spokesperson to publicly discuss, between July 1 and December 31 of an election year, the process of evaluating the judges and justices.

(b) All recommendations, narratives, and survey reports are confidential until released to the public on the first day following the deadline for judges to declare their intent to stand for retention. Comments included in the survey report shall be made available only to the commissioners, the judge or justice being evaluated, the chief justice or chief judge, and the staff development administrator responsible for judicial education when assisting a judge or justice participating in a performance improvement plan.

(c) Information provided by the Colorado Commission on Judicial Discipline, in compliance with Rule 6.5(d)(4) of the Colorado Rules of Judicial Discipline, identifying any findings of misconduct on the part of a judge or justice, shall be confidential unless the judge or justice expressly waives confidentiality.

(d) Otherwise confidential information may be released only:

(1) To the Supreme Court Office of Attorney Regulation, if an allegation is made against a judge or justice in the course of the evaluation process which, if true, would constitute a violation of the Colorado Rules of Professional Conduct; and

(2) To the Supreme Court Commission on Judicial Discipline, if an allegation is made against a judge or justice in the course of the evaluation process which, if true, would constitute a violation of the Colorado Code of Judicial Conduct.

(3) Information provided by the Colorado Commission on Judicial Discipline, in compliance with Rule 6.5(d)(4) of the Colorado Rules of Judicial Discipline, identifying any findings of misconduct on the part of a judge or justice shall be confidential, unless the judge or justice waives confidentiality. A judge or justice who waives confidentiality or discloses otherwise confidential information shall be deemed to have consented to the release of related confidential information.

### **Rule 20. Records**

Upon completing its required recommendations and narratives, each commission shall collect all documents and other information received, including all copies, regarding the justices or judges evaluated. Each commission shall forward all such materials to the State Commission within 30 days following submission of its recommendations and narratives to the State Commission for destruction. The State Commission may authorize district commissions to submit evaluation materials to the court executive or designee in each district for destruction in the courthouse.

### **Rule 21. Complaints**

(a) A commissioner, judge, or justice may file a written complaint with the State Commission regarding an alleged violation of these rules or the statutes governing commissions on judicial performance. The State Commission shall provide a copy of the complaint to the chair of the applicable district commission. The district commission shall provide to the State Commission a written response to the complaint within ten days. Upon receipt of the district commission's response, the State Commission shall make an independent review. The State Commission may not reverse a district commission's determination of whether a judge "meets performance standards" or "does not meet performance standards." The State Commission shall timely respond to the complaint and may dismiss the complaint, provide remedial instruction to the district commission for further action, direct the district commission to revise its narrative, or draft its own narrative and recommendation to be published with the district commission's narrative and recommendation. The State Commission shall defer to the district commission's evaluation and recommendation, unless the State Commission finds a serious infraction of the rules or statutes governing commissions on judicial performance.

(b) The State Commission may publicly disclose a complaint, a response thereto, and the State Commission's decision, provided that confidential information is redacted.

Appendix to the Rules Governing Commissions on Judicial Performance Forms

Form 1(a)	Trial Judge Judicial Performance Standards Retention Evaluation Matrix
Form 1(a)(1)	Retention Scorecard
Form 1(b)	Trial Judge Judicial Performance Standards Interim Evaluation Matrix
Form 1(b)(1)	Interim Scorecard
Form 2	Guidelines for Apply Statutory Performance Evaluation Criteria to Colorado Supreme Court Justice and Colorado Court of Appeals Judges