

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
PETITION TO AMEND RULES 4, 6,)
AND 7, RULES OF PROCEDURE FOR)
JUDICIAL PERFORMANCE REVIEW)
IN THE STATE OF ARIZONA)

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ORDER

**AMENDING RULES 4, 6, AND 7, RULES OF PROCEDURE FOR JUDICIAL
PERFORMANCE REVIEW**

A petition having been filed proposing to amend Rules 4, 6, and 7, Rules of Procedure for Judicial Performance Review, and the comment period having expired, upon consideration,

IT IS ORDERED that Rules 4, 6, and 7, Rules of Procedure for Judicial Performance Review, be amended in accordance with the attachment hereto, effective January 1, 2010.

DATED this _____ day of September, 2009.

REBECCA WHITE BERCH
Chief Justice

TO:
Rule 28 Distribution

mwa

ATTACHMENT¹

RULES OF PROCEDURE FOR JUDICIAL PERFORMANCE REVIEW

Rule 1. [No change in text.]

Rule 2. [No change in text.]

Rule 3. [No change in text.]

Rule 4. Conference Teams

During each mid-term and retention election performance review period of a judge or justice, the Commission shall arrange for a conference between each judge or justice and a Conference Team. The purpose of this conference shall be to assist in identifying aspects of the judge's or justice's performance that may need improvement and to help the judge or justice to develop plans for self-improvement. The activities and operations of the Conference Teams shall be governed by the following provisions:

(a) [No change in text.]

(b) Chairperson. Organization. ~~A member selected by the Conference Team shall serve as Conference Team Chairperson and shall preside at all meetings. The Conference Team members shall organize themselves as meets their needs in order to conference with the judge(s) assigned to that team.~~

(c) Secretary. ~~A member selected by the Conference Team shall serve as secretary and prepare and keep a record of the action taken at each meeting. Either the Conference Team Chairperson or the Secretary at the direction of the Chairperson shall sign all correspondence for the applicable Conference Team.~~

(d-c) Terms. A Conference Team may review more than one judge or justice during any review period. Conference Team members shall be recruited to serve for each judicial review cycle and service will terminate at the end of the specific review cycle.

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

(ed) Meetings. Meetings shall be at the call of the Conference Team Chairperson. All meetings shall be confidential. No meeting shall take place unless all three (3) members are present.

(fe) Self-Evaluation Form. Prior to meeting with the Conference Team, each judge or justice shall complete a self-evaluation form approved by the Commission reflecting his or her perception of his or her performance as to each judicial performance criterion. The completed self-evaluation form is confidential and plays no role in the evaluation/retention process. It shall be furnished only to the Conference Team before its meeting with the judge or justice, and then to his or her Presiding Judge or Chief Judge, and to the Chief Justice, along with the self-improvement plan described in Paragraph (h) below.

(gf) Peremptory Challenge. Each reviewed judge or justice shall have the right to peremptorily challenge one member of the Conference Team. The peremptory challenge shall be filed with the office of the Commission within 5 days of actual notice to the judge or justice of the members of the Conference Team. Where necessary, the Chairperson of the Commission shall rule upon any questions under this subparagraph.

(hg) Conference Team Report. A written plan for self-improvement shall be developed at the conference and, after being put into final form, signed by the judge or justice and the Conference Team members. In connection with development of the self-improvement plan, the judge or justice and the Conference Team shall consider previous and current survey results and narrative comments, the previous self-improvement plan, and objective data which demonstrate completion of the previous plan. The self-improvement plan shall be distributed only to the judge or justice being reviewed, to his or her presiding judge or chief judge, and to the Chief Justice. In addition, the self-improvement plan, with the name of the judge or justice redacted, may be distributed to the Administrative Office of the Courts for use in development of judicial education programs. Neither the Conference Team Report nor the self-improvement plan shall be distributed to the Commission or used in the Commission's deliberations as to whether a judge or justice "meets" or "does not meet" judicial performance standards.

Rule 5. [No change in text.]

Rule 6. Review Process; Dissemination of Findings

The review process administered by the Commission, with the assistance of the Conference Teams, shall consist of the following:

(a) [No change in text.]

(b) [No change in text.]

(c) [No change in text.]

(d) Public Comment and Hearings. In each election year prior to the public vote meeting, the Commission shall request written public comments and hold public hearings with respect to judges or justices standing for retention. Any person wishing to speak in favor of or in opposition to the retention of a judge or justice being reviewed may do so at the public hearings. The public hearings shall be

recorded. The names and addresses of the speakers shall be required in order to speak. Written comments will not be considered unless legible and unless the name and address of the author is included. Telephone numbers, day and evening, are requested. Comments of the public shall be considered by the Commission in formulating its findings as to whether the judge or justice meets judicial performance standards.

(e) Judicial Discipline. The Commission shall obtain from the Arizona Commission on Judicial Conduct information as to whether discipline has been imposed on any justice or judge being reviewed. If discipline has been imposed on any judge being reviewed, the Commission shall obtain the Arizona Commission on Judicial Conduct's file regarding such discipline to the extent allowed by the rules of the Arizona Commission on Judicial Conduct.

(f) Reports.

(1) **Data Report.** In April of each election year, Commission staff shall disseminate a compiled data report (including confidential comments made on the survey forms), together with any public comments, to the judge or justice being reviewed, his or her presiding judge or chief judge, and the Chief Justice. The data reports (excluding the confidential comments made on survey forms), and any public comments, encoded by judge number, will be made available to the Commission members for review. In formulating its findings as to whether a justice or judge "meets" or "does not meet" judicial performance standards, the members of the Commission shall consider and weigh carefully the evaluation data developed in the survey process, the disciplinary record, public hearings, and written public comment. While statistical summaries of evaluation data regarding a judge's or justice's performance may be compared to the performance of comparable judges or justices, that comparison shall not be given dispositive effect in arriving at a conclusion. In all aspects of the Commission's reporting, to the fullest extent practicable, generally accepted statistical methods and techniques shall be utilized. If it is impracticable for the Commission to utilize generally accepted statistical methods and techniques in any aspect of its reporting, the Commission shall so disclose.

(2) [No change in text.]

(3) [No change in text.]

(4) [No change in text.]

Rule 7. Confidentiality and Disclosure of Records

All information, survey forms, letters, notes, memoranda, and other data obtained and used in the course of any judicial performance evaluation shall be strictly confidential and shall not be disclosed except as provided herein and in accordance with court rules relating to public dissemination of such information. All survey forms and other evaluation information shall be anonymous. The identity of the judge being reviewed shall be coded and encrypted until the Commission has completed its public vote. However, any judge or justice regarding whom there is a finding that he or she "does not meet" judicial performance standards shall have the right to review the original duplicate survey forms including excluding the narrative comments.

Under no circumstances shall the data collected or the results of the evaluation be used to discipline an individual judge or justice or be disclosed to authorities charged with disciplinary responsibility, unless required by law or by the Code of Judicial Conduct.

Notwithstanding the foregoing, information disclosing a criminal act may be provided to law enforcement authorities at the direction of the Arizona Supreme Court. Requests for such information in the possession of the Commission shall be made by written petition setting forth with particularity the need for such information. All information and data provided to law enforcement authorities pursuant to this paragraph shall no longer be deemed confidential.

Rule 8. [No change in text.]

Rule 9. [No change in text.]