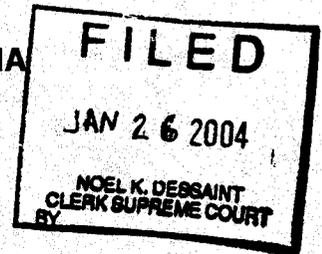


IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-03-0020



ORDER AMENDING
THE RULES OF PROCEDURE FOR
JUDICIAL PERFORMANCE REVIEW IN THE STATE OF ARIZONA

IT IS ORDERED that the Rules of Procedure for Judicial Performance Review in the State of Arizona be amended in accordance with the attachments hereto,* effective as of June 1, 2004.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 26th day of January, 2004.

For the Court:

A handwritten signature in cursive script, appearing to read "Charles E. Jones".

CHARLES E. JONES
Chief Justice

* Changes or additions in text are indicated by underlining and deletions from text are indicated by ~~strikeouts~~.

**RULES OF PROCEDURE FOR
JUDICIAL PERFORMANCE REVIEW
IN THE STATE OF ARIZONA**

Rule 1. Purpose

Ariz. Const. Art. 6, § 42, which was adopted by the voters at the November 1992 general election, requires the Court to adopt, and administer for all judges and justices who stand for retention, a process for evaluating judicial performance. These rules are intended to implement Art. 6, § 42 through adoption of a judicial performance review process which will assist voters in evaluating the performance of judges and justices standing for retention; facilitate self-improvement of all judges and justices subject to retention; promote appropriate judicial assignments; assist in identifying needed judicial education programs; and otherwise generally promote the goals of judicial performance review, which are to protect judicial independence while fostering public accountability of the judiciary.

Rule 2. Commission on Judicial Performance Review

A system of periodic review of the performance of each judge and justice subject to retention shall be administered by the Commission on Judicial Performance Review. The activities and operations of the Commission shall be governed by the following provisions:

(a) Composition of the Commission. The Commission shall be composed of not more than 30 members appointed by the Supreme Court. The Commission shall be composed of members of the public, ~~lawyers-attorneys~~, and judges. The majority of the members of the Commission shall be members of the public who are not ~~lawyers-attorneys~~ or judges and there shall be no more than 6 judges and 6 attorneys among the non-public members.

(b) Chairperson. The Chief Justice of Arizona shall select the Chairperson of the Commission. The Chairperson shall preside at all meetings of the Commission. The Chairperson shall select a Vice Chair ~~chairperson~~ who shall not be from the same member group (public-member, judge, or ~~lawyer-attorney~~) as the Chairperson.

(c) Terms. Each member of the Commission shall serve for a term of four years and be eligible for reappointment to one additional four-year term. In the case of a vacancy which occurs before expiration of a term, the member appointed to fill such vacancy shall serve for the duration of the unexpired term. If the unexpired term served is less than 18 months, the member shall be eligible to serve two additional four-year terms. If the unexpired term served is 18 months or greater, the member shall be eligible for reappointment to one additional four-year term.

(d) Meetings; Quorum; Majority. The Commission shall meet at the call of the Chairperson not less than two times each year and shall conduct no business except upon the attendance of a majority-quorum of the commission members. A quorum is constituted

by $\frac{1}{2} + 1$ of the total commission membership in office at the time of the meeting. Members shall be permitted to attend and participate in meetings by telephone or video-conference. All meetings shall be open to the public except as provided in paragraph (e) below. All actions shall require a majority vote of those present and voting, except for the finding as to whether a judge or justice meets judicial performance standards, which shall require a majority vote of the total Commission membership, and except as provided in paragraph (e) below.

(e) Executive Session. The Commission shall meet in executive session with respect to any agenda item which would involve disclosure of matters made confidential by these rules, any other court rules, or by law. In addition, in order to promote open and frank discussion and accuracy in the performance evaluation process, the Commission shall meet in executive session at the time of: (1) discussion (not including voting) of the Commission's finding as to whether a judge or justice "meets" or "does not meet" judicial performance standards; (2) presentation and discussion of a judge's or justice's written comment submitted in response to a finding that the judge or justice "does not meet" judicial performance standards; and (3) a judge's or justice's appearance before the Commission. The Commission may meet in executive session at any other time upon ~~two-thirds~~ a majority vote of the Commission members then in attendance. The substance of deliberations in executive session shall not be disclosed. All voting shall be in public session.

(f) Membership on Conference Teams. Any member of the Commission may be a member of a Conference Team as described in Rule 4 below.

(g) Powers and Duties of the Commission. The powers and duties of the Commission shall be as follows subject to approval by the Supreme Court:

(1)(a) To develop, and review and recommend amendments on written performance standards, to be approved by the Supreme Court and made available to the public, by which judicial performance is to be evaluated; ~~and to~~ (b) to formulate policies and procedures for collecting information and conducting reviews; ~~and to~~ (c) to create and supervise a program of periodic review of the performance of each judge and justice who is subject to the merit selection system. The Commission shall directly review the performance of justices of the Supreme Court, judges of the Court of Appeals, and judges of the Superior Court subject to retention. Before retention elections, the Commission shall publicly announce whether each judge or justice standing for retention "meets" or "does not meet" judicial performance standards, in accordance with the provisions of Rule 6 below.

(2) To identify key areas where improvement is needed and work with the Committee on Judicial Education and Training to prioritize areas and offer required courses to meet the educational needs.

(3) To request public comment and hold public hearings on the performance of all judges and justices subject to retention.

(h) Minutes/Correspondence. The Chairperson shall assure that minutes are kept and approved at each subsequent meeting. Minutes of meetings of the Commission shall be made available to the public. Either the Chairperson or Vice Chair-Chairperson at the

direction of the chairperson shall sign all correspondence for the Commission.

(i) Spokesperson. The Chairperson of the Commission shall ~~shall~~ may select a member of the Commission to serve as a spokesperson to speak for the Commission in any of its contacts with the media concerning actions it has taken regarding reviewed judges or justices.

(j) Failure to Attend Meetings. Any member who fails to attend ~~2 consecutive~~ fifty per cent (50%) of the scheduled meetings during a calendar year may be removed from the Commission on recommendation of the Chairperson at the discretion of the Chief Justice.

Rule 3. Subcommittees

The Commission may create as many subcommittees from its members as needed to meet its responsibilities and accomplish its purpose.

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. A Conference Team shall be appointed to consult with each appellate judge or justice and Superior Court judge subject to retention. The activities and operations of the Conference Teams shall be governed by the following provisions:

(a) Composition. Each Conference Team shall be appointed by the Chairperson of the Commission or his or her designee and shall be composed of a member of the public, an lawyer attorney who is a member of the State Bar of Arizona, and a judge or justice (active or retired). No more than one member of a Conference Team may be a member of the Commission.

(b) Chairperson. A member selected by the Conference Team shall serve as Conference Team Chairperson, and shall preside at all meetings.

(c) Secretary. A member selected by the Conference Team shall serve as secretary and. ~~It shall be the duty of the Secretary to~~ 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) 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. ~~The term of each Conference Team member shall be as provided in the appointing order.~~

(e) 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.

(f) 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.

(g) 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.

(h) 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 demonstrates 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. General Provisions

The following general provisions shall govern the activities and operations of the Commission and the Conference Teams:

(a) Diversity. The Supreme Court shall solicit recommendations from the public to assist it in appointing persons to the Commission. The Chairperson of the Committee Commission shall solicit recommendations from the public to assist in appointing persons to the Conference Teams. These persons shall have outstanding competence and reputation and shall also be sensitive to the needs of and held in high esteem by the communities they will serve. The persons appointed shall reflect, to the extent possible, the geographic, ethnic, racial and gender diversity of those communities. Competence and diversity among the members will enhance fairness and public confidence in the judicial performance review process.

(b) Reimbursement for Expenses. Members of the Commission or any Conference

Team shall receive no compensation for services but shall be reimbursed for their travel expenses in accordance with applicable statutes.

(c) Impartiality.

(1) A Commissioner or Conference Team member shall perform his or her duties in an impartial, objective manner.

(2) A Commissioner or Conference Team member shall disclose to the Commission any relationship with a reviewed judge or justice (business, personal, attorney-client) or any other cause for conflict of interest, bias or prejudice. A Commissioner or Conference Team member is disqualified from taking any action with respect to a judge who is a family member within the third degree of consanguinity.

(3) A Commissioner or Conference Team member shall not be influenced other than by facts or opinions which are relevant to the judicial performance of the reviewed judge or justice. A Commissioner or Conference Team member shall promptly report to the Commission Chairperson any attempt by any person or organization to influence him or her other than by fact or opinion.

(4) Each reviewed judge or justice shall have the right to challenge for cause any Commissioner or Conference Team member ~~disqualified under this Rule 5(c), or as to whom the reviewed judge or justice alleges that there is a cause for conflict of interest, bias or prejudice or that such member cannot perform the duties of membership impartially and objectively.~~ Any such challenge to a Commissioner shall be in writing and filed with the office Chairperson of the Commission at least 60 days before the Commission's public vote during the year in which the reviewed judge or justice is standing for retention. Any such challenge to a Conference Team member shall be filed with the office of the Commission within 5 days of actual notice to the judge or justice of the composition of the Commission or Conference Team members. The Supreme Court, or a justice designated by the Court to do so, shall rule upon such challenges for cause, on the written challenge, and the written response thereto, if any.

(d) Background Checks. Background checks pursuant to A.R.S. § 41- 1750(G)(2) may be required of all Commissioners and Conference Team members.

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) Data Center. The Court shall employ a qualified contractor or an in-house unit, hereinafter referred to as the Data Center, whose duty it shall be to prepare the survey forms referred to in paragraph (b) below, process the survey responses, and compile the statistical reports of the survey results in a manner designed to ensure the confidentiality and accuracy of the process.

(b) Survey Forms. Mid-way through the judge or justice's term and again no less than

9 months prior to his or her retention election, anonymous survey forms eliciting performance evaluations shall be distributed to ~~lawyers-attorneys~~, litigants, witnesses, jurors, other judges and justices and other persons who have been in direct contact with each judge or justice surveyed and who have first-hand knowledge of his or her judicial performance during the evaluation period. The survey forms shall seek evaluations of the judge or justice in accordance with the written performance standards of judicial performance approved by the Supreme Court, such as knowledge of the law and procedure, integrity, impartiality, judicial temperament, administrative skill, punctuality and communication skills, and shall elicit narrative comments regarding the judge's or justice's performance. The survey forms shall be processed in a manner to assure confidentiality.

(c) Anonymous Narrative Comments. The narrative comments contained in the survey forms, which shall be anonymous, shall be extracted and provided to the judge or justice, to his or her Conference Team for the purpose of self-improvement, to his or her Presiding Judge or Chief Judge, and to the Chief Justice. In addition, such anonymous narrative comments, 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. Narrative comments shall not be accessible to the public, shall be confidential, and shall be used only in connection with the preparation of a plan of self-improvement of the judge or justice by the Conference Team. The submission of a survey form containing an anonymous narrative comment does not preclude the ~~lawyer-attorney~~, litigant, witness, juror, judge or other person surveyed from submitting a public comment, whether in writing or at public hearing pursuant to Rule 6(d), or otherwise.

(d) Public Comment and Hearings. In each election year, the Commission shall request written public comments and hold a public hearings with respect to judges or justices standing for retention. The public hearings shall be recorded and the 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. 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) Factual Reports. ~~In each election year, the Commission shall compile a factual report on the judicial performance of each judge or justice standing for retention, which shall include: a summary of the results of the survey forms as to the judge or justice; written and oral public comments submitted to the Commission (pursuant to Rule 2(g)(3)) which are deemed pertinent by the Commission; any biographical or other data on such judge or justice which are deemed pertinent; the Commission's finding as to whether the judge or justice has failed to cooperate with the judicial performance review process; and the Commission's finding as to whether the judge or justice "meets" or "does not meet" judicial performance standards. Should the Commission find that a judge or justice has failed to cooperate during the judicial performance review process, the report shall identify the conduct upon which the finding is based.~~

(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, 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) Written Notice. A written notice shall be submitted to any judge or justice standing for retention who has a score in any category designated by the Commission that does not meet the threshold standard adopted by the Commission. A factual report by the Commission shall first be distributed to the judge being reviewed, who shall have the right to submit written comments thereon to the Commission. If the Commission revises its finding, such revision shall be incorporated into the factual report. The factual report shall then be forwarded, if it has been revised, to the judge being reviewed. The Commission shall prepare a factual report on each judge or justice standing for retention. A factual report by the Commission shall first be distributed to the judge or justice being reviewed. At least 15 days before dissemination of the factual report to the public, the Superior Court judge, the Court of Appeals judge or the justice The judge or justice shall have the right to submit written comments thereon to the Commission or to appear and be heard by the Commission at a date and time set by the Commission prior to the public vote and, if desired, submit written comment. If a majority of the Commission finds the judge's or justice's submission to be meritorious, the finding in the factual report shall be revised accordingly.

(3) Public Vote. In each election year, the commission shall vote in a public meeting on whether a judge or justice who is standing for retention "meets" or "does not meet" judicial performance standards. A commissioner may vote in person, by telephone, by video-conference, or by written ballot.

(4) Report of the Commission. In each election year, the Commission shall compile a report on the judicial performance of each judge or justice standing for retention, which shall include: a summary of the results of the survey forms as to the judge or justice; a summary of any written or oral public comments received by the Commission pursuant to Rule 2(g)(3) that the commission deems pertinent; any biographical or other data on such judge or justice which are deemed pertinent by the Commission; the Commission's finding as to whether the judge or justice has failed to cooperate with the judicial performance review process; and the Commission's finding as to whether the

judge or justice "meets" or "does not meet" judicial performance standards. Should the Commission find that a judge or justice has failed to cooperate during the judicial performance review process, the report shall identify the conduct upon which the finding is based. Not earlier than July 1 and not later than three days following the primary election, the Commission shall disseminate to the public and the judge or justice being reviewed its factual report and, except as provided in Rule 7, any other information which the Commission deems relevant to the retention decision, to the public and the judge or justice being reviewed not earlier than the public vote and not later than the earliest date for receipt by registered voters of any requested early ballots for the general election pursuant to A.R.S. § 16-542(a). The commission's report shall be distributed to the public by publication in the secretary of state's voter information pamphlet pursuant to A.R.S. § 19-123(5), through the judicial performance review website, and by other means deemed necessary to reach voters in the state.

(f) Conference Teams.

~~(1) During each 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.~~

~~(2) Prior to meeting with the Conference Team, each judge or justice shall complete a self-evaluation in the format approved by the Commission reflecting his or her perception of his or her performance as to each judicial performance criterion. The self-evaluation shall remain confidential and play no role in the evaluation/retention process. The Conference Team shall not participate in formulating any finding as to whether a judge or justice meets judicial performance standards.~~

~~(3) 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 Chairperson of the Commission within 5 days of actual notice to the judge or justice of the composition of the Conference Team. Where necessary, the Chairperson of the Commission shall rule upon any questions under this subparagraph.~~

~~(4) A written plan for self-improvement shall be developed at the conference. 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 demonstrates 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.~~

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 ~~a factual report is written~~ 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 survey forms including 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. Admissibility as Evidence

Except as disclosed as provided herein, or in connection with an action under Rule 9 below, all information, survey forms, notes, memoranda or other data declared to be confidential hereby shall not be admissible as evidence, and shall not be discoverable in any action of any kind in any court or before any tribunal, board, agency or person.

Rule 9. Immunity

No person participating in the judicial performance review process in any capacity should be held to answer for any actions taken or statements of fact made during the process except for statements of fact known to be false when made.