SUPREME COURT OF ARIZONA

In the Matter Of	)	Arizona Supreme Court
	)	No. R-08-0025
PROMULGATE RULE 97 OF THE SUPREME	)	
COURT, PERFORMANCE EVALUATION OF	)	
COURT COMMISSIONERS	)	
	)	
	)	
	)	
_____	)	

ORDER ADOPTING RULE 97, RULES OF THE SUPREME COURT, ON AN EMERGENCY BASIS

A petition having been filed proposing to add Rule 97, Rules of the Supreme Court, in order to implement Senate Bill 1186 (adding new A.R.S. § 12-119.04), which was passed in the Second Regular Session of the Forty-eighth Legislature (2008), with an effective date of September 26, 2008. Upon consideration,

IT IS ORDERED that Rule 97, Rules of the Supreme Court, be adopted on an emergency basis in accordance with the attachment hereto, effective January 1, 2009.

IT IS FURTHER ORDERED that the Petition shall be opened for public comment pursuant to Rule 28(C), Rules of the Supreme Court. The petition may be viewed by going to: http://www.supreme.state.az.us/ and clicking on "Court Rules Forum" under the heading "Quick Links". Comments shall be due on or before May 20, 2009.

Comments may be posted electronically by going to: http://www.supreme.state.az.us/, clicking on "Court Rules Forum" and following the instructions for submitting a comment.

Alternatively, comments may be submitted by filing an original and six (6) paper copies and one copy of the written comments and supporting documents in Microsoft Word format on a CD, disk or other compatible electronic medium with the Clerk of the Supreme Court, 1501 West Washington St., Room 402, Phoenix, AZ 85007 in an envelope marked "Rule Comment".

Any person filing a comment shall send a copy thereof to Petitioner.

DATED this _____ day of December, 2008.

_____
RUTH V. McGREGOR
Chief Justice

TO:
Rule 28 Distribution

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ATTACHMENT

Rule 97. Performance Evaluation of Court Commissioners

(a) Purpose. A.R.S. § 12-119.04(A) directs the Supreme Court to adopt and administer for all Superior Court Commissioners in counties having a population of 250,000 persons or more a process, established by court rules, for evaluating Superior Court Commissioner performance. This rule is intended to implement A.R.S. § 12-119.04 through adoption of a Superior Court Commissioner evaluation process to inform the Presiding Judge prior to the reappointment of Commissioners pursuant to Title 12, Chapter 2, Article 2, Arizona Revised Statutes.

(b) Powers and Duties of Presiding Judge. The powers and duties of the Presiding Judge in Commissioner performance evaluation shall be to:

1. Supervise a program of periodic evaluation of the performance of each Commissioner pursuant to this rule.

2. Formulate policies and procedures for collecting information and conducting reviews, using the survey instruments approved by the Supreme Court.

3. Transmit the public Commissioner evaluation reports to the Supreme Court as set forth in Section (d), for publication on the Supreme Court website.

(c) Performance Standards. The standards for Commissioner performance evaluation shall be to:

1. Administer justice fairly, ethically, uniformly, promptly and efficiently.

2. Be free from personal bias in decision making, decide cases based on proper application of law and procedure to the facts, and issue prompt, clear rulings and decisions that demonstrate competent legal analysis.

3. Act with dignity, courtesy and patience.

4. Effectively manage the courtroom and discharge the administrative responsibilities of the office.

(d) Frequency of Public Reports. The Presiding Judge shall ensure that a public survey report for each Commissioner in office for more than one year is transmitted to the Supreme Court by October 1 of

even-numbered years. Public survey reports shall then be published and maintained on the Supreme Court website.

(e) Review Process. The review process administered by the Presiding Judge shall consist of the following:

1. The Presiding Judge shall employ a qualified contractor or an in-house unit whose duty it shall be to prepare the survey forms referred to in paragraph 2 below, process the survey responses and compile the statistical reports of the survey results in a format approved by the Supreme Court, and in a manner designed to ensure the confidentiality and accuracy of the process. In all aspects of evaluation reporting, to the fullest extent practicable, generally accepted statistical methods and techniques shall be utilized. If it is impracticable to utilize generally accepted statistical methods and techniques in any aspect of reporting, the Presiding Judge shall so disclose.

2. For a minimum of 60 court days in even-numbered years, anonymous survey forms eliciting performance evaluations shall be distributed to attorneys, litigants, witnesses, jurors, staff and other persons who have been in direct contact with each Commissioner surveyed and who have first-hand knowledge of his or her performance during the evaluation period. The survey forms shall seek evaluations of the Commissioner in accordance with the above-enumerated performance standards, such as knowledge of the law and procedure, integrity, impartiality, judicial temperament, administrative skill, punctuality and communication skills. The survey forms shall be processed in a manner to assure the anonymity of respondents.

3. The narrative comments contained in the survey responses, if any, shall be extracted and provided to the Commissioner, to his or her Conference Team for the purpose of self-improvement, to his or her Departmental Presiding Judge and to the Presiding Judge. Narrative comments shall not be accessible to the public but shall be used only in connection with the preparation of a self-improvement plan by the Commissioner and his or her Conference Team pursuant to Section (g)(5). The submission of a survey form containing an anonymous narrative comment does not preclude the attorney, litigant, witness, juror, court staff or other person surveyed from submitting a public comment, whether in writing or at a public hearing held pursuant to Section (e)(4), or otherwise.

4. During each survey period the Presiding Judge shall request written public comments and hold a public hearing with respect to all Commissioners. The public hearing 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.

(f) Dissemination of Evaluation Reports.

1. The Presiding Judge or designee shall disseminate a compiled evaluation report (including confidential narrative comments made on the survey forms, if any), together with all public comments, to the reviewed Commissioner and to his or her Departmental Presiding Judge.

2. The Presiding Judge or designee shall ensure that public evaluation reports are transmitted to the Supreme Court by October 1 of even-numbered years. The evaluation report of each Commissioner shall include: the survey data results as to the Commissioner; any biographical or other information on such Commissioner deemed pertinent by the Presiding Judge; and, if applicable, a finding as to whether the Commissioner could not be reviewed during the evaluation process. Should the Presiding Judge find that a Commissioner could not be reviewed during the evaluation process, the report shall identify the circumstances upon which that finding is based. Commissioner evaluation reports shall be disseminated to the public through the Supreme Court website and may also be disseminated on the Superior Court website.

(g) Conference Teams. During each performance review period the Presiding Judge shall arrange for a conference between each Commissioner and a Conference Team. The purpose of this conference shall be to assist in identifying aspects of the Commissioner's performance that may need improvement and to help the Commissioner develop plans for self-improvement. The activities and operations of the Conference Teams shall be governed by the following provisions:

1. Each Conference Team shall be appointed by the Presiding Judge or designee and shall be composed of three members.

2. A Conference Team may review more than one Commissioner during any review period. Conference Team members shall be recruited to serve for each review cycle and service will terminate at the end of the specific review cycle.

3. All conference meetings shall be confidential. No meeting shall take place unless all three members are present.

4. During each review cycle and prior to meeting with the Conference Team, each Commissioner shall complete a self-evaluation form reflecting his or her perception of his or her performance as to each performance standard. The completed self-evaluation form shall be confidential and furnished only to the Conference Team before its meeting with the Commissioner, and then to his or her Departmental Presiding Judge and the Presiding Judge, along with the self-improvement plan described in Paragraph 5 below.

5. A written plan for self-improvement shall be developed at the conference and, after being put into final form, signed by the Commissioner and the Conference Team members. In connection with development of the self-improvement plan, the Conference Team and the Commissioner shall consider previous and current survey results, any confidential narrative comments and public

comment, any previous self-improvement plan, and objective data which demonstrate completion of the previous plan. The Conference Team may review video or audio recordings of or observe the Commissioner's performance to assist in the development of the self-improvement plan. The self-improvement plan shall be distributed only to the reviewed Commissioner, to his or her Departmental Presiding Judge, and to the Presiding Judge.

(h) Confidentiality and Disclosure of Records. All information, survey forms, letters, notes, memoranda, and other data obtained and used in the course of any Commissioner 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, with the exception of written or verbal public comment pursuant to Section (e)(4). Notwithstanding the foregoing, information disclosing a criminal act may be provided to law enforcement authorities at the direction of the Arizona Supreme Court. All information and data provided to law enforcement authorities pursuant to this paragraph shall no longer be deemed confidential. Requests for such information in the possession of the Presiding Judge or Supreme Court shall be made by written petition setting forth with particularity the need for such information.

(i) Admissibility as Evidence. Except as disclosed in accordance with this rule, or in connection with an action authorized under Section (j) 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.

(j) Immunity. No person participating in the Commissioner evaluation process in any capacity may 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.