

RULE CHANGE 2014(04)

CHAPTER 37

Rules Governing The Commissions on Judicial Performance

Rule 10. Trial Judge Evaluations.

Rule 11. Appellate Judge and Justice Evaluations.

Rule 13. Narratives

[NOTE - the changes occur only in the Rules outlined below. Omitted portions contain no changes]

Rule 10. Trial Judge Evaluations.

(a) The state commission shall develop three separate survey questionnaires: one shall be for appellate judges and justices concerning each ~~district trial judge~~ being evaluated; one shall be for attorneys, including prosecutors, public defenders, and private attorneys, who have appeared before the trial judge; and one shall be for non-attorneys, including jurors, 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 appeared before each trial judge being evaluated. Surveys shall be conducted on a continuing basis, and results provided to the district commission and the trial judge. To ensure the anonymity of respondents, a district commission shall not receive completed questionnaires, and all reports of the results shall be based on aggregate data, ~~including the percentage responding as "undecided or don't know enough to respond."~~ Comments shall be separated from completed questionnaires before the comments are forwarded to the trial judge ~~whom each comment concerns.~~ being evaluated.

(b) ~~Each district commissioner shall make unannounced visits to the courtroom to observe at least three of the trial judges being evaluated.~~ The district commission shall ensure that each trial judge being evaluated receives adequate observation.

(c) The district administrator shall provide the district commission with information concerning the caseload, case types, open case reports, and case aging reports, ~~and sentence modifications pursuant to section 18-1.3-406, C.R.S. for each trial judge during the period of evaluation.~~ current term, to the extent possible.

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

(e) Each district judge shall submit to the district commission not less than three decisions he or she issued, including, if applicable, one of which was reversed on appeal, together with the reversing opinion, if applicable. Each county judge shall submit to the district commission transcripts of three findings of fact, conclusions of law, and orders, one of which was reversed on appeal, together with the reversing decision, if applicable. 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, ~~and for 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) A district commission may interview district court judges, and county court judges, and other interested persons, ~~and accept information and documentation from interested persons, if the person provides his or her name and address.~~ The commission shall agree to meet with a representative of the District Attorney and a representative of the Public Defender when a request is made, provided that the request is made no later than the first day of April of the relevant retention year. The commission shall provide adequate notice and work with the representatives to schedule a convenient date and time for the meeting. In addition, the commission shall accept information and documentation from any interested person, provided the interested (i) submits his or her name and address, and (ii) submits the information and/or documentation to the commission by the first day of April of the relevant retention year. The district commission shall provide the trial judge with a written summary of any oral information, and a copy of any written information, no later than ten days prior to the interview with the commission. The trial judge also may submit additional written information to the commission prior to or after the interview.

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

#### Rule 11. Appellate Judge and Justice Evaluations.

(a) The state commission shall develop ~~four~~ three separate survey questionnaires: one shall be for trial judges concerning each appellate judge or justice being evaluated; ~~and one shall be for attorneys, including prosecutors, public defenders, and private attorneys, who have appeared before the appellate judge or justice;~~ and one shall be for other appellate judges and justices, and staff attorneys; ~~and one shall be for employees of the court.~~ 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 aggregate data; including the percentage responding as "undecided or don't know enough to respond." Comments shall be separated from completed questionnaires before the comments are forwarded to the appellate judge or justice, ~~whom each comment concerns.~~

(b) ~~Each state commissioner shall make unannounced visits to the courtroom to observe at least three of the appellate judges or justices being evaluated.~~ The state commission shall ensure that each appellate judge or justice being evaluated receives adequate observation through visits to the courtroom.

(c) The clerks of the supreme court and the court of appeals shall provide the state commission with information concerning opinions authored, including concurrences and dissents, and cases on desk reports, excluding case names, for each appellate judge or justice during the period of evaluation current term, to the extent possible.

(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 of which is a separate concurrence or dissent, if applicable, and at least one unpublished opinion, and at least one opinion of which was reversed on appeal, together with the reversing opinion, ~~if applicable, and in the case of a judge of the court of appeals, at least one unpublished 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, and for 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 other persons, including judges and justices and appellate court judges and other persons and accept information and documentation from interested persons, if the person provides his or her name and address. The state commission shall provide the appellate judge or justice with a written summary of any oral information, and a copy of any written information, no later than ten days prior to the interview with the commission. The appellate judge or justice also may submit additional written information to the commission prior to or after the interview.

(g) The state commission shall interview each appellate judge or justice being evaluated following its initial review of information.

### Rule 13. Narratives.

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

(i) The retention recommendation, including the number of commissioners who voted for and against retention;

(ii) Undergraduate and law schools attended, previous substantial legal or public employment, relevant professional activities or awards, and volunteer or other community work;

(iii) Evaluation methods used by the commission, whether any of the groups surveyed had an insufficient response rate, and the percentages of responses from each surveyed group recommending that a justice or judge be retained or not be retained, or making no recommendation that a justice or judge be retained; and ~~A description of the performance of the justice or judge over the past term, including any areas of notably strong or weak performance, any deficiencies identified in the interim evaluation, and the extent to which such deficiency has been satisfactorily addressed, and any additional information that the commission believes may be of assistance to the public in making an informed voting decision;~~

(iv) A description of the performance of the justice or judge over the past term, including any areas of notably strong or weak performance with respect to the judicial performance criteria contained in 13-5.5-105.5(1) and (2), any deficiencies reflected in the interim evaluation, the extent to which such deficiency has been satisfactorily addressed, and any additional information that the commission believes may be of assistance to the public in making an informed voting decision;

~~A description of the groups of respondents surveyed, whether any of the groups surveyed had an insufficient response rate, the percentage of responses received from each group who recommend that a justice or judge be retained, the percentage received from each group who recommend that a justice or judge not be retained, and the percentage received from each group indicating "undecided or don't know enough to make a recommendation."~~

(b) The justice or judge being evaluated may respond in writing to the draft narrative, and request an additional interview, within ten days of receipt of the draft. Any additional interview shall be held within ten days of the request. The commission may revise the draft

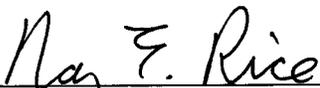
narrative, and shall provide the justice or judge with the final narrative within ten days following the additional interview.

(c) Any commission issuing a “do not retain” or “no opinion” recommendation shall, at the justice or judge’s request, include a response from the justice or judge of not more than 100 words. The commission may then change its vote count or revise the draft narrative, and shall provide the justice or judge with the final narrative within ten days following the receipt of the response.

(d) If the commission has identified one or more areas of significantly poor performance, it may recommend to the chief justice or chief judge that the justice or judge be placed on an improvement plan.

**Amended and Adopted by the Court, En Banc, March 17, 2014, effective immediately.**

By the Court:

  
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Nancy E. Rice, Chief Justice