

Judicial Performance Evaluation Commission Act

Enacted by Chapter 248, 2008 General Session

Amended 2009

78A-12-101. Title.

This chapter is known as the "Judicial Performance Evaluation Commission Act."

78A-12-102. Definitions.

As used in this chapter:

(1) "Commission" means the Judicial Performance Evaluation Commission established by this chapter.

(2) "Judge" means a judge or justice who is subject to a retention election.

(3) "Justice" means a judge who is a member of the Supreme Court.

78A-12-201. Judicial Performance Evaluation Commission -- Creation -- Membership -- Salary -- Staff.

(1) There is created an independent commission called the Judicial Performance Evaluation Commission consisting of 13 members, as follows:

(a) two members appointed by the president of the Senate, only one of whom may be a member of the Utah State Bar;

(b) two members appointed by the speaker of the House of Representatives, only one of whom may be a member of the Utah State Bar;

(c) four members appointed by the members of the Supreme Court, at least one of whom, but not more than two of whom, may be a member of the Utah State Bar;

(d) four members appointed by the governor, at least one of whom, but not more than two of whom, may be a member of the Utah State Bar; and

(e) the executive director of the Commission on Criminal and Juvenile Justice.

(2) (a) The president of the Senate and the speaker of the House of Representatives shall confer when appointing members under Subsections (1)(a) and (b) to ensure that there is at least one member from among their four appointees who is a member of the Utah State Bar.

(b) Each of the appointing authorities may appoint no more than half of the appointing authority's members from the same political party.

(c) A sitting legislator or a sitting judge may not serve as a commission member.

(3) (a) A member appointed under Subsection (1) shall be appointed for a four-year term.

(b) A member may serve no more than three consecutive terms.

(4) At the time of appointment, the terms of commission members shall be staggered so that approximately half of commission members' terms expire every two years.

(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

- (6) (a) Eight members of the commission constitute a quorum.
(b) The action of a majority of the quorum constitutes the action of the commission.
(c) If a vote on the question of whether to recommend a judge be retained or not be retained ends in a tie, the commission may make no recommendation concerning the judge's retention.

78A-12-202. Salary and expenses -- Staff.

(1) (a) (i) A member who is not a government employee receives no compensation or benefits for the member's service, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A member may decline to receive per diem and expenses for the member's service.

(b) (i) A state government officer or employee member who does not receive salary, per diem, or expenses from the member's agency for the member's service may receive per diem and expenses incurred in the performance of their official duties from the commission at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A state government officer or employee member may decline to receive per diem and expenses for the member's service.

(2) The commission shall elect a chair from among its members.

(3) The commission shall employ an executive director and may employ additional staff as necessary within budgetary constraints.

(4) The commission shall be located in the Commission on Criminal and Juvenile Justice.

78A-12-203. Judicial performance evaluations.

(1) Beginning with the 2012 judicial retention elections, the commission shall prepare a performance evaluation for:

(a) each judge in the third and fifth year of the judge's term if the judge is not a justice of the Supreme Court; and

(b) each justice of the Supreme Court in the third, seventh, and ninth year of the justice's term.

(2) Except as provided in Subsection (3), the performance evaluation for a judge under Subsection (1) shall consider only:

(a) the results of the judge's most recent judicial performance survey that is conducted by a third party in accordance with Section 78A-12-204;

(b) information concerning the judge's compliance with minimum performance standards established in accordance with Section 78A-12-205;

(c) courtroom observation;

(d) the judge's judicial disciplinary record, if any;

(e) public comment solicited by the commission;

(f) information from an earlier judicial performance evaluation concerning the judge; and

(g) any other factor that the commission:

(i) considers relevant to evaluating the judge's performance for the purpose of a retention election; and

(ii) establishes by rule.

(3) The commission shall make rules concerning the conduct of courtroom observation under Subsection (2), which shall include the following:

(a) an indication of who may perform the courtroom observation;

(b) a determination of whether the courtroom observation shall be made in person or may be made by electronic means; and

(c) a list of principles and standards used to evaluate the behavior observed.

(4) (a) As part of the evaluation conducted under this section, the commission shall determine whether to recommend that the voters retain the judge.

(b) (i) If a judge meets the minimum performance standards established in accordance with Section 78A-12-205 there is a rebuttable presumption that the commission will recommend the voters retain the judge.

(ii) If a judge fails to meet the minimum performance standards established in accordance with Section 78A-12-205 there is a rebuttable presumption that the commission will recommend the voters not retain the judge.

(c) The commission may elect to make no recommendation on whether the voters should retain a judge if the commission determines that the information concerning the judge is insufficient to make a recommendation.

(d) (i) If the commission deviates from a presumption for or against recommending the voters retain a judge or elects to make no recommendation on whether the voters should retain a judge, the commission shall provide a detailed explanation of the reason for that deviation or election in the commission's report under Section 78A-12-206.

(ii) If the commission makes no recommendation because of a tie vote, the commission shall note that fact in the commission's report.

(5) (a) Before considering the judicial performance evaluation of any judge, the commission shall notify the judge of the date and time of any commission meeting during which the judge's judicial performance evaluation will be considered.

(b) The commission shall allow a judge who is the subject of a judicial performance evaluation to appear and speak at any commission meeting, except a closed meeting, during which the judge's judicial performance evaluation is considered.

(c) The commission may meet in a closed meeting to discuss a judge's judicial performance evaluation by complying with Title 52, Chapter 4, Open and Public Meetings Act.

(6) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the evaluation required by this section.

78A-12-204. Judicial performance survey.

(1) The judicial performance survey required by Section 78A-12-203 concerning a judge who is subject to a retention election shall be conducted on an ongoing basis during the judge's term in office by a third party under contract to the commission.

(2) The judicial performance survey shall include as respondents a sample of each of the following groups as applicable:

- (a) attorneys who have appeared before the judge as counsel;
- (b) jurors who have served in a case before the judge;
- (c) litigants whose cases have been considered by the judge;
- (d) witnesses who have testified in cases considered by the judge; and
- (e) court staff who have worked with the judge.

(3) The commission may include an additional classification of respondents if the commission:

- (a) considers a survey of that classification of respondents helpful to voters in determining whether to vote to retain a judge; and
- (b) establishes the additional classification of respondents by rule.

(4) All survey responses are anonymous, including comments included with a survey response.

(5) If the commission provides any information to a judge or the Judicial Council, the information shall be provided in such a way as to protect the confidentiality of a survey respondent.

(6) A survey shall be provided to a potential survey respondent within 30 days of the day on which the case in which the person appears in the judge's court is closed, exclusive of any appeal, except for court staff and attorneys, who may be surveyed at any time during the survey period.

(7) Survey topics shall include questions concerning a judge's:

- (a) legal ability, including the following:
 - (i) demonstration of understanding of the substantive law and any relevant rules of procedure and evidence;
 - (ii) attentiveness to factual and legal issues before the court;
 - (iii) adherence to precedent and ability to clearly explain departures from precedent; and
 - (iv) grasp of the practical impact on the parties of the judge's rulings, including the effect of delay and increased litigation expense;

- (b) integrity, including the following:
 - (i) avoidance of impropriety or the appearance of impropriety; and
 - (ii) display of fairness and impartiality toward all parties
 - (c) communication skills, including clearly articulating the basis for written rulings;
 - (d) judicial temperament, including the following:
 - (i) demonstration of courtesy toward attorneys, court staff, and other's in the judge's court;
 - (ii) maintenance of decorum in the courtroom; and
 - (iii) preparedness for oral argument; and
 - (e) administrative performance, including the following:
 - (i) management of workload;
 - (ii) sharing proportionally the workload within the court or district;and
 - (iii) issuance of opinions and orders without unnecessary delay.
- (8) (a) If the commission determines that a certain survey question or topic is not appropriate for a category of respondents, the commission may omit that question or topic from the survey provided to that category of respondents.
- (b) Litigants and witnesses may be surveyed only about judicial temperament.
- (c) The commission shall, by rule, determine appropriate litigants and witnesses to be surveyed.
- (9) The survey shall allow respondents to indicate responses in a manner determined by the commission, which shall be:
 - (a) on a numerical scale from one to five, with one representing inadequate performance and five representing outstanding performance; or
 - (b) in the affirmative or negative, with an option to indicate the respondent's inability to respond in the affirmative or negative.
- (10) The commission shall compile and make available to each judge that judge's survey results with each of the judge's judicial performance evaluations.
- (11) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the judicial performance survey.

78A-12-205. Minimum performance standards.

- (1) The commission shall establish a minimum performance standard requiring that:
- (a) the judge have no more than one formal disciplinary action taken against the judge by the Judicial Conduct Commission or the Utah Supreme Court during the judge's current term; and
 - (b) the judge receive a minimum score on the judicial performance survey as follows:
 - (i) an average score of at least a 3.0 on at least 80% of the

questions, excluding litigant and witness respondents, for questions scored on the numerical scale; and

(ii) if the commission includes a question on the survey that does not use the numerical scale, the commission shall establish the minimum performance standard for all questions, excluding any question to litigant and witness respondents, that do not use the numerical scale to be substantially equivalent to the standard required under Subsection (1)(b)(i).

(2) The commission may establish an additional minimum performance standard if the commission by at least two-thirds vote:

(a) determines that satisfaction of the standard is necessary to the satisfactory performance of the judge; and

(b) adopts the standard.

(3) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish a minimum performance standard.

78A-12-206. Publication of the judicial performance evaluation.

(1) (a) The commission shall compile a report of its judicial performance evaluation of a judge.

(b) The report of a judicial performance evaluation nearest the judge's next scheduled retention election shall be provided to the judge at least 45 days before the last day on which the judge may file a declaration of the judge's candidacy in the retention election.

(c) A report prepared in accordance with Subsection (1)(b) and information obtained in connection with the evaluation become a public record under Title 63G, Chapter 2, Government Records Access and Management Act, on the day following the last day on which the judge who is the subject of the report may file a declaration of the judge's candidacy in the judge's scheduled retention election if the judge declares the judge's candidacy for the retention election.

(d) A report that is not public under Subsection (1)(c) is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(2) A judge who is the subject of a report under this section, within 15 days of receiving a copy of the commission's report under Subsection (1)(b), may:

(a) provide a written response to the report; and

(b) request an interview with the commission for the purpose of addressing the report.

(3) (a) After receiving a response from a judge in any form allowed by Subsection (2), the commission may meet and reconsider its decision to recommend the judge not be retained.

(b) If the commission does not change its decision to recommend the

judge not be retained, the judge may provide a written statement, not to exceed 100 words, that shall be included in the commission's report.

(4) The report of a judicial performance evaluation shall include:

- (a) the results of the judicial performance survey, in both raw and summary form;
- (b) information concerning the judge's compliance with the minimum performance standards;
- (c) information concerning any formal or informal discipline against a judge that is not subject to restrictions on disclosure under Title 78A, Chapter 11, Judicial Conduct Commission;
- (d) a narrative concerning the judge's performance;
- (e) the commission's recommendation concerning whether the judge should be retained, or the statement required of the commission if it declines to make a recommendation;
- (f) the number of votes for and against the commission's recommendation; and
- (g) any other information the commission considers appropriate to include in the report.

(5) (a) The commission may not include in its report specific information concerning an earlier judicial performance evaluation.

(b) The commission may refer to information from an earlier judicial performance evaluation concerning the judge in the commission's report only if the reference is in general terms.

(6) The report of the commission's judicial performance evaluation shall be made publicly available on an Internet website.

(7) The commission may make the report of the judicial performance evaluation immediately preceding the judge's retention election publicly available through other means within budgetary constraints.

(8) The commission shall provide a summary of the judicial performance evaluation for each judge to the lieutenant governor for publication in the voter information pamphlet in the manner required by Title 20A, Chapter 7, Issues Submitted to the Voters.

(9) The commission may also provide any information collected during the course of a judge's judicial performance evaluation immediately preceding the judge's retention election to the public to the extent that information is not otherwise subject to restrictions on disclosure.

(10) The commission shall provide the Judicial Council with:

- (a) the judicial performance survey results for each judge; and
- (b) a copy of the report of each judicial performance evaluation.

(11) The Judicial Council shall provide information obtained concerning a judge under Subsection (10) to the subject judge's presiding judge, if any.