

1 **JUDICIAL PERFORMANCE EVALUATION**

2 **COMMISSION MODIFICATIONS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: D. Chris Buttar**

6 House Sponsor: Curtis Oda

7

8 **LONG TITLE**

9 **General Description:**

10 This bill changes the time of performance evaluations for justices of the supreme court
11 and exempts attorneys from the requirement of being surveyed within 30 days of the
12 day their case closed.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ changes the time of performance evaluations for justices of the supreme court from
16 the third, sixth, and ninth year of the justice's term to the third, seventh, and ninth
17 year of the justice's term;
- 18 ▶ exempts attorneys from the requirement of being surveyed within 30 days of the
19 day their case is closed; and
- 20 ▶ allows attorneys to be surveyed at any time during the survey period.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides an immediate effective date.

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **78A-12-203**, as enacted by Laws of Utah 2008, Chapter 248

28 **78A-12-204**, as enacted by Laws of Utah 2008, Chapter 248

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **78A-12-203** is amended to read:

32 **78A-12-203. Judicial performance evaluations.**

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

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

37 (b) each justice of the Supreme Court in the third, [~~sixth~~] seventh, and ninth year of
38 the justice's term.

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

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

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

45 (c) courtroom observation;

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

47 (e) public comment solicited by the commission;

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

49 and

50 (g) any other factor that the commission:

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

53 (ii) establishes by rule.

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

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

57 (b) a determination of whether the courtroom observation shall be made in person or

58 may be made by electronic means; and

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

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

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

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

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

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

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

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

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

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

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

89 Section 2. Section **78A-12-204** is amended to read:

90 **78A-12-204. Judicial performance survey.**

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

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

96 (a) attorneys who have appeared before the judge as counsel;

97 (b) jurors who have served in a case before the judge;

98 (c) litigants whose cases have been considered by the judge;

99 (d) witnesses who have testified in cases considered by the judge; and

100 (e) court staff who have worked with the judge.

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

103 (a) considers a survey of that classification of respondents helpful to voters in
104 determining whether to vote to retain a judge; and

105 (b) establishes the additional classification of respondents by rule.

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

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

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

114 survey period.

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

116 (a) legal ability, including the following:

117 (i) demonstration of understanding of the substantive law and any relevant rules of
118 procedure and evidence;

119 (ii) attentiveness to factual and legal issues before the court;

120 (iii) adherence to precedent and ability to clearly explain departures from precedent;

121 and

122 (iv) grasp of the practical impact on the parties of the judge's rulings, including the
123 effect of delay and increased litigation expense;

124 (b) integrity, including the following:

125 (i) avoidance of impropriety or the appearance of impropriety; and

126 (ii) display of fairness and impartiality toward all parties;

127 (c) communication skills, including clearly articulating the basis for written rulings;

128 (d) judicial temperament, including the following:

129 (i) demonstration of courtesy toward attorneys, court staff, and others in the judge's
130 court;

131 (ii) maintenance of decorum in the courtroom; and

132 (iii) preparedness for oral argument; and

133 (e) administrative performance, including the following:

134 (i) management of workload;

135 (ii) sharing proportionally the workload within the court or district; and

136 (iii) issuance of opinions and orders without unnecessary delay.

137 (8) (a) If the commission determines that a certain survey question or topic is not
138 appropriate for a category of respondents, the commission may omit that question or topic
139 from the survey provided to that category of respondents.

140 (b) Litigants and witnesses may be surveyed only about judicial temperament.

141 (c) The commission shall, by rule, determine appropriate litigants and witnesses to be

142 surveyed.

143 (9) The survey shall allow respondents to indicate responses in a manner determined
144 by the commission, which shall be:

145 (a) on a numerical scale from one to five, with one representing inadequate
146 performance and five representing outstanding performance; or

147 (b) in the affirmative or negative, with an option to indicate the respondent's inability
148 to respond in the affirmative or negative.

149 (10) The commission shall compile and make available to each judge that judge's
150 survey results with each of the judge's judicial performance evaluations.

151 (11) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
152 Administrative Rulemaking Act, as necessary to administer the judicial performance survey.

153 **Section 3. Effective date.**

154 If approved by two-thirds of all the members elected to each house, this bill takes effect
155 upon approval by the governor, or the day following the constitutional time limit of Utah
156 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
157 the date of veto override.