

JUDICIAL PERFORMANCE EVALUATION

COMMISSION AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: D. Chris Buttar

House Sponsor: Curtis Oda

LONG TITLE

General Description:

This bill amends the judicial performance evaluation survey.

Highlighted Provisions:

This bill:

- ▶ eliminates witnesses who have testified in cases considered by the judge from the list of mandatory survey respondent groups; and
- ▶ expands the survey topic of "judicial temperament" to include questions about judicial demeanor and personal attributes that promote trust and confidence in the judiciary.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-12-203, as last amended by Laws of Utah 2009, Chapter 243

78A-12-204, as last amended by Laws of Utah 2009, Chapter 243

78A-12-205, as enacted by Laws of Utah 2008, Chapter 248

78A-12-206, as enacted by Laws of Utah 2008, Chapter 248

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

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

31 **78A-12-203. Judicial performance evaluations.**

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

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

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

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

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

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

44 (c) courtroom observation;

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

46 (e) public comment solicited by the commission;

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

48 and

49 (g) any other factor that the commission:

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

52 (ii) establishes by rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

84 (6) (a) The commission shall compile a midterm report of its judicial performance
85 evaluation of a judge.

86 (b) The midterm report of a judicial performance evaluation shall include information
87 that the commission considers appropriate for purposes of judicial self-improvement.

88 (c) The report shall be provided to the evaluated judge and the presiding judge of the
89 district in which the evaluated judge serves. If the evaluated judge is the presiding judge, the
90 midterm report shall be provided to the chair of the board of judges for the court level on which
91 the evaluated judge serves.

92 ~~[(6)]~~ (7) The commission may make rules in accordance with Title 63G, Chapter 3,
93 Utah Administrative Rulemaking Act, as necessary to administer the evaluation required by
94 this section.

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

96 **78A-12-204. Judicial performance survey.**

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

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

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

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

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

105 ~~[(d) witnesses who have testified in cases considered by the judge; and]~~

106 ~~[(e)]~~ (d) court staff who have worked with the judge.

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

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

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

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

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

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

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

122 (a) legal ability, including the following:

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

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

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

127 and

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

130 (b) integrity, including the following:

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

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

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

134 (d) judicial temperament, including the following:

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

137 (ii) maintenance of decorum in the courtroom; [~~and~~]

138 (iii) demonstration of judicial demeanor and personal attributes that promote public
139 trust and confidence in the judicial system; and

140 [~~(iii)~~] (iv) preparedness for oral argument; and

141 (e) administrative performance, including the following:

- 142 (i) management of workload;
- 143 (ii) sharing proportionally the workload within the court or district; and
- 144 (iii) issuance of opinions and orders without unnecessary delay.
- 145 (8) (a) If the commission determines that a certain survey question or topic is not
- 146 appropriate for a category of respondents, the commission may omit that question or topic from
- 147 the survey provided to that category of respondents.
- 148 (b) Litigants [~~and witnesses~~] may be surveyed only about judicial temperament,
- 149 integrity, and communication skills.
- 150 (c) The commission shall, by rule, determine appropriate litigants [~~and witnesses~~] to be
- 151 surveyed.
- 152 (9) The survey shall allow respondents to indicate responses in a manner determined by
- 153 the commission, which shall be:
- 154 (a) on a numerical scale from one to five, with one representing inadequate
- 155 performance and five representing outstanding performance; or
- 156 (b) in the affirmative or negative, with an option to indicate the respondent's inability
- 157 to respond in the affirmative or negative.
- 158 (10) The commission shall compile and make available to each judge that judge's
- 159 survey results with each of the judge's judicial performance evaluations.
- 160 (11) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
- 161 Administrative Rulemaking Act, as necessary to administer the judicial performance survey.
- 162 Section 3. Section **78A-12-205** is amended to read:
- 163 **78A-12-205. Minimum performance standards.**
- 164 (1) The commission shall establish a minimum performance standard requiring that:
- 165 (a) the judge have no more than one formal disciplinary action taken against the judge
- 166 by the Judicial Conduct Commission or the Utah Supreme Court during the judge's current
- 167 term; and
- 168 (b) the judge receive a minimum score on the judicial performance survey as follows:
- 169 (i) an average score of at least a 3.0 on at least 80% of the questions, excluding litigant

170 [~~and witness~~] respondents, for questions scored on the numerical scale; and

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

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

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

179 (b) adopts the standard.

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

182 Section 4. Section **78A-12-206** is amended to read:

183 **78A-12-206. Publication of the judicial performance evaluation.**

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

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

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

195 (d) A report that is not public under Subsection (1)(c) is a protected record under Title
196 63G, Chapter 2, Government Records Access and Management Act.

197 (2) A judge who is the subject of a retention report under this section, within 15 days of

198 receiving a copy of the commission's report under Subsection (1)(b), may:

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

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

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

203 (b) If the commission does not change its decision to recommend the judge not be
204 retained, the judge may provide a written statement, not to exceed 100 words, that shall be
205 included in the commission's report.

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

207 (a) the results of the judicial performance survey, in both raw and summary form;

208 (b) information concerning the judge's compliance with the minimum performance
209 standards;

210 (c) information concerning any formal or informal discipline against a judge that is not
211 subject to restrictions on disclosure under Title 78A, Chapter 11, Judicial Conduct
212 Commission;

213 (d) a narrative concerning the judge's performance;

214 (e) the commission's recommendation concerning whether the judge should be
215 retained, or the statement required of the commission if it declines to make a recommendation;

216 (f) the number of votes for and against the commission's recommendation; and

217 (g) any other information the commission considers appropriate to include in the
218 report.

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

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

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

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

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

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

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

236 (a) the judicial performance survey results for each judge; and

237 (b) a copy of the retention report of each judicial performance evaluation.

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