

Rule Change #1999(21)

CHAPTER 37. RULES GOVERNING THE COMMISSIONS ON JUDICIAL PERFORMANCE

Pursuant to section 13-~~5.5-102~~103(1)(k), ~~5-C.R.S. (1997)~~, the State Commission on Judicial Performance establishes the following rules. These rules have been approved by the Supreme Court and shall be applicable to the state and district commissions.

(1) **Duties of commissions.** Commissions shall elect one member as a chair, or two members as co-chairs, to serve for two years, who will direct the business of the commissions, pursuant to statute, rule or guideline of the state commission.

Commissions on judicial performance evaluate the professional performance of justices, judges or magistrates and make recommendations to the electorate regarding the retention of individual justices or judges who stand for retention during any general election. In addition to other procedures and duties imposed by these rules, a commission shall distribute questionnaires, may conduct public hearings, may interview appropriate persons and shall produce and distribute to the public a narrative profile on each district, county and appellate justice or judge subject to retention election. The state commission shall arrange to have the narrative profiles and recommendations of the state and district commissions printed in the ballot information booklet that is prepared pursuant to section 1-40-124.5, ~~1-C.R.S. (1997)~~.

(2) **Sources of information.** Each commission, in evaluating the professional performance of any justice, judge or magistrate, shall rely on official sources of information, including and limited to:

(a) Questionnaires. Commissions will use questionnaires developed by the state commission to survey attorneys (including district attorneys and public defenders), jurors, litigants, court personnel, probation officers, social services caseworkers, crime victims, and law enforcement personnel. Attorney questionnaires will be distributed by direct mail through the Office of the State Court Administrator. The jury commissioner of each judicial district shall provide the Office of the State Court Administrator with lists of jurors who have served. Jurors chosen will receive questionnaires by direct mail. The Judicial District Administrator of each judicial district will provide the Office of the State Court Administrator with lists of attorneys, probation officers, court personnel, social services workers, litigants and law enforcement personnel who have appeared before, or have professional contacts with the judge or magistrate being evaluated. The Clerk of the Colorado Supreme Court and the Clerk of the Colorado Court of Appeals will provide the Office of the State Court Administrator with lists of attorneys who have appeared before, or have had professional contacts with the justice or judge being evaluated. These persons will be surveyed by direct mail questionnaires in numbers designed to achieve a random, statistically valid sample.

(b) Interview with justices, judges or magistrates. Judicial district administrators will schedule interview sessions for judges and magistrates with district commissions. The Clerk of the Colorado Supreme Court and the Clerk of the Colorado Court of Appeals will schedule interview sessions for justices and judges with the state commission. All efforts to accommodate court dockets and calendars of commission members will be exercised.

(c) Statistics. Information concerning the caseload and case types of a judge or magistrate being evaluated will be gathered and provided to the chair of the district commission by the district administrator. Information concerning the caseload of a justice or judge being evaluated by the state commission will be gathered and provided to the chair of the state commission by the Clerk of the Colorado Supreme Court and the Clerk of the Colorado Court of Appeals.

(d) Oral Interviews. The district commissions may conduct interviews with other persons who have appeared before the judge or magistrate on a regular basis. The district commissions shall ensure that the persons interviewed have had professional contact with the judge or magistrate. The judge or magistrate shall be provided with a written summary of the interview that preserves the anonymity of the interviewee while advising the judge or magistrate of the substance of the interview. Oral interviews shall be completed no later than thirty (30) days prior to the scheduled interview with the judge or magistrate.

(e) Documentation from interested parties. Written information concerning a judge or magistrate received from an interested party may be considered by the district commissions provided it contains the author's name and address.

(f) Public hearings. The district commissions may conduct public hearings to solicit public comment on judges or magistrates being evaluated. Public hearings shall be completed no later than thirty (30) days prior to the scheduled interview with the judge or magistrate. The district commission shall give notice of the hearing not less than ten (10) days prior to such hearing. Public notice shall be given by the posting of a sign in a conspicuous place in each courthouse within the judicial district, and by notifying local news media in each county within the judicial district. The district commissions shall conduct public hearings pursuant to the Colorado Open Meetings Law at section 24-6-401, et seq., ~~7-C.R.S.(1997).~~

(3) Organization of information. All completed surveys will be collected by the Office of the State Court Administrator and reproduced to separate demographic information from standard questions and comments. All demographic information and comments will be reproduced in such a fashion to ensure that the identity of the respondent remains anonymous. Commissions shall not receive the original questionnaires. All evaluation reports generated from the questionnaires shall be based on aggregate data. The information shall be supplied only as a composite report. Commissions shall not receive demographic information, unless the analysis of such information by the state commission or its agent proves to be statistically significant and affects evaluation of the overall professional performance of the justice, judge or magistrate being evaluated. Commissions will not receive questionnaire responses concerning any justice, judge or magistrate being evaluated if a statistically valid sample has not been collected, as determined by the state commission or its agent.

All written comments shall be reproduced verbatim, unless confidentiality cannot be assured. If confidentiality cannot be preserved, the commission may summarize the substance of the comment in order to provide it to the justice, judge or magistrate. All oral comments shall be summarized in writing. All comments shall also be forwarded to the justice, judge or magistrate whom each comment concerns.

(4) Release of information. Numerical data gathered by the Office of the State Court

Administrator and provided to the commissions is public, but shall not be released until such time as the retention recommendation is made public. Any comments included with questionnaires and written information received by the commission are not public and will be made available only to commission members and the justice, judge or magistrate being evaluated. Comments are solicited in an effort to provide feedback to the justice, judge or magistrate and to assist the justice, judge or magistrate in a self-evaluation process. Commission members have access to comments in order to assist the commission in the interview of the justice, judge or magistrate. Commission members shall not reveal the contents of any comment concerning a justice, judge or magistrate being evaluated to anyone other than other commission members, and the justice, judge or magistrate during an interview.

Any justice, judge or magistrate being evaluated will be provided with the same information that is provided to commission members concerning that justice, judge or magistrate. The justice, judge or magistrate will receive the information no later than ten (10) days prior to any scheduled interview.

(5) Information otherwise entitled to protection. Sensitive, personal information otherwise entitled to protection under the personnel files exemption of the Public Records Act, section 24-72-104(3)(a)(II), ~~7-C.R.S.(1997)~~, shall remain confidential.

Members of commissions and staff shall maintain confidentiality with regard to those materials and communications so designated as confidential.

(6) Disclosure. Upon two-thirds majority vote of approval of the current members of the state commission, a commission may release confidential information concerning a justice, judge or magistrate when:

(a) An inquiry is initiated which becomes the subject of widespread concern and the release of information would benefit the justice, judge or magistrate and the public, and the justice, judge or magistrate signs a waiver for this purpose;

(b) A government agency or nominating commission requests information concerning the appointment of a justice, judge or magistrate or former justice, judge or magistrate to another judicial position, and the justice, judge or magistrate signs a waiver for this purpose;

(c) An agency authorized to investigate the qualifications of persons for admission to practice law requires information in order to evaluate a justice, judge or magistrate's application for admission to the bar of another state, and the justice, judge or magistrate signs a waiver for this purpose;

(d) The Chief Justice of the Supreme Court requests information pertaining to the appointment or assignment of a retired justice or judge to judicial duties;

(e) The State Commission on Judicial Performance notifies the Supreme Court Grievance Committee of a complaint against a judge or magistrate that may violate the Code of Professional Responsibility; or

(f) The State Commission on Judicial Performance notifies the Commission on Judicial Discipline of a complaint against a justice, judge or magistrate that may violate the Code of Judicial Conduct, or extra judicial conduct which reflects adversely on the judiciary.

(7) Review of information. Commissions must complete the review of information

concerning each justice, judge or magistrate being evaluated within thirty (30) days of receipt of the information.

(8) Interview. Commissions are required to schedule and conduct an interview with each justice, judge or magistrate being evaluated within fifteen (15) days after the commission's initial review of information is complete. Neither the commission, nor the justice, judge or magistrate may waive the initial interview process.

(a) Commissions must follow all guidelines published by the state commission regarding the personal interview of justices, judges or magistrates being evaluated.

(b) The interview shall be conducted for such a period of time as is necessary to address the concerns of the commission members and the justice, judge or magistrate being evaluated. Prior to the interview, the justice, judge or magistrate may submit written information to the commission if he or she so desires.

(9) Preparation of narrative profile. Within ten (10) days following an interview with a justice, judge or magistrate, and in any event no later than forty-five (45) days prior to the last date available for the justice or judge to declare such justice or judge's intent to stand for retention, the chair of the commission shall provide the justice, judge or magistrate, in writing, a complete draft of the narrative profile. The narrative profile shall conform to the format designed by the state commission. Preparation of the narrative profile may not be delegated to any court employee or judicial officer. A draft of the narrative profile is not to be released to any person other than the justice, judge or magistrate whom it concerns.

(10) Recommendation. In addition to the information published as a narrative profile, the commission shall make a recommendation regarding the retention of each justice or judge who has declared intent to stand for retention. The recommendation shall be ~~to~~ "Retain," "Do Not Retain," or "No Opinion." A "No Opinion" shall be given only when the commission concludes that the results of information gathered are not sufficiently clear to make a firm recommendation, and such shall be accompanied by a detailed explanation.

(11) Narrative Profile Requirements. Narrative profiles shall be reports of three to four short paragraphs describing the justice, judge or magistrate, judicial assignment, number of years on the bench and the retention recommendation. Narrative profiles should include information specific to the work of the justice, judge or magistrate. Narrative profiles may contain information concerning the justice, judge or magistrate's professional association activities, recent awards and honors, and volunteer or other community work. Narrative profiles of those judges who are not licensed to practice law in Colorado shall reflect such. Narrative profiles need not contain biographical data, such as undergraduate school information, educational degrees, or other historical information not directly related to the practice of law. Narrative profiles for justices or judges standing for retention shall include a statement of the groups of respondents surveyed, the percentage of responses received from each group who recommend that a justice or judge be retained, the percentage of responses received from each group who have no opinion as to the retention of the justice or judge, and the percentage of responses received from each group who recommend that a justice or judge should not be retained. District

commissions shall prepare and provide the narrative profiles to the state commission sixty (60) days prior to the general election.

(12) Response to narrative profile.

(a) Any judge or magistrate being evaluated pursuant to section 13-5.5-106(3)(a), ~~5-C.R.S. (1997)~~, may respond to a draft of a narrative profile, in writing, within ten (10) days of receipt of the draft. Such a response must be directed to the chair of the commission.

(b) Any justice or judge being evaluated pursuant to section 13-5.5-106 (1)(a) or (2)(a), ~~5-C.R.S. (1997)~~, may respond to a draft of the narrative profile, in writing, within ten (10) days of receipt of the draft. If the responding justice or judge requests an additional interview with the commission, the justice or judge shall be given an opportunity to meet with the commission to address the contents of the narrative profile. Any additional interview shall be held within ten (10) days of the request. The commission may, after such a meeting with the justice or judge being evaluated, revise its evaluation. Additionally, any commission issuing a "Do Not Retain" recommendation shall, at the justice or judge's request, include language in the narrative profile summarizing the justice or judge's position. The justice or judge may, upon review of the summary, elect to withdraw the summary from inclusion in the narrative profile. The chair of the commission shall provide the justice or judge with any redraft of the narrative profile, in writing, within ten (10) days following the additional interview, or, absent an additional interview, within ten (10) days of the receipt of the justice or judge's response.

(13) Release of interim evaluations. The district commission shall release the narrative profile and any other relevant information developed pursuant to section 13-5.5-106(3), ~~5-C.R.S. (1997)~~, to the chief judge of the court and to the judge or magistrate no later than September 1 of the year in which the evaluation is performed. By September 1 of the year in which the evaluation is performed, the narrative profile and any other relevant information developed under this section shall also be available to the public, except that narrative profiles prepared pursuant to this section shall not be mailed to registered voters.

(14) Release of the narrative profile and recommendation. The chair of the commission shall release the narrative profile and the recommendation on retention to the public no later than forty-five (45) days prior to the retention election.

(15) Removal for cause. Any member of any judicial performance commission may be removed for cause by the appointing authority pursuant to section 13-5.5-104, ~~5-C.R.S. (1997)~~. The state commission may recommend to the ~~such~~ appointing authority that a member of a judicial performance commission be removed for cause. "Cause" means any malfeasance or nonfeasance in carrying out the duties and responsibilities of any judicial performance commission.

(16) Complaints. When a member of any district judicial performance commission or justice, judge or magistrate under evaluation believes that the judicial performance commission is operating in violation of these rules or the statute governing judicial performance commissions, such member, justice, judge, or magistrate shall notify the state commission. The state

commission shall notify the chair of the ~~subject~~particular district ~~judicial performance~~ commission and request a written response regarding the complaint. Upon receipt of such a response, the state commission shall make an independent review and determine whether a violation of rule or statute has occurred. Findings of the state commission will be communicated to the ~~subject~~district commission along with any instructions that are necessary to ensure that the district commission operates within these rules and the statute governing judicial performance commissions. In no event may the state commission overrule a recommendation regarding retention of any judge, but the state commission may provide a rebuttal recommendation to the district commission's recommendation regarding retention of any judge when the district commission fails to comply with any instructions issued by the state commission pursuant to this Rule.

(17) Participation by commission members in activities subsequent to dissemination of narrative profiles and recommendations on retention. A commission member or the commission may publicly discuss only the narrative profile, the retention recommendation, the numerical data, information from public hearings, and such information as has been made public under Rule 6.

(18) Recusal. An attorney who is serving as a commission member for a district or state judicial performance commission shall not, during the term of such service, request that a justice, judge or magistrate being evaluated by the commission be recused from hearing a case in which the attorney appears as counsel of record, or request permission to withdraw from the case pending before a justice, judge or magistrate being evaluated, solely on the basis that the attorney is serving on such performance commission.

Any attorney who appears in a matter where opposing counsel of record serves as a member of the judicial performance commission which is evaluating the justice, judge or magistrate before whom the matter is set, may not request that the attorney be required to withdraw from the matter, or that the justice, judge or magistrate be recused from the matter on the basis that opposing counsel is serving on such performance commission.

A justice, judge or magistrate being evaluated by a judicial performance commission may not recuse himself or herself from a case in which an attorney member of a state or district judicial performance commission is counsel of record, nor should a justice, judge or magistrate grant a request to withdraw from a case by an attorney commission member, solely on the basis that the attorney is serving on the judicial performance commission conducting the evaluation.

An attorney member of a commission must disclose this information to all counsel and parties in a case pending before a justice, judge or magistrate who is being evaluated by the commission, where the attorney is also counsel of record.

A commission member shall disclose to the state and member's commission, any professional or personal relationship with the justice, judge or magistrate that may affect an unbiased evaluation of that justice, judge or magistrate.

A member may abstain from voting on the recommendation of the commission.

(19) Notice. The names of members of any district judicial performance commission shall be posted at all times in a conspicuous location in each county courthouse of each judicial

district affected by such commission. The names of members of the state judicial performance commission shall be posted at all times in a conspicuous location in the Colorado State Judicial Building.

(20) Dissemination of information. The following shall apply to the dissemination of narrative profiles and recommendations on retention of justices or judges standing for retention in office:

(a) General Distribution: Commissions may prepare and may make available, narrative profiles at the county courthouse, local libraries, major grocery outlets, and other practical public outlets.

(b) Newspaper: Narrative profiles may be provided for publication in the local newspapers.

(c) Radio/T.V.: Commissions may contract for public service announcement airtime on local radio/ T.V. Public service announcements will direct the listener to the publication of retention recommendations. (Sample: 15 second PSA announcing that the results and recommendations concerning the election of judges standing for retention in the judicial district will be available in the [publication] on [date]. Narrative profiles are included in the ballot analysis distributed to all registered voters.)

The 1997 Rules of the Commission are Amended and, as Amended, are Approved by the Court and Ordered to be Published, En Banc, November 10, 1999, effective immediately.

BY THE COURT:

**Gregory J. Hobbs, Jr.
Justice, Colorado Supreme Court**