

## **Rules Governing Commissions on Judicial Performance**

*Adopted January 6, 2020*

The State Commission on Judicial Performance adopts the following rules pursuant to section 13-5.5-106, C.R.S.

### **Rule 1. Appointments**

(a) State and district commissioners shall be appointed to four-year terms, expiring on November 30 in odd-numbered years. To the extent practicable, appointments must include residents from throughout the state or judicial district and persons with disabilities, and appointments should take into consideration gender as well as the race and ethnic diversity of the state or district. A commissioner who resigns shall advise the chair of the commission, the appointing authority, and/or the executive director of the Office of Judicial Performance Evaluation. The chair of a commission shall advise the executive director of the Office of Judicial Performance Evaluation of any vacancy, and the date of the vacancy, if known. The executive director of the Office of Judicial Performance Evaluation shall within five days, in writing, advise the appropriate appointing authority of the vacancy, whether the vacancy must be filled with an attorney or a non-attorney, and that if no appointment is made within forty-five days of the vacancy, the State Commission shall make the appointment.

(b) A commissioner shall not serve more than two full terms including any balance remaining on an unexpired term if the initial appointment was to fill a vacancy. When there is a break in a commissioner's service of at least one year, or the appointment is to a different commission than the one the commissioner previously served on, appointing authorities may consider those past commissioners for appointment to a district commission or the State Commission.

(c) The executive director of the Office of Judicial Performance Evaluation shall cause to be published and posted at all times on the office's website the names of the state and district commissioners and the name, address, telephone number, and e-mail address of the executive director of the Office of Judicial Performance Evaluation.

(d) The State Commission may recommend to the appointing authority that a member of any commission be removed for cause pursuant to section 13-5.5-104(5)(c), C.R.S. "Cause" means any malfeasance or nonfeasance in carrying out the commissioner's official duties and responsibilities, including improper disclosure of confidential information, failure to disclose any basis for recusal or to recuse when appropriate, publicly advocating for or against the retention of any particular justice or judge, failure to participate in evaluation activities (e.g., observations, interviews or written decision reviews), and failure to participate in three consecutive meetings.

(e) Commissioner Terms. Commission appointments shall be made in compliance with section 13-5.5-104, C.R.S.

### **Rule 2. Officers**

Commissions shall elect a chair and a vice-chair, one of whom should be an attorney, and one of whom should not be an attorney, to serve two-year terms. Terms will end on the two-year

anniversary of the appointment or at the end of an existing commissioner's term, whichever comes first.

### **Rule 3. Procedures**

(a) A majority of the total number of appointed members of a commission shall constitute a quorum. The rules, guidelines, and procedures adopted by the State Commission shall be used for the conduct of all meetings, evaluations, and other business, except as otherwise provided by these rules or statute.

(b) The State Commission shall, prior to final promulgation of any proposed rule, post a notice of the proposed rule, allow for a period of public comment, and give the public an opportunity to address the commission concerning the proposed rule at a public hearing.

### **Rule 4. Meetings**

(a) Commissions on Judicial Performance are not subject to the Colorado open meetings law, section 24-6-402, C.R.S.

(b) The State Commission must post a notice on its website not less than twenty-four hours prior to the holding of a meeting only if the meeting is one at which the State Commission expects to implement rules or regulations.

(c) The State Commission's rulemaking and regulation development is conducted publicly, unless it has decided to proceed in executive session in accordance with these rules. No proposed rule or regulation shall be adopted at any executive session.

### **Rule 5. Executive Sessions**

(a) A motion to enter executive session must be approved by a two-thirds vote of the commissioners, and for only the following purposes:

(1) Consideration of confidential materials as part of an evaluation of a judge or justice, including deliberations. Members of other commissions and staff may not be present during such consideration;

(2) Conferences with an attorney representing the commission concerning disputes involving the commission;

(3) Investigation of charges or complaints against an employee or consideration of dismissal, discipline, promotion, demotion, or compensation of an employee; or

(4) Any other matter required to be kept confidential by state or federal statutes or rules, including these rules.

## **Rule 6. Recusal**

(a) A commissioner shall:

(1) Disclose to the commission any professional or personal relationship or interest with respect to a judge or justice that may affect an unbiased evaluation of the judge or justice, including any litigation involving the judge or justice and the commissioner, the commissioner's family, or the commissioner's financial interest. A commission may require recusal of one of its members on account of such relationship or interest upon a two-thirds vote of the other commissioners;

(2) Recuse himself or herself from any evaluation of the person who appointed the commissioner;

(3) Recuse himself or herself from participating in the consideration and vote on any matter involving the evaluation of a judge or justice if the commissioner failed to meet the responsibilities provided by these rules concerning training, courtroom observation, interview, opinion review, or completion of a performance standards matrix, unless excused by a two-thirds vote of the other commissioners; and

(4) Once recused, not be present during any part of the evaluation of the judge or justice.

(b) A judge or justice being evaluated by a judicial performance commission may not recuse himself or herself from a case solely on the basis that an attorney, party, or witness in the case is a commissioner on the evaluating commission.

## **Rule 7. Staff**

(a) The executive director of the Office of Judicial Performance Evaluation, court executives, and their staffs shall assist their respective commissions in the performance of their duties, including making meeting and interview arrangements, obtaining and distributing information, and posting notices. Neither court executives nor their staff shall participate in interviews or deliberations conducted by the commission concerning the evaluation of any judge or justice or assist in the drafting of narratives.

(b) The executive director of the Office of Judicial Performance Evaluation may attend meetings, interviews, and deliberations in an advisory capacity when requested or agreed to by a commission. The executive director shall not vote on the recommendation of a judge or justice or participate in the initial drafting of a narrative.

## **Rule 8. Chief Justice or Chief Judge**

Prior to beginning any evaluations, each commission shall meet with the chief justice or chief judge of the court for which there is a judge or justice to be evaluated that year. The meeting is to allow the chief justice or chief judge to provide an overview of the court.

## **Rule 9. Commissioner Training**

The Office of Judicial Performance Evaluation shall provide training as necessary that is reasonably accessible and convenient to all commissioners. Each commissioner shall attend one

training session, or an appropriate alternative as developed by the Office of Judicial Performance Evaluation, each year in which the commissioner is to evaluate a judge or justice eligible to stand for a retention election.

### **Rule 10. Courtroom Volunteer Observation Program**

Courtroom volunteer observers are recruited by the Office of Judicial Performance Evaluation through public outreach and advertising.

- (a) Courtroom observers shall be selected by the Office based on written application and an interview process.
- (b) Selection Criteria. Volunteer observers with a broad and varied range of life experience shall be sought. The following persons shall be excluded from eligibility as courtroom observers:
  - (1) Persons with a professional involvement with the state court system, or with a justice or judge;
  - (2) Persons with a third degree of relationship with a state justice or judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);
  - (3) Persons lacking computer access or basic computer literacy skills;
  - (4) Persons currently involved in litigation in state courts; and
  - (5) Persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.
- (c) Terms and Conditions of Service:
  - (1) Volunteer courtroom observers shall serve at the will of the Office of Judicial Performance Evaluation;
  - (2) Volunteer courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the Office.
- (d) Training Observers. Volunteer courtroom observers must satisfactorily complete a training program developed by the Office before engaging in courtroom observation.
- (e) Courtroom Requirements:
  - (1) Each observer shall observe each justice or judge to whom the observer is assigned while the justice or judge is in the courtroom and for a minimum of two hours while the court is in session. The observations may be completed in one sitting or over several courtroom visits;
  - (2) If the justice or judge sits in more than one geographic location the justice or judge may be observed in any location or combination of locations in which the justice or judge holds court;
  - (3) When the observer completes the observation of a judge, the observer shall complete the observation instrument, which will be electronically transferred to the Office for processing.
- (f) Travel and Reimbursement:
  - (1) All travel must be preapproved by the executive director of the Office;

- (2) All per diem and lodging will be reimbursed, when appropriate, in accordance with the State Courts travel rules and regulations; and
- (3) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is being sought

### **Rule 11. Trial Judge Evaluations**

- (a) The State Commission shall develop three separate survey questionnaires: one for appellate judges and justices concerning each district court judge being evaluated; one for attorneys, including prosecutors, public defenders, and private attorneys, who have interacted with the court where a trial judge is being evaluated; and one for non-attorneys, including jurors, represented and unrepresented 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 interacted with the court where a trial judge is being evaluated. Surveys shall be conducted on a continuing basis, and results provided to the district commission and the trial judge during evaluations. To ensure the anonymity of respondents, a district commission shall not receive completed questionnaires, and all reports of the results shall be based on compiled survey responses. Comments shall be copied from individual survey responses and copied verbatim into the final survey report. Comments from each individual shall be coded with an assigned identification number and any identifying information shall be redacted.
- (b) The district commission shall ensure that each trial judge being evaluated receives adequate courtroom observation.
- (c) To the extent possible, each trial judge being evaluated shall provide the district commission with information from the current term of office, including the judge's caseload, the types of cases, and an open case report. The judge may request assistance from the court executive or the Office of Judicial Performance Evaluation in providing this information.
- (d) The State Commission shall develop self-evaluation forms that shall be completed by each trial judge being evaluated.
- (e) Each trial judge being evaluated shall submit to the district commission not less than three decisions he or she issued, including, if applicable, one that was reversed on appeal, together with the reversing opinion, if applicable. The judge may choose written or transcribed decisions for submission. 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, 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) The district commission may interview judges and justices, other than the judge being evaluated, and other interested persons. 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 meeting. In addition, the commission

may accept information and documentation from any interested person, provided the person (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 being evaluated with a written summary of any oral information, and a copy of any written information, prior to his or her interview with the commission. The trial judge also may submit additional written information to the commission before or after the interview.

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

(h) In evaluating each judge's performance, commissioners shall be guided by the trial judge matrix or scorecard and accompanying explanatory material. See Forms 1(a) and (b), Trial Judge Judicial Performance Standards Evaluation Retention Matrix and Trial Judge Judicial Performance Standards Evaluation Interim Matrix along with Forms 1(a)(1) and 1(b)(1), Retention Scorecard and Interim Scorecard.

### **Rule 12. Appellate Judge and Justice Evaluations**

(a) The State Commission shall develop three separate survey questionnaires: one for trial judges concerning each appellate judge or justice being evaluated; one for attorneys, including prosecutors, public defenders, private attorneys, and staff attorneys who have interacted with the court where an appellate judge or justice is being evaluated; and one for other appellate judges and justices. 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 compiled survey responses. Comments shall be separated from completed questionnaires before the comments are forwarded in a final survey report to the appellate judge or justice.

(b) The State Commission shall ensure that each appellate judge or justice being evaluated receives adequate observation through visits to the courtroom or review of live courtroom video or archived video replay.

(c) To the extent possible, the clerk of the supreme court and the court of appeals shall provide the State Commission with information from the current term of office for each appellate judge or justice being evaluated, including a list of all opinions authored and a cases on desk report.

(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 separate concurrence or dissent, at least one unpublished opinion, and at least one opinion that was reversed on appeal, together with the reversing 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, 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 judges and justices, other than the judge or justice being evaluated, and other interested persons, and may accept information and documentation from any interested person, provided the person (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 State Commission shall provide the appellate judge or justice being evaluated with a written summary of any oral information, and a copy of any written information, prior to his or her interview with the commission. The appellate judge or justice also may submit additional written information to the commission before or after the interview.

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

(h) Commissioners must use the definitions, standards, and measurement principles of the adopted Guidelines for Applying Statutory Performance Evaluation Criteria to Colorado Supreme Court Justices and Colorado Court of Appeals Judges, and a matrix/scorecard based on these Guidelines to evaluate each justice's or judge's performance. See Form 2, Appellate Judge or Justice Judicial Performance Standards Evaluation Retention Matrix or Appellate Judge or Justice Judicial Performance Standards Evaluation Interim Matrix.

### **Rule 13. Retention Election Year Recommendations**

(a) Each commissioner shall complete the appropriate matrix form or scorecard based upon information contained in the final survey report, courtroom observations, case information, the judge or justice's self-evaluation, the commissioner's review of decisions, interviews, and any other written or oral information received, and shall then prepare a recommendation regarding each judge or justice being evaluated.

(b) The commission's evaluation must include a final recommendation of "meets performance standards" or "does not meet performance standards" based on the judicial performance criteria in section 13-5.5-107, C.R.S. (integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and the public). For a judge or justice to receive a designation of "does not meet performance standards," there must be a majority vote by the serving commission members that the justice or judge should receive such a recommendation.

(c) Commissioners shall not disclose the content of their performance standards matrix or scorecard in any form or to any person except to other members of their commission during executive sessions of commission meetings when deliberating the evaluation and performance of a justice or judge. The content of the matrix/scorecard may be released as required under Rule 18(c) of these rules.

#### **Rule 14. Performance Evaluations in Retention Years**

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

(1) The recommendation on performance, including the number of commissioners who voted for “meets performance standards” and for “does not meet performance standards”;

(2) A description of the performance of the judge or justice over the past term, including any areas of notably strong or weak performance with respect to the judicial performance criteria in section 13-5.5-107, C.R.S. (integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and the public), any deficiencies reflected in the initial or interim evaluation, a review of any improvement plan pursuant to section 13-5.5-110, a statement of whether the commission concludes that any deficiency has been satisfactorily addressed or a statement from the chief justice or appropriate chief judge that an improvement plan, if any, was satisfactorily followed by the justice or judge, and any additional information that the commission believes may be of assistance to the public in making an informed voting decision;

(3) Evaluation methods used by the commission, a discussion of survey results, and any recommendations of survey respondents regarding whether a judge is meeting or not meeting performance standards, if the commission believes the information may assist voters in making an informed voting decision. A commission should report the number of survey respondents, when the commission believes the information will inform the public of the survey results and their usefulness in evaluating a justice’s or judge’s performance;

(4) Relevant biographical information the commission believes may be of assistance to the public in making an informed voting decision, such as undergraduate and law schools attended, previous substantial legal or public employment, relevant professional activities or awards, and volunteer or other community work.

(b) The judge or justice being evaluated may respond in writing to the draft narrative within ten days of receipt of the draft. The judge or justice may provide feedback on or corrections to the draft narrative language and may request an additional interview. Any additional interview shall be held within fourteen days of the request. The commission may revise the draft narrative and shall provide the judge or justice with the final narrative within fourteen days following the written response or additional interview.

(c) A commission issuing a “does not meet performance standards” recommendation shall, at the judge or justice's request, include a response from the judge or justice of not more than 100 words as part of the commission’s published narrative. The judge or justice shall have seven days from receipt of the commission’s final recommendation and narrative to submit the 100-word response to the chair of the commission or the executive director of the Office of Judicial Performance Evaluation, who will forward the response to the commission. The commission may then change its vote count or revise the narrative and shall provide the judge or justice with the final narrative within seven days following the receipt of the response.

### **Rule 15. Initial Performance Evaluations**

(a) The State Commission shall conduct an “initial” evaluation for each justice and appellate judge during their provisional term of office following the evaluation requirements established in Rule 12.

(b) A district commission shall conduct an “initial” evaluation for each county judge and district judge in the applicable district during their provisional term of office following the evaluation requirements established in Rule 11.

(c) The State Commission shall communicate its findings, including any recommendation for improvement plans, to the justice or judge who was evaluated and to either the chief justice of the supreme court, if the evaluation concerns a justice, or the chief judge of the court of appeals, if the evaluation concerns a court of appeals judge.

(d) A district commission shall communicate its findings, including any recommendation for improvement plans, to the chief judge of the district and the judge who was evaluated.

(e) Within ten days following the interview, a commission shall provide the judge or justice its findings as follows:

(1) The recommendation on performance, including the number of commissioners who voted for “meets performance standards” and for recommending a “performance improvement plan”;

(2) Descriptions of the performance of the judge or justice during the initial period of evaluation, including any areas of notably strong or weak performance with respect to the judicial performance criteria in section 13-5.5-107, C.R.S. (integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and the public), and any additional information that the commission believes may be of assistance to the justice or judge in improving judicial performance.

(f) If a commission recommends an improvement plan, the procedures developed and implemented for such a plan will follow the guidelines set forth in Rule 17 and 13-5.5-110 C.R.S.

(g) A commission shall grant each justice or judge who receives an initial evaluation the opportunity to meet with the commission or otherwise respond to the initial evaluation no later than ten days following the justice’s or judge’s receipt of the initial evaluation. Any additional interview shall be held within fourteen days of the request.

(h) If a meeting is held or a response is made, the commission may revise its initial evaluation and shall provide the judge or justice with the final evaluation within fourteen days following the written response or additional interview.

(i) Evaluations, recommendations, and any other relevant information related to an initial evaluation shall not be released to the public, except as authorized in section 13-5.5-113(3)(a-c) C.R.S and Rule 18(c).

## **Rule 16. Performance Evaluations in Interim Years**

- (a) Within the guidelines established by the state commission, a commission may at its discretion conduct an “interim” evaluation of each justice and each judge between the years when the justice or judge stands for retention.
- (b) The State Commission shall communicate its findings, including any recommendation for improvement plans, to the justice or judge who was evaluated and to either the chief justice of the supreme court, if the evaluation concerns a justice, or the chief judge of the court of appeals, if the evaluation concerns a court of appeals judge.
- (c) A district commission shall communicate its findings, including any recommendation for improvement plans, to the chief judge of the district and the judge who was evaluated.
- (d) Within ten days following the interview, a commission shall provide the judge or justice a completed draft of its findings as follows:
  - (1) The recommendation on performance, including the number of commissioners who voted for “meets performance standards” and for recommending a “performance improvement plan”;
  - (2) Descriptions of the performance of the judge or justice over the interim term, including any areas of notably strong or weak performance with respect to the judicial performance criteria in section 13-5.5-107, C.R.S. (integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and the public), and any additional information that the commission believes may be of assistance to the justice or judge in improving judicial performance.
- (e) If a commission recommends an improvement plan, the procedures developed and implemented for such a plan will follow the guidelines set forth in Rule 17 and 13-5.5-110 C.R.S.
- (f) A commission shall grant each justice or judge who receives an interim evaluation the opportunity to meet with the commission or otherwise respond to the interim evaluation no later than ten days following the justice’s or judge’s receipt of the interim evaluation. Any additional interview shall be held within fourteen days of the request.
- (g) If a meeting is held or a response is made, the commission may revise its interim evaluation and shall provide the judge or justice with the final evaluation within fourteen days following the written response or additional interview.
- (h) Evaluations, recommendations, and any other relevant information related to an interim year evaluation shall not be released to the public, except as authorized in section 13-5.5-113(3)(a-c) C.R.S. and Rule 18(c)

## **Rule 17. Individual Judicial Improvement Plans**

- (a) If the state or a district commission recommends that a justice or judge receive an individual judicial improvement plan as part of the initial or interim evaluation process, the commission shall communicate such a recommendation, in writing, to the chief justice if the recommendation concerns a supreme court justice or to the appropriate chief judge if the recommendation concerns a judge, outlining the commission’s findings, including any recommendations for the

content of an individual judicial improvement plan. If the state or a district commission recommends that a chief judge receive an individual judicial improvement plan as part of the initial or interim evaluation process, the commission shall communicate such a recommendation, in writing, to the chief justice, outlining its findings, including any recommendations for the content an individual judicial improvement plan.

(b) A copy of the letter will be sent to the executive director of the Office of Judicial Performance Evaluation by the state or district commission for inclusion in the office's files. The chief justice or appropriate chief judge shall develop an improvement plan for such justice or judge and shall send the improvement plan to the State Commission for review and approval by the executive director, subject to review and approval by the State Commission. After the executive director on behalf of the State Commission reviews and approves the improvement plan, the chief justice or chief judge is responsible for implementing and overseeing the improvement plan.

(c) Once the justice or judge has completed the improvement plan, the chief justice or chief judge shall convey the results of the improvement plan activities to the appropriate commission, in writing, and copy the executive director, who will maintain a copy of the improvement plan and the statement of the results in the appropriate commission files.

(d) If a justice or judge is required to complete an improvement plan pursuant to this section, and he or she fails to satisfactorily complete the requirements of such improvement plan in the judgment of the commission, the appropriate commission shall automatically issue a "does not meet performance standards" designation on his or her next retention performance evaluation narrative.

### **Rule 18. Confidentiality**

(a) Individual survey responses, all comments in survey reports, self-evaluations, personal information protected under court rule or section 24-72-204(3)(a)(II), C.R.S., additional oral or written information under Rules 11(f), 11(g), 12(f), and 12(g), content of performance improvement plans, any matter discussed in executive session under Rule 5, and complaints, responses, and decisions under Rule 20 shall remain confidential except as otherwise specifically provided in these rules. Information from comments in survey reports, self-evaluations, and additional oral or written information under Rules 11(f), 11(g), 12(f), and 12(g) may be summarized for use in a narrative. No commissioner may publicly discuss the substance of the evaluation of any particular judge or justice. Each commission may designate a sole or primary spokesperson to publicly discuss, between July 1 and December 31 of an election year, the process of evaluating the judges and justices.

(b) All recommendations, narratives, and survey reports are confidential until released to the public on the first day following the deadline for judges to declare their intent to stand for retention. Comments included in the survey report shall be made available only to the commissioners, the judge or justice being evaluated, the chief justice or chief judge, and the staff development administrator responsible for judicial education when assisting a judge or justice participating in a performance improvement plan.

(c) Otherwise confidential information may be released only:

- (1) To the Supreme Court Office of Attorney Regulation, if an allegation is made against a judge or justice in the course of the evaluation process which, if true, would constitute a violation of the Colorado Rules of Professional Conduct; and
- (2) To the Supreme Court Commission on Judicial Discipline, if an allegation is made against a judge or justice in the course of the evaluation process which, if true, would constitute a violation of the Colorado Code of Judicial Conduct.
- (d) A judge or justice who discloses otherwise confidential information shall be deemed to have consented to the release of related confidential information.

### **Rule 19. Records**

Upon completing its required recommendations and narratives, each commission shall collect all documents and other information received, including all copies, regarding the justices or judges evaluated. Each commission shall forward all such materials to the State Commission within 30 days following submission of its recommendations and narratives to the State Commission. The State Commission may authorize district commissions to submit evaluation materials to the court executive or designee in each district for destruction in the courthouse.

### **Rule 20. Complaints**

- (a) Any commissioner, judge, or justice may file a written complaint with the State Commission regarding any alleged violation of these rules or the statutes governing judicial performance commissions. The State Commission shall provide a copy to the chair of the particular district commission, who shall provide a written response. The State Commission shall make an independent review and provide its decision to the district commission along with any remedial instructions. The State Commission may not reverse any determination of whether the judge “meets performance standards” or “does not meet performance standards” but may cause a rebuttal to be published with the district commission's recommendation or direct a district commission to revise a narrative within ten days. Should the district commission fail to satisfactorily comply, the State Commission may, in its discretion, rewrite the narrative.
- (b) The State Commission may publicly disclose a complaint, a response thereto, and the State Commission's decision, provided that confidential information is redacted.

## Appendix to the Rules Governing Commissions on Judicial Performance

### Forms

Form 1(a)	Trial Judge Judicial Performance Standards Retention Evaluation Matrix
Form 1(a)(1)	Retention Scorecard
Form 1(b)	Trial Judge Judicial Performance Standards Interim Evaluation Matrix
Form 1(b)(1)	Interim Scorecard
Form 2	Guidelines for Apply Statutory Performance Evaluation Criteria to Colorado Supreme Court Justice and Colorado Court of Appeals Judges

## **Form 1(a)**

### **Trial Judge Performance Standards Retention Evaluation Matrix**

The purpose of these performance standards and their use in completing a performance matrix is to assist District Commissioners in understanding and uniformly applying the evaluation criteria in section 13-5.5-107, C.R.S. 2017, and the Colorado Rules Governing Commissions on Judicial Performance (R.G.C.J.P.) to Colorado trial court judges being evaluated as part of the Colorado Judicial Performance Evaluation program.

As required by R.G.C.J.P. 11(h), Commissioners must use the trial judge matrix and accompanying explanatory materials when evaluating a judge and recommending whether a judge “meets performance standard[s]” for the six statutory performance evaluation criteria found in section 13-5.5-107(1)(a)-(f), C.R.S. 2017. The evaluations “must only include” these six performance evaluation criteria.

The six statutory performance evaluation criteria are integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and public. Section 13-5.5-107(1)(a)-(f). The performance standards provide a description of a judge’s performance that meets performance standards in each criterion. The matrix and criteria standards provide an opportunity for each Commissioner to rate a judge as “meeting” or “not meeting” a specific standard (there are other rating options that will be explained later). The matrix requires each commissioner to rate the judge’s performance using each of the required evaluation tools available to commissioners, so that each evaluation method contributes to a commissioner’s determination of whether a judge is meeting performance standards. A comment section for each of the criterion provides space for commissioners to explain their rating or distinguish differences discovered while using each evaluation tool. Further, the matrix requires each commissioner to consider their ratings for each criterion subcategory and roll those ratings into an overall rating for each of the six performance criteria. Again, space is provided to provide reason for the rating provided.

While completing the matrix may add additional steps in the evaluation process, they are important steps. Completing the matrix requires commissioners to pause and reflect on their evaluation of the judge in each performance area. Using the performance standards provides a definition of what performance is and again forces commissioners to distinguish their evaluations against a standard. One of the criticisms judicial performance evaluation has suffered throughout the program’s history is the complaint of implicit bias playing a role in individual evaluations. The use of the performance matrix is a check against those perceptions and biases during the evaluation process. The matrix also provides a record of individual evaluations and some key information supporting the basis for each rating. When the Commission meets to finalize the Commission’s recommendation, and draft a narrative, individual information contained in each commissioner’s completed matrix will assist commissioners in voicing their input and contributing to the overall evaluation.

During the retention evaluation cycle the matrix provides for either a “yes” or “no” answer on performance. We have also included as other inputs, “n/a” and “insufficient information” allowing commissioners to provide a response in situations where they did not witness or observe a performance standard as part of their evaluation. In some cases, the standard may not be applicable during the evaluation setting and an “n/a” provides the most appropriate response. Either of these two response should be considered value neutral and not be considered when determining whether a judge does or does not meet performance standards. Commissioners are to select only one response per section. If the commissioner feels the judge meets performance standards circle “yes.” If a judge’s performance does not meet performance standards, then the response is “no.” By circling “no” the commissioner is stating the judge is performing below standards and a “no” response is warranted. With either a “yes” or “no” answer commissioners should use the comments section to describe the basis for the response. Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.

## Trial Judge Judicial Performance Standards Retention Matrix Coversheet

Once you have completed each page of the matrix as part of your evaluation of the judge, please provide your ratings for each of the performance criteria below. Once completed please provide a copy of the cover page to the Commission Chair.

Judge \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

Overall rating for Integrity: Does the judge meet the performance standard for Integrity? (circle one)

Yes No Comment:

Overall rating for Legal Knowledge: Does the judge meet the performance standard for Legal Knowledge? (circle one)

Yes No Comment:

Overall rating for Communication: Does the judge meet the performance standard for Communication? (circle one)

Yes No Comment:

Overall rating for Judicial Temperament: Does the judge meet the performance standard for Temperament? (circle one)

Yes No Comment:

Overall rating for Administrative Performance (Management): Does the judge meet the performance standard for Administrative Performance? (circle one)

Yes No Comment:

Overall rating for Service to the Legal Profession: Does the judge meet the performance standard for Service to the Legal Profession? (circle one)

Yes No Comment:

Judge \_\_\_\_\_

Court \_\_\_\_\_

Date \_\_\_\_\_

Integrity Standard	Survey	Courtroom Observation	Opinion Review	Comments from Others	Judicial Interview	Comments/Notes
	Docket/Case Type and Date:					
<b>Does the judge avoid impropriety and the appearance of impropriety?</b>	Yes / No N/A Insufficient information					
<b>Does the judge display fairness and impartiality toward all participants?</b>	Yes / No N/A Insufficient information					
<b>Does the judge avoid ex parte communications?</b>	Yes / No N/A Insufficient information					
<b>Does the judge's manner convey and promote public confidence in his/her integrity?</b>	Yes / No N/A Insufficient information					
<b>Did the judge address issues and correct deficiencies noted in the survey and other evaluation activities?</b>						

---

**Overall rating for Integrity: Does the judge meet the performance standard for Integrity? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)**

Yes      No

**Explain the reasons for your rating:**

**Integrity Standards:**

**Avoids Impropriety:**

The judge, when on the bench, out in public, or in his or her writings, should avoid intemperate or unfitting acts or remarks. The judge should behave in ways that instill the public’s trust in the integrity, fairness and equality of judges and the courts.

The judge should not allow relationships to influence or change his/her judicial behavior or decisions.

**Displays fairness and impartiality toward all participants:**

In court or during any official court activity the judge should not display a level of familiarity with parties, attorneys, witnesses or the families of anyone in court if that level of familiarity could reasonably lead to a perception that the judge favors one party over the other. This does not mean the judge should not greet parties or have casual conversations before or after court if the conversation has nothing to do with a case or legal matter. For example, in many criminal courts a deputy district attorney, public defender and perhaps alternative defense counsel are assigned to a courtroom and appear daily before the judge. In juvenile matters, such as in Dependency and Neglect cases, it is not uncommon for a deputy county attorney, respondent parents’ counsel, and a guardian ad litem to be assigned to a courtroom. In both situations, because of the frequent contact, it can be expected that some casual conversations will occur amongst the judge, courtroom staff and attorneys.

The judge should attempt to defend against bias and prejudice due to race, sex, religion, national origin, disability, age, or sexual orientation whether in court, in chambers, or in public.

The judge should not be influenced by public criticism or public approval, whether real or expected, in his/her actions, rulings, or decisions.

The judge, in his/her rulings, does not favor one side over the other or even appear to do so.

**Avoids ex parte communications:**

The judge should insist that no attorney or any other person discuss a substantive matter regarding a current case with the judge or staff when the other side of the case is not present. If this type of communication does occur, the judge should make a report “on the record” that the communication happened.

If the judge does have communications about a case with only one of the parties, it may not be certain that the judge will need to remove themselves from the case. The person asking the judge to recuse (not be the judge in the case) must reasonably show that because of the one-sided communication the judge is prejudiced or biased, or appears to be prejudiced or biased, in favor or against a party or their attorney.

Judge \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

Legal Knowledge Standard	Survey	Courtroom Observation	Opinion Review	Comments from Others	Judicial Interview	Comments/Notes
		Docket/Case Type and Date:				
<b>Does the judge demonstrate through well-reasoned opinions and courtroom rulings an understanding of substantive law and relevant rules of procedure and evidence?</b>	Yes / No  N/A Insufficient information					
<b>Does the judge demonstrate attentiveness to factual and legal issues?</b>	Yes / No  N/A Insufficient information					
<b>Does the judge adhere to precedent or clearly explain the legal basis for departing from precedent?</b>	Yes / No  N/A Insufficient information					
<b>Does the judge appropriately apply statutes or other sources of legal authority in their decisions?</b>	Yes / No  N/A Insufficient information					

<b>Did the judge address issues and correct deficiencies noted in the survey and other evaluation activities?</b>						
-------------------------------------------------------------------------------------------------------------------	--	--	--	--	--	--

**Overall rating for Legal Knowledge: Does the judge meet the performance standard for Legal Knowledge? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)**

**Yes**

**No**

**Explain the reasons for your rating:**

**Legal Knowledge Standard**

Did the judge demonstrate in his/her written opinions and courtroom rulings that he/she understands and applies court rules, and laws applicable to the specific cases they preside over? The judge demonstrates this through oral and written communication with sufficient clarity that the public can understand what the case is about, what the judge decided after each side had the opportunity to be heard, and the authority that supports the outcome (either sentence or judgment).

Did the judge demonstrate attentiveness to factual and legal issues before the court? Through rulings and written opinions, the judge demonstrates a thorough understanding of what the facts in the case are, how those facts and the law were used to decide or issue the opinion in the case, and what law or authority supports the outcome (either sentence or judgment). The judge should make it clear what the parties are supposed to do next.

Did the judge appropriately apply law to the facts of a case to determine the outcome? Case outcomes are directed by various legal authorities including statutes, past court decisions, and court rules. The judge’s opinions and rulings should provide the basis or reason for applying or rejecting legal authority in communicating his/her decisions.

Judge \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

Communication Standard	Survey	Courtroom Observation	Opinion Review	Comments from Others	Judicial Interview	Comments/Notes
		Docket/Case Type and Date:				
<b>Does the judge provide clearly written and understandable opinions, findings of fact, conclusions of law, and orders?</b>	Yes / No  N/A Insufficient information					
<b>Does the judge ask understandable and relevant questions during oral arguments and presentations?</b>	Yes / No  N/A Insufficient information					
<b>Does the judge clearly explain the legal and factual basis for all oral decisions?</b>	Yes / No  N/A Insufficient information					
<b>In a sentencing, does the judge listen to all sides, clearly state the sentence and reason for the sentence, and clearly advise the defendant what is to occur next?</b>	Yes / No  N/A Insufficient information					

<b>(criminal matters only)</b>						
<b>In a jury trial does the judge explain the process to the jury? (Jury trials only)</b>	Yes / No  N/A Insufficient information					
<b>Does the judge ask if the parties understand, have questions, or need clarification about any matters?</b>	Yes / No  N/A Insufficient information					
<b>Did the judge address issues and correct deficiencies noted in the survey and other evaluation activities?</b>						

**Overall rating for Communication: Does the judge meet the performance standard for Communication? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)**

**Yes**

**No**

**Explain the reasons for your rating:**

**Communication Standards:**

The judge's communication should be clear so that the parties receiving written or oral communications understand the issues being decided, the reasons for the judge's decision, and what the parties will need to do next or what will happen next.

Communication should reflect thoroughness of findings, clarity of expression, and reasoning along with the application of the law to the facts of the case. In other words, the rulings should contain enough information about the facts of the case and the laws that apply, along with an explanation of how the judge has applied the law to the facts, to explain the result. Final decisions should address the losing party's arguments and explain why they were rejected.

Judge \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

Judicial Temperament Standard	Survey	Courtroom Observation Docket/Case Type and Date:	Opinion Review	Comments from Others	Judicial Interview	Comments/Notes
<b>Does the judge demonstrate respect toward attorneys, litigants, court staff, and others in the courtroom?</b>	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	
<b>Does the judge maintain and require order, punctuality, and appropriate decorum in the courtroom?</b>	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	
<b>Does the judge have control over the courtroom?</b>	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	
<b>Did the judge address issues and correct deficiencies noted in the survey and other evaluation activities?</b>						
<p><b>Overall rating for Temperament: Does the judge meet the performance standard for Temperament? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)</b></p> <p style="text-align: center;"><b>Yes                      No</b></p>						

---

**Explain the reasons for your rating:**

---

**Judicial Temperament Standard**

The judge should show courtesy and respect to attorneys, parties, court staff and others in the courtroom.

The judge is patient, respectful, and courteous to parties, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity. The judge must require similar conduct of parties, lawyers, court staff, court officials, and others in the judge's courtroom or during other official duties while in the presence of the judge.

A judge can be efficient and businesslike while being patient and deliberate.

When it becomes necessary during a trial for the judge to comment about the conduct or testimony of witnesses, spectators, counsel, or others, the judge should do so outside the presence of the jury, if possible. Any such comment should be in a firm, dignified, and restrained manner, limiting comments and rulings to what is reasonably required for the orderly progress of the trial, and refraining from unnecessary disparagement of persons or issues.

Judge \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

Administrative Performance Standard (Management)	Survey	Courtroom Observation Docket/Case Type and Date:	Opinion Review	Comments from Others	Judicial Interview	Comments/Notes
<b>Is the judge timely in attendance and prepared for hearings?</b>	Yes / No  N/A  Insufficient information					
<b>Does the judge explain why any proceedings began after their scheduled time?</b>	Yes / No  N/A  Insufficient information					
<b>Does the judge issue opinions and orders in a timely manner?</b>	Yes / No  N/A  Insufficient information					
<b>Does the judge manage court time effectively and efficiently?</b>	Yes / No  N/A  Insufficient information					
<b>Does the judge assist other judges with their workload?</b>	Yes / No  N/A  Insufficient information					



### **Administrative Performance Standard (Management)**

The judge is prepared for oral arguments, trials, and hearings, and demonstrates attentiveness to and appropriate control over judicial proceedings;

The judge demonstrates the court is ready to proceed at the scheduled time for any event on the court's docket, regardless of whether the parties are ready to proceed;

The judge should explain any delays that occur and the reason for the delay;

The judge should manage his/her workload and court time effectively and efficiently and require judicial staff to do the same;

The judge should issue opinions, findings of fact, conclusions of law, and orders in a timely manner and without unnecessary delay;

The judge should participate in an equal share of the cases that come into the court. The judge should take responsibility for more than his/her own caseload and should be willing to assist other judges, as needed.

The judge should complete cases within the time standards provided by Chief Justice Directives intended to provide guidelines for the management of cases and case types on each judge's individual docket. When the judge has a percentage of cases outside the established time standards he/she should be able to provide a reasonable explanation for why he/she is unable to complete their case assignments within the prescribed percentage range.

Judge \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

Service to the Legal Profession Standard	Survey	Courtroom Observation Docket/Case Type and Date:	Opinion Review	Comments from Others	Judicial Interview	Comments/Notes
<b>Does the judge participate in service-oriented activities for the legal profession and the public?</b>	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	
<b>Does the judge participate in efforts designed to improve the legal system and educate the public?</b>	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	Yes / No  N/A Insufficient information	
<b>Did the judge address issues and correct deficiencies noted in the survey and other evaluation activities?</b>						

**Overall rating for Service to the Legal Profession: Does the judge meet the performance standard for Service to the Legal Profession?**  
 (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)

**Yes                      No**

**Explain the reasons for your rating:**

## **Service to the Legal Profession Standard**

The judge should demonstrate service to the legal profession and the public by participating in service-oriented efforts designed to educate the public about the legal system and work with other legal professionals to improve the legal system and the practice of law.

When choosing which activities to participate in the judge must be careful that participation with a group or organization does not raise concerns of favoritism, bias or the appearance of favoritism or bias.

The judge connects his/her legal knowledge and professionalism to public service activities.. In others words, it is the judge's knowledge and judicial experience that undergirds his/her participation in such activities.

+100%

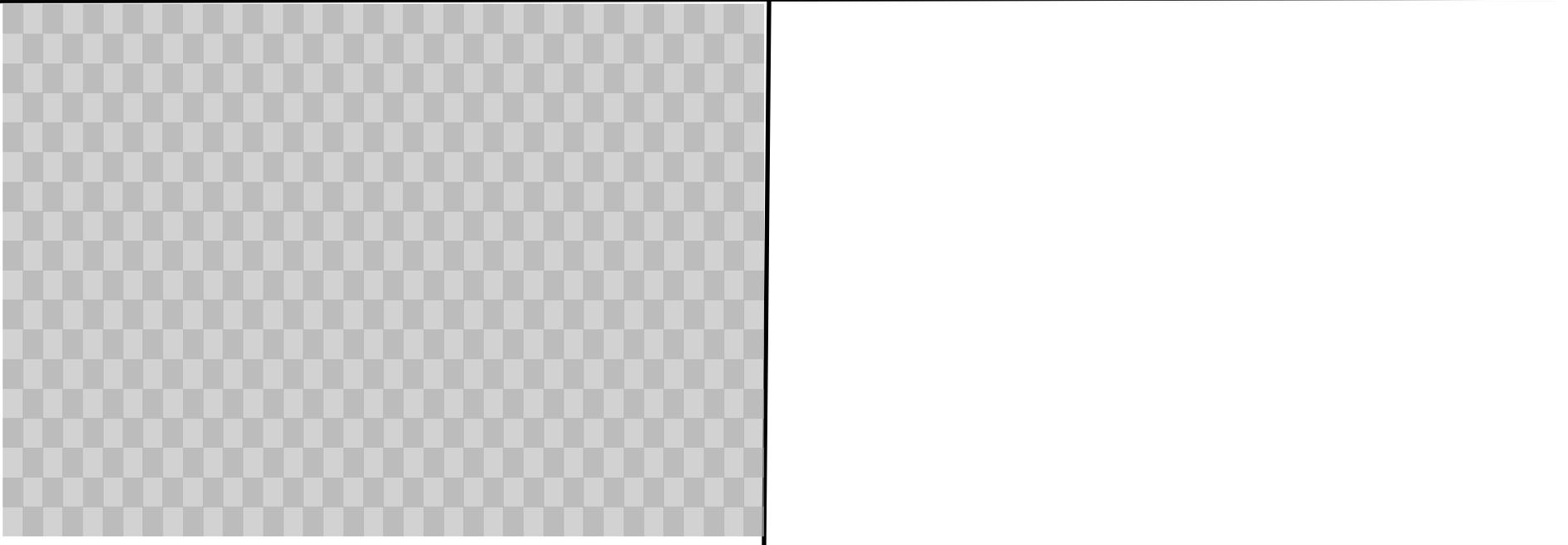
# Form 1(a)(1) Judicial Performance Evaluation Scorecard

High Performance

Needs No Improvement

Needs Improvement

Minimum Performance Standards



Low Performance

-100 %

## **Integrity Standards**

### **Avoids Impropriety:**

The judge, when on the bench, out in public, or in his or her writings, should avoid intemperate or unfitting acts or remarks. The judge should behave in ways that instill the public's trust in the integrity, fairness and equality of judges and the courts.

The judge should not allow relationships to influence or change his/her judicial behavior or decisions.

### **Displays fairness and impartiality toward all participants:**

In court or during any official court activity the judge should not be too familiar with parties, attorneys, witnesses or the families of anyone in court that might make anyone think the judge favors one party over the other. This does not mean the judge should not greet parties or have casual conversations before or after court; if the conversation has nothing to do with a case or legal matter. For example, in many criminal courts a deputy district attorney, public defender and perhaps alternative defense counsel are assigned to a courtroom and appear daily before the judge. In juvenile matters, such as in Dependency and Neglect cases, it is not uncommon for a deputy county attorney, respondent parents counsel, and guardian ad litem to be assigned to a courtroom. In both situations, because of the frequent contact, it can be expected that some casual conversations occur amongst the judge, courtroom staff and attorneys.

The judge should attempt to defend against bias and prejudice due to race, sex, religion, national origin, disability, age, or sexual orientation whether in court, in chambers, or in public.

The judge should not be influenced by public criticism or public approval, whether real or expected, in his/her actions, rulings, or decisions.

The judge, in his/her rulings, does not favor one side over the other or even appear to do so.

### **Avoids ex parte communications:**

The judge should insist that no attorney or any other person discuss a substantive matter regarding a current case with the judge or staff when the other side of the case is not present. If this type of communication does occur, the judge should make a report "on the record" that the communication happened.

If the judge does have communications about a case with only one of the parties, it may not be certain that the judge will need to remove themselves from the case. The person asking the judge to recuse (not be the judge in the case) must reasonably show that because of the one-sided communication the judge is prejudiced or biased, or appears to be prejudiced or biased, in favor or against a party or their attorney.

**Questions to ask yourself while evaluating the integrity standard:**

Does the judge avoid impropriety and the appearance of impropriety?

Does the judge display fairness and impartiality toward all participants?

Does the judge avoid ex parte communications?

Does the judge's manner convey and promote public confidence in his/her integrity?

**Survey Question to consider when evaluating Integrity:**

Application and Knowledge of Law —

Issuing consistent sentences when the circumstances are similar:

Being fair and impartial to both sides of the case:

Consistently applying laws and rules:

Demeanor—

Conducting his/her courtroom in a neutral manner:

## **Legal Knowledge Standard**

Did the judge demonstrate in his/her written opinions and courtroom rulings, that he/she understand and apply court rules, and laws applicable to the specific cases they preside over? The judge demonstrates this through oral and written communication with sufficient clarity that the public can understand what the case is about, what the judge decided after each side had the opportunity to be heard, and the authority that supports the outcome (either sentence or judgment).

Did the judge demonstrate attentiveness to factual and legal issues before the court? Through rulings and written opinions, the judge demonstrates a thorough understanding of what the facts in the case are, how those facts and the law were used to decide or issue the opinion in the case, and what law or authority supports the outcome (either sentence or judgment). The judge should make it clear what the parties are supposed to do next.

Did the judge appropriately apply law to the facts of a case to determine the outcome. Case outcomes are directed by various legal authorities including statutes, past court decisions, and court rules. The judge's opinions and rulings should provide the basis or reason for applying or rejecting legal authority in communicating his/her decisions.

### **Questions to ask yourself while evaluating the legal knowledge standard:**

**Does the judge demonstrate through well-reasoned opinions and courtroom rulings an understanding of substantive law and relevant rules of procedure and evidence?**

**Does the judge demonstrate attentiveness to factual and legal issues?**

**Does the judge adhere to precedent or clearly explain the legal basis for departing from precedent?**

**Does the judge appropriately apply statutes or other sources of legal authority in their decisions?**

## **Survey Question to consider when evaluating legal knowledge**

### Application and Knowledge of Law —

Being able to identify and analyze relevant facts:

Basing decisions on evidence and argument:

Issuing consistent sentences when the circumstances are similar:

Consistently applying laws and rules:

### Diligence —

Using good judgement in application of relevant law and rules.

### **Communication Standards:**

The judge's communication should be clear so that the parties receiving written or oral communications understand the issues being decided, the reasons for the judge's decision, and what the parties will need to do next or what will happen next.

Communication should reflect thoroughness of findings, clarity of expression, and reasoning along with the application of the law to the facts of the case. In other words, the rulings should contain enough information about the facts of the case and the laws that apply, along with an explanation of how the judge has applied the law to the facts, to explain the result. Final decisions should address the losing party's arguments and explain why they were rejected.

#### **Questions to ask yourself while evaluating communication:**

**Does the judge provide clearly written and understandable opinions, findings of fact, conclusions of law, and orders?**

**Does the judge ask understandable, relevant and pertinent questions during oral arguments, or presentations?**

**Does the judge clearly explain the legal and factual basis for all oral decisions?**

**In a sentencing, does the judge listen to all sides, clearly state the sentence and reason for the sentence, and clearly advise the defendant what is to occur next? (criminal matters only)**

**In a jury trial does the judge explain the process to the jury?  
(Jury trials only)**

**Does the judge ask if the parties understand, have questions, or need clarification about any matters?**

#### **Survey Question to consider when evaluating communication:**

##### **Communications -**

**Making sure all participants understand the proceedings.**

**Providing written communications that are clear, thorough and well reasoned.**

##### **Demeanor—**

**Treating participants with respect.**

## **Judicial Temperament Standard**

The judge should show courtesy and respect to attorneys, parties, court staff and others in the courtroom.

The judge is patient, respectful, and courteous to parties, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity. The judge must require similar conduct of parties, lawyers, court staff, court officials, and others in the judge's courtroom or during other official duties while in the presence of the judge.

A judge can be efficient and businesslike while being patient and deliberate.

When it becomes necessary during a trial for the judge to comment about the conduct or testimony of witnesses, spectators, counsel, or others, the judge should do so outside the presence of the jury, if possible. Any such comment should be in a firm, dignified, and restrained manner, limiting comments and rulings to what is reasonably required for the orderly progress of the trial, and refraining from unnecessary disparagement of persons or issues.

### **Questions to ask yourself while evaluating judicial temperament:**

**Does the judge demonstrate respect toward attorneys, litigants, court staff, and others in the courtroom?**

**Does the judge maintain and require order, punctuality, and appropriate decorum in the courtroom?**

**Does the judge have control over the courtroom?**

### **Survey Question to consider when evaluating judicial temperament:**

#### **Demeanor—**

**Giving proceedings a sense of dignity.**

**Treating participants with respect.**

**Conducting his/her courtroom in a neutral manner.**

#### **Communication—**

**Making sure all participants understand the proceedings.**

## **Administrative Performance Standard (Management)**

The judge is prepared for oral arguments, trials, and hearings, and demonstrates attentiveness to and appropriate control over judicial proceedings;

The judge demonstrates the court is ready to proceed at the scheduled time for any event on the court's docket, regardless of whether the parties are ready to proceed;

The judge should explain any delays that occur and the reason for the delay;

The judge should manage his/her workload and court time effectively and efficiently and require judicial staff to do the same;

The judge should issue opinions, findings of fact, conclusions of law, and orders in a timely manner and without unnecessary delay;

The judge should participate in an equal share of the cases that come into the court. The judge should take responsibility for more than his/her own caseload and should be willing to assist other judges, as needed.

The judge should complete cases within the time standards provided by Chief Justice Directives intended to provide guidelines for the management of cases and case types on each judge's individual docket. When the judge has a percentage of cases outside the established time standards he/she should be able to provide a reasonable explanation for why he/she is unable to complete their case assignments within the prescribed percentage range.

### **Questions to ask yourself while evaluating administrative performance:**

**Is the judge timely in attendance and prepared for hearings?**

**Does the judge explain the reasons for any delays for proceedings that began after a scheduled time?**

**Does the judge issue opinions and orders in a timely manner?**

**Does the judge manage court time effectively and efficiently?**

**Does the judge assist other judges with their workload?**

**Does the judge comply with Directives of the Colorado Supreme Court?**

### **Survey Question to consider when evaluating administrative performance:**

**Diligence —**

**Doing necessary “homework” and being prepared for cases.**

**Being willing to handle cases on the docket even when they are complicated and time consuming**

## **Service to the Legal Profession Standard**

The judge should demonstrate service to the legal profession and the public by participating in service-oriented efforts designed to educate the public about the legal system and work with other legal professionals to improve the legal system and the practice of law.

When choosing which activities to participate in the judge must be careful that participation with a group or organization does not raise concerns of favoritism, bias or the appearance of favoritism or bias.

The judge connects his/her legal knowledge and professionalism to public service activities. In other words, it is the judge's knowledge and professionalism that explains why he/she is appearing or presenting to an audience or at an event.

**Questions to ask yourself while evaluating service to the legal profession:**

**Does the judge participate in service-oriented activities for the legal profession and the public?**

**Does the judge participate in efforts designed to improve the legal system and educate the public?**

## **Form 1(b)**

### **Trial Judge Performance Standards Interim Evaluation Matrix**

The purpose of these performance standards and their use in completing a performance matrix is to assist District Commissioners in understanding and uniformly applying the evaluation criteria in section 13-5.5-107, C.R.S. 2017, and the Colorado Rules Governing Commissions on Judicial Performance (R.G.C.J.P.) to Colorado trial court judges being evaluated as part of the Colorado Judicial Performance Evaluation program.

As required by R.G.C.J.P. 11(h), Commissioners must use the trial judge matrix and accompanying explanatory materials when evaluating a judge and recommending whether a judge “meets performance standard[s]” for the six statutory performance evaluation criteria found in section 13-5.5-107(1)(a)-(f), C.R.S. 2017. The evaluations “must only include” these six performance evaluation criteria.

The six statutory performance evaluation criteria are integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and public. Section 13-5.5-107(1)(a)-(f). The performance standards provide a description of a judge’s performance that meets performance standards in each criterion. The matrix and criteria standards provide an opportunity for each Commissioner to rate a judge as “meeting” or “not meeting” a specific standard (there are other rating options that will be explained later). The matrix requires each commissioner to rate the judge’s performance using each of the required evaluation tools available to commissioners, so that each evaluation method contributes to a commissioner’s determination of whether a judge is meeting performance standards. A comment section for each of the criterion provides space for commissioners to explain their rating or distinguish differences discovered while using each evaluation tool. Further, the matrix requires each commissioner to consider their ratings for each criterion subcategory and roll those ratings into an overall rating for each of the six performance criteria. Again, space is provided to provide reason for the rating provided.

While completing the matrix may add additional steps in the evaluation process, they are important steps. Completing the matrix requires commissioners to pause and reflect on their evaluation of the judge in each performance area. Using the performance standards provides a definition of what performance is and again forces commissioners to distinguish their evaluations against a standard. One of the criticisms judicial performance evaluation has suffered throughout the program’s history is the complaint of implicit bias playing a role in individual evaluations. The use of the performance matrix is a check against those perceptions and biases during the evaluation process. The matrix also provides a record of individual evaluations and some key information supporting the basis for each rating. When the Commission meets to finalize the Commission’s recommendation, and draft a narrative, individual information contained in each commissioner’s completed matrix will assist commissioners in voicing their input and contributing to the overall evaluation.

The matrix has several rating options; “Yes, without qualifications;” “Yes, with qualifications;” “No, needs improvement;” “n/a;” and “Insufficient information.” Commissioners are to select only one response per section. Because the focus of the interim evaluation is on development, commissioners are encouraged to provide written comment for each of their selections, particularly when there are qualifications and specific examples of needed performance improvement. During the interim cycle the commissions responsibility is to provide performance feedback and suggestions for performance improvement. If a judge’s evaluation contains several “no, needs improvement” responses the commission should consider recommending that a judge participate in an improvement plan. The last two selections are to be used when during the evaluation, you were not able to witness behaviors representative of the criteria. Insufficient information is appropriate when there was not enough evidence or experience with the judge to base a decision on.

## Trial Judge Judicial Performance Standards Interim Evaluation Matrix Coversheet

Once you have completed each page of the matrix as part of your evaluation of the judge, please provide your ratings for each of the performance criteria below. Once completed please provide a copy of the cover page to the Commission Chair.

Judge \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

**Overall rating for Integrity: Does the judge meet the performance standard for Integrity? (circle one)**

**Yes, without qualifications      Yes, with qualifications      No, needs improvement**

**Overall rating for Legal Knowledge: Does the judge meet the performance standard for Legal Knowledge? (circle one)**

**Yes, without qualifications      Yes, with qualifications      No, needs improvement**

**Overall rating for Communication: Does the judge meet the performance standard for Communication? (circle one)**

**Yes, without qualifications      Yes, with qualifications      No, needs improvement**

**Overall rating for Judicial Temperament: Does the judge meet the performance standard for Temperament? (circle one)**

**Yes, without qualifications      Yes, with qualifications      No, needs improvement**

**Overall rating for Administrative Performance (Management): Does the judge meet the performance standard for Administrative Performance? (circle one)**

**Yes, without qualifications      Yes, with qualifications      No, needs improvement**

**Overall rating for Service to the Legal Profession: Does the judge meet the performance standard for Service to the Legal Profession? (circle one)**

**Yes, without qualifications      Yes, with qualifications      No, needs improvement**

Judge \_\_\_\_\_

Court \_\_\_\_\_

Date \_\_\_\_\_

Integrity Standard	Survey	Courtroom Observation	Opinion Review	Comments from Others	Judicial Interview	Comments/Notes
		Docket/Case Type and Date:				
<b>Does the judge avoid impropriety and the appearance of impropriety?</b>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	
<b>Does the judge display fairness and impartiality toward all participants?</b>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	
<b>Does the judge avoid ex parte communications?</b>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	

<b>Does the judge's manner convey and promote public confidence in his/her integrity?</b>	(Circle One) Yes, without qualifications					
	Yes, with qualifications					
	No, needs improvement					
	N/A	N/A	N/A	N/A	N/A	
	Insufficient information					
<b>Did the judge address issues and correct deficiencies noted in the survey and other evaluation activities?</b>						

**Overall rating for Integrity: Does the judge meet the performance standard for Integrity? (circle one)**

**Yes, without qualifications**

**Yes, with qualifications**

**No, needs improvement**

**Explain the reasons for your rating:**

**Integrity Standards:**

**Avoids Impropriety:**

The judge, when on the bench, out in public, or in his or her writings, should avoid intemperate or unfitting acts or remarks. The judge should behave in ways that instill the public's trust in the integrity, fairness and equality of judges and the courts.

The judge should not allow relationships to influence or change his/her judicial behavior or decisions.

**Displays fairness and impartiality toward all participants:**

In court or during any official court activity the judge should not display a level of familiarity with parties, attorneys, witnesses or the families of anyone in court if that level of familiarity could reasonably lead to a perception that the judge favors one party over the other. This does not mean the judge should not greet parties or have casual conversations before or after court if the conversation has nothing to do with a case or legal matter. For example, in many criminal courts a deputy district attorney, public defender and perhaps alternative defense counsel are assigned to a courtroom and

appear daily before the judge. In juvenile matters, such as in Dependency and Neglect cases, it is not uncommon for a deputy county attorney, respondent parents' counsel, and guardian ad litem to be assigned to a courtroom. In both situations, because of the frequent contact, it can be expected that some casual conversations will occur amongst the judge, courtroom staff and attorneys.

The judge should attempt to defend against bias and prejudice due to race, sex, religion, national origin, disability, age, or sexual orientation whether in court, in chambers, or in public.

The judge should not be influenced by public criticism or public approval, whether real or expected, in his/her actions, rulings, or decisions.

The judge, in his/her rulings, does not favor one side over the other or even appear to do so.

**Avoids ex parte communications:**

The judge should insist that no attorney or any other person discuss a substantive matter regarding a current case with the judge or staff when the other side of the case is not present. If this type of communication does occur, the judge should make a report "on the record" that the communication happened.

If the judge does have communications about a case with only one of the parties, it may not be certain that the judge will need to remove themselves from the case. The person asking the judge to recuse (not be the judge in the case) must reasonably show that because of the one-sided communication the judge is prejudiced or biased, or appears to be prejudiced or biased, in favor or against a party or their attorney.

Judge \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

Legal Knowledge Standard	Survey	Courtroom Observation  Docket/Case Type and Date:	Opinion Review	Comments from Others	Judicial Interview	Comments/Notes
<b>Does the judge demonstrate through well-reasoned opinions and courtroom rulings an understanding of substantive law and relevant rules of procedure and evidence?</b>	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	
<b>Does the judge demonstrate attentiveness to factual and legal issues?</b>	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	
<b>Does the judge adhere to precedent or clearly explain the legal basis for departing from precedent?</b>	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	

<b>Does the judge appropriately apply statutes or other sources of legal authority in their decisions?</b>	(Circle One)					
	Yes, without qualifications					
	Yes, with qualifications					
	No, needs improvement					
	N/A	N/A	N/A	N/A	N/A	
Insufficient information	Insufficient information	Insufficient information	Insufficient information	Insufficient information		
<b>Did the judge address issues and correct deficiencies noted in the survey and other evaluation activities?</b>						

**Overall rating for Legal Knowledge: Does the judge meet the performance standard for Legal Knowledge? (circle one)**

**Yes, without qualifications**

**Yes, with qualifications**

**No, needs improvement**

**Explain the reasons for your rating:**

### **Legal Knowledge Standard**

Did the judge demonstrate in his/her written opinions and courtroom rulings that he/she understands and apply court rules, and laws applicable to the specific cases they preside over? The judge demonstrates this through oral and written communication with sufficient clarity that the public can understand what the case is about, what the judge decided after each side had the opportunity to be heard, and the authority that supports the outcome (either sentence or judgment).

Did the judge demonstrate attentiveness to factual and legal issues before the court? Through rulings and written opinions, the judge demonstrates a thorough understanding of what the facts in the case are, how those facts and the law were used to decide or issue the opinion in the case, and what law or authority supports the outcome (either sentence or judgment). The judge should make it clear what the parties are supposed to do next.

Did the judge appropriately apply law to the facts of a case to determine the outcome. Case outcomes are directed by various legal authorities including statutes, past court decisions, and court rules. The judge's opinions and rulings should provide the basis or reason for applying or rejecting legal authority in communicating his/her decisions.

Judge \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

Communication Standard	Survey	Courtroom Observation	Opinion Review	Comments from Others	Judicial Interview	Comments/Notes
		Docket/Case Type and Date:				
<b>Does the judge provide clearly written and understandable opinions, findings of fact, conclusions of law, and orders?</b>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	
<b>Does the judge ask understandable and relevant questions during oral arguments and presentations?</b>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	
<b>Does the judge clearly explain the legal and factual basis for all oral decisions?</b>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	

<p><b>In a sentencing, does the judge listen to all sides, clearly state the sentence and reason for the sentence, and clearly advise the defendant what is to occur next? (criminal matters only)</b></p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	
<p><b>In a jury trial does the judge explain the process to the jury? (Jury trials only)</b></p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	
<p><b>Does the judge ask if the parties understand, have questions, or need clarification about any matters?</b></p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	
<p><b>Did the judge address issues and correct deficiencies noted in the survey and other evaluation activities?</b></p>						

---

**Overall rating for Communication: Does the judge meet the performance standard for Communication? (circle one)**

**Yes, without qualifications**

**Yes, with qualifications**

**No, needs improvement**

**Explain the reasons for your rating:**

**Communication Standards:**

The judge's communication should be clear so that the parties receiving written or oral communications understand the issues being decided, the reasons for the judge's decision, and what the parties will need to do next or what will happen next.

Communication should reflect thoroughness of findings, clarity of expression, and reasoning along with the application of the law to the facts of the case. In other words, the rulings should contain enough information about the facts of the case and the laws that apply, along with an explanation of how the judge has applied the law to the facts, to explain the result. Final decisions should address the losing party's arguments and explain why they were rejected.

Judge \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

Judicial Temperament Standard	Survey	Courtroom Observation Docket/Case Type and Date:	Opinion Review	Comments from Others	Judicial Interview	Comments/Notes
<b>Does the judge demonstrate respect toward attorneys, litigants, court staff, and others in the courtroom?</b>	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	
<b>Does the judge maintain and require order, punctuality, and appropriate decorum in the courtroom?</b>	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	
<b>Does the judge have control over the courtroom?</b>	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	

<b>Did the judge address issues and correct deficiencies noted in the survey and other evaluation activities?</b>						
-------------------------------------------------------------------------------------------------------------------	--	--	--	--	--	--

**Overall rating for Temperament: Does the judge meet the performance standard for Temperament? (circle one)**

**Yes, without qualifications**      **Yes, with qualifications**      **No, needs improvement**

**Explain the reasons for your rating:**

---

**Judicial Temperament Standard**

The judge should show courtesy and respect to attorneys, parties, court staff and others in the courtroom.

The judge is patient, respectful, and courteous to parties, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity. The judge must require similar conduct of parties, lawyers, court staff, court officials, and others in the judge’s courtroom or during other official duties while in the presence of the judge.

A judge can be efficient and businesslike while being patient and deliberate.

When it becomes necessary during a trial for the judge to comment about the conduct or testimony of witnesses, spectators, counsel, or others, the judge should do so outside the presence of the jury, if possible. Any such comment should be in a firm, dignified, and restrained manner, limiting comments and rulings to what is reasonably required for the orderly progress of the trial, and refraining from unnecessary disparagement of persons or issues.

Judge \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

Administrative Performance Standard (Management)	Survey	Courtroom Observation Docket/Case Type and Date:	Opinion Review	Comments from Others	Judicial Interview	Comments/Notes
<b>Is the judge timely in attendance and prepared for hearings?</b>	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	
<b>Does the judge explain why any proceedings began after their scheduled time?</b>	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	
<b>Does the judge issue opinions and orders in a timely manner?</b>	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	

<b>Does the judge manage court time effectively and efficiently?</b>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	
<b>Does the judge assist other judges with their workload?</b>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	
<b>Does the judge comply with Directives of the Colorado Supreme Court?</b>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	<p>(Circle One)</p> <p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p> <p>Insufficient information</p>	
<b>Did the judge address issues and correct deficiencies noted in the survey and other evaluation activities?</b>						

**Overall rating for Administrative Performance (Management): Does the judge meet the performance standard for Administrative Performance? (circle one)**

**Yes, without qualifications**

**Yes, with qualifications**

**No, needs improvement**

**Explain the reasons for your rating:**

---

### **Administrative Performance Standard (Management)**

The judge is prepared for oral arguments, trials, and hearings, and demonstrates attentiveness to and appropriate control over judicial proceedings;

The judge demonstrates the court is ready to proceed at the scheduled time for any event on the court's docket, regardless of whether the parties are ready to proceed;

The judge should explain any delays that occur and the reason for the delay;

The judge should manage his/her workload and court time effectively and efficiently and require judicial staff to do the same;

The judge should issue opinions, findings of fact, conclusions of law, and orders in a timely manner and without unnecessary delay;

The judge should participate in an equal share of the cases that come into the court. The judge should take responsibility for more than his/her own caseload and should be willing to assist other judges, as needed.

The judge should complete cases within the time standards provided by Chief Justice Directives intended to provide guidelines for the management of cases and case types on each judge's individual docket. When the judge has a percentage of cases outside the established time standards he/she should be able to provide a reasonable explanation for why he/she is unable to complete their case assignments within the prescribed percentage range.

Judge \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

Service to the Legal Profession Standard	Survey	Courtroom Observation Docket/Case Type and Date:	Opinion Review	Comments from Others	Judicial Interview	Comments/Notes
<b>Does the judge participate in service-oriented activities for the legal profession and the public?</b>	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	
<b>Does the judge participate in efforts designed to improve the legal system and educate the public?</b>	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	(Circle One) Yes, without qualifications Yes, with qualifications No, needs improvement N/A Insufficient information	
<b>Did the judge address issues and correct deficiencies noted in the survey and other evaluation activities?</b>						

**Overall rating for Service to the Legal Profession: Does the judge meet the performance standard for Service to the Legal Profession? (circle one)**

**Yes, without qualifications**

**Yes, with qualifications**

**No, needs improvement**

**Explain the reasons for your rating:**

### **Service to the Legal Profession Standard**

The judge should demonstrate service to the legal profession and the public by participating in service-oriented efforts designed to educate the public about the legal system and work with other legal professionals to improve the legal system and the practice of law.

When choosing which activities to participate in the judge must be careful that participation with a group or organization does not raise concerns of favoritism, bias or the appearance of favoritism or bias.

The judge connects his/her legal knowledge and professionalism to public service activities. In other words, it is the judge's knowledge and judicial experience that undergirds his/her participation in such activities.

# Form 1(b)(1) Judicial Performance Evaluation Scorecard

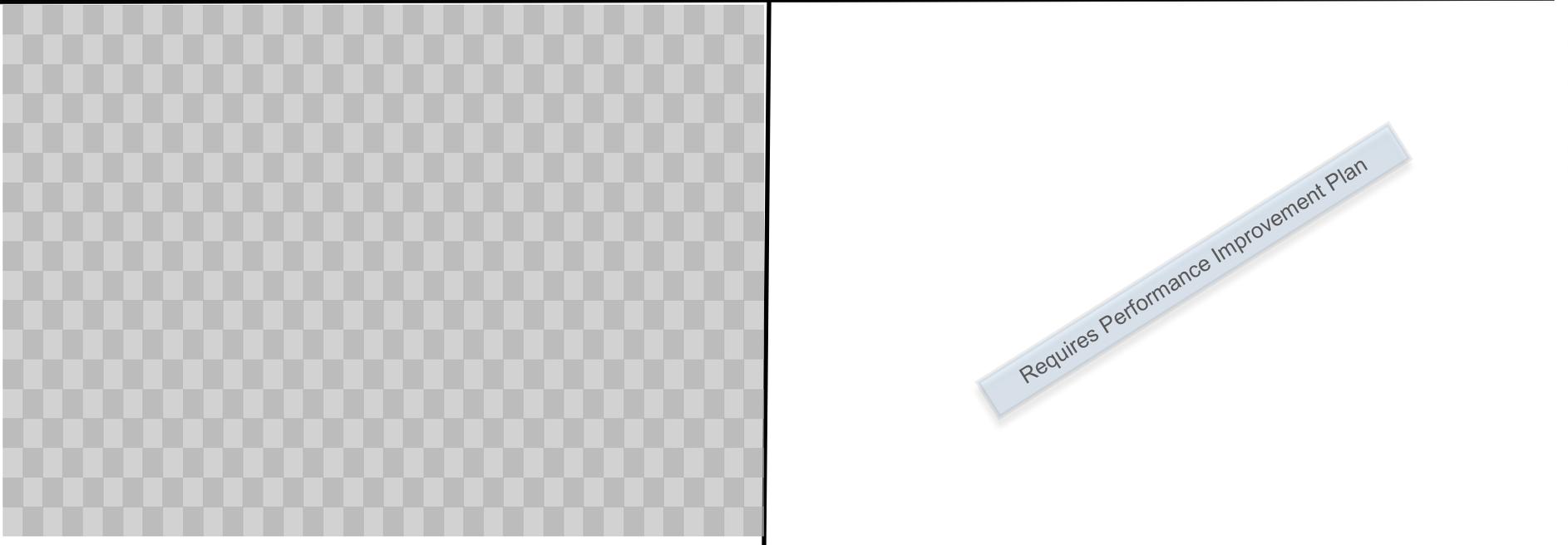
High Performance

Minimum Performance Standards

Low Performance

Needs No Improvement

Needs Improvement



Requires Performance Improvement Plan

## **Integrity Standards**

### **Avoids Impropriety:**

The judge, when on the bench, out in public, or in his or her writings, should avoid intemperate or unfitting acts or remarks. The judge should behave in ways that instill the public's trust in the integrity, fairness and equality of judges and the courts.

The judge should not allow relationships to influence or change his/her judicial behavior or decisions.

### **Displays fairness and impartiality toward all participants:**

In court or during any official court activity the judge should not be too familiar with parties, attorneys, witnesses or the families of anyone in court that might make anyone think the judge favors one party over the other. This does not mean the judge should not greet parties or have casual conversations before or after court; if the conversation has nothing to do with a case or legal matter. For example, in many criminal courts a deputy district attorney, public defender and perhaps alternative defense counsel are assigned to a courtroom and appear daily before the judge. In juvenile matters, such as in Dependency and Neglect cases, it is not uncommon for a deputy county attorney, respondent parents counsel, and guardian ad litem to be assigned to a courtroom. In both situations, because of the frequent contact, it can be expected that some casual conversations occur amongst the judge, courtroom staff and attorneys.

The judge should attempt to defend against bias and prejudice due to race, sex, religion, national origin, disability, age, or sexual orientation whether in court, in chambers, or in public.

The judge should not be influenced by public criticism or public approval, whether real or expected, in his/her actions, rulings, or decisions.

The judge, in his/her rulings, does not favor one side over the other or even appear to do so.

### **Avoids ex parte communications:**

The judge should insist that no attorney or any other person discuss a substantive matter regarding a current case with the judge or staff when the other side of the case is not present. If this type of communication does occur, the judge should make a report "on the record" that the communication happened.

If the judge does have communications about a case with only one of the parties, it may not be certain that the judge will need to remove themselves from the case. The person asking the judge to recuse (not be the judge in the case) must reasonably show that because of the one-sided communication the judge is prejudiced or biased, or appears to be prejudiced or biased, in favor or against a party or their attorney.

**Questions to ask yourself while evaluating the integrity standard:**

Does the judge avoid impropriety and the appearance of impropriety?

Does the judge display fairness and impartiality toward all participants?

Does the judge avoid ex parte communications?

Does the judge's manner convey and promote public confidence in his/her integrity?

**Survey Question to consider when evaluating Integrity:**

Application and Knowledge of Law —

Issuing consistent sentences when the circumstances are similar:

Being fair and impartial to both sides of the case:

Consistently applying laws and rules:

Demeanor—

Conducting his/her courtroom in a neutral manner:

## **Legal Knowledge Standard**

Did the judge demonstrate in his/her written opinions and courtroom rulings, that he/she understand and apply court rules, and laws applicable to the specific cases they preside over? The judge demonstrates this through oral and written communication with sufficient clarity that the public can understand what the case is about, what the judge decided after each side had the opportunity to be heard, and the authority that supports the outcome (either sentence or judgment).

Did the judge demonstrate attentiveness to factual and legal issues before the court? Through rulings and written opinions, the judge demonstrates a thorough understanding of what the facts in the case are, how those facts and the law were used to decide or issue the opinion in the case, and what law or authority supports the outcome (either sentence or judgment). The judge should make it clear what the parties are supposed to do next.

Did the judge appropriately apply law to the facts of a case to determine the outcome. Case outcomes are directed by various legal authorities including statutes, past court decisions, and court rules. The judge's opinions and rulings should provide the basis or reason for applying or rejecting legal authority in communicating his/her decisions.

### **Questions to ask yourself while evaluating the legal knowledge standard:**

Does the judge demonstrate through well-reasoned opinions and courtroom rulings an understanding of substantive law and relevant rules of procedure and evidence?

Does the judge demonstrate attentiveness to factual and legal issues?

Does the judge adhere to precedent or clearly explain the legal basis for departing from precedent?

Does the judge appropriately apply statutes or other sources of legal authority in their decisions?

## **Survey Question to consider when evaluating legal knowledge**

### Application and Knowledge of Law —

Being able to identify and analyze relevant facts:

Basing decisions on evidence and argument:

Issuing consistent sentences when the circumstances are similar:

Consistently applying laws and rules:

### Diligence —

Using good judgement in application of relevant law and rules.

### **Communication Standards:**

The judge's communication should be clear so that the parties receiving written or oral communications understand the issues being decided, the reasons for the judge's decision, and what the parties will need to do next or what will happen next.

Communication should reflect thoroughness of findings, clarity of expression, and reasoning along with the application of the law to the facts of the case. In other words, the rulings should contain enough information about the facts of the case and the laws that apply, along with an explanation of how the judge has applied the law to the facts, to explain the result. Final decisions should address the losing party's arguments and explain why they were rejected.

#### **Questions to ask yourself while evaluating communication:**

**Does the judge provide clearly written and understandable opinions, findings of fact, conclusions of law, and orders?**

**Does the judge ask understandable, relevant and pertinent questions during oral arguments, or presentations?**

**Does the judge clearly explain the legal and factual basis for all oral decisions?**

**In a sentencing, does the judge listen to all sides, clearly state the sentence and reason for the sentence, and clearly advise the defendant what is to occur next? (criminal matters only)**

**In a jury trial does the judge explain the process to the jury?  
(Jury trials only)**

**Does the judge ask if the parties understand, have questions, or need clarification about any matters?**

#### **Survey Question to consider when evaluating communication:**

##### **Communications -**

**Making sure all participants understand the proceedings.**

**Providing written communications that are clear, thorough and well reasoned.**

##### **Demeanor—**

**Treating participants with respect.**

## **Judicial Temperament Standard**

The judge should show courtesy and respect to attorneys, parties, court staff and others in the courtroom.

The judge is patient, respectful, and courteous to parties, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity. The judge must require similar conduct of parties, lawyers, court staff, court officials, and others in the judge's courtroom or during other official duties while in the presence of the judge.

A judge can be efficient and businesslike while being patient and deliberate.

When it becomes necessary during a trial for the judge to comment about the conduct or testimony of witnesses, spectators, counsel, or others, the judge should do so outside the presence of the jury, if possible. Any such comment should be in a firm, dignified, and restrained manner, limiting comments and rulings to what is reasonably required for the orderly progress of the trial, and refraining from unnecessary disparagement of persons or issues.

### **Questions to ask yourself while evaluating judicial temperament:**

**Does the judge demonstrate respect toward attorneys, litigants, court staff, and others in the courtroom?**

**Does the judge maintain and require order, punctuality, and appropriate decorum in the courtroom?**

**Does the judge have control over the courtroom?**

### **Survey Question to consider when evaluating judicial temperament:**

#### **Demeanor—**

**Giving proceedings a sense of dignity.**

**Treating participants with respect.**

**Conducting his/her courtroom in a neutral manner.**

#### **Communication—**

**Making sure all participants understand the proceedings.**

## **Administrative Performance Standard (Management)**

The judge is prepared for oral arguments, trials, and hearings, and demonstrates attentiveness to and appropriate control over judicial proceedings;

The judge demonstrates the court is ready to proceed at the scheduled time for any event on the court's docket, regardless of whether the parties are ready to proceed;

The judge should explain any delays that occur and the reason for the delay;

The judge should manage his/her workload and court time effectively and efficiently and require judicial staff to do the same;

The judge should issue opinions, findings of fact, conclusions of law, and orders in a timely manner and without unnecessary delay;

The judge should participate in an equal share of the cases that come into the court. The judge should take responsibility for more than his/her own caseload and should be willing to assist other judges, as needed.

The judge should complete cases within the time standards provided by Chief Justice Directives intended to provide guidelines for the management of cases and case types on each judge's individual docket. When the judge has a percentage of cases outside the established time standards he/she should be able to provide a reasonable explanation for why he/she is unable to complete their case assignments within the prescribed percentage range.

### **Questions to ask yourself while evaluating administrative performance:**

**Is the judge timely in attendance and prepared for hearings?**

**Does the judge explain the reasons for any delays for proceedings that began after a scheduled time?**

**Does the judge issue opinions and orders in a timely manner?**

**Does the judge manage court time effectively and efficiently?**

**Does the judge assist other judges with their workload?**

**Does the judge comply with Directives of the Colorado Supreme Court?**

### **Survey Question to consider when evaluating administrative performance:**

**Diligence —**

**Doing necessary “homework” and being prepared for cases.**

**Being willing to handle cases on the docket even when they are complicated and time consuming**

## **Service to the Legal Profession Standard**

The judge should demonstrate service to the legal profession and the public by participating in service-oriented efforts designed to educate the public about the legal system and work with other legal professionals to improve the legal system and the practice of law.

When choosing which activities to participate in the judge must be careful that participation with a group or organization does not raise concerns of favoritism, bias or the appearance of favoritism or bias.

The judge connects his/her legal knowledge and professionalism to public service activities. In other words, it is the judge's knowledge and professionalism that explains why he/she is appearing or presenting to an audience or at an event.

**Questions to ask yourself while evaluating service to the legal profession:**

**Does the judge participate in service-oriented activities for the legal profession and the public?**

**Does the judge participate in efforts designed to improve the legal system and educate the public?**

Form 2

**Guidelines for Applying Statutory Performance Evaluation Criteria to Colorado Supreme  
Court Justices and Colorado Court of Appeals Judges**

## Table of Contents

I.	Purpose.....	1
II.	Overview of the Colorado Supreme Court and the Colorado Court of Appeals .....	1
III.	Statutory Performance Evaluation Criteria.....	2
	A. Integrity.....	2
	1. Definitions.....	2
	2. Standards.....	3
	3. Measurement Principles.....	4
	B. Legal Knowledge .....	5
	1. Definitions.....	5
	2. Standards.....	6
	3. Measurement Principles.....	6
	C. Communication Skills.....	8
	1. Definitions.....	8
	2. Standards.....	9
	3. Measurement Principles.....	9
	D. Judicial Temperament.....	10
	1. Definitions.....	10
	2. Standards.....	10
	3. Measurement Principles.....	11
	E. Administrative Performance .....	12
	1. Standards.....	12
	2. Measurement Principles.....	13
	F. Service to the Legal Profession and the Public.....	14
	1. Definitions.....	14
	2. Standards.....	15
	3. Measurement Principles.....	15
IV.	Use of Surveys .....	16
	1. Definitions.....	16
	2. Measurement Principles.....	17
V.	Avoiding Racial and Gender Bias.....	17
VI.	Tools for Performing Evaluations.....	17
VII.	Endnotes .....	18

## **I. Purpose**

The purpose of these guidelines is to assist State Commissioners in understanding and uniformly applying the evaluation criteria in section 13-5.5-107, C.R.S. 2017, and the Colorado Rules Governing Commissions on Judicial Performance (R.G.C.J.P.) to Colorado Supreme Court justices and Colorado Court of Appeals judges.

The roles and responsibilities of appellate justices or judges and trial judges differ in marked ways that have important implications in the judicial evaluation process.<sup>1</sup> These guidelines define terms in the statutory performance criteria, and identify appellate judicial performance standards and measurement principles to guide Commissioners in recommending whether a justice or appellate court judge “meets performance standard[s].”<sup>2</sup> The guidelines are based on Colorado law and recognized standards found in authoritative secondary sources, which are referenced in endnotes.

## **II. Overview of the Colorado Supreme Court and the Colorado Court of Appeals**

The Colorado Supreme Court derives its authority from Article VI of the Colorado State Constitution. It is the state’s court of last resort. Its decisions are binding on all other Colorado state courts. The Colorado Supreme Court also has exclusive jurisdiction over the practice of law in Colorado and oversees the State Court Administrator, Board of Continuing Legal Education, Board of Law Examiners, Commission on Judicial Discipline, and Unauthorized Practice of Law Committee. It also has exclusive jurisdiction to promulgate rules governing practice and procedure in civil and criminal actions.

A complete description of the Colorado Supreme Court, including how it decides cases and performs its other functions, is included as Attachment A.<sup>3</sup>

The Colorado Court of Appeals derives its authority from a statute enacted by the General Assembly.<sup>4</sup> This statute directs that judges on the court sit in divisions of three judges to review a wide variety of district court and state agency cases. A complete description of the Colorado Court of Appeals, including how it decides cases and performs its other functions, is included as Attachment B.<sup>5</sup>

Colorado Supreme Court justices and Colorado Court of Appeals judges are appointed by the Governor pursuant to Colorado’s merit selection process. This process is rigorous, focusing on applicants’ qualifications to become a justice or judge as demonstrated through written applications, recommendations from others, and personal interviews.<sup>6</sup>

### III. Statutory Performance Evaluation Criteria

As required by R.G.C.J.P. 12(h), Commissioners must apply the following definitions, standards, and measurement principles when recommending whether a justice or appellate court judge “meets performance standard[s]” for the six statutory performance evaluation criteria found in section 13-5.5-107(1)(a)-(f), C.R.S. 2017. The evaluations “must only include” these six performance evaluation criteria.<sup>7</sup>

The six statutory performance evaluation criteria are integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and public. Section 13-5.5-107(1)(a)-(f) is included as Attachment C.

#### A. Integrity

The first performance evaluation criterion is:

Integrity, including but not limited to whether the justice or judge:

- (I) Avoids impropriety or the appearance of impropriety;
- (II) Displays fairness and impartiality toward all participants; and
- (III) Avoids ex parte communications.<sup>8</sup>

#### 1. Definitions

The Colorado Code of Judicial Conduct (the Code) establishes standards for the ethical conduct of justices and judges. The preamble to the Code states, in part, as follows:

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

The following definitions, which relate to the integrity criterion, are taken from the Code:

“Integrity” means “probity, fairness, honesty, uprightness, and soundness of character.”<sup>9</sup>

“Impropriety” includes “conduct that violates the law, court rules, or provisions of [the Code], and conduct that undermines a judge’s independence, integrity or impartiality.”<sup>10</sup>

“Appearance of impropriety” means “conduct that would create in reasonable minds a perception that the judge violated [the] Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.”<sup>11</sup>

“Independence” means “a judge’s freedom from influence or controls other than those established by law.”<sup>12</sup>

“Impartiality” means “absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.”<sup>13</sup>

## 2. Standards

A justice or judge satisfies the integrity criterion as follows:

- a. The justice or judge interprets and applies the law without regard to whether he or she approves or disapproves of the law in question.<sup>14</sup>
- b. The justice or judge writes opinions that fairly consider and address the issues raised by the parties<sup>15</sup> based on the controlling law as applied to the particular facts of the case and is attentive to the arguments of all parties during oral argument.<sup>16</sup>
- c. The justice or judge disqualifies himself or herself from cases when required by the Code.<sup>17</sup>
- d. The justice or judge does not otherwise engage in conduct that constitutes “impropriety” or “appearance of impropriety” as defined above.

- e. The justice or judge does not “initiate, permit, or consider ex parte communications, or consider other communications made to the [justice or] judge outside the presence of the parties or their lawyers, concerning a pending or impending matter,”<sup>18</sup> subject to specific exceptions in the Code.<sup>19</sup>
- f. The justice or judge does not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court nor make any nonpublic statement that might substantially interfere with a fair trial or hearing.<sup>20</sup>

### 3. Measurement Principles

To evaluate the integrity criterion, the Commission should review and consider the following: (1) a justice’s or judge’s written opinions to determine whether the opinions address the issues raised by all parties; (2) the justice’s or judge’s conduct during oral argument to determine whether the justice or judge is attentive to the arguments of all parties during the oral argument;<sup>21</sup> (3) the justice’s or judge’s self-evaluation explaining how he or she decides whether to disqualify himself or herself from hearing particular cases; and (4) survey results which may highlight areas needing further investigation by the Commission.<sup>22</sup> The Commission must also consider the justice’s or judge’s personal interview with the Commission.

In addition, the commission may consider: (a) comments from the public, bar and others, not received from survey questions; (b) public or private comments made by the justice or judge.

In its evaluation, the Commission should also be mindful of the following:

- Comments in a survey response that are not specific about a justice’s or judge’s integrity, or that express mere disagreement with the outcome of a case, are generally insufficient to show that he or she lacked integrity, fairness, or impartiality when deciding the case.<sup>23</sup>
- The justice or judge should hear and decide assigned matters, except when disqualification is required by the Code.<sup>24</sup>
- There are many reasons why a justice or judge might ask one party more questions or more difficult questions than the other party during oral argument. For example, a party might be proposing a new legal rule or an extension of an old one, or a party might need to clarify its position based on the record. So, asking one party more questions or more difficult

questions than the other party at oral argument does not, by itself, demonstrate partiality or a lack of judicial integrity.<sup>25</sup>

- Good faith judicial errors, or reasonable accommodations by justices or judges to ensure that pro se litigants receive an opportunity to have their matters fairly heard, do not show a lack of judicial integrity, impartiality, or fairness.<sup>26</sup>
- The statutory criterion “avoids ex parte communications” has minimal significance in reviewing the performance of justices and appellate court judges because, unlike trial judges, they have little direct contact with parties or their attorneys.<sup>27</sup>

Use of these measurement principles must not be viewed as divesting any commissioner of his or her ultimate authority to decide whether a justice or judge meets the minimum performance standards, as established by the state and district commissions. 13-5.5-106 (3)(b) C.R.S. 2017

## **B. Legal Knowledge**

The second performance evaluation criterion is:

Legal knowledge, including but not limited to whether the justice or judge:

- (I) Demonstrates, through well-reasoned opinions and courtroom conduct, an understanding of substantive law and relevant rules of procedure and evidence;
- (II) Demonstrates, through well-reasoned opinions and courtroom conduct, attentiveness to factual and legal issues before the court; and
- (III) Adheres to precedent or clearly explains the legal basis for departure from precedent and appropriately applies statutes or other sources of legal authority.<sup>28</sup>

### 1. Definitions

A “well-reasoned” appellate opinion (a) describes the parties’ arguments and positions; (b) sets out the pertinent facts, without unnecessary detail, and demonstrates knowledge of relevant portions of the appellate record and the case history; (c) discusses and analyzes the applicable legal principles, including relevant statutes, rules, and case law; (d) identifies and follows an applicable standard of review; (e) explains the basis of the court’s decision (i.e., logically shows, and describes, how B follows from A); (f) decides only the issues that need to be decided in the case before the court; and (g) if necessary to guide further proceedings, provides clear direction to the

court or administrative body below.<sup>29</sup> (Opinions often use legal terms of art. Some of these terms are defined in Attachment D.)

“Courtroom conduct” means, for justices and appellate court judges, conduct during oral argument.

“Precedent” means a decided case that furnishes a basis for determining later cases involving similar facts or issues.<sup>30</sup>

“Adheres to precedent” means using the principles established in earlier cases to decide new cases that have similar facts and raise similar legal issues.<sup>31</sup>

## 2. Standards

A justice or judge satisfies the legal knowledge criterion as follows:

- a. The justice or judge writes well-reasoned opinions as defined above. Well-reasoned appellate opinions come in many forms. Some cases involve more complex facts or more difficult or numerous legal issues and contentions. These cases may require more extensive discussion and explanation. Conversely, some cases involve few or very straightforward issues governed by established law. Therefore, an opinion’s length or brevity should not, by itself, dictate whether it is considered “well-reasoned.”<sup>32</sup>
- b. In some appeals, deciding a particular issue may effectively resolve the case and therefore obviate the need to address and decide other factual and legal issues.<sup>33</sup> Therefore, in these circumstances, the justice or judge who writes a well-reasoned opinion explains why it does not address every issue the parties have raised in their briefs. A judge should resolve enough issues before the court to ensure that the parties can achieve a full resolution of their claims or issues, as efficiently as possible, within the court system.
- c. The justice or judge “adheres to precedent or clearly explains the legal basis for departure from precedent.”<sup>34</sup>
- d. At oral argument, the justice or judge demonstrates understanding of substantive law and attentiveness to issues before the court.

## 3. Measurement Principles

To evaluate the legal knowledge criterion, the Commission should review and consider the following: (a) a justice’s or judge’s written opinions to determine whether they are well-reasoned according to the above definition; (b) the justice’s or judge’s questioning during oral argument; (c) the justice’s or judge’s self-evaluation explaining how he or she drafts opinions and prepares

for oral argument; and (d) survey results which may highlight areas needing further investigation.<sup>35</sup> The Commission must also consider the justice's or judge's personal interview with the Commission.

In addition, the commission may consider: (a) comments from the public, bar and others, not received from survey questions; (b) public or private comments made by the justice or judge.

In its evaluation, the Commission should also be mindful of the following:

- When evaluating written opinions, Commissioners should review a sufficient sample of a justice's or a judge's work (at least five opinions) and should obtain input from a broad group of stakeholders.<sup>36</sup> Laypersons may rely on attorney Commissioners, who are generally better positioned to evaluate a justice's or a judge's legal knowledge described by the stated statutory criteria.<sup>37</sup>
- Unpublished opinions from the Colorado Court of Appeals, while held to the same standard, may properly contain more abbreviated descriptions of relevant facts and procedural history, descriptions of applicable law, and legal analysis.<sup>38</sup>
- In deciding whether a justice's or judge's opinions are well-reasoned, or whether the justice or judge otherwise displays appropriate legal knowledge, evaluators generally should not consider the merits of the issues addressed in the opinion, including any agreement or disagreement with the case's outcome.<sup>39</sup>
- The Colorado Supreme Court sometimes overrules or modifies prior precedent. It is proper for the Court to do so. The Court should, however, explain its reasons for doing so.
- Commissioners should be aware that Colorado Court of Appeals divisions are not required to follow prior decisions by other divisions of the Colorado Court of Appeals, but must follow governing Colorado Supreme Court decisions, as well as those of the United States Supreme Court.<sup>40</sup> If Court of Appeals divisions chooses not to follow prior decisions by other divisions, it should thoroughly explain the disagreement.
- When evaluating oral argument for the purposes of measuring legal knowledge, Commissioners should watch the dialogue between the justices or judges and counsel. The justices or judges, through their questioning,

can direct counsel's attention to a particular area of factual or legal concern.<sup>41</sup>

- Brevity in a justice's or a judge's questioning during oral argument (or even an absence of questioning) should not be construed as a lack of legal knowledge. This is so for a number of reasons, including but not limited to: (1) another justice or judge asked a relevant question first; (2) the case involved settled law and undisputed facts; and (3) the briefing adequately answered all of the legal and factual questions.

Use of these measurement principles must not be viewed as divesting any commissioner of his or her ultimate authority to decide whether a justice or judge meets the minimum performance standards, as established by the state and district commissions. 13-5.5-106 (3)(b) C.R.S. 2017

### **C. Communication Skills**

The third performance evaluation criterion is:

Communication skills, including but not limited to whether the justice or judge:

- (I) Presents clearly written and understandable opinions, findings of fact, conclusions of law, and orders; and
- (II) Presents clearly stated and understandable questions or statements during oral arguments or presentations.<sup>42</sup>

#### 1. Definitions

A "clearly written and understandable opinion" (a) describes the issues and the facts necessary to decide the case;<sup>43</sup> (b) states conclusions that are clear, concise, readily understandable, and unambiguous;<sup>44</sup> (c) to the extent practicable, is written in a way that the parties to the case can understand the opinion's basic logic and reasoning;<sup>45</sup> and (d) displays generally accepted characteristics of clear, understandable writing, including proper sentence structure and grammar.<sup>46</sup>

"Clearly stated and understandable questions or statements during oral arguments" means questions or statements that counsel should reasonably be able to comprehend and then answer. These might include questions or statements concerning the facts of the case, the appellate record, the applicable law and how it applies under the circumstances, and what should be done about

conflicting legal principles.<sup>47</sup> These might also include hypothetical questions to help clarify legal issues or ascertain the possible future implications of a particular decision.

## 2. Standards

A justice or judge satisfies the communications skills criterion as follows:

- a. The justice or judges writes clear and understandable opinions as defined above.
- b. The justice or judge asks clear and understandable questions during oral arguments as defined above. During oral arguments, justices or judges should be willing to rephrase or clarify questions or statements on request.

## 3. Measurement Principles

To evaluate the communication skills criterion, the Commission should review and consider the following: (a) a justice's or judge's written opinions to determine whether they are clearly-written and understandable according to the above definition; (b) the justice's or judge's questioning and statements during oral argument; (c) the justice's or judge's self-evaluation explaining how he or she drafts an opinion and prepares for oral argument; and (d) survey results which may highlight areas needing further investigation.<sup>48</sup> The Commission must also consider the justice's or judge's personal interview with the Commission.

In addition, the commission may consider: (a) comments from the public, bar and others, not received from survey questions; (b) public or private comments made by the justice or judge.

In its evaluation, the Commission should also be mindful of the following:

- When evaluating a justice's or a judge's written opinions, Commissioners should review a sufficient sample of the justice's or judge's work (at least five opinions) and should obtain input from a broad group of stakeholders.<sup>49</sup> Non-attorney Commissioners are uniquely able to assess whether an opinion's basic logic and reasoning are clear and understandable to a layperson.<sup>50</sup>

Use of these measurement principles must not be viewed as divesting any commissioner of his or her ultimate authority to decide whether a justice or judge meets the minimum performance standards, as established by the state and district commissions. 13-5.5-106 (3)(b) C.R.S. 2017

## D. Judicial Temperament

The fourth performance evaluation criterion is:

Judicial temperament, including but not limited to whether the justice or judge:

- (I) Demonstrates courtesy toward attorneys, litigants, court staff, and others in the courtroom; and
- (II) Maintains and requires order, punctuality, and appropriate decorum in the courtroom.<sup>51</sup>

### 1. Definitions

“Judicial temperament” means a justice’s or a judge’s demeanor.<sup>52</sup>

The Code provision addressing demeanor states that

- (A) A judge shall require order and decorum in proceedings before the court.
- (B) A judge shall be patient, dignified, and courteous to litigants, . . . lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge’s direction and control.<sup>53</sup>

### 2. Standards

A justice or judge satisfies the judicial temperament criterion as follows:

- a. The justice or judge at oral argument displays the above-listed qualities by attentively listening to the parties’ arguments and by not demonstrating unreasonable irritation or impatience with counsel.<sup>54</sup>
- b. At oral arguments and in written opinions, the justice or judge is attentive to and appropriately respectful of the differing opinions of colleagues.
- c. Concerning “order, punctuality, and appropriate decorum,” oral arguments are scheduled at a predetermined time and the parties receive a set amount of time to present their arguments. A justice or judge should appear on time for argument and respect, within reason, the applicable time limits for the argument. The responsibility for maintaining order, punctuality, and

appropriate decorum during oral argument falls primarily on the Chief Justice or the presiding judge of the division.

- d. A justices or judges' comments should not be limited to statements made in the courtroom, but include non-courtroom statements that are directed towards attorneys, litigants, court staff, and others who appear or are likely to appear in the justice's or judge's courtroom.

### 3. Measurement Principles

To evaluate the judicial temperament criterion, the Commission should review and consider the following: (a) the justice's or judge's questioning and statements during oral argument; (b) the justice's or judge's written opinions, particularly dissenting and concurring opinions; and (c) survey results, including survey results of court staff, which may highlight areas needing further investigation. This performance criterion is best evaluated by reviewing the justice's or judge's conduct during oral arguments.<sup>55</sup> The Commission must also consider the justice's or judge's personal interview with the Commission.

In addition, the commission may consider: (a) comments from the public, bar and others, not received from survey questions; (b) public or private comments made by the justice or judge.

In its evaluation, the Commission should also be mindful of the following:

- In evaluating a justice's or a judge's temperament at oral argument, keep in mind that a primary purpose of appellate oral argument is to allow justices and judges to seek clarification of parties' positions and to ask counsel about difficult legal issues or other particular areas of concern.<sup>56</sup> This requires a dialogue. Therefore, a justice or judge asking numerous or difficult questions of counsel should not, by itself, be considered discourteous or poor temperament.<sup>57</sup>
- Although justices and judges should always be courteous and respectful, they are entitled to ask attorneys to answer their questions. They are also entitled to interrupt counsel with questions.

Use of these measurement principles must not be viewed as divesting any commissioner of his or her ultimate authority to decide whether a justice or judge meets the minimum performance standards, as established by the state and district commissions. 13-5.5-106 (3)(b) C.R.S 2017

## E. Administrative Performance

The fifth performance evaluation criterion is:

Administrative performance, including but not limited to whether the justice or judge:

- (I) Demonstrates preparation for oral arguments . . . as well as attentiveness to and appropriate control over judicial proceedings;
- (II) Manages workload and court time effectively and efficiently;
- (III) Issues opinions . . . and orders in a timely manner and without unnecessary delay;
- (IV) Participates in a proportionate share of the court’s workload, takes responsibility for more than his or her own caseload, and is willing to assist other justices or judges; and
- (V) Understands and complies, as necessary, with directives of the Colorado Supreme Court.<sup>58</sup>

### 1. Standards

A justice or judge satisfies the administrative performance criterion as follows:

- a. A justice or judge prepares for oral argument in many ways, including reading the parties’ briefs, reviewing or researching relevant law, and reviewing relevant portions of the appellate record, as necessary. Colorado Court of Appeals judges also draft and review proposed predisposition memoranda.
- b. Appropriate control over judicial proceedings is demonstrated by standards described in the previous section addressing judicial temperament.
- c. Colorado Supreme Court justices have relatively equal workloads, but the workload can vary based upon the complexity of cases assigned, authoring concurrences or dissents, and other administrative responsibilities. A justice “participates in a proportionate share of the court’s workload” by timely circulating majority opinions as assigned by the Chief Justice, timely circulating concurrences and dissents, and carefully reviewing opinions authored by other justices.

- d. Colorado Court of Appeals judges have relatively equal workloads based on the court's established procedures for assigning cases and other administrative duties.<sup>59</sup> A judge generally "participates in a proportionate share of the court's workload" by deciding those assigned cases and performing those assigned duties.
- e. A Colorado Court of Appeals judge "takes responsibility for more than his or her own caseload" by undertaking additional case assignments or administrative responsibilities. This includes, but is not limited to, sitting on special divisions, participating in various court committees, reviewing opinions circulated for publication, or participating in other special administrative projects.
- f. A Colorado Supreme Court justice "takes responsibility for more than his or her own caseload" by undertaking additional case assignments or administrative responsibilities. This includes, but is not limited to, participating in various court committees, participating in activities related to the management of the judicial branch, accepting responsibility for reviewing additional petitions for certiorari and emergency petitions, participating in activities related to judicial education, serving as ex-officio chairs of nominating commissions, and otherwise representing the court at public functions.
- g. A justice or judge demonstrates willingness to assist other justices or judges by being available to discuss legal issues, offering to assist colleagues with research or legal analysis, prioritizing writing separate opinions so that majority opinions are not unnecessarily delayed, offering to take over the writing of a case when necessary, and by generally fostering a productive work environment.<sup>60</sup>

## 2. Measurement Principles

To evaluate the administrative performance criterion, the Commission should review and consider the following: (a) the justice's or judge's questioning and statements during oral argument; (b) cases on desk reports; (c) survey results; (d) public comments; and (e) a justice's or judge's self-evaluation. The Commission must also consider the justice's or judge's personal interview with the Commission. And the Commission must consider a report from the Chief Justice or Chief Judge.

In its evaluation, the Commission should also be mindful of the following:

- An authoring justice’s opinion can be justifiably delayed after assignment to the justice for several reasons, including but not limited to: (1) unusually numerous, complex, novel, or difficult issues; (2) incomplete appellate records requiring supplementation; (3) supplemental briefing by the parties; and (4) dissenting or specially concurring opinions prepared by other justices.
  
- An authoring judge’s opinion can be justifiably delayed after assignment to the judge for several reasons, including but not limited to: (1) unusually numerous, complex, novel, or difficult issues; (2) incomplete appellate records requiring supplementation; (3) limited remands to the trial court; (4) supplemental briefing by the parties; (5) dissenting or specially concurring opinions prepared by other judges on the division; and (6) bankruptcy stays.
  
- Brevity in a justice’s or a judge’s questioning during oral argument (or even an absence of questioning) should not be construed as a lack of preparation. This is so for a number of reasons, including but not limited to: (1) another justice or judge asked a relevant question first; (2) the case involved settled law and undisputed facts; and (3) the briefing adequately answered all of the legal and factual questions.

Use of these measurement principles must not be viewed as divesting any commissioner of his or her ultimate authority to decide whether a justice or judge meets the minimum performance standards, as established by the state and district commissions. 13-5.5-106 (3)(b) C.R.S 2017

## **F. Service to the Legal Profession and the Public**

The sixth performance evaluation criterion is:

Service to the legal profession and the public by participating in service-oriented efforts designed to educate the public about the legal system and improve the legal system.<sup>61</sup>

### 1. Definitions

“Service to the legal profession” includes, but is not limited to, a justice or judge participating in (a) programs designed to educate attorneys and judges; (b) Colorado Supreme Court standing or ad hoc committees; (c) bar association committees; (d) inns of court; and (e) other law-related organizations.

“Service to the public” includes, but is not limited to, a justice or judge participating in (a) moot court, mock trial, and similar programs; (b) programs designed to educate the public about the legal system and ways to improve the legal system; and (c) organizations devoted to promoting the fairness, impartiality, and excellence of the legal system, as well as the rule of law.

## 2. Standards

A justice or judge satisfies the service to the legal profession and the public criterion by participating in an activity or activities that fall within the above definitions.

## 3. Measurement Principles

To evaluate the service to the legal profession and the public criterion, the Commission should (a) review a justice’s or judge’s self-evaluation, (b) consider a report from the Chief Justice or Chief Judge, (c) consider the justice’s or judge’s personal interview with the Commission, and (d) consider comments from other justices or judges, attorneys, and citizens.

Examples of activities include, but are not limited to, the following:

- continuing legal education programs;
- the annual judicial conference and other judicial education and training programs;
- Colorado Supreme Court standing or ad hoc committees;
- the “Courts in the Community” program;
- the district court outreach program;
- moot court and mock trial programs;
- bar association programs and committees;
- inns of court;
- access to justice programs;
- publishing articles;
- formal or informal mentoring;
- supervising interns;

- access to justice programs or activities;
- participating in activities of the “Colorado Judicial Institute” and other similar organizations;
- “Our Courts,” “We the People,” and other similar educational programs; and
- teaching classes or making presentations about the law at law schools, colleges, other schools, or adult education programs.

Use of these measurement principles must not be viewed as divesting any commissioner of his or her ultimate authority to decide whether a justice or judge meets the minimum performance standards, as established by the state and district commissions. 13-5.5-106 (3)(b) C.R.S 2017

#### **IV. Use of Surveys**

The State Commission must “determine the validity of completed surveys . . . and prepare alternatives to surveys where sample populations are inadequate to produce valid results.”<sup>62</sup>

##### 1. Definitions

“Validity” refers to the accuracy of the measurement. Valid surveys are based on data collection methods that obtain adequate sample representation of the population.

“Surveys” collect perceptions about justices and judges from other justices and appellate court judges, trial judges, attorneys, and others.<sup>63</sup> In assessing judicial performance in Colorado, surveys are performed using a census rather than sample approach in order to collect the maximum amount of input from those who come in contact with Colorado courts.<sup>64</sup>

“Adequate sample representation” in this instance means a sufficient number of responses to reasonably represent the opinions of that particular group which comes in contact with the court.

“Inadequate sample populations” in this instance refers to a set of survey responses that are too few in number to provide a reasonable representation of opinions of the full population of potential respondents.

## 2. Measurement Principles

Survey responses can provide helpful information and play a role in the judicial evaluation process. Surveys help inform Commissioners of evaluation criteria needing further investigation. Surveys also have certain inherent limitations and have the potential to produce biased or unreliable results.

65

In its evaluation, the Commission should also be mindful of the following:

- Judicial performance surveys generally measure the perceptions of the person responding to the survey and as such are normally insufficient by themselves to determine whether the justice or the judge “meets judicial performance standards.”
- Survey response reports that publicly compare a particular justice or judge to other justices or judges and that report only raw numbers (or percentages) can be misleading if the differences are statistically insignificant.
- Commissioners should be wary of various forms of bias in considering survey response information. These include non-response bias (too few responses), unrepresentative responses (volunteer respondents only), gender and racial bias.

## **V. Avoiding Racial and Gender Bias**

The Commission should, as necessary, account for various studies and data, including studies about surveys performed in Colorado, showing the presence of gender and racial bias in judicial performance surveys and responses.<sup>66</sup>

The Commission should continue to take steps to attempt to minimize possible bias in the data it receives. These steps could include (1) assuring that the Commission’s data collection effort is broad and deep, with a variety of data sources, and that committees synthesizing and evaluating the data are diverse; (2) ensuring that survey instruments represent “best practices” in survey design to reduce opportunities for bias; and (3) educating the bench, bar, court staff, and the public broadly on bias and ways it can be addressed and minimized.<sup>67</sup>

## **VI. Tools for Performing Evaluations**

For each justice or judge being evaluated, each Commissioner must complete the Appellate Court Standards Matrices based on these Guidelines. *See* Attachment E. In evaluating written opinions

and oral arguments, Commissioners may find the Oral Argument Review Worksheets and Opinion Review Worksheets helpful. *See* Attachments F and G.

## VII. Endnotes

---

<sup>1</sup> *See* Nat'l Conference on Evaluating Appellate Judges: Preserving Integrity, Maintaining Accountability, Post-Conference Report, Inst. for the Advancement of the American Legal Sys. 5 (2011); *see also* Jean E. Dubofsky, *Judicial Performance Review: A Balance Between Judicial Independence and Public Accountability*, 34 Fordham Urb. L.J. 315, 328-29 (2007) (noting that many required personal qualities and skills of trial and appellate judges are significantly different and listing some of those differences).

<sup>2</sup> § 13-5.5-108(3), C.R.S. 2017.

<sup>3</sup> Additional information about the Colorado Supreme Court is available at [https://www.courts.state.co.us/Courts/Supreme\\_Court/Index.cfm](https://www.courts.state.co.us/Courts/Supreme_Court/Index.cfm) and [https://www.courts.state.co.us/Courts/Supreme\\_Court/Protocols.cfm](https://www.courts.state.co.us/Courts/Supreme_Court/Protocols.cfm).

<sup>4</sup> § 13-4-101, C.R.S. 2017.

<sup>5</sup> Additional information about the Colorado Court of Appeals is available at [www.courts.state.co.us/Courts/Court\\_Of\\_Appeals/Index.cfm](http://www.courts.state.co.us/Courts/Court_Of_Appeals/Index.cfm) and [https://www.courts.state.co.us/Courts/Court\\_Of\\_Appeals/Protocols.cfm](https://www.courts.state.co.us/Courts/Court_Of_Appeals/Protocols.cfm).

<sup>6</sup> Additional information about Colorado's judicial selection process is available at [https://www.courts.state.co.us/Courts/Supreme\\_Court/Nominating.cfm](https://www.courts.state.co.us/Courts/Supreme_Court/Nominating.cfm).

<sup>7</sup> § 13-5.5-107(1), C.R.S. 2017.

<sup>8</sup> § 13-5.5-107(1)(a), C.R.S. 2017.

<sup>9</sup> Colorado Code of Judicial Conduct (C.J.C.), Terminology, defining "[i]ntegrity."

<sup>10</sup> C.J.C. Terminology, defining "[i]mpropriety."

<sup>11</sup> C.J.C. 1.2 cmt. 5.

<sup>12</sup> C.J.C. Terminology, defining "[i]ndependence."

<sup>13</sup> C.J.C. Terminology, defining "impartiality."

<sup>14</sup> *See* C.J.C. 2.2 cmt. 2.

<sup>15</sup> *See* Recommended Tools for Evaluating Appellate Judges, Inst. for the Advancement of the American Legal Sys. 21 (2013).

<sup>16</sup> *See id.*

<sup>17</sup> *See* C.J.C. 2.11; *see also* C.R.C.P. 97.

<sup>18</sup> C.J.C. 2.9(A).

<sup>19</sup> C.J.C. 2.9(A)(1)-(5).

<sup>20</sup> C.J.C. 2.10(A).

<sup>21</sup> *See* Recommended Tools for Evaluating Appellate Judges, *supra* note 15, at 21.

<sup>22</sup> *See id.* at 4, 21, 24, 27.

<sup>23</sup> *See People in Interest of S.G.*, 91 P.3d 443, 447 (Colo. App. 2004) (noting that a judge's ruling on a legal issue is not a proper basis for disqualification).

<sup>24</sup> C.J.C. 2.7.

---

<sup>25</sup> See Joyce J. George, *Judicial Opinion Writing Handbook* 339-40, 346-347 (5th ed. 2007) (describing the purpose of appellate oral argument and the judge's role in asking questions).

<sup>26</sup> C.J.C. 2.2 cmts. 3, 4; see also C.J.C. 2.6 cmt. 2.

<sup>27</sup> See Nat'l Conference on Evaluating Appellate Judges, *supra* note 1, at 6 (noting the "significant difference in a trial judge's versus an appellate judge's exposure to the parties and counsel").

<sup>28</sup> § 13-5.5-107(1)(b), C.R.S. 2017.

<sup>29</sup> See An Opinion on Opinions, Report of the IAALS Task Force on State Appellate Court Opinion Review, Inst. for the Advancement of the American Legal Sys. 6 (2012); Recommended Tools for Evaluating Appellate Judges, *supra* note 15, at 14-16. For additional information about logic in opinions or in legal writing generally, see also Antonin Scalia & Brian A. Garner, *Making Your Case: The Art of Persuading Judges* 41-43, 46-48 (2008); Ruggero J. Aldisert, *Opinion Writing* 130-138 (3d ed. 2012).

<sup>30</sup> Black's Law Dictionary 1295 (9th ed. 2009).

<sup>31</sup> United States Courts glossary of terms. UScourts.gov/glossary.

<sup>32</sup> See Aldisert, *supra* note 29, at 122 (describing different outlines for drafting "simple" opinions and "more sophisticated" opinions).

<sup>33</sup> See *Chittenden v. Colo. Bd. of Soc. Work Exam'rs*, 2012 COA 150, ¶ 9 ("We address these questions first because we conclude that they are dispositive of this appeal.").

<sup>34</sup> § 13-5.5-107(1)(b)(III), C.R.S. 2017.

<sup>35</sup> See Recommended Tools for Evaluating Appellate Judges, *supra* note 15, at 4-5, 14-30.

<sup>36</sup> See An Opinion on Opinions, *supra* note 29, at 2; § 13-5.5-105(2)(d)(I), C.R.S. 2017 (describing persons affected by justices and judges, including but not limited to: attorneys; jurors; represented and unrepresented litigants; law enforcement personnel; attorneys within the district attorneys' and public defenders' offices; court employees; court interpreters; probation office employees; employees of social services departments; and crime victims).

<sup>37</sup> See An Opinion on Opinions, *supra* note 29, at 3; David C. Brody, *The Use of Judicial Performance Evaluations to Enhance Judicial Accountability, Judicial Independence, and Public Trust*, 86 Denv. U. L. Rev. 115, 152 (2008) (noting particular importance of "having only individuals with legal training and experience evaluate a judge's legal ability").

<sup>38</sup> See Aldisert *supra* note 29, at 17.

<sup>39</sup> An Opinion on Opinions, *supra* note 29, at 3; American Bar Ass'n Guidelines for the Evaluation of Judicial Performance with Commentary 7 (2005) ("[E]valuators must be cautioned to disregard their personal feelings about a judge's decisions. These criteria measure knowledge of the law; they do not measure the extent to which the evaluator and the judge share similar legal philosophies or ideologies.").

<sup>40</sup> See *In re Estate of Ramstetter*, 2016 COA 81, ¶ 40 (Colorado Court of Appeals is bound to follow Colorado Supreme Court precedent); *Monez v. Reinertson*, 140 P.3d 242, 245 (Colo. App. 2006) (Colorado Court of Appeals must follow the United States Supreme Court's interpretation of federal law).

<sup>41</sup> See George, *supra*, note 25, at 340.

<sup>42</sup> See § 13-5.5-107(1)(c), C.R.S. 2017.

<sup>43</sup> See An Opinion on Opinions, *supra* note 29, at 6 (listing model opinion review criteria); see also Roger A. Hanson, *Appellate Court Performance Standards and*

---

*Measures* 6, 47 (Natl. Ctr. for St. Courts & App. Ct. Performance Standards Comm'n 1999).

<sup>44</sup> See *id.*

<sup>45</sup> See *id.*; see also Aldisert, *supra* note 29, at 23 (stating that the polestar should be whether “the lay parties to the lawsuit understand what is being said” and that “[a]ll is lost if the parties do not know why you did what you did”).

<sup>46</sup> See Richard C. Wydick, *Plain English for Lawyers* 4 (Carolina Academic Press 5<sup>th</sup> Ed. 2005) (noting that “good legal writing should not differ, without good reason, from ordinary well-written English”); see also Aldisert, *supra* note 29, at 274-76.

<sup>47</sup> See George *supra* note 25, at 345-46

<sup>48</sup> See *supra*, note 35.

<sup>49</sup> See *supra*, note 36.

<sup>50</sup> See An Opinion on Opinions, *supra* note 29, at 3.

<sup>51</sup> § 13-5.5-107(1)(d), C.R.S. 2017.

<sup>52</sup> See Recommended Tools for Evaluating Appellate Judges, *supra* note 15, at 21, 24, 27, 29 (characterizing this performance factor as “Temperament/Demeanor”).

<sup>53</sup> C.J.C. 2:8(A) and (B).

<sup>54</sup> See George, *supra* note 25, at 748; see also Recommended Tools for Evaluating Appellate Judges, *supra* note 15, at 21 (whether a judge is attentive to differing opinions of colleagues during oral argument is a factor in evaluating temperament and demeanor).

<sup>55</sup> See American Bar Ass’n Guidelines, *supra* note 39, at 9 (noting that at the appellate level, evaluation of professionalism and temperament is “for the most part, limited to oral argument”).

<sup>56</sup> See George, *supra* note 25, at 339-40, 345-46.

<sup>57</sup> See *id.* at 345-47.

<sup>58</sup> § 13-5.5-107(1)(e), C.R.S. 2017.

<sup>59</sup> See Attachment B.

<sup>60</sup> See American Bar Ass’n Guidelines, *supra* note 39, at 10 (noting that appellate judges almost always work on panels with other judges and “must freely and effectively exchange views with other judges and negotiate differences that arise” to help promote a productive work environment).

<sup>61</sup> § 13-5.5-107(1)(f), C.R.S. 2017.

<sup>62</sup> § 13-5.5-105(2)(e), C.R.S. 2017.

<sup>63</sup> See Recommended Tools for Evaluating Appellate Judges, *supra* note 15, at 2, 4, 19-26.

<sup>64</sup> See Inst. for the Advancement of the Am. Legal Sys., *Leveling the Playing Field: Gender, Ethnicity, and Judicial Performance Evaluation* (2012), available at [http://iaals.du.edu/sites/default/files/documents/publications/iaals\\_level\\_the\\_playing\\_field.pdf](http://iaals.du.edu/sites/default/files/documents/publications/iaals_level_the_playing_field.pdf); see also Rebecca D. Gill & Kenneth J. Retzl, *Implicit Gender Bias in State-Sponsored Judicial Performance Evaluations: A Preliminary Analysis of Colorado’s JPE System, 2002-2012* (2013); Rebecca D. Gill, Sylvia R. Lazos & Mallory M. Waters, *Are Judicial Performance Evaluations Fair to Women and Minorities? A Cautionary Tale from Clark County, Nevada*, 45 *Law & Soc’y Rev.* 731 (2011).

<sup>65</sup> See Inst. for the Advancement of the Am. Legal Sys., *Leveling the Playing Field: Gender, Ethnicity, and Judicial Performance Evaluation* (2012), available at [http://iaals.du.edu/sites/default/files/documents/publications/iaals\\_level\\_the\\_playing\\_field.pdf](http://iaals.du.edu/sites/default/files/documents/publications/iaals_level_the_playing_field.pdf); see also Rebecca D. Gill & Kenneth J. Retzl, *Implicit Gender Bias in State-Sponsored Judicial Performance Evaluations: A Preliminary Analysis of*

---

*Colorado's JPE System, 2002-2012* (2013); Rebecca D. Gill, Sylvia R. Lazos & Mallory M. Waters, *Are Judicial Performance Evaluations Fair to Women and Minorities? A Cautionary Tale from Clark County, Nevada*, 45 *Law & Soc'y Rev.* 731 (2011).

<sup>66</sup> See Inst. for the Advancement of the Am. Legal Sys., *Leveling the Playing Field: Gender, Ethnicity, and Judicial Performance Evaluation* (2012), available at [http://iaals.du.edu/sites/default/files/documents/publications/iaals\\_level\\_the\\_playing\\_field.pdf](http://iaals.du.edu/sites/default/files/documents/publications/iaals_level_the_playing_field.pdf); see also Rebecca D. Gill & Kenneth J. Retzl, *Implicit Gender Bias in State-Sponsored Judicial Performance Evaluations: A Preliminary Analysis of Colorado's JPE System, 2002-2012* (2013); Rebecca D. Gill, Sylvia R. Lazos & Mallory M. Waters, *Are Judicial Performance Evaluations Fair to Women and Minorities? A Cautionary Tale from Clark County, Nevada*, 45 *Law & Soc'y Rev.* 731 (2011).

<sup>67</sup> See *Leveling the Playing Field*, *supra* note 66, at 30-32 (setting forth detailed recommendations).

**An Overview of the Colorado Supreme Court\***

The Supreme Court is composed of seven justices who serve ten-year terms. The Chief Justice is selected from the membership of the body and serves at the pleasure of a majority of the justices. The Chief Justice also serves as the executive head of the Colorado Judicial System and is the ex-officio chair of the Supreme Court Nominating Commission. The Chief Justice appoints the Chief Judge of the Court of Appeals and the Chief Judge of each of the state's 22 judicial districts and is vested with the authority to assign judges (active or retired) to perform judicial duties.

Colorado's attorneys are licensed and disciplined by the Supreme Court. The court's attorney regulation system, funded by attorney registration fees, polices the profession. In addition, the court oversees the State Court Administrator, Board of Continuing Legal Education, Board of Law Examiners, Commission on Judicial Discipline, and Unauthorized Practice of Law Committee.

**Jurisdiction and Caseload**

The Colorado Supreme Court is the state's appellate court of last resort. The Court has both original and discretionary appellate jurisdiction. Most appeals are initially taken to the Colorado Court of Appeals, or a District Court sitting as an appellate court in a case initially filed in the County Court, with the Supreme Court retaining discretionary jurisdiction to review decisions of that court.

The Supreme Court generally does not grant discretionary review simply to correct an erroneous decision that will affect only the parties to that case. Instead, because the Court's primary role in reviewing such decisions is to set precedent that develops and clarifies the law on important issues of broad impact, it grants review in a small percentage of cases. The Court has no set number of certiorari petitions it will grant, but it typically grants less than ten percent of the petitions filed each year. In addition to certiorari jurisdiction, the Supreme Court has discretionary jurisdiction to consider original proceeding petitions under Colorado Appellate Rule 21; petitions for habeas corpus review; certified questions from the federal courts; and a number of other proceedings.

In addition to its discretionary jurisdiction, the court has direct appellate jurisdiction in certain types of cases, including water cases, Public Utility Commission cases, cases in which the trial court has declared a statute unconstitutional, death sentence cases, attorney discipline cases, interlocutory appeals by the prosecution from suppression orders in criminal cases; initiative ballot titles set by the Title Setting Board, election cases, and other cases that bypass the Court of Appeals by law.

**The Role of the Chief Justice, Committees, Supreme Court Staff**

The Chief Justice, who is selected by the other justices under a provision of the Colorado Constitution, is the executive head of the Colorado Judicial Branch and is the leader in its administration. In this capacity, the Chief Justice manages a large budget and oversees employees of the Supreme Court, Court of Appeals, State Court Administrator's office, and twenty-two judicial districts. Reporting directly to the Chief Justice are the clerks of the Supreme Court and Court of Appeals, and the State Court Administrator.

## **Attachment A**

The Chief Justice has authority to issue Chief Justice Directives pertaining to matters of judicial administration. The Chief Justice presides over quarterly meetings of the Chief Judges of the twenty-two judicial districts to discuss matters concerning the administration of justice. The Chief Justice also presides over all conferences, oral arguments, and hearings of the Court; assigns all opinions for authorship; and designates, in consultation with the Court, which justice or justices will serve as liaison to the various committees and special committees of the Court.

There are over thirty committees and working groups that the justices oversee. For example, Supreme Court committees include the Attorney Regulation Advisory Committee; the Appellate Rules Committee; Board of Law Examiners; Civil Rules Committee; Criminal Rules Committee; Chief Justice Commission on Professional Development; Family Issues Committee; Rules of Professional Conduct Standing Committee; Judicial Ethics Advisory Board; and Water Court Committee, among others. In addition, the Supreme Court and the Colorado Bar Association have jointly established the Access to Justice Commission.

Each justice has three full-time law clerks who provide legal and administrative support. The law clerk responsible for the administrative management of chambers is called the judicial assistant. The Court employs several staff attorneys who provide legal research and guidance to the Court as a whole, including assistance with certiorari, habeas corpus, and original proceeding petitions, special projects such as revising Colorado's criminal jury instructions, and research, guidance, and administrative support to standing rules committees appointed by the Court.

The Court uses its homepage to post matters of interest to the public and the bar on the Internet, such as rule changes, Chief Justice Directives, certiorari grant or denial announcements, and opinions of the Court. On Friday mornings from September through June, the "Case Announcements" page lists the names of the cases for which opinions will be issued the following Monday morning.

### **Oral Argument, Case Assignment, and Decision-Making**

The Supreme Court works collegially. During the typical week, there is much visitation and informal discussion among the justices on all matters pending for decision. The Court has a twelve-month work year. From September through June (except during a two-week Christmas break, one week spring break and during oral argument week) the justices meet each Thursday in conference to decide all pending matters that are ready for vote. During July and August, the Court does not hold weekly conferences or issue opinions. During this time, the justices write proposed opinions they have not yet presented to the Court for review; attend educational conferences; take their vacations; and vote electronically on pending certiorari petitions and original proceedings.

The Court typically schedules seven oral argument calendars between September and June, with each calendar lasting two or three days. All oral arguments are open for the public to attend. After oral argument, the justices deliberate and the Chief Justice makes opinion drafting assignments based on the preliminary vote in each case, which is taken after all the cases set on a calendar have been heard.

## **Attachment A**

The Court also decides cases submitted on the briefs without oral argument, such as interlocutory appeals from suppression orders in criminal cases; review of constitutional or statutory citizen initiative ballot titles set by the Secretary of State's hearing board; original petitions when a Rule to Show Cause has been issued by the Court; and attorney discipline cases.

Generally, four affirmative votes of the seven justices are required to decide any matter coming before the Court, except for grant of a certiorari petition, which requires three votes. However, one or more justices may decide not to participate in a particular case. If only an even number of justices is participating in a case, a tie vote of the justices results in the decision of the court being reviewed affirmed by operation of law, without opinion.

During one fall and one spring oral argument calendar, the Court convenes at a high school for oral argument in two cases. Volunteer attorneys meet with teachers to help prepare the students in advance for the arguments they will witness. Justices return after oral argument to answer questions, except questions concerning the merits of the cases just argued or other matters pending for decision before the Court.

### **Thursday Decisional Conference**

The Court's weekly decisional conference is called to order at 9:00 a.m. on Thursday mornings. Each justice is expected to attend or, if absent, must leave a vote sheet for all pending matters ready for decision. The Chief Justice presides over the discussion and votes are taken, proceeding from junior to senior justice, with the Chief Justice voting last. Any justice may request a matter to be passed to the next conference for a vote, and the present conference may be used for discussion of the case instead. Passing a matter is a courtesy asked by one justice of the others; a justice's request to pass the case for vote at a future conference is always honored.

The order of business for vote at the Thursday conference follows this order: decision on proposed final opinions; petitions for rehearing on issued opinions; cases submitted on the briefs without oral argument, followed by assignment of the opinion by the Chief Justice to one of the justices; grant or denial of certiorari petitions; grant or denial of petitions in original proceedings for a Rule to Show Cause under Colorado Appellate Rule 21 that have not otherwise been voted on during the week; and administrative matters, including rule changes and any other matter concerning governance of the Court or the Judicial Branch. Sometimes, the Court acts to dismiss a certiorari granted matter as "improvidently granted" because the Court, on reflection, determines that the lower court decision should remain without further review.

Decisions of the Court on cases and certiorari petitions are announced the Monday following the Thursday decisional conference by means of an electronic announcement sheet and issued opinions. While the full text of opinions is posted on the website on Mondays, the case numbers and case captions of opinions to be issued on Mondays are posted the preceding Friday.

**Original Petitions/Duty Judge**

Original petitions under Colorado Appellate Rule 21 may be filed with the Clerk of the Court and decided by the court at any time. Granting review of an original petition, which results in the issuance of an order to show cause, is within the sole discretion of the Court, and rarely occurs.

At least four justices must agree to issue such an order, the effect of which is to stay all proceedings in the court below. When received, the clerk of the court assigns review of a petition filed by an attorney to one of the seven justices, in random rotation. Petitions filed by persons not represented by counsel are first reviewed by a staff attorney who makes a grant or deny recommendation to the Court. The assigned justice reports on the petition for vote, with reasons for the grant or deny recommendation, to the other justices by internal email communication, at an in-person ad hoc conference of the Court called by the assigned justice at any time, or at the Thursday conference. The assigned justice may, but is not required to issue, a short-term stay or other temporary order pending the Court's decision on the petition, upon the petitioner's motion.

There is a monthly Duty Judge assigned in rotation by the Chief Justice to rule on matters brought to that justice by a staff attorney or the Clerk of the Court, such as motions for amicus curiae appearance, extensions of time, or extended-page briefing.

**Certiorari Petitions**

Based on the briefs and issues raised and the guidelines set forth in Colorado Appellate Rule 49, the staff attorneys separate out approximately half of the certiorari petitions for circulation and decision without preparation of a certiorari memorandum ("non-memo Certs"). Each justice reviews the intermediate appellate court's decision, together with the certiorari petition and any response thereto, and votes on whether to deny the petition or request preparation of a certiorari memorandum before a vote is taken.

The other certiorari petitions and those extracted from non-memo consideration by any justice are delivered in random rotation by the Clerk of the Court to the seven chambers. The assigned justice, in turn, then assigns a law clerk to prepare a certiorari memorandum on the case. The assigned justice reviews the certiorari petition, any response thereto, and the memorandum, makes any desired change to the memorandum, and circulates the memorandum along with the underlying appellate court's opinion to the other six justices, noting on the face of the memorandum the assigned justice's recommendation regarding which issues, if any, should be taken on certiorari.

Votes of three justices are required to accept a case on certiorari review. The order granting a petition will specify the issues taken for review and those issues for which review is denied. To be voted on at the weekly Thursday decisional conference, certiorari memoranda must be circulated to all the justices by the preceding Friday. During July and August, each justice's vote is entered on an electronic vote sheet.

## **Proposed Opinions**

Newly proposed majority opinions must be circulated by the authoring justice to the other six justices by 5:00 p.m. Thursday afternoon. Each justice may propose only one new opinion for the next Thursday conference. By noon on Tuesday, all seven justices make known to each other whether they intend to concur with or dissent from a proposed majority opinion that has been scheduled for vote at the Thursday conference. Any justice has until Tuesday at 5:00 p.m. to propose a written concurrence or dissent. The vote on the proposed majority opinion and concurring or dissenting opinions that are ready for vote occurs at the Thursday conference. Any justice, including the authoring justice, may request that the vote be passed to the following week's conference in favor of a discussion of the matter at the pending conference, or because the justice needs more time to consider the matter or to write a concurring or dissenting opinion.

A majority opinion does not argue with a concurring or dissenting opinion; instead it is written to stand on its own. Each justice works to review the proposed opinions of the other justices as a first priority in dealing with pending work. When disagreement between justices occurs on any matter, they confer with each other concerning the disagreement, to the extent possible, before conference. This process results in changes to proposed opinions that are circulated to all of the justices. An opinion that has received a majority vote at the weekly decisional conference is prepared in final slip opinion form, together with any concurring or dissenting opinion, by noon on Friday. The authoring justice's law clerk or judicial assistant is responsible for copying and assembling the required copies for the Clerk's Office by noon on Friday for distribution upon announcement Monday morning. Each issued opinion is accompanied by a cover page synopsis of the case prepared by the authoring justice.

A justice may determine not to participate in any decision upon considering the Canons of Judicial Conduct. An opinion or order of the Court will identify any justice who is not participating. A non-participating justice need not explain the reason for not participating.

## **Judicial Nominating Commissions**

The Chief Justice chairs, ex-officio, the statewide Judicial Nominating Commission that selects up to three candidates for each vacancy that occurs periodically on the Supreme Court and Court of Appeals. The other six justices take turns in chairing, ex officio, the twenty-two Judicial District Nominating Commissions that select up to three candidates for each vacancy occurring periodically for district court and county court judgeships.

## **Supreme Court Law Library and Learning Center**

The Supreme Court Law Library serves judges, lawyers, staff, and members of the public. It specializes in issue-specific legal research and the historical verification of facts, including legal developments and their publication in all formats. Additionally, it manages the Learning Center for the Court, which adds community-related civics education and museum curation to the library's responsibilities.

## **Attachment A**

The library is a team of eight persons (six lawyers, a librarian and an appellate self-represented litigant coordinator) all with advanced professional degrees. The appellate self-represented litigant coordinator meets individually with unrepresented litigants from any jurisdiction to assist them with court rules, forms, processes, and procedures. Appointments are available and walk-ins are welcome. The library is open to all members of the bench, bar, and general public. Library services include free access to LexisNexis and other legal databases, use of legal treatises and other print materials in the library, and professional reference and research assistance. The library staff may not provide legal advice. All members of the library team are highly skilled in providing access to legal information.

The Learning Center focuses on the rule of law and its operation in the state and federal courts of Colorado and the United States. Its many interactive displays include judges talking about their daily work. Visitors learn about our constitutional form of government and significant milestones in Colorado's legal history. Students and teachers can participate in the trial of a simulated case.

### **Conclusion**

The Court's work is multi-faceted. Each justice plays a direct role in all business coming before the Court, unless the justice has determined that he or she should not participate in any particular matter. Upon invitation, justices often participate in civic education programs throughout Colorado.

\*This overview is taken from Colorado Supreme Court's webpages:  
[https://www.courts.state.co.us/Courts/Supreme\\_Court/Index.cfm](https://www.courts.state.co.us/Courts/Supreme_Court/Index.cfm) and  
[https://www.courts.state.co.us/Courts/Supreme\\_Court/Protocols.cfm](https://www.courts.state.co.us/Courts/Supreme_Court/Protocols.cfm).

**An Overview of the Colorado Court of Appeals\***

*This article provides an overview of the Colorado Court of Appeals: the people involved, how a case moves through the court, and other details about the court's caseload and responsibilities.*

**Who We Are**

Judges and Staff

The Colorado Court of Appeals currently has twenty-two judges, including a Chief Judge. The Chief Justice of the Colorado Supreme Court selects the Chief Judge. The Chief Judge develops court policies, works on budget issues, manages facilities, and supervises all staff. He or she also reviews cases and writes opinions, often substituting for recused judges and sitting on panels with senior judges.

Each judge hires two support staff, who are usually law clerks, although a judge may hire one administrative assistant instead of a law clerk. Each law clerk is a confidential employee and serves at the pleasure of the judge. Law clerks usually work in these positions for one or two years, although some work for their judge indefinitely. These clerks take a number of classes each year to learn about writing, legal topics, and their administrative duties.

Nine senior judges currently work for the court. They sit on cases with the Chief Judge or substitute for other judges who are recused or otherwise unable to participate on a case.

Clerk of the Court

The clerk of the court has a combined staff of about thirteen employees. These employees make sure the court runs smoothly — receiving pleadings, issuing orders, announcing cases, managing dockets, and organizing case files.

Court Attorneys

The court employs a number of attorneys who provide assistance in a variety of ways. The reporter of decisions and assistant reporter of decisions are both attorneys with excellent editorial skills. They are responsible for editing the cases that the court announces.

The court employs nineteen full-time staff attorneys and a small support staff. These staff attorneys are people who have practiced law and who have developed particular expertise in certain areas of law. They draft PDMs — Pre-Disposition Memoranda — for divisions, as more fully described below.

The court also employs three motions and jurisdiction counsel. They review and rule on many routine motions, present more complex motions to one or three judges for resolution, and screen cases to ensure the court has jurisdiction under section 13-4-102, C.R.S. 2017. Motions and jurisdiction counsel may issue orders to “show cause” directing the parties to address potential jurisdictional issues.

**Location**

The court is located in the Ralph L. Carr Colorado Judicial Center in downtown Denver. It opened in December of 2012.

**Case Filings**

Cases begin their life in the court when a party files a notice of appeal. The court decides a broad range of criminal, general civil, domestic relations, administrative, and juvenile cases.

**Jurisdiction and Motions**

After a party files a notice of appeal, the case moves through a few preliminary stages.

As noted, the motions and jurisdiction counsel screen new cases for jurisdictional issues, such as whether an appeal was timely filed.

Parties also may file motions. Again, the motions and jurisdiction counsel review and process these motions for resolution.

A panel of three judges serves as a “motions division,” that decides any dispositive motions. The membership of this panel rotates every month.

After parties file briefs, the law clerks screen the briefs to ensure that they comply with the court’s formatting rules. The law clerks rotate these screening duties every month.

**Recusal Review**

Once a case is fully briefed, it becomes “at issue.” The clerk’s office circulates at-issue sheets to all judges. These sheets contain the case number; the names of the parties, attorneys, and participating trial court judges; and the court, agency, or tribunal from which the appeal came. Each judge reviews the “at-issue” sheets to determine whether he or she must recuse himself or herself based on the Code of Judicial Conduct.

**Divisional Nature of the Court**

After a case has been checked to ensure that the court has jurisdiction, any appropriate motions have been ruled on, and all of the briefs have been filed, the clerk’s office randomly assigns it to a “division.”

A “division” is a three-judge panel that serves together for four months. The Chief Judge assigns these divisions, with the approval of the Chief Justice. § 13-4-106, C.R.S. 2017. The goal is to rotate assignments so that each judge sits with every other judge within a three-and-a-half year period.

## **Attachment B**

All of the divisions function independently from each other, similar to the way that the federal circuits function in the federal system; however, the court is not authorized to sit en banc, which means that all of the judges are present and participating.

Each division decides its cases in light of its own interpretation of binding and persuasive authority. But divisions are not bound by the decisions of another division. That is, although judges recognize the importance of deference to earlier decisions, each division may view the law differently and issue a conflicting decision.

Conflict between division decisions is one reason why the Colorado Supreme Court may grant certiorari. C.A.R. 49(a)(3).

### **Case Assignments**

As noted, the clerk's office assigns cases randomly, not attempting to match cases with any particular division or judge. Because of this, judges see a wide variety of cases. This random assignment helps attract qualified applicants for judicial vacancies and helps avoid burnout by engaging the judges' intellectual curiosity. The process of random selection also furthers impartiality and ensures that a diversity of ideas from the varied backgrounds of the judges will inform a division's decision.

The most senior judge among the division members usually serves as the presiding judge, and seniority is based on the length of time each judge has served on the court. After cases are assigned to the division, the presiding judge makes assignments within the division and directs authorship of opinions; however, authorship is typically assigned on a random basis.

### **Staff Attorney Case Assignments**

The chief staff attorney reviews all cases filed and recommends to the Chief Judge that certain cases be assigned to staff attorneys. This recommendation is based on such factors as the level of difficulty of the issues in the case, the expertise that each staff attorney possesses, and whether the case involves settled areas of the law.

Once assigned a case, the staff attorney reviews the briefs and the record, conducts appropriate research, and prepares a "predisposition memorandum," or PDM. The case is then assigned to a division.

### **Sittings**

Each division meets about every two weeks to decide orally argued and waived cases, which are assigned by the clerk's office. A waived case is one that is decided without oral argument. The

clerk's office normally assigns seven cases for each sitting, including two to four cases set for oral argument.

The clerk's office schedules these "sittings" approximately five to six weeks in advance. The clerk's office notifies parties of the date set for oral argument and indicates how conflicts in scheduling are to be handled. The clerk's office does not notify parties of the date when waived cases will be considered, although parties may request this information from the clerk's office.

In addition to these sittings, the clerk's office assigns to each division nine to twelve staff attorney cases per month, with three assigned per week. These are cases for which the staff attorneys draft tentative opinions. Each division normally decides these cases on Wednesday mornings in a separate sitting.

### **Case Adjudication**

#### PDMs

Once a case arrives on the assigned judge's desk, he or she prepares a "predisposition memorandum," or PDM, directed to the other two panel members.

The judge, with the assistance of his or her law clerks, drafts the PDM after reviewing the briefs, pertinent law, and the record. Judges typically write PDMs in draft opinion form with a proposed disposition of the case.

Each judge is responsible for drafting at least two PDMs for each sitting, and the authoring judge circulates the PDM to the other division members no later than the Friday before the scheduled sitting. Generally, a staff attorney also drafts one case that is assigned to this sitting, and the judges take turns reviewing, editing, and announcing this case. Each judge and his or her chambers therefore prepares two to three PDMs every two weeks. This means that each judge, after completing his or her PDMs, is also responsible for reading the briefs, pertinent law, and, if necessary, portions of the record in four to five other cases every two weeks. When the judges prepare for oral argument, the PDM serves to provide insight and to focus questions for each division member. When oral argument is waived, the PDM serves a similar function for discussion in conference.

#### Staff Attorney PDMs

The staff attorney drafts PDMs for the case that is assigned to the regular division and for the cases set for a Wednesday division. The assigned judge analyzes the case in the same manner described above: reading the briefs, pertinent law, and the record, conducting independent research, and then reviewing the staff attorney's proposed draft. The assigned judge then makes changes that he or she thinks are appropriate (including changes to the reasoning and result), and sends the revised draft to the other division members for their consideration.

#### Oral Arguments

## **Attachment B**

Judges look forward to oral argument; it is a chance to meet with attorneys and to discuss the law.

Attorneys for either side may request oral argument. These requests are routinely granted, although the division may, in its discretion, deny such a request. The division also may order a case to be orally argued, even though a party did not request oral argument.

Before oral argument, each judge usually formulates questions to ask the attorneys. In some cases, a division may send pre-argument questions to the attorneys.

The court consistently aims to make oral arguments more accessible to the public. The court now streams oral arguments live. The link to watch the arguments is accessible from the court's homepage. The court also archives the arguments so the public may watch or listen to them later. Video files are available on the court's website going back to December of 2014; audio files are available going back to 2005.

### Conference

On the day of the scheduled sitting, usually immediately after oral arguments, the division meets in "conference" to discuss all of the cases assigned for that sitting, including waived cases. If the division reaches consensus on a case, the judges confirm authorship, and the case continues towards announcement. If they cannot reach consensus, the judges may decide to discuss it again at a later division conference. These cases may require additional research, further record review, or supplemental discussion before the panel reaches a decision.

All PDMs are tentative, as is authorship. The PDM may form the basis of the majority opinion. Occasionally, it may represent a dissenting view, if the other two judges disagree with it, in which case one of the remaining two division members will author the majority opinion. It is not uncommon for all division members to disagree with at least part of the PDM; the initial author judge may then prepare one or more revised drafts before a draft is acceptable to the other members of the division.

### Division Conference

Nearly every Wednesday, each division will meet to discuss staff attorney cases, cases that were held over from prior division conferences, and any other outstanding issues.

## **Cases Proposed for Publication**

### Why Publish?

During conference, the division also discusses whether a draft opinion merits publication. Colorado Appellate Rule 35(e) provides that a case should be published when the opinion (1) lays down a new rule of law, alters or modifies an existing rule, or applies an established rule to novel

## **Attachment B**

facts; (2) involves a legal issue of continuing public interest; (3) directs attention to the shortcomings of existing common law or statutes; or (4) resolves an apparent conflict of authority.

If the opinion may merit publication, the author will indicate that publication is a possibility and state the reasons why when he or she circulates the PDM to the other division members. If the division agrees that the opinion merits publication, the opinion will be circulated to the full court for a majority vote.

### **Full Court Review and Conference**

A majority of the twenty-two judges reviews every draft opinion circulated for publication. During this review, a reviewing judge may conduct additional research, determine whether the opinion merits publication, and offer suggested edits to the opinion. The authoring judge receives a comment sheet, which records the reviewing judge's publication vote and comments. These comments may be substantive or editorial. Votes on publication and comments are circulated to the full court the Monday before the next full court conference, which is held on alternating Thursdays.

Each judge may call any draft opinion "into conference." This means that the judge can request a full discussion of the opinion at the full court conference based on the opinion's content, its apparent conflict with prior decisions, or for any other reason.

Before full court conference, any judge calling a case into conference typically discusses his or her concerns with the author judge. At that time, the judges may discuss proposed changes, which, after further discussion with the other division members, may obviate the need for discussion at full court conference.

Any opinion receiving a majority vote for publication will be published, unless it is withdrawn before or during full court conference. The author judge and the rest of the division may, but need not, modify the opinion to take into account the suggestions of the reviewing judges and the reporter of decisions, and may recirculate the opinion to the full court for further review.

### **Unpublished Cases**

Draft opinions that do not meet the requirements for publication are announced as unpublished cases. For these cases, the authoring judge, incorporating the views of the other division members, submits the draft opinion to the reporter or the assistant reporter of decisions. They review each opinion for style, form, language, punctuation, and general readability. The authoring judge then reviews suggested edits from the reporter or the assistant reporter of decisions, and if they are substantive, the other division members will also review them. The authoring judge then finalizes the draft opinion.

### **Announcements**

## **Attachment B**

The court announces cases every Thursday, but only announces published cases every other week. An announcement sheet lists which cases are published and which are unpublished, states the disposition of each case, and lists determinations on motions for rehearing.

When the court announces opinions, it provides copies of the opinion to all parties, the trial court or agency, the press, and the public. Opinions selected for official publication also are provided to West Publishing and The Colorado Lawyer.

All opinions of the Colorado Court of Appeals are also available on the Colorado Courts Web Page, located at <http://www.courts.state.co.us>.

### **Petitions for Rehearing and Certiorari**

After the court announces an opinion, the parties may petition the division, asking it to rehear the case. Petitions for rehearing state whether the opinion misapprehended the law or the case's facts. The clerk's office circulates a petition for rehearing to each division member, who reviews it and makes a recommendation. The division may grant the petition and withdraw the opinion, deny the petition, or deny the petition with minor modifications to the opinion.

In approximately one-third of the cases decided by the court, one of the parties petitions the Colorado Supreme Court to review the case. This petition is called a petition for a writ of certiorari. Historically, the supreme court only grants review in about 6% of these petitions. Petitions for rehearing are no longer required before a party seeks certiorari review in the supreme court. C.A.R. 52.

### **Workload**

The workload of the court and of each judge is significant. In addition to being responsible for his or her own "authored" opinions, each judge must review all of the briefs, pertinent law, and record for each case in which he or she participates; conduct independent research; discuss the case; author dissenting or concurring opinions if necessary; read other division members' opinions; and review all draft opinions proposed for publication.

Each judge also strives to keep abreast of recent Colorado Supreme Court and United States Supreme Court opinions.

Consequently, each judge reads an estimated three thousand pages of material per month. Weekend reading is inevitable, and ten- to twelve-hour workdays are not uncommon.

### **Extra-Judicial Activities**

In addition to his or her judicial duties, judges of the court participate in numerous outside activities related to the legal system. These activities include participation in bar associations and giving frequent CLE lectures. A court of appeals judge also serves as the chair for nearly every supreme court standing committee.

Colorado Court of Appeals Extended Community Outreach Program

In recent years, the court has made an effort to become more transparent and to engage with Colorado's communities. The vehicle for forming these connections is the extended outreach program. This program is made up of three initiatives: (1) district outreach, (2) Courts in the Community, and (3) Goldilocks trials.

District Outreach

There are both twenty-two judges and twenty-two judicial districts in Colorado. So, each judge is assigned by the Chief Judge to one of these districts as a liaison. Each judge tries to visit his or her respective district at least once per year to meet with the local judges, bar, administrative staff, and community.

Courts in the Community

As part of the Courts in the Community program, divisions hold oral arguments at high schools around the state and at Colorado's two law schools. These arguments afford students the opportunity to observe appellate proceedings firsthand. In preparation for oral argument, judges meet with teachers and provide them with materials about the judicial system and the court. Local attorneys also meet with teachers to provide information about the cases that will be argued and to answer any questions. After the oral argument, students ask the judges and the attorneys general questions about the legal system or their careers.

Three to four times per year, Courts in the Community is held in conjunction with a judge's district outreach visit. The division may spend up to a week in a district, holding oral arguments and visiting with the bench, bar, and community.

People v. Goldilocks Mock Trial

To introduce young people to the law, the division may conduct "Goldilocks trials" at local elementary schools. In this trial, the State has charged the defendant, Sarah Goldilocks, with trespass and theft. The students play the roles of attorneys, parties, witnesses, judge, and jury, and interact with judges from the division during this portion of a district outreach visit.

**Conclusion**

The court, in recognizing and valuing the importance of our judicial system, fosters a commitment to excellence, integrity, and collegiality. And, through the hard work and dedication of every judge and staff member, the court has a long-standing reputation for upholding these principles.

\*This article is taken from the Colorado Court of Appeals' webpage:  
[https://www.courts.state.co.us/Courts/Court\\_Of\\_Appeals/Protocols.cfm](https://www.courts.state.co.us/Courts/Court_Of_Appeals/Protocols.cfm).

**§ 13-5.5-107. Judicial performance evaluation criteria**

(1) The state commission and each district commission shall evaluate each justice and judge in Colorado utilizing the powers and duties conferred upon each commission in section 13-5.5-105. The evaluations must only include the following performance evaluation criteria:

(a) Integrity, including but not limited to whether the justice or judge:

- (I) Avoids impropriety or the appearance of impropriety;
- (II) Displays fairness and impartiality toward all participants; and
- (III) Avoids ex parte communications;

(b) Legal knowledge, including but not limited to whether the justice or judge:

- (I) Demonstrates, through well-reasoned opinions and courtroom conduct, an understanding of substantive law and relevant rules of procedure and evidence;
- (II) Demonstrates, through well-reasoned opinions and courtroom conduct, attentiveness to factual and legal issues before the court; and
- (III) Adheres to precedent or clearly explains the legal basis for departure from precedent and appropriately applies statutes or other sources of legal authority;

(c) Communication skills, including but not limited to whether the justice or judge:

- (I) Presents clearly written and understandable opinions, findings of fact, conclusions of law, and orders;
- (II) Presents clearly stated and understandable questions or statements during oral arguments or presentations, and, for trial judges, clearly explains all oral decisions; and
- (III) Clearly presents information to the jury, as necessary;

(d) Judicial temperament, including but not limited to whether the justice or judge:

- (I) Demonstrates courtesy toward attorneys, litigants, court staff, and others in the courtroom; and
- (II) Maintains and requires order, punctuality, and appropriate decorum in the courtroom;

(e) Administrative performance, including but not limited to whether the justice or judge:

## Attachment C

- (I) Demonstrates preparation for oral arguments, trials, and hearings, as well as attentiveness to and appropriate control over judicial proceedings;
  - (II) Manages workload and court time effectively and efficiently;
  - (III) Issues opinions, findings of fact, conclusions of law, and orders in a timely manner and without unnecessary delay;
  - (IV) Participates in a proportionate share of the court's workload, takes responsibility for more than his or her own caseload, and is willing to assist other justices or judges; and
  - (V) Understands and complies, as necessary, with directives of the Colorado supreme court; and
- (f) Service to the legal profession and the public by participating in service-oriented efforts designed to educate the public about the legal system and improve the legal system.

**Glossary of Legal Terms Frequently Seen in Appellate Opinions\***

**Acquittal** - A jury verdict that a criminal defendant is not guilty, or the finding of a judge that the evidence is insufficient to support a conviction.

**Affidavit** - A written or printed statement made under oath.

**Affirmed** - Means that a higher court has concluded that a lower court decision is correct and will stand as rendered by the lower court.

**Amicus curiae** - Latin for "friend of the court." It is advice formally offered to the court in a brief filed by an entity interested in, but not a party to, the case.

**Answer** - The formal written statement by a defendant in a civil case that responds to a complaint, articulating the grounds for defense.

**Appeal** - A request made after a trial by a party that has lost on one or more issues that a higher court review the decision to determine if it was correct. To make such a request is "to appeal" or "to take an appeal." One who appeals is called the "appellant;" the other party is the "appellee."

**Appellant** - The party who appeals a district court's decision, usually seeking reversal of that decision.

**Appellate** - About appeals; an appellate court has the authority to review the judgment of a lower court (trial court) or tribunal.

**Appellee** - The party who opposes an appellant's appeal, and who seeks to persuade the appeals court to affirm the district court's decision.

**Bench trial** - A trial without a jury, in which the judge serves as the fact-finder.

**Brief** - A written statement submitted in a trial or appellate proceeding that explains one side's legal and factual arguments.

**Burden of proof** - The duty to prove disputed facts. In civil cases, a plaintiff generally has the burden of proving his or her case. In criminal cases, the government has the burden of proving the defendant's guilt.

**Case file** - A complete collection of every document filed in court in a case.

**Case law** - The law as established in previous court decisions.

**Caseload** - The number of cases handled by a judge or a court.

**Cause of action** - A legal claim.

## Attachment D

**Chief Justice/Chief Judge** - The justice or judge who has primary responsibility for the administration of a court.

**Clerk of court** - The court officer who oversees administrative functions, especially managing the flow of cases through the court. The clerk's office is often called a court's central nervous system.

**Common law** - The legal system that originated in England and is now in use in the United States, which relies on the articulation of legal principles in a historical succession of judicial decisions. Common law principles can be changed by legislation.

**Complaint** - A written statement that begins a civil lawsuit, in which the plaintiff details the claims against the defendant.

**Concurring opinion or concurrence** - An opinion that agrees with the outcome reached by the majority of the justices in the case, but for different reasons. A case may have one or more concurring opinions.

**Continuance** - Decision by a judge to postpone trial until a later date.

**Costs** - Expenses in prosecuting or defending a case in court. Usually does not include attorney fees.

**Cross-appeal** - An appeal brought by the appellee against the appellant after the appellant has already filed an appeal.

**Damages** - Money that a defendant pays a plaintiff in a civil case if the plaintiff has won. Damages may be compensatory (for loss or injury) or punitive (to punish and deter future misconduct).

**De facto** - Latin, meaning "in fact" or "actually." Something that exists in fact but not as a matter of law.

**De jure** - Latin, meaning "in law." Something that exists by operation of law.

**De novo** - Latin, meaning "anew." A trial de novo is a completely new trial. Appellate review de novo implies no deference to the trial judge's ruling.

**Defendant** - In a civil case, the person or organization against whom the plaintiff brings suit; in a criminal case, the person accused or convicted of the crime.

**Discovery** - Procedures used to obtain disclosure of evidence before trial.

**Dismissal with prejudice** - Court action that prevents an identical lawsuit from being filed later.

**Dismissal without prejudice** - Court action that allows the later filing.

## Attachment D

**Dissenting opinion or dissent** - This is what happens when an appellate court justice or judge does not agree with the opinion of the majority of the court, or a justice or judge does not agree with the majority of a division. Justices or judges who dissent write a dissenting opinion that expresses their viewpoint but does not determine what the parties ultimately have to do.

**Division** - A group of judges constituted to decide an appeal.

**Due process** - In criminal law, the constitutional guarantee that a defendant will receive a fair and impartial trial. In civil law, the legal rights of someone who confronts an adverse action threatening liberty or property.

**En banc** - French, meaning "on the bench." All judges of an appellate court sitting together to hear a case, as opposed to the routine disposition by divisions of three judges.

**Evidence** - Proof legally presented at a trial or hearing through witnesses, records, and/or exhibits.

**Ex parte** - A proceeding brought before a court by one party only, without notice to or challenge by the other side.

**Exhibit** - A paper, document or other physical object received by the lower court as evidence during a trial, or a document or an object shown and identified in court as evidence in a case.

**Finding** - The trial court's or jury's decision on issues of fact.

**Garnishment** - A court order to collect money or property.

**Habeas corpus** - A court order used to bring a person physically before a court in order to test the legality of the person's detention.

**Hearsay** - Testimony given by a witness who tells second or third hand information.

**Indigent** - Poor or needy. Often refers to someone who cannot afford to pay certain fees required by the court.

**Information** - In a criminal case, the formal court document in the clerk's file that which contains the charges, dates of offenses, bond status, continuance dates and disposition.

**Injunction** - An order of the court prohibiting (or compelling) the performance of a specific act.

**Judgment** - The official decision of a court finally resolving the dispute between the parties to the lawsuit.

**Jurisdiction** - The authority or power the court has to act or hear a case and make a decision.

**Jury instructions** - Directions given by the judge to the jury concerning the law of the case.

**Litigant** - A party to a case.

## Attachment D

**Majority opinion** - The written opinion by the majority of justices or judges on an appeal.

**Moot** - Not subject to a court ruling because the controversy has not actually arisen, or has ended.

**Motion** - A request by a litigant to a judge for a decision on an issue relating to the case.

**Notice of appeal** - A document filed in an appellate court that states you are appealing a lower court judgment. This document starts the appeal.

**Opinion** - A justice's or a judge's written explanation of the decision of the court.

**Oral argument** - An opportunity for lawyers to argue their position before the court and to answer questions posed by justices or judges.

**Order** - A written decision of a court or judge deciding an issue or directing someone to do or refrain from doing certain acts.

**Per curiam** - Latin, meaning "for the court." In appellate courts, often refers to an unsigned opinion.

**Petition** - A formal written request to a court to start a certain proceeding.

**Petition for rehearing** - A request to rehear a matter that a court has already decided.

**Petitioner** - Another word for a plaintiff or other person starting a lawsuit or legal proceeding.

**Plaintiff** - A person or business that files a formal complaint with the court.

**Plea** - In a criminal case, the defendant's statement pleading "guilty" or "not guilty" in answer to the charges.

**Pleadings** - Written statements filed with the court that describe a party's legal or factual assertions about the case.

**Postjudgment** - Any request to a court or action by a judge after a judgment has entered in a case.

**Pro se** - Representing oneself. Serving as one's own lawyer.

**Procedure** - The rules for conducting a lawsuit. These include, but are not limited to, rules of civil procedure, criminal procedure, and appellate procedure.

**Record** - A written account of the proceedings in a case, including all pleadings, evidence, and exhibits submitted in the course of the case.

**Remand** - When an appellate court sends a case back to a lower court for further proceedings.

## Attachment D

**Respondent** - Another word for a defendant or other person responding to a lawsuit or other proceeding.

**Restitution** - Money ordered to be paid by the defendant to the victim to reimburse the victim for the costs of the crime.

**Reverse** - The act of a court setting aside the decision of a lower court. A reversal is often accompanied by a remand to the lower court for further proceedings.

**Sentence** - The punishment ordered by a court for a defendant convicted of a crime.

**Standard of proof** - Degree of proof required. In criminal cases, prosecutors must prove a defendant's guilt "beyond a reasonable doubt." The majority of civil lawsuits require proof "by a preponderance of the evidence" (more likely than not), but in some the standard is higher and requires "clear and convincing" proof (highly probable or free from serious or substantial doubt).

**Standard of review** - The standard of review is how much weight (or deference) a reviewing court gives to lower tribunal's decision when reviewing the decision on appeal. There are different standards of review for different kinds of decisions.

**Stay** - Temporarily stopping a judicial proceeding.

**Sua sponte** - Latin, meaning "of its own will." Often refers to a court taking an action in a case without being asked to do so by either side.

**Subpoena** - A command, issued under a court's authority, to a witness to appear and give testimony.

**Testimony** - The words spoken during a court proceeding by witnesses that is evidence.

**Transcript** - A written, word-for-word record of what was said, either in a proceeding such as a trial, or during some other formal conversation, such as a hearing or oral deposition.

**Trial court** - The lower court where the case starts which is usually the district court. This court decides the facts and law in the case.

**Vacate** - To cancel or rescind a court order or judgment.

**Voir dire** - The process of questioning prospective jurors or witnesses about their qualifications.

\*Most of these terms are derived from the following sources:

(1) <http://www.uscourts.gov/glossary>

(2) <http://www.courts.alaska.gov/shc/appeals/appealsglossary.htm>

(3) <https://www.jud.ct.gov/legalterms.htm>.

**Attachment E**

Appellate Court Judicial Performance Retention Matrix Coversheet

Once you have completed the “matrix,” the “opinion review worksheet,” and the “oral argument worksheet,” of as part of your evaluation of the justice/ judge, please provide your ratings for each of the Performance Criteria below. Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score. Once completed please provide a copy of the cover page to the Commission Chair.

Justice /Judge \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

**Overall rating for Integrity: Does the judge meet the performance standard for Integrity? (circle one)**

<b>Matrix:</b>	<b>Yes</b>	<b>No</b>	<b>Comment:</b>
<b>Opinion Review:</b>	<b>Yes</b>	<b>No</b>	
<b>Oral Argument:</b>	<b>Yes</b>	<b>No</b>	

**Overall rating for Legal Knowledge: Does the judge meet the performance standard for Legal Knowledge? (circle one)**

<b>Matrix:</b>	<b>Yes</b>	<b>No</b>	<b>Comment:</b>
<b>Opinion Review:</b>	<b>Yes</b>	<b>No</b>	
<b>Oral Argument:</b>	<b>Yes</b>	<b>No</b>	

**Overall rating for Communication: Does the judge meet the performance standard for Communication? (circle one)**

<b>Matrix:</b>	<b>Yes</b>	<b>No</b>	<b>Comment:</b>
<b>Opinion Review:</b>	<b>Yes</b>	<b>No</b>	
<b>Oral Argument:</b>	<b>Yes</b>	<b>No</b>	

**Overall rating for Judicial Temperament: Does the judge meet the performance standard for Temperament? (circle one)**

**Matrix:** Yes No **Comment:**  
**Opinion Review:** Yes No  
**Oral Argument:** Yes No

**Overall rating for Administrative Performance (Management): Does the judge meet the performance standard for Administrative Performance? (circle one)**

**Matrix:** Yes No **Comment:**  
**Oral Argument:** Yes No

**Overall rating for Service to the Legal Profession: Does the judge meet the performance standard for Service to the Legal Profession? (circle one)**

**Matrix:** Yes No **Comment:**

### Appellate Court Standards Matrix – Retention Evaluation

Standard	Guidelines Section	Meets Performance Standard	Comments
<b>Integrity</b> (Guidelines Pages 3-7)			
Interprets and applies the law regardless of personal beliefs.	III.A.2.a	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Attentive to the arguments of all parties in opinions and at oral arguments.	III.A.2.b	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Disqualifies from cases when required.	III.A.2.c	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Avoids impropriety or the appearance of impropriety.	III.A.2.d	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Avoids improper ex parte communications.	III.A.2.e	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Avoids improper comments about pending or impending cases.	III.A.2.f	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p><b>Overall rating for Integrity:</b> Does the Justice/Judge meet the performance standards for Integrity? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)</p> <p style="text-align: center;">Yes    No</p>			
<p><b>Explain the reason for your rating:</b></p>			

<b>Legal Knowledge</b> (Guidelines Pages 7-11)			
Writes well-reasoned opinions.	III.B.2.a	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Opinions, when necessary, explain why they do not address every issue raised.	III.B.2.b	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Opinions adhere to precedent or clearly explain why they do not.	III.B.2.c	<input type="checkbox"/> Yes <input type="checkbox"/> No	
At oral argument, attentive to issues before the court.	III.B.2.d	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p><b>Overall rating for Legal Knowledge:</b> Does the Justice/Judge meet the performance standards for Legal Knowledge? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)</p> <p style="text-align: center;">Yes    No</p>			
<p><b>Explain the reason for your rating:</b></p>			

<b>Communication Skills</b> (Guidelines Pages 11-13)			
Writes clear and understandable opinions.	III.C.2.a	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Asks clear and understandable questions during oral argument.	III.C.2.b	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p><b>Overall rating for Communication Skills:</b> Does the Justice/Judge meet the performance standards for Communication Skills? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)</p> <p style="text-align: center;">Yes    No</p>			
<p><b>Explain the reason for your rating:</b></p>			

<b>Judicial Temperament</b> (Guidelines Pages 13-15)			
Courteous to litigants at oral argument.	III.D.2.a	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Attentive to and respectful of differing opinions of colleagues at oral argument.	III.D.2.b	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Attentive to and respectful of differing opinions of colleagues in written opinions.	III.D.2.b	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Demonstrates order, punctuality, and appropriate decorum.	III.D.2.c	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>Overall rating for Judicial Temperament: Does the Justice/Judge meet the performance standards for Judicial Temperament? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)</p> <p style="text-align: center;">Yes    No</p>			
<p>Explain the reason for your rating: (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)</p>			

<b>Administrative Performance</b> (Guidelines Pages 16-19)			
Prepares for oral argument.	III.E.1.a	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Maintains appropriate control over judicial proceedings.	III.E.1.b	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Participates in proportionate share of workload.	III.E.1.c III.E.1.d	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Takes responsibility for more than his or her caseload.	III.E.1.e III.E.1.f	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Timely issues opinions or has justifiable reason(s) for delay.	III.E.1.g III.E.1.h	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Willing to assist colleagues.	III.E.1.i	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p><b>Overall rating for Administrative Performance:</b> Does the Justice/Judge meet the performance standards for Administrative Performance? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)</p> <p style="text-align: center;">Yes    No</p>			
<p><b>Explain the reason for your rating:</b></p>			

<b>Service to the Legal Profession and the Public</b> (Guidelines Pages 19-21)			
Participates in service-oriented efforts to benefit the legal system and/or public.	III.F.2	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p><b>Overall rating for Service to the Legal Profession and the Public:</b> Does the Justice/Judge meet the performance standards for Service to the Legal Profession and the Public? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)</p> <p style="text-align: center;">Yes    No</p>			
<p><b>Explain the reason for your rating:</b></p>          			

Appellate Court Judicial Performance Matrix Interim Coversheet

Once you have completed the “matrix,” the “opinion review worksheet,” and the “oral argument worksheet,” of as part of your evaluation of the justice/ judge, please provide your ratings for each of the Performance Criteria below. Once completed please provide a copy of the cover page to the Commission Chair.

Justice /Judge \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

**Overall rating for Integrity: Does the judge meet the performance standard for Integrity? (circle one)**

<b>Matrix:</b>	<b>Yes, without qualifications</b>	<b>Yes, with qualifications</b>	<b>No, needs improvement</b>
<b>Opinion Review:</b>	<b>Yes, without qualifications</b>	<b>Yes, with qualifications</b>	<b>No, needs improvement</b>
<b>Oral Argument:</b>	<b>Yes, without qualifications</b>	<b>Yes, with qualifications</b>	<b>No, needs improvement</b>
<b>Comment:</b>			

**Overall rating for Legal Knowledge: Does the judge meet the performance standard for Legal Knowledge? (circle one)**

<b>Matrix:</b>	<b>Yes, without qualifications</b>	<b>Yes, with qualifications</b>	<b>No, needs improvement</b>
<b>Opinion Review:</b>	<b>Yes, without qualifications</b>	<b>Yes, with qualifications</b>	<b>No, needs improvement</b>
<b>Oral Argument:</b>	<b>Yes, without qualifications</b>	<b>Yes, with qualifications</b>	<b>No, needs improvement</b>
<b>Comment:</b>			

**Overall rating for Communication: Does the judge meet the performance standard for Communication? (circle one)**

<b>Matrix:</b>	<b>Yes, without qualifications</b>	<b>Yes, with qualifications</b>	<b>No, needs improvement</b>
<b>Opinion Review:</b>	<b>Yes, without qualifications</b>	<b>Yes, with qualifications</b>	<b>No, needs improvement</b>
<b>Oral Argument:</b>	<b>Yes, without qualifications</b>	<b>Yes, with qualifications</b>	<b>No, needs improvement</b>
<b>Comment:</b>			

**Overall rating for Judicial Temperament: Does the judge meet the performance standard for Temperament? (circle one)**

<b>Matrix:</b>	<b>Yes, without qualifications</b>	<b>Yes, with qualifications</b>	<b>No, needs improvement</b>
<b>Opinion Review:</b>	<b>Yes, without qualifications</b>	<b>Yes, with qualifications</b>	<b>No, needs improvement</b>
<b>Oral Argument:</b>	<b>Yes, without qualifications</b>	<b>Yes, with qualifications</b>	<b>No, needs improvement</b>
<b>Comment:</b>			

**Overall rating for Administrative Performance (Management): Does the judge meet the performance standard for Administrative Performance? (circle one)**

<b>Matrix:</b>	<b>Yes, without qualifications</b>	<b>Yes, with qualifications</b>	<b>No, needs improvement</b>
<b>Oral Argument:</b>	<b>Yes, without qualifications</b>	<b>Yes, with qualifications</b>	<b>No, needs improvement</b>
<b>Comment:</b>			

**Overall rating for Service to the Legal Profession: Does the judge meet the performance standard for Service to the Legal Profession? (circle one)**

<b>Matrix:</b>	<b>Yes, without qualifications</b>	<b>Yes, with qualifications</b>	<b>No, needs improvement</b>
<b>Comment:</b>			

### Appellate Court Standards Matrix – Interim Evaluation

Standard	Guidelines Section	Meets Performance Standard	Comments
<b>Integrity</b> (Guidelines Pages 3-7)			
Interprets and applies the law regardless of personal beliefs.	III.A.2.a	Yes, without qualifications  Yes, with qualifications  No, needs improvement	
Attentive to the arguments of all parties in opinions and at oral arguments.	III.A.2.b	Yes, without qualifications  Yes, with qualifications  No, needs improvement	
Disqualifies from cases when required.	III.A.2.c	Yes, without qualifications  Yes, with qualifications	

		No, needs improvement	
Avoids impropriety or the appearance of impropriety.	III.A.2.d	Yes, without qualifications  Yes, with qualifications  No, needs improvement	
Avoids improper ex parte communications.	III.A.2.e	Yes, without qualifications  Yes, with qualifications  No, needs improvement	
Avoids improper comments about pending or impending cases.	III.A.2.f	Yes, without qualifications  Yes, with qualifications  No, needs improvement	

**Overall rating for Integrity:** Does the Justice/Judge meet the performance standards for Integrity? (circle one)

Yes, without qualifications

Yes, with qualifications

No, needs improvement

**Explain the reason for your rating:**

<b>Legal Knowledge</b> (Guidelines Pages 7-11)			
Writes well-reasoned opinions.	III.B.2.a	Yes, without qualifications  Yes, with qualifications  No, needs improvement	
Opinions, when necessary, explain why they do not address every issue raised.	III.B.2.b	Yes, without qualifications  Yes, with qualifications  No, needs improvement	
Opinions adhere to precedent or clearly explain why they do not.	III.B.2.c	Yes, without qualifications  Yes, with qualifications  No, needs improvement	



<b>Communication Skills</b> (Guidelines Pages 11-13)			
Writes clear and understandable opinions.	III.C.2.a	Yes, without qualifications  Yes, with qualifications  No, needs improvement	
Asks clear and understandable questions during oral argument.	III.C.2.b	Yes, without qualifications  Yes, with qualifications  No, needs improvement	
<p><b>Overall rating for Communication Skills:</b> Does the Justice/Judge meet the performance standards for Communication Skills? (circle one)</p> <p style="text-align: center;">             Yes, without qualifications      Yes, with qualifications      No, needs improvement           </p>			
<p><b>Explain the reason for your rating:</b></p>			

<b>Judicial Temperament</b> (Guidelines Pages 13-15)			
Courteous to litigants at oral argument.	III.D.2.a	Yes, without qualifications  Yes, with qualifications  No, needs improvement	
Attentive to and respectful of differing opinions of colleagues at oral argument.	III.D.2.b	Yes, without qualifications  Yes, with qualifications  No, needs improvement	
Attentive to and respectful of differing opinions of colleagues in written opinions.	III.D.2.b	Yes, without qualifications  Yes, with qualifications  No, needs improvement	
Demonstrates order, punctuality, and appropriate decorum.	III.D.2.c	Yes, without qualifications	

		Yes, with qualifications	
		No, needs improvement	
Overall rating for Judicial Temperament: Does the Justice/Judge meet the performance standards for Judicial Temperament? (circle one)			
	Yes, without qualifications	Yes, with qualifications	No, needs improvement
Explain the reason for your rating:			

<b>Administrative Performance</b> (Guidelines Pages 16-19)			
Prepares for oral argument.	III.E.1.a	Yes, without qualifications  Yes, with qualifications  No, needs improvement	
Maintains appropriate control over judicial proceedings.	III.E.1.b	Yes, without qualifications  Yes, with qualifications  No, needs improvement	
Participates in proportionate share of workload.	III.E.1.c III.E.1.d	Yes, without qualifications  Yes, with qualifications  No, needs improvement	

Takes responsibility for more than his or her caseload.	III.E.1.e III.E.1.f	Yes, without qualifications  Yes, with qualifications  No, needs improvement	
Timely issues opinions or has justifiable reason(s) for delay.	III.E.1.g III.E.1.h	Yes, without qualifications  Yes, with qualifications  No, needs improvement	
Willing to assist colleagues.	III.E.1.i	Yes, without qualifications  Yes, with qualifications  No, needs improvement	

**Overall rating for Administrative Performance:** Does the Justice/Judge meet the performance standards for Administrative Performance? (circle one)

Yes, without qualifications

Yes, with qualifications

No, needs improvement

**Explain the reason for your rating:**

<b>Service to the Legal Profession and the Public</b> (Guidelines Pages 19-21)			
Participates in service-oriented efforts to benefit the legal system and/or public.	III.F.2	Yes, without qualifications  Yes, with qualifications  No, needs improvement	
<b>Overall rating for Service to the Legal Profession and the Public:</b> Does the Justice/Judge meet the performance standards for Service to the Legal Profession and the Public? (circle one)			
<p style="text-align: center;">             Yes, without qualifications      Yes, with qualifications      No, needs improvement           </p>			
<b>Explain the reason for your rating:</b>			

## **Attachment F**

### Opinion Review Worksheet (Retention)

<b>Authoring Justice/Judge:</b>	
<b>Case Name:</b>	<b>Case Number:</b>
<b>Opinion Type:</b> Majority/Concurrence/Dissent (Circle One)	
<b>Area(s) of Law:</b>	

Standard	Meets the Standard	Comments
<b>Integrity</b>		
Interprets and applies the law regardless of personal beliefs.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Fairly considers and addresses the issues.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
<p><b>Overall rating for Integrity:</b> Does the Justice/Judge meet the performance standards for Integrity? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)</p> <p style="text-align: center;">Yes    No</p>		
<b>Explain the reason for your rating:</b>		
<b>Legal Knowledge</b>		
Opinion is well-reasoned (based on the standards below).	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
• Describes the parties’ arguments and positions.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
• Sets out pertinent facts, without unnecessary detail, and demonstrates knowledge of the record and case history.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
• Discusses and analyzes applicable legal principles, including statutes, rules, and case law.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
• Identifies and follows an applicable standard of review.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
• Explains the basis of the court’s decision.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	

<ul style="list-style-type: none"> <li>• Decides only the issues that need to be decided.</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
<ul style="list-style-type: none"> <li>• If necessary, provides clear direction to the court or administrative body below.</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
<ul style="list-style-type: none"> <li>• Explains why it does not address every issue the parties have raised in their briefs.</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
<ul style="list-style-type: none"> <li>• Adheres to precedent or clearly explains why it does not.</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
<p><b>Overall rating for Legal Knowledge:</b> Does the Justice/Judge meet the performance standards for Legal Knowledge? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)</p> <p style="text-align: center;">Yes    No</p>		
<p><b>Explain the reason for your rating:</b></p>		

<b>Communication Skills</b>		
Opinion is clearly written and understandable (based on the standards below).	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
• Describes the issues and the facts necessary to decide the case.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
• States conclusions that are clear, concise, readily understandable, and unambiguous.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
• To the extent practicable, written so that the parties can understand the opinion's basic logic and reasoning.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
• Displays proper sentence structure and grammar.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
<p><b>Overall rating for Communication Skills:</b> Does the Justice/Judge meet the performance standards for Legal Knowledge? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)</p> <p style="text-align: center;">Yes    No</p>		
<p><b>Explain the reason for your rating:</b></p>		

<b>Judicial Temperament</b>		
Opinion is attentive to and respectful of differing opinions of colleagues.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
<p><b>Overall rating for Judicial Temperament:</b> Does the Justice/Judge meet the performance standards for Judicial Temperament? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)</p> <p style="text-align: center;">Yes    No</p>		
<p><b>Explain the reason for your rating:</b></p>		

**Additional Comments** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### Opinion Review Worksheet (Interim

<b>Authoring Justice/Judge:</b>	
<b>Case Name:</b>	<b>Case Number:</b>
<b>Opinion Type:</b> Majority/Concurrence/Dissent (Circle One)	
<b>Area(s) of Law:</b>	

Standard	Meets the Standard	Comments
<b>Integrity</b>		
Interprets and applies the law regardless of personal beliefs.	Yes, without qualifications  Yes, with qualifications  No, needs improvement  N/A	
Fairly considers and addresses the issues.	Yes, without qualifications  Yes, with qualifications  No, needs improvement  N/A	
<b>Overall rating for Integrity:</b> Does the Justice/Judge meet the performance standards for Integrity? (circle one)		
Yes, without qualifications	Yes, with qualifications	No, needs improvement
<b>Explain the reason for your rating:</b>		

<b>Legal Knowledge</b>		
Opinion is well-reasoned (based on the standards below).	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
<ul style="list-style-type: none"> <li>• Describes the parties' arguments and positions.</li> </ul>	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
<ul style="list-style-type: none"> <li>• Sets out pertinent facts, without unnecessary detail, and demonstrates knowledge of the record and case history.</li> </ul>	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	

<ul style="list-style-type: none"> <li>• Discusses and analyzes applicable legal principles, including statutes, rules, and case law.</li> </ul>	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
<ul style="list-style-type: none"> <li>• Identifies and follows an applicable standard of review.</li> </ul>	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
<ul style="list-style-type: none"> <li>• Explains the basis of the court's decision.</li> </ul>	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
<ul style="list-style-type: none"> <li>• Decides only the issues that need to be decided.</li> </ul>	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	

<ul style="list-style-type: none"> <li>• If necessary, provides clear direction to the court or administrative body below.</li> </ul>	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
<ul style="list-style-type: none"> <li>• Explains why it does not address every issue the parties have raised in their briefs.</li> </ul>	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
<ul style="list-style-type: none"> <li>• Adheres to precedent or clearly explains why it does not.</li> </ul>	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
<p><b>Overall rating for Legal Knowledge:</b> Does the Justice/Judge meet the performance standards for Legal Knowledge? (circle one)</p> <p>Yes, without qualifications                  Yes, with qualifications                  No, needs improvement</p>		
<p><b>Explain the reason for your rating:</b></p>		

<b>Communication Skills</b>		
<p>Opinion is clearly written and understandable (based on the standards below).</p>	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
<ul style="list-style-type: none"> <li>• Describes the issues and the facts necessary to decide the case.</li> </ul>	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
<ul style="list-style-type: none"> <li>• States conclusions that are clear, concise, readily understandable, and unambiguous.</li> </ul>	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	

<ul style="list-style-type: none"> <li>• To the extent practicable, written so that the parties can understand the opinion's basic logic and reasoning.</li> </ul>	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
<ul style="list-style-type: none"> <li>• Displays proper sentence structure and grammar.</li> </ul>	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
<p><b>Overall rating for Communication Skills:</b> Does the Justice/Judge meet the performance standards for Legal Knowledge? (circle one)</p> <p>Yes, without qualifications                  Yes, with qualifications                  No, needs improvement</p>		
<p><b>Explain the reason for your rating:</b></p>		

<b>Judicial Temperament</b>		
Opinion is attentive to and respectful of differing opinions of colleagues.	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
<p><b>Overall rating for Judicial Temperament:</b> Does the Justice/Judge meet the performance standards for Judicial Temperament? (circle one)</p> <p>Yes, without qualifications      Yes, with qualifications      No, needs improvement</p>		
<p><b>Explain the reason for your rating:</b></p>		

**Additional Comments**

---



---



---



---



---

## **Attachment G**

## Oral Argument Review Worksheet (Retention)

<b>Justice/Judge:</b>	
<b>Case Name:</b>	<b>Case Number:</b>
<b>Presiding:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>Date of Argument:</b>

Standard	Meets the Standard	Comments
<b>Integrity</b>		
Attentive to the arguments of all parties.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
<b>Overall rating for Integrity:</b> Does the Justice/Judge meet the performance standards for Integrity? (circle one) <div style="text-align: center;">Yes    No</div>		
<b>Explain the reason for your rating:</b>		
<b>Legal Knowledge</b>		
Understands substantive law and is attentive to the issues.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
<b>Overall rating for Legal Knowledge:</b> Does the Justice/Judge meet the performance standards for Legal Knowledge? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.) <div style="text-align: center;">Yes    No</div>		
<b>Explain the reason for your rating:</b>		

<b>Communication Skills</b>		
Clear and understandable questions or statements.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Rephrases or clarifies questions on request.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
<p><b>Overall rating for Communication Skills:</b> Does the Justice/Judge meet the performance standards for Legal Knowledge? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)</p> <p style="text-align: center;">Yes    No</p>		
<b>Explain the reason for your rating:</b>		
<b>Judicial Temperament</b>		
Listens to the arguments of the parties.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Does not demonstrate unreasonable irritation or impatience with counsel.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Shows respect to all parties, counsel, court employees, and others.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Attentive to and respectful of the differing opinions of colleagues.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Respects, within reason, the applicable time limits for the argument.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
<p><b>Overall rating for Judicial Temperament:</b> Does the Justice/Judge meet the performance standards for Judicial Temperament? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)</p> <p style="text-align: center;">Yes    No</p>		
<b>Explain the reason for your rating:</b>		

<b>Administrative Performance</b>		
Appears prepared for oral argument.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Maintains appropriate control over the proceedings.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
<p><b>Overall rating for Administrative Performance:</b> Does the Justice/Judge meet the performance standards for Administrative Performance? (Please note that an answer of “no” to an individual sub-standard does not need to translate into a “does not meet performance standards” on an overall criterion score.)</p> <p style="text-align: center;">Yes    No</p>		
<p><b>Explain the reason for your rating:</b></p>		

## Oral Argument Review Worksheet (Interim)

<b>Justice/Judge:</b>	
<b>Case Name:</b>	<b>Case Number:</b>
<b>Presiding:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>Date of Argument:</b>

Standard	Meets the Standard	Comments
<b>Integrity</b>		
Attentive to the arguments of all parties.	Yes, without qualifications  Yes, with qualifications  No, needs improvement  N/A	

**Overall rating for Integrity:** Does the Justice/Judge meet the performance standards for Integrity? (circle one)

Yes, without qualifications     
  Yes, with qualifications     
  No, needs improvement

**Explain the reason for your rating:**

<b>Legal Knowledge</b>		
Understands substantive law and is attentive to the issues.	Yes, without qualifications  Yes, with qualifications  No, needs improvement  N/A	

**Overall rating for Legal Knowledge:** Does the Justice/Judge meet the performance standards for Legal Knowledge? (circle one)

Yes, without qualifications     
  Yes, with qualifications     
  No, needs improvement

**Explain the reason for your rating:**

**Communication Skills**

Clear and understandable questions or statements.	Yes, without qualifications  Yes, with qualifications  No, needs improvement  N/A	
---------------------------------------------------	-----------------------------------------------------------------------------------------------------	--

Rephrases or clarifies questions on request.	Yes, without qualifications  Yes, with qualifications  No, needs improvement  N/A	
----------------------------------------------	-----------------------------------------------------------------------------------------------------	--

**Overall rating for Communication Skills:** Does the Justice/Judge meet the performance standards for Legal Knowledge? (circle one)

Yes, without qualifications      Yes, with qualifications      No, needs improvement

**Explain the reason for your rating:**

<b>Judicial Temperament</b>		
Listens to the arguments of the parties.	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
Does not demonstrate unreasonable irritation or impatience with counsel.	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
Shows respect to all parties, counsel, court employees, and others.	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
Attentive to and respectful of the differing opinions of colleagues.	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	

Respects, within reason, the applicable time limits for the argument.	<p>Yes, without qualifications</p> <p>Yes, with qualifications</p> <p>No, needs improvement</p> <p>N/A</p>	
-----------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------	--

**Overall rating for Judicial Temperament:** Does the Justice/Judge meet the performance standards for Judicial Temperament? (circle one)

Yes, without qualifications      Yes, with qualifications      No, needs improvement

**Explain the reason for your rating:**

**Administrative Performance**

Appears prepared for oral argument.	Yes, without qualifications  Yes, with qualifications  No, needs improvement  N/A	
-------------------------------------	-----------------------------------------------------------------------------------------------------	--

Maintains appropriate control over the proceedings.	Yes, without qualifications  Yes, with qualifications  No, needs improvement  N/A	
-----------------------------------------------------	-----------------------------------------------------------------------------------------------------	--

**Overall rating for Administrative Performance:** Does the Justice/Judge meet the performance standards for Administrative Performance? (circle one)

Yes, without qualifications      Yes, with qualifications      No, needs improvement

**Explain the reason for your rating:**