

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 08-054

BY SENATOR(S) Shaffer, Gibbs, and Ward;
also REPRESENTATIVE(S) Carroll T., Madden, and McGihon.

CONCERNING JUDICIAL PERFORMANCE EVALUATIONS, AND MAKING AN
APPROPRIATION THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 13-5.5-101, Colorado Revised Statutes, is amended to read:

13-5.5-101. Legislative declaration. (1) The general assembly hereby finds and declares that it is in the public interest to establish a system of evaluating judicial performance to provide persons voting on the retention of justices and judges with fair, responsible, and constructive information about judicial performance and to provide justices AND judges ~~and magistrates~~ with useful information concerning their own performances. The general assembly further finds and declares that the evaluation of judicial performance should be conducted statewide and within each judicial district using uniform criteria and procedures ~~established by a state commission on judicial performance pursuant to the provisions of this article.~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT IT IS IN THE PUBLIC INTEREST TO ESTABLISH AN OFFICE OF JUDICIAL PERFORMANCE EVALUATION WITHIN THE JUDICIAL DEPARTMENT OF THE STATE TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE.

SECTION 2. Article 5.5 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

13-5.5-101.5. Office of judicial performance evaluation.

(1) THERE IS HEREBY ESTABLISHED IN THE JUDICIAL DEPARTMENT THE OFFICE OF JUDICIAL PERFORMANCE EVALUATION, REFERRED TO IN THIS ARTICLE AS THE "OFFICE". THE STATE COMMISSION ON JUDICIAL PERFORMANCE ESTABLISHED PURSUANT TO SECTION 13-5.5-102 SHALL OVERSEE THE OFFICE.

(2) THE STATE COMMISSION SHALL APPOINT AN EXECUTIVE DIRECTOR OF THE OFFICE WHO SHALL SERVE AT THE PLEASURE OF THE STATE COMMISSION. THE COMPENSATION OF THE EXECUTIVE DIRECTOR SHALL BE THE SAME AS THE GENERAL ASSEMBLY ESTABLISHES FOR A JUDGE OF THE DISTRICT COURT. THE COMPENSATION PAID TO THE EXECUTIVE DIRECTOR SHALL NOT BE REDUCED DURING THE TIME THAT A PERSON SERVES AS EXECUTIVE DIRECTOR. THE EXECUTIVE DIRECTOR SHALL HIRE ADDITIONAL STAFF FOR THE OFFICE AS NECESSARY AND AS APPROVED BY THE STATE COMMISSION.

(3) SUBJECT TO THE SUPERVISION OF THE STATE COMMISSION, THE OFFICE SHALL:

(a) STAFF THE STATE AND DISTRICT COMMISSIONS WHEN DIRECTED TO DO SO BY THE STATE COMMISSION;

(b) TRAIN MEMBERS OF THE STATE AND DISTRICT COMMISSIONS;

(c) COLLECT AND DISSEMINATE DATA ON JUDICIAL PERFORMANCE EVALUATIONS;

(d) CONDUCT PUBLIC EDUCATION EFFORTS CONCERNING THE JUDICIAL PERFORMANCE EVALUATION PROCESS AND RETENTION RECOMMENDATIONS OF THE STATE AND DISTRICT COMMISSIONS;

(e) MEASURE PUBLIC AWARENESS OF THE JUDICIAL PERFORMANCE EVALUATION PROCESS THROUGH REGULAR POLLING; AND

(f) COMPLETE OTHER DUTIES AS ASSIGNED BY THE STATE COMMISSION.

(4) EXPENSES OF THE OFFICE SHALL BE PAID FOR FROM THE STATE COMMISSION ON JUDICIAL PERFORMANCE CASH FUND CREATED PURSUANT TO SECTION 13-5.5-107.

SECTION 3. 13-5.5-102 (1) (a) and (1) (b), Colorado Revised Statutes, are amended, and the said 13-5.5-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

13-5.5-102. State commission on judicial performance - repeal.

(1) (a) (I) (A) There is hereby established the state commission on judicial performance, referred to in this article as the "state commission". The state commission shall consist of ten members. The speaker of the house of representatives and the president of the senate shall each appoint one attorney and one nonattorney. The governor and the chief justice of the supreme court shall each appoint one attorney and two nonattorneys.

(B) FOR PURPOSES OF THIS SUBSECTION (1), "ATTORNEY" MEANS A PERSON ADMITTED TO PRACTICE LAW BEFORE THE COURTS OF THIS STATE.

(II) (A) All members of the state commission shall serve terms of four years. ~~except that, of those first appointed, one person appointed by each appointing authority shall serve for a term of two years. All initial appointments shall be completed by July 1, 1988. The term of any member of the state commission serving as of June 30, 1997, shall expire on November 30 of the year in which the term is scheduled to expire. The term of any member appointed on or after July 1, 1997, to replace a member of the state commission at the end of his or her term shall commence on December 1 of the year in which the previous member's term is scheduled to expire.~~ THE TERM OF EACH MEMBER OF THE STATE COMMISSION SHALL EXPIRE ON NOVEMBER 30 OF AN ODD-NUMBERED YEAR, AND THE TERM OF A MEMBER APPOINTED TO REPLACE A MEMBER AT THE END OF THE MEMBER'S TERM SHALL COMMENCE ON DECEMBER 1 OF THE YEAR IN WHICH THE PREVIOUS MEMBER'S TERM EXPIRES.

(B) THE TERM OF EACH MEMBER SERVING AS OF JANUARY 1, 2009, SHALL BE EXTENDED UNTIL NOVEMBER 30 OF THE ODD-NUMBERED YEAR FOLLOWING THE COMPLETION OF THAT MEMBER'S TERM. THIS SUB-SUBPARAGRAPH (B) IS REPEALED, EFFECTIVE JULY 1, 2014.

(b) (I) Any vacancy on the state commission shall be filled by the original appointing authority, but ~~no~~ A member shall NOT serve more than two full terms plus any balance remaining on an unexpired term if the initial appointment was to fill a vacancy. Within five days after a vacancy arises on the state commission, the state commission shall notify the appointing authority of the vacancy, and the appointing authority shall make an appointment within forty-five days after the date of the vacancy. If the original appointing authority fails to make the appointment ~~or appointments~~ ~~if more than one vacancy,~~ within forty-five days after the date of the vacancy, the state commission shall make the appointment. ~~or appointments.~~

(II) Justices and judges actively performing judicial duties may not be appointed to serve on the state commission. ~~Retired~~ FORMER justices and judges are eligible to be appointed as attorney members; except that ~~no~~ A ~~retired~~ FORMER justice or judge may NOT be assigned or appointed to perform judicial duties while serving on the state commission.

(3) A MEMBER OF THE STATE COMMISSION SHALL RECUSE HIMSELF OR HERSELF FROM ANY EVALUATION OF THE PERSON WHO APPOINTED THE MEMBER TO THE COMMISSION.

SECTION 4. 13-5.5-103, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

13-5.5-103. Powers and duties of the state commission. (1) IN ADDITION TO OTHER POWERS CONFERRED AND DUTIES IMPOSED UPON THE STATE COMMISSION BY THIS ARTICLE, THE STATE COMMISSION HAS THE FOLLOWING POWERS AND DUTIES:

(a) TO APPOINT AND SUPERVISE A PERSON TO SERVE AS THE EXECUTIVE DIRECTOR OF THE OFFICE OF JUDICIAL PERFORMANCE EVALUATION;

(b) TO ASSIST THE EXECUTIVE DIRECTOR IN MANAGING THE OFFICE AND PROVIDING FISCAL OVERSIGHT OF THE OPERATING BUDGET OF THE

OFFICE;

(c) TO DEVELOP UNIFORM PROCEDURES AND TECHNIQUES FOR EVALUATING DISTRICT AND COUNTY JUDGES, JUSTICES OF THE COLORADO SUPREME COURT, AND JUDGES OF THE COURT OF APPEALS BASED ON PERFORMANCE CRITERIA PROVIDED IN SECTION 13-5.5-105.5;

(d) TO DEVELOP GUIDELINES AND PROCEDURES FOR THE CONTINUOUS COLLECTION OF DATA FOR USE IN THE EVALUATION PROCESS;

(e) TO DEVELOP SURVEYS FOR PERSONS AFFECTED BY JUSTICES AND JUDGES, INCLUDING BUT NOT LIMITED TO ATTORNEYS, JURORS, LITIGANTS, LAW ENFORCEMENT PERSONNEL, ATTORNEYS WITHIN THE DISTRICT ATTORNEYS' AND PUBLIC DEFENDER'S OFFICES, EMPLOYEES OF THE COURT, COURT INTERPRETERS, EMPLOYEES OF PROBATION OFFICES, EMPLOYEES OF LOCAL DEPARTMENTS OF SOCIAL SERVICES, AND VICTIMS OF CRIMES, AS DEFINED IN SECTION 24-4.1-302 (5), C.R.S.;

(f) TO DETERMINE THE STATISTICAL VALIDITY OF COMPLETED SURVEYS, REPORT TO THE DISTRICT COMMISSIONS ON THE STATISTICAL VALIDITY OF THE SURVEYS FOR THEIR DISTRICTS, AND SPECIFY WHEN AND HOW STATISTICALLY INVALID SURVEYS MAY BE USED;

(g) TO PREPARE ALTERNATIVES TO SURVEYS WHERE SAMPLE POPULATIONS ARE INADEQUATE TO PRODUCE VALID RESULTS;

(h) TO PRODUCE AND DISTRIBUTE NARRATIVES AND SURVEY REPORTS;

(i) TO REVIEW CASE MANAGEMENT DATA AND STATISTICS FOR INDIVIDUAL APPELLATE JUSTICES AND JUDGES PROVIDED BY THE STATE COURT ADMINISTRATOR;

(j) TO REVIEW WRITTEN JUDICIAL OPINIONS;

(k) TO COLLECT INFORMATION FROM DIRECT COURTROOM OBSERVATION;

(l) TO INTERVIEW JUSTICES AND APPELLATE JUDGES AND OTHER PERSONS AND ACCEPT INFORMATION AND DOCUMENTATION FROM

INTERESTED PERSONS;

(m) TO DRAFT NARRATIVES THAT REFLECT THE RESULTS OF JUDICIAL PERFORMANCE EVALUATIONS OF JUSTICES AND APPELLATE JUDGES;

(n) TO DISTRIBUTE TO THE PUBLIC NARRATIVES THAT REFLECT THE RESULTS OF EACH JUDICIAL PERFORMANCE EVALUATION OF EACH APPELLATE JUSTICE OR JUDGE;

(o) (I) SUBJECT TO APPROVAL BY THE COLORADO SUPREME COURT, TO PROMULGATE RULES NECESSARY TO IMPLEMENT AND EFFECTUATE THE PROVISIONS OF THIS ARTICLE, INCLUDING RULES TO BE FOLLOWED BY THE DISTRICT COMMISSIONS.

(II) PRIOR TO THE FINAL PROMULGATION OF ANY RULE PURSUANT TO THIS PARAGRAPH (o), THE STATE COMMISSION SHALL POST A NOTICE OF THE PROPOSED RULE, ALLOW FOR A PERIOD FOR PUBLIC COMMENT, AND GIVE THE PUBLIC AN OPPORTUNITY TO ADDRESS THE COMMISSION CONCERNING THE PROPOSED RULE AT A PUBLIC HEARING.

(III) THE STATE COMMISSION MAY ADOPT RULES OR STANDARDS THAT PROVIDE GUIDANCE TO MEMBERS OF THE STATE COMMISSION OR MEMBERS OF DISTRICT COMMISSIONS REGARDING THE REVIEW OR INTERPRETATION OF INFORMATION OBTAINED AS A RESULT OF THE EVALUATION PROCESS AND THE CRITERIA CONTAINED IN SECTION 13-5.5-105.5. ANY SUCH RULES OR STANDARDS SHALL:

(A) BE CONSISTENT WITH PARAGRAPHS (e), (f), AND (g) OF THIS SUBSECTION (1), IN THAT THE RULES OR STANDARDS AND THE APPLICATION THEREOF SHALL TAKE INTO CONSIDERATION THE STATISTICAL RELIABILITY OF SURVEY DATA; AND

(B) NOT DIVEST ANY MEMBER OF THE STATE COMMISSION OR A DISTRICT COMMISSION OF HIS OR HER ULTIMATE AUTHORITY TO DECIDE WHETHER TO VOTE FOR OR AGAINST RECOMMENDING RETENTION OF A JUSTICE OR JUDGE AND MUST BE CONSISTENT WITH SUBSECTION (2) OF THIS SECTION AND SECTION 13-5.5-105 (2).

(p) TO DEVELOP PROCEDURES FOR THE REVIEW OF THE DELIBERATION PROCEDURES ESTABLISHED BY THE DISTRICT COMMISSIONS.

HOWEVER, THE STATE COMMISSION SHALL NOT HAVE THE POWER OR DUTY TO REVIEW ACTUAL DETERMINATIONS MADE BY THE DISTRICT COMMISSIONS.

(q) TO GATHER AND MAINTAIN STATEWIDE STATISTICAL DATA AND POST A STATISTICAL REPORT OF THE STATEWIDE DATA ON ITS WEBSITE NO LATER THAN THIRTY DAYS PRIOR TO EACH RETENTION ELECTION. THE STATISTICAL REPORT SHALL SPECIFY:

(I) THE TOTAL NUMBER OF JUSTICES AND JUDGES WHO WERE ELIGIBLE TO STAND FOR RETENTION;

(II) THE TOTAL NUMBER OF EVALUATIONS OF JUSTICES AND JUDGES PERFORMED BY THE STATE AND DISTRICT COMMISSIONS;

(III) THE TOTAL NUMBER OF JUSTICES AND JUDGES WHO WERE EVALUATED BUT DID NOT STAND FOR RETENTION; AND

(IV) THE TOTAL NUMBER OF JUSTICES AND JUDGES RECOMMENDED AS "RETAIN", "DO NOT RETAIN", OR "NO OPINION", RESPECTIVELY.

(2) UNLESS RECUSED PURSUANT TO A PROVISION OF THIS ARTICLE, EACH MEMBER OF THE STATE COMMISSION SHALL HAVE THE DISCRETION TO VOTE FOR OR AGAINST RETENTION OF A JUSTICE OR JUDGE BASED UPON HIS OR HER REVIEW OF ALL INFORMATION BEFORE THE STATE COMMISSION.

SECTION 5. 13-5.5-104 (1) (a), (1) (b), and (2), Colorado Revised Statutes, are amended, and the said 13-5.5-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

13-5.5-104. District commission on judicial performance - repeal. (1) (a) (I) (A) There is hereby established in each judicial district a district commission on judicial performance, referred to in this article as the "district commission". The district commission shall consist of ten members. The speaker of the house of representatives and the president of the senate shall each appoint one attorney and one nonattorney. The governor and the chief justice of the supreme court shall each appoint one attorney and two nonattorneys.

(B) FOR PURPOSES OF THIS SUBSECTION (1), "ATTORNEY" MEANS A PERSON ADMITTED TO PRACTICE LAW BEFORE THE COURTS OF THIS STATE.

(II) All members of the district commission shall serve terms of four years. ~~except that, of those first appointed, one person appointed by each appointing authority shall serve for a term of two years. All initial appointments shall be completed by July 1, 1989.~~ THE TERM OF EACH MEMBER OF A DISTRICT COMMISSION SHALL EXPIRE ON NOVEMBER 30 OF AN ODD-NUMBERED YEAR, AND THE TERM OF ANY MEMBER APPOINTED TO REPLACE A MEMBER AT THE END OF THE MEMBER'S TERM SHALL COMMENCE ON DECEMBER 1 OF THE YEAR WHEN THE PREVIOUS MEMBER'S TERM EXPIRES.

(III) The appointing authority may remove members of the district commissions for cause. ~~The term of any member of a district commission serving as of June 30, 1997, shall expire on November 30 of the year in which the term is scheduled to expire. The term of any member appointed on or after July 1, 1997, to replace a member of a district commission at the end of his or her term shall commence on December 1 of the year in which the previous member's term is scheduled to expire.~~

(b) (I) Any vacancy on the district commission shall be filled by the original appointing authority, but ~~no~~ A member shall NOT serve more than two full terms plus any balance remaining on an unexpired term if the initial appointment was to fill a vacancy. Within five days after a vacancy arises on a district commission, the district commission shall notify the appointing authority and the state commission of the vacancy, and the appointing authority shall make an appointment within forty-five days after the date of the vacancy. If the original appointing authority fails to make the appointment ~~or appointments if more than one vacancy~~ within forty-five days after the date of the vacancy, the state commission shall make the appointment. ~~or appointments.~~

(II) Justices and judges actively performing judicial duties may not be appointed to serve on the district commission. ~~Retired~~ FORMER justices and judges are eligible to be appointed as attorney members; except that ~~no~~ A ~~retired~~ FORMER justice or judge may NOT be assigned or appointed to perform judicial duties while serving on the district commission.

(2) The district administrator of each judicial district and his OR HER staff shall serve as the staff for the district commission.

(4) A MEMBER OF A DISTRICT COMMISSION SHALL RECUSE HIMSELF

OR HERSELF FROM AN EVALUATION OF THE PERSON WHO APPOINTED THE MEMBER TO THE COMMISSION.

SECTION 6. 13-5.5-105, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

13-5.5-105. Powers and duties of district commissions. (1) IN ADDITION TO OTHER POWERS CONFERRED AND DUTIES IMPOSED UPON A DISTRICT COMMISSION BY THIS ARTICLE, IN CONFORMITY WITH THE RULES, GUIDELINES, AND PROCEDURES ADOPTED BY THE STATE COMMISSION PURSUANT TO SECTION 13-5.5-103 (1) (f) AND THE STATE COMMISSION'S REVIEW OF THE DELIBERATION PROCEDURES PURSUANT TO SECTION 13-5.5-103 (1) (p), A DISTRICT COMMISSION HAS THE FOLLOWING POWERS AND DUTIES:

(a) TO REVIEW CASE MANAGEMENT STATISTICS AND DATA FOR INDIVIDUAL DISTRICT AND COUNTY COURT JUDGES PROVIDED BY THE STATE COURT ADMINISTRATOR;

(b) TO REVIEW WRITTEN JUDICIAL OPINIONS AND ORDERS OF DISTRICT AND COUNTY COURT JUDGES WITHIN THE JUDICIAL DISTRICT;

(c) TO COLLECT INFORMATION FROM DIRECT COURTROOM OBSERVATION OF DISTRICT AND COUNTY COURT JUDGES WITHIN THE JUDICIAL DISTRICT;

(d) TO INTERVIEW DISTRICT AND COUNTY COURT JUDGES AND OTHER PERSONS AND ACCEPT INFORMATION AND DOCUMENTATION FROM INTERESTED PERSONS;

(e) TO OBTAIN INFORMATION FROM PARTIES AND ATTORNEYS REGARDING DISTRICT AND COUNTY COURT JUDGES HANDLING OF DOMESTIC RELATIONS AND FAMILY LAW CASES WITH RESPECT TO THE JUDGE'S FAIRNESS, PATIENCE WITH PRO SE PARTIES, GENDER NEUTRALITY, AND HANDLING OF EMOTIONAL PARTIES; AND

(f) TO DRAFT NARRATIVES THAT REFLECT THE RESULTS OF JUDICIAL PERFORMANCE EVALUATIONS OF DISTRICT AND COUNTY COURT JUDGES.

(2) UNLESS RECUSED PURSUANT TO A PROVISION OF THIS ARTICLE,

EACH MEMBER OF A DISTRICT COMMISSION SHALL HAVE THE DISCRETION TO VOTE FOR OR AGAINST RETENTION OF A DISTRICT OR COUNTY JUDGE BASED UPON HIS OR HER REVIEW OF ALL INFORMATION BEFORE THE DISTRICT COMMISSION.

(3) UPON COMPLETING ITS REQUIRED RECOMMENDATIONS AND NARRATIVES, EACH DISTRICT COMMISSION SHALL COLLECT ALL DOCUMENTS AND OTHER INFORMATION, INCLUDING ALL COPIES, RECEIVED REGARDING THE JUSTICES OR JUDGES EVALUATED. EACH DISTRICT COMMISSION SHALL FORWARD THE DOCUMENTS AND OTHER INFORMATION, INCLUDING ALL COPIES, TO THE STATE COMMISSION WITHIN THIRTY DAYS FOLLOWING SUBMISSION OF THE DISTRICT COMMISSION'S RECOMMENDATIONS AND NARRATIVES TO THE STATE COMMISSION. THE STATE COMMISSION SHALL ADOPT RULES REGARDING RETENTION OF EVALUATION INFORMATION, WHICH SHALL BE MADE AVAILABLE TO DISTRICT COMMISSIONS FOR SUBSEQUENT EVALUATIONS OF THE JUSTICES OR JUDGES.

SECTION 7. Article 5.5 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

13-5.5-105.5. Judicial performance criteria. (1) THE STATE COMMISSION SHALL EVALUATE EACH JUSTICE OF THE COLORADO SUPREME COURT AND EACH JUDGE OF THE COLORADO COURT OF APPEALS BASED ON THE FOLLOWING PERFORMANCE CRITERIA:

(a) INTEGRITY, INCLUDING BUT NOT LIMITED TO WHETHER:

(I) THE JUSTICE OR JUDGE AVOIDS IMPROPRIETY OR THE APPEARANCE OF IMPROPRIETY;

(II) THE JUSTICE OR JUDGE DISPLAYS FAIRNESS AND IMPARTIALITY TOWARD ALL PARTICIPANTS; AND

(III) THE JUSTICE OR JUDGE AVOIDS EX PARTE COMMUNICATIONS;

(b) LEGAL KNOWLEDGE, INCLUDING BUT NOT LIMITED TO WHETHER:

(I) THE JUSTICE'S OR JUDGE'S OPINIONS ARE WELL-REASONED AND DEMONSTRATE AN UNDERSTANDING OF SUBSTANTIVE LAW AND THE RELEVANT RULES OF PROCEDURE AND EVIDENCE;

(II) THE JUSTICE'S OR JUDGE'S OPINIONS DEMONSTRATE ATTENTIVENESS TO FACTUAL AND LEGAL ISSUES BEFORE THE COURT; AND

(III) THE JUSTICE'S OR JUDGE'S OPINIONS ADHERE TO PRECEDENT OR CLEARLY EXPLAIN THE LEGAL BASIS FOR DEPARTURE FROM PRECEDENT.

(c) COMMUNICATION SKILLS, INCLUDING BUT NOT LIMITED TO WHETHER:

(I) THE JUSTICE'S OR JUDGE'S OPINIONS ARE CLEARLY WRITTEN AND UNDERSTANDABLE; AND

(II) THE JUSTICE'S OR JUDGE'S QUESTIONS OR STATEMENTS DURING ORAL ARGUMENTS ARE CLEARLY STATED AND UNDERSTANDABLE;

(d) JUDICIAL TEMPERAMENT, INCLUDING BUT NOT LIMITED TO WHETHER:

(I) THE JUSTICE OR JUDGE DEMONSTRATES COURTESY TOWARD ATTORNEYS, LITIGANTS, COURT STAFF, AND OTHERS IN THE COURTROOM; AND

(II) THE JUSTICE OR JUDGE MAINTAINS APPROPRIATE DECORUM IN THE COURTROOM;

(e) ADMINISTRATIVE PERFORMANCE, INCLUDING BUT NOT LIMITED TO WHETHER:

(I) THE JUSTICE OR JUDGE DEMONSTRATES PREPARATION FOR ORAL ARGUMENT, ATTENTIVENESS, AND APPROPRIATE CONTROL OVER JUDICIAL PROCEEDINGS;

(II) THE JUSTICE OR JUDGE MANAGES WORKLOAD EFFECTIVELY;

(III) THE JUSTICE OR JUDGE ISSUES OPINIONS IN A TIMELY MANNER AND WITHOUT UNNECESSARY DELAY; AND

(IV) THE JUSTICE OR JUDGE PARTICIPATES IN A PROPORTIONATE SHARE OF THE COURT'S WORKLOAD; 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 TO IMPROVE THE LEGAL SYSTEM.

(2) THE DISTRICT COMMISSIONS SHALL EVALUATE DISTRICT AND COUNTY JUDGES BASED ON THE FOLLOWING CRITERIA:

(a) INTEGRITY, INCLUDING BUT NOT LIMITED TO WHETHER:

(I) THE JUDGE AVOIDS IMPROPRIETY OR THE APPEARANCE OF IMPROPRIETY;

(II) THE JUDGE DISPLAYS FAIRNESS AND IMPARTIALITY TOWARD ALL PARTICIPANTS; AND

(III) THE JUDGE AVOIDS EX PARTE COMMUNICATIONS;

(b) LEGAL KNOWLEDGE, INCLUDING BUT NOT LIMITED TO WHETHER:

(I) THE JUDGE DEMONSTRATES AN UNDERSTANDING OF SUBSTANTIVE LAW AND RELEVANT RULES OF PROCEDURE AND EVIDENCE;

(II) THE JUDGE DEMONSTRATES AWARENESS OF AND ATTENTIVENESS TO FACTUAL AND LEGAL ISSUES BEFORE THE COURT; AND

(III) THE JUDGE APPROPRIATELY APPLIES STATUTES, JUDICIAL PRECEDENT, AND OTHER SOURCES OF LEGAL AUTHORITY;

(c) COMMUNICATION SKILLS, INCLUDING BUT NOT LIMITED TO WHETHER:

(I) THE JUDGE'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS ARE CLEARLY WRITTEN AND UNDERSTANDABLE;

(II) THE JUDGE'S ORAL PRESENTATIONS ARE CLEARLY STATED AND UNDERSTANDABLE AND THE JUDGE CLEARLY EXPLAINS ALL ORAL DECISIONS; AND

(III) THE JUDGE CLEARLY PRESENTS INFORMATION TO THE JURY;

(d) JUDICIAL TEMPERAMENT, INCLUDING BUT NOT LIMITED TO WHETHER:

(I) THE JUDGE DEMONSTRATES COURTESY TOWARD ATTORNEYS, LITIGANTS, COURT STAFF, AND OTHERS IN THE COURTROOM;

(II) THE JUDGE MAINTAINS AND REQUIRES ORDER, PUNCTUALITY, AND DECORUM IN THE COURTROOM; AND

(III) THE JUDGE DEMONSTRATES APPROPRIATE DEMEANOR ON THE BENCH;

(e) ADMINISTRATIVE PERFORMANCE, INCLUDING BUT NOT LIMITED TO WHETHER:

(I) THE JUDGE DEMONSTRATES PREPARATION FOR ALL HEARINGS AND TRIAL;

(II) THE JUDGE USES COURT TIME EFFICIENTLY;

(III) THE JUDGE ISSUES FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS WITHOUT UNNECESSARY DELAY;

(IV) THE JUDGE EFFECTIVELY MANAGES CASES;

(V) THE JUDGE TAKES RESPONSIBILITY FOR MORE THAN HIS OR HER OWN CASELOAD AND IS WILLING TO ASSIST OTHER JUDGES; AND

(VI) THE JUDGE UNDERSTANDS AND COMPLIES 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 TO IMPROVE THE LEGAL SYSTEM.

SECTION 8. 13-5.5-106 (1) and (2), Colorado Revised Statutes, are amended to read:

13-5.5-106. Evaluation in retention election years. (1) (a) (I) The state commission shall conduct an evaluation of each justice of the supreme

court and each judge of the court of appeals whose term is to expire following the next general election but not before July 1, 1989 AND WHO MUST STAND FOR RETENTION ELECTION. THE EVALUATIONS SHALL BE REFERRED TO IN THIS SUBSECTION (1) AS "RETENTION YEAR EVALUATIONS".

(II) RETENTION YEAR evaluations shall be completed and the narrative profile prepared for communication AND COMMUNICATED to the appellate justice or judge no later than forty-five days prior to the last day available for the appellate justice or judge to declare such justice's or judge's intent to stand for retention.

(III) PRIOR TO THE COMPLETION OF THE NARRATIVES FOR RETENTION YEAR EVALUATIONS, AND FOLLOWING AT LEAST TEN DAYS' NOTICE TO THE PUBLIC AND THE APPELLATE JUSTICES AND JUDGES, IT IS HIGHLY RECOMMENDED THAT THE STATE COMMISSION HOLD A PUBLIC HEARING REGARDING ALL APPELLATE JUSTICES AND JUDGES WHO ARE SUBJECT TO RETENTION YEAR EVALUATIONS. THE STATE COMMISSION SHALL ARRANGE TO HAVE THE PUBLIC HEARING ELECTRONICALLY RECORDED AND SHALL MAKE COPIES OF THE RECORDING AVAILABLE TO MEMBERS OF THE PUBLIC. THE STATE COMMISSION SHALL SUPPLY A COPY OF THE RECORDING AT NO COST TO ANY JUSTICE OR JUDGE WHO IS THE SUBJECT OF THE HEARING.

(IV) THE NARRATIVE PREPARED FOR A RETENTION YEAR EVALUATION SHALL INCLUDE AN ASSESSMENT OF THE APPELLATE JUSTICE'S OR JUDGE'S STRENGTHS AND WEAKNESSES WITH RESPECT TO THE JUDICIAL PERFORMANCE CRITERIA CONTAINED IN SECTION 13-5.5-105.5 (1), A DISCUSSION REGARDING ANY DEFICIENCY IDENTIFIED IN THE INTERIM EVALUATION PREPARED PURSUANT TO SECTION 13-5.5-106.3, AND A STATEMENT OF WHETHER THE STATE COMMISSION CONCLUDES THAT ANY DEFICIENCY IDENTIFIED HAS BEEN SATISFACTORILY ADDRESSED BY THE JUSTICE OR JUDGE.

(V) ~~The~~ EACH appellate justice or judge WHO RECEIVES A RETENTION YEAR EVALUATION shall have the opportunity to meet with the state commission or otherwise respond to the evaluation no later than ten days following ~~such~~ THE justice's or judge's receipt of ~~such~~ THE evaluation. If ~~such~~ THE meeting is held or response is made, the state commission may revise its evaluation.

(b) After the ~~requirement~~ REQUIREMENTS of paragraph (a) of this

subsection (1) ~~is~~ ARE met, the state commission shall make a recommendation regarding the retention of each appellate justice or judge who declares his OR HER intent to stand for retention, which recommendation shall be stated as "retain", "do not retain", or "no opinion". A "no opinion" recommendation shall be made only when the state commission concludes that results are not sufficiently clear to make a firm recommendation and shall be accompanied by a detailed explanation. THE NARRATIVE SHALL INCLUDE THE NUMBER OF COMMISSION MEMBERS WHO VOTED FOR AND AGAINST THE RECOMMENDATION.

(c) The state commission shall release the narrative, ~~profile~~, the recommendation, and any other relevant information RELATED TO A RETENTION YEAR EVALUATION to the public no later than forty-five days prior to the retention election. The state commission shall arrange to have ~~a summary of the narrative profile~~ and recommendation printed in the ballot information booklet prepared pursuant to section 1-40-124.5, C.R.S., and mailed to electors pursuant to section 1-40-125, C.R.S.

(2) (a) (I) The district commission shall conduct an evaluation of each district and county judge whose term is to expire ~~following the next general election but not before July 1, 1989~~ AND WHO MUST STAND FOR RETENTION ELECTION. THE EVALUATIONS SHALL BE REFERRED TO IN THIS SUBSECTION (2) AS "RETENTION YEAR EVALUATIONS".

(II) RETENTION YEAR evaluations shall be completed and the narrative ~~profile prepared for communication~~ COMMUNICATED to ~~the~~ EACH judge no later than forty-five days prior to the last day available for the judge to declare ~~such~~ THE judge's intent to stand for retention.

(III) PRIOR TO THE COMPLETION OF NARRATIVES FOR RETENTION YEAR EVALUATIONS, AND FOLLOWING AT LEAST TEN DAYS' NOTICE TO THE PUBLIC AND THE DISTRICT AND COUNTY JUDGES, IT IS HIGHLY RECOMMENDED THAT THE DISTRICT COMMISSION CONDUCT A PUBLIC HEARING REGARDING ALL DISTRICT AND COUNTY JUDGES WHO ARE SUBJECT TO RETENTION YEAR EVALUATIONS. THE DISTRICT COMMISSION SHALL ARRANGE TO HAVE THE PUBLIC HEARING ELECTRONICALLY RECORDED AND SHALL MAKE COPIES OF THE RECORDING AVAILABLE TO MEMBERS OF THE PUBLIC. THE DISTRICT COMMISSION SHALL SUPPLY A COPY OF THE RECORDING AT NO COST TO ANY JUDGE WHO IS THE SUBJECT OF THE HEARING.

(IV) THE NARRATIVE PREPARED FOR A RETENTION YEAR EVALUATION SHALL INCLUDE AN ASSESSMENT OF THE DISTRICT OR COUNTY JUDGE'S STRENGTHS AND WEAKNESSES WITH RESPECT TO THE JUDICIAL PERFORMANCE CRITERIA CONTAINED IN SECTION 13-5.5-105.5 (2), A DISCUSSION REGARDING ANY DEFICIENCY IDENTIFIED IN THE INTERIM EVALUATION PREPARED PURSUANT TO SECTION 13-5.5-106.3, AND A STATEMENT OF WHETHER THE DISTRICT COMMISSION CONCLUDES THAT ANY DEFICIENCY IDENTIFIED HAS BEEN SATISFACTORILY ADDRESSED BY THE JUDGE.

(V) ~~The~~ EACH judge WHO RECEIVES A RETENTION YEAR EVALUATION shall have the opportunity to meet with the district commission or otherwise respond to the evaluation no later than ten days following ~~such~~ THE judge's receipt of ~~such~~ THE evaluation. If ~~such~~ THE meeting is held or response is made, the district commission may revise its evaluation.

(b) After the ~~requirement~~ REQUIREMENTS of paragraph (a) of this subsection (2) ~~is~~ ARE met, the district commission shall make a recommendation regarding the retention of each district or county judge who declares his OR HER intent to stand for retention, which recommendation shall be stated as "retain", "do not retain", or "no opinion". A "no opinion" recommendation shall be made only when the district commission concludes that results are not sufficiently clear to make a firm recommendation and shall be accompanied by a detailed explanation. THE NARRATIVE SHALL INCLUDE THE NUMBER OF COMMISSION MEMBERS WHO VOTED FOR AND AGAINST THE RECOMMENDATION.

(c) The ~~district~~ STATE commission shall release the narrative, ~~profile~~, the recommendation, and any other relevant information to the public no later than forty-five days prior to the retention election. The ~~district~~ STATE commission shall arrange to have a summary of the narrative ~~profile~~ and recommendation printed in the ballot information booklet prepared pursuant to section 1-40-124.5, C.R.S., and mailed to electors within the judicial district pursuant to section 1-40-125, C.R.S.

SECTION 9. Repeal. 13-5.5-106 (3), Colorado Revised Statutes, is repealed.

SECTION 10. Article 5.5 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS

to read:

13-5.5-106.3. Interim evaluations. (1) (a) DURING EACH FULL TERM OF OFFICE OF EACH COLORADO SUPREME COURT JUSTICE AND EACH JUDGE OF THE COURT OF APPEALS, THE STATE COMMISSION SHALL CONDUCT AT LEAST ONE INTERIM EVALUATION OF EACH JUSTICE AND EACH JUDGE. THE EVALUATIONS SHALL BE REFERRED TO IN THIS SUBSECTION (1) AS "INTERIM EVALUATIONS".

(b) INTERIM EVALUATIONS SHALL BE COMPLETED AND COMMUNICATED TO THE CHIEF JUSTICE OF THE COLORADO SUPREME COURT OR THE CHIEF JUDGE OF THE COURT OF APPEALS AND THE APPELLATE JUSTICE OR JUDGE BEING EVALUATED.

(c) EACH APPELLATE JUSTICE OR JUDGE WHO RECEIVES AN INTERIM EVALUATION SHALL HAVE THE OPPORTUNITY TO MEET WITH THE STATE COMMISSION OR OTHERWISE RESPOND TO THE EVALUATION NO LATER THAN TEN DAYS FOLLOWING THE JUSTICE'S OR JUDGE'S RECEIPT OF THE EVALUATION. IF THE MEETING IS HELD OR RESPONSE IS MADE, THE STATE COMMISSION MAY REVISE ITS EVALUATION.

(d) THE STATE COMMISSION SHALL RELEASE THE SURVEY EVALUATIONS RELATED TO INTERIM EVALUATIONS TO THE PUBLIC SIMULTANEOUSLY WITH, AND NO EARLIER THAN, THE RELEASE OF THE RETENTION YEAR EVALUATIONS PURSUANT TO SECTION 13-5.5-106 (1) (c) PREPARED FOR THAT YEAR.

(2) (a) DURING EACH FULL TERM OF OFFICE OF EACH DISTRICT JUDGE AND COUNTY JUDGE, THE DISTRICT COMMISSION SHALL CONDUCT AT LEAST ONE INTERIM EVALUATION OF EACH DISTRICT JUDGE AND COUNTY JUDGE. THE EVALUATIONS SHALL BE REFERRED TO IN THIS SUBSECTION (2) AS "INTERIM EVALUATIONS".

(b) INTERIM EVALUATIONS SHALL BE COMPLETED AND COMMUNICATED TO THE CHIEF JUDGE OF THE DISTRICT AND TO THE DISTRICT OR COUNTY JUDGE BEING EVALUATED.

(c) EACH DISTRICT OR COUNTY JUDGE WHO RECEIVES AN INTERIM EVALUATION SHALL HAVE THE OPPORTUNITY TO MEET WITH THE DISTRICT COMMISSION OR OTHERWISE RESPOND TO THE EVALUATION NO LATER THAN

TEN DAYS FOLLOWING THE JUDGE'S RECEIPT OF THE EVALUATION. IF THE MEETING IS HELD OR RESPONSE IS MADE, THE DISTRICT COMMISSION MAY REVISE ITS EVALUATION.

(d) THE STATE COMMISSION SHALL RELEASE THE SURVEY EVALUATIONS RELATED TO INTERIM EVALUATIONS TO THE PUBLIC SIMULTANEOUSLY WITH, AND NO EARLIER THAN, THE RELEASE OF THE RETENTION YEAR EVALUATIONS PREPARED FOR THAT YEAR.

13-5.5-106.4. Recusal. (1) A MEMBER OF THE STATE COMMISSION OR A DISTRICT COMMISSION SHALL DISCLOSE TO THE COMMISSION ANY PROFESSIONAL OR PERSONAL RELATIONSHIP WITH A JUSTICE OR JUDGE THAT MAY AFFECT AN UNBIASED EVALUATION OF THE JUSTICE OR JUDGE, INCLUDING INVOLVEMENT WITH ANY LITIGATION INVOLVING THE JUSTICE OR JUDGE AND THE MEMBER, THE MEMBER'S FAMILY, OR THE MEMBER'S FINANCIAL INTERESTS. THE STATE COMMISSION OR A DISTRICT COMMISSION MAY REQUIRE THE RECUSAL OF ONE OF ITS MEMBERS ON ACCOUNT OF A RELATIONSHIP WITH A JUSTICE OR JUDGE UPON A TWO-THIRDS VOTE OF THE OTHER MEMBERS OF THE COMMISSION.

(2) A MEMBER OF THE STATE COMMISSION OR A DISTRICT COMMISSION SHALL RECUSE HIMSELF OR HERSELF FROM PARTICIPATING IN THE CONSIDERATION AND VOTE ON ANY MATTER INVOLVING THE EVALUATION OF A JUSTICE OR JUDGE FOR FAILURE TO MEET THE TRAINING, COURTROOM OBSERVATION, INTERVIEW, OR OPINION REVIEW RESPONSIBILITIES PROVIDED BY RULE, UNLESS EXCUSED BY A TWO-THIRDS VOTE OF THE OTHER MEMBERS OF THE COMMISSION.

(3) AN ATTORNEY SERVING AS A MEMBER OF THE STATE COMMISSION OR A DISTRICT COMMISSION SHALL NOT REQUEST THAT A JUSTICE OR JUDGE BEING EVALUATED BY THE COMMISSION BE RECUSED FROM HEARING A CASE IN WHICH THE ATTORNEY APPEARS AS COUNSEL OF RECORD, OR REQUEST PERMISSION TO WITHDRAW FROM A CASE PENDING BEFORE A JUSTICE OR JUDGE BEING EVALUATED, SOLELY ON THE BASIS THAT THE ATTORNEY IS SERVING AS A MEMBER OF A COMMISSION.

(4) AN ATTORNEY WHO APPEARS IN A MATTER WHERE OPPOSING COUNSEL OR A WITNESS SERVES AS A MEMBER OF THE STATE COMMISSION OR A DISTRICT COMMISSION THAT IS EVALUATING THE JUSTICE OR JUDGE BEFORE WHOM THE MATTER IS SET MAY NOT SEEK WITHDRAWAL OF THE ATTORNEY,

EXCLUSION OF THE WITNESS, OR RECUSAL OF THE JUSTICE OR JUDGE SOLELY ON THE BASIS THAT THE OPPOSING COUNSEL OR WITNESS IS SERVING AS A MEMBER OF A COMMISSION.

(5) A JUSTICE OR JUDGE BEING EVALUATED BY THE STATE COMMISSION OR A DISTRICT COMMISSION MAY NOT RECUSE HIMSELF OR HERSELF FROM A CASE SOLELY ON THE BASIS THAT AN ATTORNEY, PARTY, OR WITNESS IS A MEMBER OF THE COMMISSION, NOR SHOULD A JUSTICE OR JUDGE GRANT AN ATTORNEY'S REQUEST TO WITHDRAW FROM A CASE, SOLELY ON THE BASIS THAT THE ATTORNEY, PARTY, OR WITNESS IS SERVING AS A MEMBER OF A COMMISSION.

13-5.5-106.5. Confidentiality. (1) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, ALL COMMENTS IN SURVEY REPORTS, SELF-EVALUATIONS, PERSONAL INFORMATION PROTECTED UNDER SECTION 24-72-204(3)(a)(II), C.R.S., ADDITIONAL ORAL OR WRITTEN INFORMATION, CONTENT OF IMPROVEMENT PLANS, AND ANY MATTER DISCUSSED IN EXECUTIVE SESSION SHALL REMAIN CONFIDENTIAL EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED BY RULE. COMMENTS IN SURVEY REPORTS MAY BE SUMMARIZED FOR USE IN A NARRATIVE. A MEMBER OF A COMMISSION SHALL NOT PUBLICLY DISCUSS THE EVALUATION OF ANY PARTICULAR JUSTICE OR JUDGE.

(2) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, ALL RECOMMENDATIONS, NARRATIVES, AND SURVEY REPORTS ARE CONFIDENTIAL UNTIL RELEASED TO THE PUBLIC ON THE FIRST DAY FOLLOWING THE DEADLINE FOR JUSTICES AND JUDGES TO DECLARE THEIR INTENT TO STAND FOR RETENTION. ANY COMMENTS INCLUDED IN THE REPORT SHALL BE MADE AVAILABLE ONLY TO MEMBERS OF THE COMMISSIONS, THE JUSTICE OR JUDGE BEING EVALUATED, AND THE CHIEF JUSTICE OR CHIEF JUDGE.

(3) INFORMATION REQUIRED TO BE KEPT CONFIDENTIAL PURSUANT TO THIS ARTICLE MAY BE RELEASED ONLY UNDER THE FOLLOWING CIRCUMSTANCES:

(a) TO THE SUPREME COURT ATTORNEY REGULATION COMMITTEE, AS PROVIDED BY RULE OF THE STATE COMMISSION;

(b) TO THE COMMISSION ON JUDICIAL DISCIPLINE, AS PROVIDED BY

RULE OF THE STATE COMMISSION; OR

(c) WITH THE CONSENT OF THE JUSTICE OR JUDGE BEING EVALUATED.

SECTION 11. Repeal. 13-5.5-108, Colorado Revised Statutes, is repealed as follows:

13-5.5-108. Implementation of article. ~~The implementation of this article shall be subject to the availability of funds received pursuant to section 13-5.5-107. If funds received pursuant to said section are insufficient to fully implement this article, the state commission shall reduce the number of judicial districts in which district commissions are established by section 13-5.5-104.~~

SECTION 12. 13-5.5-109 (1), Colorado Revised Statutes, is amended to read:

13-5.5-109. Repeal of article. (1) This article is repealed, effective June 30, 2009 2019.

SECTION 13. 13-3-101 (5), Colorado Revised Statutes, is amended to read:

13-3-101. State court administrator. (5) The state court administrator shall provide to the director of research of the legislative council criminal justice information and statistics and any other related data requested by the director. THE STATE COURT ADMINISTRATOR SHALL PROVIDE TO THE STATE COMMISSION ON JUDICIAL PERFORMANCE AND TO DISTRICT COMMISSIONS ON JUDICIAL PERFORMANCE CASE MANAGEMENT STATISTICS FOR JUSTICES AND JUDGES BEING EVALUATED.

SECTION 14. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the state commission on judicial performance cash fund created in section 13-5.5-107, Colorado Revised Statutes, not otherwise appropriated, to the judicial department, for allocation to the courts administration division, for the fiscal year beginning July 1, 2008, the sum of three hundred eight thousand two hundred seventy dollars (\$308,270) cash funds and 1.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 15. Effective date. This act shall take effect July, 1, 2008.

SECTION 16. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Peter C. Groff
PRESIDENT OF
THE SENATE

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO