

APPENDIX B

AMENDMENTS TO THE 2023 JPR TASK FORCE PROPOSED RULES OF PROCEDURE FOR JUDICIAL PERFORMANCE REVIEW ADDRESSES NON-RESPONSE BIAS ISSUES

Rule 1. Purpose

- (a) **Requirements.** Arizona Constitution Article 6, § 42, adopted by the voters at the November 1992 general election, requires the Court to adopt rules for, and administer, a process for evaluating judicial performance for all justices and judges standing for retention and for disseminating information to voters. These rules must include written performance standards and provide for performance reviews by surveying those with knowledge of the justice's or judge's performance. For purposes of these rules, "judges" means all justices and judges who are in merit selection jurisdictions and subject to retention elections.
- (b) **Intent.** These rules are intended to implement the constitutional requirements through adoption of a judicial performance review process to provide information on judicial performance to voters in retention elections and the judges subject to retention; assist all judges subject to retention with opportunities for improving judicial performance; identify needed judicial education programs; and promote the goals of protecting judicial independence while fostering public accountability of the judiciary.

Rule 2. Commission on Judicial Performance Review

- (a) **General.** The Commission on Judicial Performance Review administers the process for reviewing the performance of judges subject to retention. For purposes of these rules, "Commission" means the Commission on Judicial Performance Review.
- (b) **Composition of the Commission.** The Commission is comprised of up to 34 members appointed by the Supreme Court. The Commission's members may include up to 7 judges and up to 6 attorneys. Members of the public who are not attorneys or judges must be in the majority.
- (c) **Diversity.** The Supreme Court will solicit recommendations of candidates for appointment to the Commission. To promote fairness and public confidence in the Commission, qualified candidates for appointment must:
 - (1) Have outstanding competence and reputation;
 - (2) Be sensitive to the needs of and held in high esteem by their personal and professional communities;

- (3) To the extent possible, reflect the geographic, ethnic, racial, and gender diversity of the state and their communities.
- (d) **Chair; Vice Chair.** The Chief Justice of Arizona must appoint either an attorney member or public member as Commission Chair to preside at all Commission meetings. The Chair must select a Vice Chair from either the Commission’s attorney members or public members so that the Chair and Vice Chair are not both attorney or public members. The Vice Chair presides at all meetings in the Chair’s absence.
- (e) **Terms.** Each Commission member serves a 4-year term and is eligible for reappointment. If a vacancy occurs during a term, a member appointed to fill the vacancy serves the remainder of the unexpired term.
- (f) **Subcommittees.** The Chair may create subcommittees or work groups of Commission members as needed to meet its responsibilities and accomplish its purpose. Such subcommittees or work groups are exempt from the quorum requirement in Rule 4(c)(1). By a simple majority of the eligible votes cast, a subcommittee or work group may recommend action to the full Commission.
- (g) **Correspondence.** Only the Chair or Vice Chair, acting at the direction of the Chair may sign-Commission correspondence.
- (h) **Spokesperson.** The Commission Chair may select a Commission member to communicate with the media about the judicial performance evaluation process and the Commission’s actions on judges eligible for retention.

Rule 3. Powers and Duties

- (a) **Judicial Performance Review Program.** The Commission must administer a program for periodic review of the performance of each judge who is subject to retention. Information obtained during this review enables the Commission to determine and publicly announce whether each judge eligible for retention “meets” or “does not meet” the Rule 5(a) judicial performance standards.
- (b) **Performance Standards.** The Commission must determine whether judges meet the Rule 5(a) judicial performance standards for purposes of:
 - (1) **Retention.** In the context of a judge’s retention, the Commission must determine whether the judge’s record of performance under the judicial performance standards demonstrates the judge’s fitness for retention in office.
 - (2) **Improvement.** For judges where there are identified needs for self-improvement, including judges who have been determined to meet the judicial performance standards for retention, the Commission must refer any such suggestions for improvement to the judge’s assigned Conference Team.
- (c) **Policies and Procedures.** The Commission must adopt policies and procedures for collecting information for use by the Commission in conducting performance

reviews.

- (d) **Forms.** ~~The Commission must approve the survey instruments required under Rule 5(b), the self-evaluation form to be completed by each judge, and any other forms the Commission deems necessary to conduct its business.~~
- (1) The Commission survey instrument required under Rule 5(b) must have been approved by the Supreme Court.
- (2) The Commission must approve the self-evaluation form to be completed by each judge.
- (e) **Education.** If the Commission believes that any judge may benefit from additional education or training of a specific nature, the Commission should so inform the judge and the judge's assigned Conference Team. The Commission should work with the Committee on Judicial Education and Training to prioritize the development of such programs.
- (f) **Public Participation.** To give the public a full and fair opportunity for participation in the evaluation process, the Commission must provide advance notice of public hearings for receiving public comment on judicial performance.
- (g) **Voter Information.** The Commission must develop and implement methods for disseminating information about judicial performance for purposes of retention as provided in Rule 7(b).
- (h) **Contractors.** The Commission may retain the services of one or more qualified contractors to assist the Commission in carrying out its duties.

Rule 4. Meetings and Action

- (a) **Frequency.** The Commission meets at the call of the Chair and at least two times each year.
- (b) **Election-Related Meetings.**
- (1) **Public Hearings.** In each election year, the Commission must request written public comments and hold at least one hearing for the sole purpose of receiving public comment on the performance of judges eligible for retention on the next general election ballot.
- (A) Public hearings must be recorded.
- (B) Before being permitted to give public comment, each member of the public must provide their name and address. The Commission may request a speaker's day and evening telephone numbers.

- (C) Commission members may ask follow-up questions of individuals providing public comment as necessary to obtain any additional information, clarification, or context for the Commission.
 - (D) Written comments must be legible and include the author's name and address to be provided for the Commission's consideration.
 - (2) **Invitational Meeting.** On the request of any Commission member, the Commission must invite a judge to an executive session to discuss information received from survey results, public comments, the Judicial Conduct Commission, or other sources. No Commissioner may vote that a judge does not meet the Rule 5(a) judicial performance standards sufficient for retention in office without the judge first being given the opportunity to meet with the Commission in executive session.
 - (3) **Public Vote Meeting.** Following the public hearings and invitational meeting, the Commission must meet during the first 5 months of every even-numbered year to determine whether each judge eligible for retention "meets" or "does not meet" the Rule 5(a) judicial performance standards sufficient for retention. Public comment is prohibited at the public vote meeting.
- (c) **Quorum.**
- (1) **Requirement.** The Commission must not conduct business unless a quorum of Commission members is present. A quorum is one more than half of the total Commission membership in office at the time of the meeting and eligible to vote.
 - (2) **Exception.** The quorum requirement does not apply to meetings held by the Commission in counties other than Maricopa exclusively for the purpose of receiving public comment.
- (d) **Member Attendance.**
- (1) **Members Present.** Commission members attending a meeting in person or by telephone or video conference are deemed present. Members must be allowed to attend and participate in meetings by telephone or video conference.
 - (2) **Failure to Attend.**
 - (A) Any member who fails to attend 50% of the Commission's scheduled meetings during a calendar year may be removed from the Commission by the Chief Justice on recommendation of the Commission Chair.
 - (B) Any member who does not attend the executive session at which a judge appears under (b), is ineligible to vote on any judge at the following public vote meeting.
- (e) **Public Participation.** Except as provided in (b) (h), all Commission meetings are open to the public and, except as provided in (b)(3), must include a call to the public

to allow individuals to address the Commission on the judicial performance review process or the performance of any judges subject to retention.

- (1) ***Speaker Identification.*** Before being permitted to give public comment, each member of the public must provide their name and address. The Commission may request a speaker's day and evening telephone numbers.
 - (2) ***Commission Questions.*** Commission members may ask follow-up questions of individuals providing public comment as necessary to obtain any additional information, clarification, or context for the Commission.
- (f) **Minutes.** The Chair must assure that minutes of each public meeting and executive session are prepared. The minutes of each public meeting must be approved at the next public meeting. Minutes of public meetings are subject to disclosure under Rule 123.
- (g) **Majority Vote Required.** ~~Except as provided otherwise in these rules, the Commission acts only by a simple majority vote of more than half of the eligible votes cast. Abstentions are excluded in calculating a majority vote.~~

Except as provided otherwise in these rules, the Commission acts only by a simple majority vote of more than half of the eligible votes cast. Abstentions are excluded in calculating a majority vote and will not be counted or reported in the minutes or to the public via the Commission website or the statewide publicity pamphlet required under A.R.S. § 19-123(A)(5) or its successor.

(h) **Executive Session.**

- (1) ***When Required.*** The Commission must meet in executive session as follows:
 - (A) ***Confidential Agenda Items.*** For any agenda item involving matters made confidential by these rules, any other court rules, or by law.
 - (B) ***During the Performance Evaluation Process.*** To promote open and frank discussion and accuracy in the performance evaluation process, during:
 - (i) Discussion of whether a judge “meets” or “does not meet” judicial performance standards;
 - (ii) Presentation and discussion of a judge’s written comment submitted in response to a finding that the judge “does not meet” judicial performance standards;
 - (iii) A judge’s appearance before the Commission by invitation; and
 - (iv) Discussion of whether any judges, including judges determined to meet the Rule 5(a) judicial performance standards for retention, have opportunities for self-improvement to be relayed to the judge and the judge’s conference team.
- (2) ***When Permitted.*** The Commission may meet in executive session at any time

upon a simple majority vote for any purpose authorized by the Supreme Court or by law.

- (3) **When Prohibited.** No vote may be taken in executive session.
- (4) **Attendance.** Executive session attendance is limited to Commission members and additional persons as reasonably necessary for the Commission to perform its duties, including the taking of minutes.
- (5) **Nondisclosure.** Persons present at an executive session must not disclose the substance of executive session discussions. The Chair must instruct those present of the confidential nature of the executive session and this disclosure prohibition.

Rule 5. Judicial Performance Review Process

(a) **Judicial Performance Standards.** The Commission must evaluate judicial performance according to the following standards:

- (1) Command of relevant substantive law and procedural rules;
- (2) Impartiality and freedom from bias;
- (3) Clarity of oral and written communications;
- (4) Judicial temperament and professionalism upholding public confidence in the legal system and demonstrating appropriate respect for everyone; and
- (5) Possession of the administrative and management skills and work ethic necessary to be productive and efficient.

(b) **Tools For Evaluating Performance.**

(1) **Surveys.**

(A) *Purpose.* The Commission must conduct periodic surveys of those with knowledge of a judge's performance to elicit information about whether a judge meets the judicial performance standards in (a).

(B) *Survey Periods and Public Vote; Superior Court Judges.*

- (i) A "mid-term survey" is conducted from February through May of odd-numbered years for judges who were retained at the preceding regular general election.
- (ii) A "retention election survey" is conducted from February through May of odd-numbered years for judges eligible for retention at the next regular general election who will be the subject of the

Commission's election-year meeting under Rule 6.

- (iii) A "special survey" is conducted from August through November of odd-numbered years for judges appointed from July through the general election date of the preceding even-numbered year and the subject of the Commission's election-year meeting under Rule 6.
 - (iv) In its discretion, the Commission may extend the length of any survey period.
- (C) *Survey Periods and Public Vote; Appellate Judges.* Appellate judges are surveyed on a continuing basis but are the subject of the Commission's election-year meeting only in the even-numbered year in which the appellate judge is eligible for retention.
- (D) *Respondents.* The Commission may exercise its discretion as to the method and frequency of survey distribution, but it must conduct periodic surveys of those with knowledge of a judge's performance including, as applicable:
 - (i) Attorneys who appear before the judge for any argument or proceeding, whether in person or by means of a telecommunication system or remote connection, during the survey period; file a motion, request, response, or reply on any issue that is fully briefed during the 60-day period before the survey period begins; receive a minute entry, ruling, order, opinion, or other communication issued by the judge in any proceeding or matter taken under advisement during the survey period; or receive a minute entry, ruling, order, or other communication issued by the judge during the survey period.
 - (ii) Jurors, except that jurors are surveyed year-round.
 - (iii) Parties, including criminal defendants.
 - (iv) Witnesses.
 - (v) Victims in criminal cases who testify or provide any oral or written victim impact statement during the survey period; if the judge conducts any proceeding during the survey period attended by the victim; or if there is disposition of any charge against the defendant or judgment entered during the survey period.
 - (vi) Court employees, including clerks and the judge's staff; and
 - (vii) Other judicial officers as provided in (D); and
 - (viii) Other persons who have been in direct contact with the judge being surveyed, regardless of the form of that contact, and who have first-hand knowledge of the judge's judicial performance during

the evaluation period.

- (E) *Judicial Officer Respondents.*
 - (i) As the Commission deems appropriate, the Commission must provide for survey evaluation of superior court judges by commissioners, full time judges pro tem, other superior court judges, and appellate judges who participated in deciding any appellate matter heard and decided by the superior court judge. In determining other judicial officers to survey, the Commission should consider the size and structure of the superior court of the county in which the judge serves and any department or calendar to which the judge is assigned.
 - (ii) As the Commission deems appropriate, the Commission must provide for survey evaluation of appellate judges by other appellate judges on the same bench; appellate judges who participated in judicial review of the appellate judge's written opinion; and appellate or superior court judges whose written, opinions, decisions, or orders were the subject of an appellate matter decided by the appellate judge being reviewed.
- (F) *Development.* The Commission must supervise the preparation and evaluation of survey instruments developed according to the best practices in survey design and administration in the area of performance evaluations.
- (G) *Narrative Comments.* To the extent the survey allows anonymous respondents to include narrative comments:
 - (i) The narrative comments must be extracted, and redacted as necessary to preserve anonymity, before being provided to the judge, the judge's Conference Team, presiding judge or chief judge, or the Chief Justice;
 - (ii) Narrative comments, extracted and redacted under (i), may be provided to the Administrative Office of the Courts for use in development of judicial education programs; and
 - (iii) Narrative comments, even if extracted and redacted under (i), must remain confidential and not disclosed except as provided under (i) and (ii).
- (2) ***Public Comments.*** The Commission must consider oral and written comments received during the relevant survey period under Rule 4(b)(1) and Rule 4(e).
- (3) ***Disciplinary Record.*** The Commission must obtain information from the Arizona Commission on Judicial Conduct about whether discipline has been imposed on any judge being reviewed. If discipline has been imposed on any

judge being reviewed, the Commission must obtain and review the judge's disciplinary file to the extent allowed by the rules of the Arizona Commission on Judicial Conduct.

- (4) **Other Evaluation Tools.** To obtain additional, reliable information about whether a judge who is invited to the executive session under Rule 4(b)(2) meets the performance standards for retention, the Commission may consider the following:

- (A) Courtroom observation, including review of video and audio recordings;
- (B) The number of notices of change of judge;
- (C) Review of written opinions or orders; or
- (D) Case management statistics.

- (c) **Data Report.** In April of each statewide general election year:

- (1) **Preparation.** The Commission staff must prepare a data report on each judge being reviewed consisting of compiled survey data, any narrative comments extracted and redacted under Rule 5(b)(1)(F)(ii); any public and written comments received under Rule 5(b)(2); any disciplinary information received under Rule 5(b)(3); and any information obtained under Rule 5(b)(4) using the other evaluation tools.
- (2) **Dissemination.** The data report must be provided:
 - (A) To the judge being reviewed, the judge's presiding judge or chief judge, and the Chief Justice.
 - (B) To the Commission members but only after encoding the report by a number randomly assigned to the judge.

Rule 6. Commission Evaluation; Public Vote.

- (a) **Relevant Information.** In determining whether a judge meets or does not meet the judicial performance standards for retention, the Commission members must consider, and give appropriate weight to, only:
- (1) The survey data report;
 - (2) Comments from public hearings or calls to the public;
 - (3) Written comments received;
 - (4) Written or oral information submitted by the judge in an invitational meeting or otherwise;
 - (5) Information obtained from the Arizona Commission on Judicial Conduct;

- (6) The judge’s calendar assignment;
 - (7) Past survey results; and
 - (8) Information obtained by use of other evaluation tools under Rule 5(b)(4).
- (b) **Comparison to Other Judges; Limitation.** A judge’s survey results as compared with the mean scores of all judges reviewed may be considered by the Commission but must not be given dispositive effect in determining whether a judge meets or does not meet the judicial performance standards for retention.
- (c) **Public Vote; Retention.**
- (1) **Consent Agenda.** To determine whether each judge who is subject to retention “meets” or “does not meet” the Rule 5(a) judicial performance standards for retention, all judges, identified only by number, are placed on a consent agenda.
 - (2) **Removal From Consent Agenda.** Before the Commission votes on the consent agenda, judges may be removed from the consent agenda on the request of any Commission member.
 - (3) **Effect of Removal From Consent Agenda.** The Commission must vote separately on each judge removed from the consent agenda. The vote of each Commission member must be recorded.
 - (4) **Effect of Inclusion on Consent Agenda.** The Commission will vote on whether to approve the consent agenda by a voice vote. Approval of the consent agenda means all judges on the consent agenda are determined to meet the Rule 5(a) judicial performance standards for retention by a vote of all Commissioners present and eligible to vote.
 - (5) **Voting on Consent Agenda.** Before voting on the consent agenda, the Chair must identify on the record any Commission member who is recused from voting under Rule 9(a)(2) or is not eligible to vote under Rules 4(d)(2)(B) or 9(b); identify the number of each judge the Commission member is recused from or ineligible to vote on; and state that the voice vote taken on the consent agenda does not include the vote of the Commission member on judges so identified.
 - (6) **Discussion.** No vote may be taken on any judge without a full and fair opportunity for Commission discussion.
 - (7) **Question Presented.** The question before the Commission, whether voting on the consent agenda or on individual judges, is whether the judge’s record of performance meets the Rule 5(a) judicial performance standards and demonstrates the judge’s fitness for retention in office. A “nay” vote on the question presented is a vote that a judge does not meet the Rule 5(a) judicial performance standards sufficient for retention in office.

- (8) ***Explanation.*** A Commission member voting does not meet standards shall explain his or her vote. The explanation shall not contain information protected by executive session.
- (d) **~~Public Vote; Cooperation.~~** ~~The Commission must determine whether any judge substantially failed to cooperate with the judicial performance review process and identify the conduct resulting in that determination.~~

Rule 7. Dissemination of Results

(a) Commission Report.

- (1) ***Content.*** Following the public vote meeting, the Commission must prepare a report on the judicial performance of each judge eligible for retention stating:
 - (A) Whether the Commission found that the judge “meets” or “does not meet” the judicial performance standards for retention;
 - (B) The court on which the judge serves, any current assignment, and the number of years on that court; and
 - (C) ~~Whether a judge has failed to cooperate with the judicial performance review process and on what basis.~~
- (2) ***Format.*** The report must clearly list any judges who the Commission determined to not meet the judicial performance standards for retention before listing the judges determined to meet those standards.

(b) Dissemination; Methods. The Commission must disseminate its report, and any other information available for disclosure under Rule 12 it deems relevant, to the public and the judge eligible for retention.

- (1) ***Statewide Publicity Pamphlet.*** The Commission must transmit its report to the secretary of state for publication in the statewide publicity pamphlet required under A.R.S. § 19-123(A)(5) or its successor.

(2) Web Sites.

(A) Commission Website.

- (i) ~~To maximize the information available to voters, no later than 60 days before the regular general election, the Commission must publish on its website any publicly available judicial performance evaluation information about judges eligible for retention.~~

No later than 60 days before the regular general election, The Commission must publish on its website the same judicial performance evaluation information regarding judges eligible for retention that was provided to the secretary of state for publication in the statewide publicity pamphlet required under A.R.S. § 19-

123(A)(5) or its successor.

- (ii) As required under A.R.S. § 12-120.07, no later than 60 days before the regular primary election, the Commission must publish on its website a list of the decisions of each appellate court judge eligible for retention in the next regular general election with the decision's official citation and an electronic copy of the decision.
 - (B) *Secretary of State Website.* As required under A.R.S. § 19-124.01, no later than 60 days before the regular primary election, the Commission must transmit the following information to the secretary of state for publication on the secretary of state's website.
 - (i) Biographical information in no more than 300 words on each appellate judge eligible for retention, including length of time serving in a judicial capacity and educational background.
 - (ii) A list of published decisions in which an appellate judge eligible for retention ruled on the constitutionality of a statute together with citation to the relevant provision of the constitution.
- (3) **Other.** By any other methods it deems necessary to provide voters with easy access to meaningful and accurate information about judicial performance, the Commission may disseminate information, including information:
 - (A) Made public by these rules or Rule 123;
 - (B) To educate the state's voters about the role of judges;
 - (C) About the judicial performance review process;
 - (D) About the judges eligible for retention; and
 - (E) About whether a judge meets the judicial performance standards for retention.

Rule 8. Conference Teams

- (a) **Purpose.** Every judge must meet with an assigned Conference Team to assist in identifying aspects of the judge's performance that may need improvement and to help the judge develop plans for self-improvement.
- (b) **Timing.** Following each of a judge's mid-term and retention election performance reviews, the judge must meet with the assigned Conference Team.
- (c) **Composition.** The Commission Chair must solicit recommendations from the public to assist in appointing Conference Team members. The Chair or the Chair's designee must appoint Conference Teams comprised of one member of the public, one attorney who is a member of the State Bar of Arizona, and one active or retired judge. No more than one member of a Conference Team may be a member of the

Commission.

- (d) **Organization.** Conference Team members may organize themselves as necessary to perform their assigned duties.
- (e) **Terms.** A Conference Team may review more than one judge during any review period. Conference Team members will be appointed to serve until the completion of Conference Team meetings during the even-numbered year following their appointment.
- (f) **Meetings.** Meetings of the Conference Team require the presence of all 3 members. Conference Team meeting logistics are within their discretion. The substance of Conference Team meetings is confidential.
- (g) **Self-Evaluation Form.** Prior to meeting with the Conference Team, each judge must complete a self-evaluation form reflecting on the judge's performance. The completed self-evaluation form is confidential and may not be used in the Commission's evaluation process. It is furnished only to the Conference Team before its meeting with the judge, and then to the judge's presiding or chief judge and the Chief Justice together with the self-improvement plan developed with the Conference Team.
- (h) **Conference Team Report.** The judge and Conference Team must develop a written plan for self-improvement. Once finalized, the plan must be signed by the judge and the Conference Team members.
 - (1) **Development.** In developing the self-improvement plan, the judge and Conference Team must consider previous and current survey results and narrative comments, the previous self-improvement plan, and any objective data demonstrating completion of the previous plan.
 - (2) **Distribution.** The self-improvement plan is distributed only to the judge being reviewed, the judge's presiding or chief judge, and the Chief Justice. The self-improvement plan, with the name of the judge redacted, may be distributed to the Administrative Office of the Courts for use in development of judicial education programs. Neither the Conference Team Report nor the self-improvement plan may be distributed to the Commission or used by the Commission in determining whether a judge meets the judicial performance standards for retention.

Rule 9. Commission Member Responsibilities

(a) Impartiality.

- (1) **Duty.** A Commission or Conference Team member must perform official duties in an impartial, objective manner.
- (2) **Recusal.** To preserve impartiality:

- (A) When a Commission or Conference Team member cannot perform official duties in an impartial, objective manner due to the member's relationship with a reviewed judge, conflict of interest, bias, sentiments concerning a judge's appointment, political considerations, or prejudice that may interfere with the member's duty to act in an impartial, objective manner, the member must inform the Commission or Conference Team of the member's recusal from participating in any matter concerning the judge.
 - (B) A Commission or Conference Team member is disqualified from participating in any matter concerning a judge who is a family member within the third degree of consanguinity and must inform the Commission or Conference Team of the relationship.
- (b) **Judicial Member.**
 - (1) A judicial member of the Commission is not eligible to participate in any matter concerning the judge's own performance.
 - (2) A judicial member of the Commission who receives an invitation under Rule 4(b)(2) is prohibited from participating as a Commission member for the balance of the then-current cycle.
- (c) **Outside Influence.** A Commission or Conference Team member must not be influenced by sentiments concerning the judge's appointment, political considerations, or by facts or opinions about the reviewed judge other than those presented to the Commission or Conference Team during the review process. A Commission or Conference Team member must promptly report to the Commission Chair if any individual or entity attempts to influence the member other than by stating fact or opinion.

Rule 10. Judge's Rights and Responsibilities

- (a) **Cooperation.** A judge is expected to cooperate with and respond to communications from the Commission and Conference Team.
- (b) **Fair and Impartial Treatment.** A judge is entitled to receive fair and impartial treatment from the Commission and Conference Team, including enforcement of the rules safeguarding the process from improper influence and protecting the judge's confidentiality.
- (c) **Right to Be Heard.**
 - (1) **Executive Session.** A judge must be invited to meet with the Commission in executive session under Rule 4(b)(2), before any Commission member may vote that the judge does not meet the Rule 5(a) judicial performance standards sufficient for retention in office.

- (2) **Written Comments.** A judge receiving an invitation to meet with the Commission in executive session has the right to submit confidential written comments to the Commission, to appear and be heard in an executive session held on a day before the day of the public vote, or both. The fact that a judge only submits written comments and does not appear in executive session should not be considered in determining whether the judge has cooperated or whether the judge meets the performance standards for retention.
- (d) **Data Validity.** ~~The Commission is expected to use generally accepted statistical methods and techniques. If any information the Commission receives about a judge under Rule 5(c) includes data that is not within a generally accepted confidence level; was obtained or compiled in a manner inconsistent with generally accepted statistical methods and techniques; or the Commission deems it unduly prejudicial or otherwise unreliable, the Commission must disclose these facts and the reasons the data or other information is flawed in its report under Rule 5(c)(2) and in any dissemination under Rule 7(b).~~

Data Validity. The Commission is expected to use generally accepted statistical methods and techniques. If any information the Commission receives about a judge under Rule 5(c) includes data that is not within a generally accepted confidence level; was obtained or compiled in a manner inconsistent with generally accepted statistical methods and techniques; or the Commission deems it unduly prejudicial or otherwise unreliable, the Commission must disclose these facts and the reasons the data or other information is flawed in its report under Rule 5(c)(2) and in any dissemination under Rule 7(b). In order to address the issue of non-response, distributed surveys that are not returned will be counted as “agree” with survey questions that make positive statements and “disagree” with survey questions that make negative statements and as “good” or “likely” for survey questions that ask for evaluations.

(e) **Challenges.**

- (1) **Peremptory Challenge.** Once each odd-numbered year, within 5 days of receiving actual notice of the assigned Conference Team, the judge being reviewed may peremptorily challenge one member of the Conference Team by filing notice with the Commission. The Commission Chair will decide any questions or disputes arising under this provision.
- (2) **Challenge For Cause.** Each judge being reviewed has the right to challenge any Commission or Conference Team member for cause for conflict of interest, bias, or prejudice.
- (A) Any such challenge to a Commission member must be in writing and filed with the Commission at least 60 days before the Commission’s public vote during the year in which the judge is eligible for retention.

- (B) Any such challenge to a Conference Team member must be in writing and filed with the Commission within 5 days of the judge receiving actual notice of the Conference Team members.
 - (C) Challenges for cause will be resolved by the Supreme Court, or a justice designated by the Court for this purpose, after consideration of the written challenge and any written response.
- (f) **Review Forms.** If the Commission determines that a judge does not meet the judicial performance standards for retention, the judge has the right to review duplicate survey forms excluding the narrative comments.

Rule 11. General Provisions

- (a) **Reimbursement for Expenses.** Commission or Conference Team members may not receive any compensation for their services but may be reimbursed for their travel expenses upon compliance with Supreme Court policies and procedures.
- (b) **Background Checks.** Criminal history records checks under A.R.S. § 41-1750(G)(2) may be required of all Commission and Conference Team members.

Rule 12. Confidentiality and Disclosure of Records

- (a) **Information Received.** All information, survey forms, letters, notes, memoranda, and other data received by the Commission in connection with any judicial performance evaluation is confidential and must not be disclosed except as specifically provided in these rules or Rule 123.
- (b) **Anonymity.** All survey forms and other evaluation information is anonymous. The identity of the judge being reviewed must be coded and encrypted until the Commission has completed its public vote except as provided in these rules.
- (c) **Discipline.** ~~Under no circumstances may the information the Commission receives as part of the judicial performance review process or the results of a judge's evaluation be used to discipline an individual judge or be disclosed to authorities charged with disciplinary responsibility unless the disclosure is required by law or the Code of Judicial Conduct.~~

Under no circumstances may the information the Commission receives as part of the judicial performance review process or the results of a judge's evaluation be used to discipline an individual judge. It may be disclosed to authorities charged with disciplinary responsibility for the purpose of determining if further investigation is necessary by that authority as required by law or the Code of Judicial Conduct or on a vote of the majority of Commissioners.

- (d) **Criminal Conduct.** Information concerning any criminal act may be provided to law enforcement authorities at the direction of the Arizona Supreme Court. Requests for

such information must be in writing and must state the particular need for the information. Once provided to law enforcement authorities under this provision, the information is no longer deemed confidential.

Rule 13. Admissibility as Evidence

All information made confidential under these rules is not admissible as evidence and is not discoverable in any action of any kind in any court or before any tribunal, board, agency, or person.

Rule 14. Immunity

No person participating in the judicial performance review process in any capacity may be held to answer for any actions taken or statements of fact made during the judicial performance review process except for statements of fact known to be false when made.