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Appendix A Adopt a Sampling Survey Approach

Rule 5. Judicial Performance Review Process

(a) [No changes]

(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~~ a randomly selected sample of

individuals with knowledge of a judge's performance, using the

methodology outlined in Rule 5(b)(1)(B), to determine whether a

judge meets the judicial performance standards ~~in (a).~~

(B) Sampling Methodology. The Commission shall conduct surveys

using a simple random sampling method that:

(i) Achieves a 95% confidence level;

(ii) Has a margin of error not exceeding $\pm 5\%$;

(iii) Selects respondents randomly from the entirety of the

eligible population, ensuring that all individuals with

relevant knowledge of the judge's performance have an

equal probability of selection.

(iv) The required sample size shall be calculated using standard statistical formulas to achieve the stated confidence level and margin of error, based on the total population size.

(v) Surveys shall be distributed to the selected sample, with follow-ups conducted to encourage participation and achieve the required number of responses.

(vi) If the required number of responses cannot be achieved due to non-responsiveness, the results must be flagged as statistically invalid and this limitation must be disclosed in the evaluation report.

(vii) Invalid survey data must not influence evaluations. In such cases, the judge may only be issued an invitation to appear at an executive session if public comments or disciplinary records indicate there is a reason to be concerned the judge does not meet performance standards.

(C) Confidentiality of Surveys. All survey responses and respondent identities shall remain confidential and be used solely for evaluating judicial performance. Respondent identities may be collected to verify survey authenticity and track the return of surveys but must not be disclosed to the evaluated judge,

members of the Commission, or any unauthorized party. These identities must remain confidential and be anonymized before any analysis, in compliance with Rule 12(b). Individual survey responses or respondent identities shall not be disclosed publicly.

(D) Data Handling. The Commission shall implement secure data handling procedures, including as appropriate, encryption of respondent information, restricted access to raw data, and anonymization of data during analysis.

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

(i) – (iv) [No changes]

~~(C)~~ (F) 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. The Commission may review only those surveys that are applicable to the judge’s current term.

~~(D)~~ (G) 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) – (vii) [No changes]

~~(H)~~ (H) *Judicial Officer Respondents.*

(i) – (ii) [No changes]

~~(F)~~ (I) 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)~~ (J) Narrative Comments. To the extent the survey allows anonymous respondents to include narrative comments:

(i) – (iii) [No changes]

(2) – (5) [No changes]

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

(1) *Preparation.* The Commission must prepare a data report on each judge being reviewed consisting of compiled survey data (excluding data from surveys of court employees), any narrative comments extracted and redacted under Rule 5(b)(1)(G); 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. Survey data that fails to meet the statistical standards outlined in Rule 5(b)(1)(B) must be flagged as statistically

invalid and excluded from the analysis. The data report must include a disclosure noting the limitations of the invalid data.

(2) *Dissemination.*

(A) [No changes]

~~(B) Unless good reason exists for not doing so, the Commission must disclose the compiled survey data under Rule 7(b)(2)(A)(i).~~

(3) *Publication of Results.* The Commission must disclose the compiled survey data under Rule 7(b)(2)(A)(i) unless:

(A) the required confidence level (95%) and margin of error ($\pm 5\%$) are not achieved. If the required confidence level and margin of error are not achieved, the survey results may not be published.

(B) In cases where results cannot be published the judge's evaluation which is disseminated under Rule 7(b) shall state "The Commission for Judicial Performance Review failed to collect sufficient data to fairly evaluate this 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) – (6) [No changes]

(7) past survey results, provided they meet the standards set forth in 5(b)(1)(A) and 5(b)(1)(B); and

(8) **[No changes]**

(9) In instances where survey data is deemed statistically invalid under Rule 5(b)(1)(B), the Commission may consider other relevant information, including public comments, disciplinary records, and other evaluation tools, with appropriate weight.

(b) – (d) [No changes]

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) – (C) **[No changes]**

(D) If insufficient survey data is collected to meet the requirements of Rule 5(b)(1)(B), the Commission report must explicitly state, 'The Commission for Judicial Performance Review failed to collect sufficient data to fairly evaluate this judge.

(2) **[No changes]**

(b) [No changes]

Rule 12. Confidentiality and Disclosure of Records

(a) [No changes]

(b) Anonymity and Confidentiality. All survey forms and other evaluation information is confidential. 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. Survey respondent identities may be collected for survey validation but must remain anonymized in all reposting and analysis stages.

(c) – (d) [No changes]

Appendix B Limit Surveys to Attorneys

Rule 5. Judicial Performance Review Process

(a) [No changes]

(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).~~ The Commission must conduct periodic surveys of attorneys who have knowledge of a judge's performance, as outlined in Rule 5(b)(1)(B), to determine whether a judge meets the judicial performance standards.

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

(i) – (iv) [No changes]

(C) [No changes]

(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~~ attorneys knowledge of a judge's performance ~~including, as applicable.~~ Only licensed

attorneys who have directly interacted with a judge as indicated in Rule 5(b)(1)(D)(i) during the evaluation period are eligible to participate in judicial performance surveys.

(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; should be surveyed.

~~(ii) jurors, except that jurors are surveyed year round;~~

~~(iii) parties, including criminal defendants;~~

~~(iv) witnesses;~~

~~(v) victims in criminal cases who have appeared before the judge being surveyed during the survey period;~~

- ~~(vi) court employees, including clerks and the judge's staff, who have been in direct contact with the judge being surveyed during the survey period; and~~
- ~~(vii) other judicial officers as provided in (b)(1)(E); and~~
- ~~(viii) other persons who have been in direct contact with the judge being surveyed during the survey period, regardless of the form of that contact, and who have first hand knowledge of the judge's judicial performance during the survey 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 tempore, 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) – (G) [No changes]

(2) – (5) [No changes]

(c) [No changes]

Appendix C Adopt Measurable Data Standards

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;~~
- ~~(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.~~

(1) Measurable Standards. Judicial performance shall be evaluated according to the following measurable standards:

(A) Timeliness. Cases under advisement must be resolved within the following timeframes:

(i) Trial Court Judges. No more than 60 days.

(ii) Appellate Judges. No more than six months.

(B) Judicial Education. Judges must complete at least 16 hours of continuing judicial education annually.

(C) Case Management. Judges must maintain an average caseload clearance rate of at least 90%, defined as the ratio of cases resolved to cases filed within a specified timeframe, ensuring that the number of resolved cases equals or exceeds the number of new cases filed. This standard may be adjusted by the Commission if the Administrative Office of the Courts (AOC) revises its performance benchmarks or if specific court circumstances justify an alternative clearance rate.

(D) Physical and Mental Competence. Judges must demonstrate the physical and mental competence necessary to perform judicial duties effectively.

(2) Non-measurable Standards. Judicial performance shall be evaluated according to the following non-measurable standards:

(A) Disciplinary Record. The Commission must evaluate the significance of any disciplinary record that may have occurred since the last survey period.

(B) 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) Exceptions: Exceptions to measurable performance metrics may be granted by the Commission in cases of extraordinary circumstances, including:

(A) Personal illness or family emergencies;

(B) Case complexity requiring additional time;

(C) Unanticipated court workload increases;

(D) Verified temporary conditions affecting physical or mental competence, provided the judge demonstrates efforts to address the condition.

(4) Support for Exceptions: A judge requesting an exception may, but is not required to, submit statements from those with knowledge of the circumstances requiring an exception in order to support the request. The commission may not use the absence of supporting statements as a reason to deny an exception.

(b) Tools for Evaluating Performance.

(1) *Surveys.*

(A) Purpose. The Commission must conduct periodic surveys of those with knowledge of a judge's performance with regard to judicial performance standards to elicit information about whether a judge meets the standards in Rule 5(a). The survey will compile all data

collected with regard to the standards in Rule 5(a) since the last survey period.

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

- (i) A “mid-term survey” ~~is conducted from~~ must occur between February through May of odd- numbered years for judges and justices who were retained at the preceding regular general election.
- (ii) A “retention election survey” ~~is conducted from~~ must occur between February through May of odd-numbered years for judges and justices 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~~ must occur between August through November of odd-numbered years for judges and justices 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) Review of Surveys 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. The Commission may review only those surveys that are applicable to the judge's current term.~~

~~(i) The Commission may review only those surveys that are applicable to the judges' and justice's current term.~~

~~(ii) Judges and justices may review all surveys related to their performance at any time.~~

~~(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 have appeared before the judge being surveyed during the survey period;~~

~~(vi) court employees, including clerks and the judge's staff, who have been in direct contact with the judge being surveyed during the survey period; and~~

~~(vii) other judicial officers as provided in (b)(1)(E); and~~

~~(viii) other persons who have been in direct contact with the judge being surveyed during the survey period, regardless of the form of that contact, and who have first hand knowledge of the judge's judicial performance during the survey 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 tempore, 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.~~

(D) The commission will survey the following respondents.

(i) Respondents for Measurable Standards:

- (a) The commission will survey the court's administrative personnel with knowledge of the judge's performance with regard to the standards in Rule 5(a)(1)(A) and Rule 5(a)(1)(C).
- (b) The commission will use the same methodology as the Arizona Bar Association with regard to verification of CEU credits to collect evidence of compliance with Rule 5(a)(1)(B).
- (c) Judges shall self-certify annually that they possess the physical and mental competence necessary to perform judicial duties effectively as required by Rule 5(a)(1)(D). The Commission may require additional verification, including a physician's statement, when circumstances suggest a judge's fitness may be impaired. All information related to physical and mental competence shall remain confidential, unless disclosure is required by law. If a judge fails to demonstrate adequate physical or mental fitness, the matter shall be referred to the Commission on Judicial Conduct.

(ii) Non-measurable Standards:

(a) As required by Rule 5(a)(2)(A), 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.

(b) As required by Rule 5(a)(2)(B), the commission must consider input from the public that is received under Rule 4(b)(1) and Rule 4(e).

~~(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) *Video and Audio Recordings of Courtroom Proceedings.* If the Commission or a Commission member expresses concern about receives a report casting doubt on a judge's demeanor physical or mental~~

competence necessary to perform judicial duties effectively, the Commission or Commission member(s) should review a representative sample of video and audio recordings of courtroom proceedings during the judge's current term: to determine if the judge should be asked to provide a medical statement of fitness for office. The judge also may request such a review in these circumstances.

(5) *Other Evaluation Tools.* In the event information obtained with regard to Rule 5(a)(1)(D), Rule 5(2)(a) or Rule 5(2)(b) raises concerns regarding a judge's performance, the Commission may use additional 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) – (D) [No changes]

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

~~(1) *Preparation.* The Commission must prepare a data report on each judge being reviewed consisting of compiled survey data (excluding data from surveys of court employees), any narrative comments extracted and redacted under Rule 5(b)(1)(G); 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.~~

- (1) The Commission shall collect and analyze data on measurable metrics for each judge.
- (2) Judges shall have the opportunity to review their data, provide written explanations for any deviations from standards, and ask for an exception under Rule 5(a)(3) before publication.
- (3) If the Commission identifies a pattern of non-compliance with the measurable metrics or receives information demonstrating a violation of professional standards related to impartiality, professionalism, or other conduct expectations, the matter shall be referred to the Commission on Judicial Conduct.
- (4) The data report shall indicate the measurable metrics, whether the judge met the measurable standard, and, in the event that a judge was invited to an executive session as a result of a disciplinary report and subsequently received a vote of does not meet standards, the existence of the judicial discipline report.

~~(2)~~ (4) *Dissemination.*

(A) [No changes]

(B) Unless good reason exists for not doing so, the Commission must disclose the compiled survey data under Rule 7(b)(2)(A)(i) except that:

- (i) Data regarding judges granted an exception under Rule 5(a)(3) may not be released. The data report will state that the judge meets standards.

Appendix D

Treat Non-Responses as Neutral

Rule 5. Judicial Performance Review Process

(a) – (b) [No changes]

(c) Treatment of Non-Responses

- (1) Non-Response. For the purposes of judicial performance surveys, a non-response occurs when an individual who is eligible to participate does not return a completed survey within the prescribed time period.
- (2) Neutral Scoring. Non-responses shall be treated as neutral, indicating neither dissatisfaction nor satisfaction with a judge’s performance.
 - (A) For survey questions that use numerical scoring (e.g., a 1–5 scale), a neutral score shall be assigned as the midpoint of the scale (e.g., 3 on a 1–5 scale).
 - (B) For binary questions (e.g., yes/no), non-responses shall be excluded from the calculation.
- (3) Calculation of Results. When calculating survey results, the total number of eligible respondents shall include all individuals surveyed, whether they responded or not. Non-responses shall be factored into the aggregate score as neutral responses as described in 5(c)(2)(A) and 5(c)(2)(B).

(4) Public Disclosure. Survey reports shall include the total number of respondents, the number of non-responses, and the impact of non-responses on the final score. A statement shall accompany the results explaining that non-responses have been treated as neutral to ensure balance and fairness.

~~(e)~~ **(d) Data Report.** In April of each statewide general election year:

(1) – (2) [No changes]

Appendix E Treat Non-Responses as Positive

Rule 5. Judicial Performance Review Process

(a) –(b) [No changes]

(c) Treatment of Non-Responses

(1) Non-Response. For the purposes of judicial performance surveys, a non-response occurs when an individual who is eligible to participate does not return a completed survey within the prescribed time period.

(2) Positive Scoring. Non-responses shall be treated as positive, indicating an implicit satisfaction with a judge's performance.

(A) For survey questions that use numerical scoring (e.g., a 1–5 scale), a positive score shall be assigned as the highest score of the scale (e.g., 5 on a 1–5 scale)

(B) For binary questions (e.g., yes/no), non-responses shall be included in a way that gives the surveyed judge a positive response.

(3) Calculation of Results. When calculating survey results, the total number of eligible respondents shall include all individuals surveyed, whether they responded or not. Non-responses shall be factored into the aggregate score as positive responses as described in 5(c)(2)(A) and 5(c)(2)(B).

(4) Public Disclosure. Survey reports shall include the total number of respondents, the number of non-responses, and the impact of non-responses on the final score. A statement shall accompany the results explaining that non-responses have been treated as positive to ensure balance and mitigate the potential impact of a non-response bias.

~~(e)~~ **(d) Data Report.** In April of each statewide general election year:

(1) – (2) **[No changes]**