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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of

PETITION TO AMEND RULE 4
AND RULE 8 OF RULES
OF PROCEDURE FOR JUDICIAL
PERFORMANCE REVIEW IN THE
STATE OF ARIZONA

Supreme Court No. R-25-0015

Comment
of
Commission on Judicial
Performance Review

The Commission on Judicial Performance Review (“Commission”) respectfully submits this Comment to Petition R-25-0015 under Supreme Court Rule 28(e) and this Court’s January 21, 2025, Order Opening Rule Petitions for Public Comment.

The Commission comments in opposition to that portion of Petition R-25-0015, which seeks to amend Rules 4 and 8, Rules of Procedure for Judicial Performance Review in the State of Arizona (“JPR Rules”), to allow the Commission to review Conference Team information before the Commission

member may request that a judge be invited to meet with the Commission in executive session but only if the judge has opted to allow the Commission access to his or her conference team report and self-improvement plan. On January 24, 2025, the Commission approved a motion to file a comment in opposition to the R-25-0015 Conference Team amendments by a vote of 13 ayes, 4 nays, and 2 abstentions. The approved minutes of the Commission's January 24, 2025, meeting are provided as Appendix A to this Comment.

The primary reason for the Commission's opposition is its previous rejection of a similar proposal. During the Commission's meeting on November 15, 2024, it considered five proposals for inclusion in its petition proposing amendments to the JPR Rules.¹ Proposal #1 concerned allowing the Commission to access the Conference Team Report and self-evaluation plan in determining whether to invite a judge to attend an executive session if, during the last retention cycle, the Commission referred suggestions for improvement to the judge's assigned Conference Team.

Specifically, Proposal #1 would have recommended amending JPR Rules 4(b)(2) as follows:

¹ The proposals approved by the Commission were included in the Commission's Rule Petition R-25-0006.

(2) *Invitational Meeting.*

(A) If a Commission member requests that the Commission invite a judge to attend an executive session and articulates a reason for doing so, the Commission must invite the judge to an executive session to discuss information received from survey results, public comments, the Judicial Conduct Commission, or other sources. When asking the judge to attend an executive session, the Commission must inform the judge in writing of the reason or reasons for the request.

(B) In determining whether to invite a judge to attend an executive session and if, during the immediately preceding year in which the judge was subject to retention, the Commission referred suggestions for improvement to the judge's assigned Conference Team under Rules 3(b)(2) and 4(h)(1)(B)(iv), the Commission members may obtain and review that preceding Conference Team Report and self-evaluation plan for this limited purpose only.

(C) No Commission member 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.

Proposal #1 also included a corresponding amendment to JPR Rule 8(h):

(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 except as provided in Rule 4(b)(2)(B).

A complete copy of Proposal #1 is provided as Appendix B to this Comment. The Commission voted against including Proposition #1 in its rule petition by a vote of 21 ayes and 3 nays or abstentions. The approved minutes of the Commission's November 15, 2024, meeting are provided as Appendix C to this Comment.

Those Commission members opposed to Proposition #1 argued that the Conference Team process is intended to assist judges in improving their performance and not as a basis for evaluation. The Conference Team Reports and a judge's self-evaluation are confidential and if a judge expects confidentiality, it arguably makes for a more robust meeting with the judge's Conference Team and greater candor and reflection in the judge's self-evaluation.

There may be some marginal benefit to the evaluation process in knowing whether a judge who is the subject of a possible executive session invitation has had past performance issues of a similar nature addressed by the judge's Conference Team in the last retention cycle. But the Commission's vote against Proposal #1 reflects the majority view that whatever benefit would be gained from this additional

information would be far outweighed by the negative impact from even the limited use of Conference Team information during the Commission's evaluation process concerning the small category of judges being considered for an executive session invitation.

R-25-0015 is not identical to Proposition #1. Petitioner Townsend's petition attempts to cure the majority's concerns by allowing judges to exercise the option of allowing their Conference Team Report to be made available to the Commission before any executive session invitation is extended. The proposal is unclear as to whether a judge would opt in at the time of meeting with the Conference Team or only when contacted about a possible executive session invitation. In either case, the Commission's position is that the specter of Conference Team information being used in the evaluation process will ultimately have a chilling effect on the Conference Team process and will diminish any benefits to judges and the public derived from a confidential process that seeks only to assist even the best and most experienced judges on ways to improve their performance.

Conclusion

Accordingly, the Commission respectfully requests that the Court deny the above-described changes proposed in Rule Petition R-25-0015. The Commission does not oppose the Petition's proposed change to Rule 4(e)(3) concerning public comment.

