

STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

HOUSE BILL 3380

By: Shannon

AS INTRODUCED

An Act relating to courts; creating the Board on Judicial Performance Evaluation; providing for composition and appointment; providing terms; providing for staff and support; providing for filling of vacancies; providing for selection of a chair and secretary; providing immunity from certain actions; providing for travel reimbursement; providing powers and duties of the Board; providing required criteria for evaluations of certain members of the judiciary; requiring and providing procedure for retention-year evaluations and reelection-year evaluations; requiring and providing procedure for interim evaluations; requiring members of the Board to make certain disclosures; providing for recusal in certain circumstances; prohibiting certain acts; providing for confidentiality of certain material and matters; providing exceptions; authorizing the Board to accept grants; creating the Board on Judicial Performance Evaluation Revolving Fund; stating source of funding; providing for expenditures from the fund; defining term; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3.11 of Title 20, unless there is created a duplication in numbering, reads as follows:

1 A. There is hereby created the Board on Judicial Performance
2 Evaluation.

3 B. The Board shall be composed of nine (9) members. Three
4 members shall be appointed by the President Pro Tempore of the
5 Oklahoma State Senate, three members shall be appointed by the
6 Speaker of the Oklahoma House of Representatives, and three members
7 shall be appointed by the Governor. For the initial appointments to
8 the Board, each appointing authority shall appoint one member for a
9 term of one (1) year, one member for a term of three (3) years and
10 one member for a term of five (5) years, subject to the pleasure of
11 the appointing authority. Thereafter the term of office of members
12 of the Board shall be five (5) years, subject to the pleasure of the
13 appointing authority.

14 C. The Administrative Office of the Courts shall provide such
15 staff and support as is necessary for the Board to carry out its
16 duties. Requests from the Board for staff and support shall be
17 coordinated through the Office of the Administrative Director of the
18 Courts. Justices and judges actively performing judicial duties
19 shall not be appointed to serve on the Board. Former justices and
20 judges are eligible to be appointed to the Board; except that a
21 former justice or judge shall not be assigned or appointed to
22 perform judicial duties while serving on the Board.

23 D. Any vacancy on the Board shall be filled by the original
24 appointing authority, but a member shall not serve more than two

1 full terms plus any balance remaining on an unexpired term if the
2 initial appointment was to fill a vacancy. Within five (5) days
3 after a vacancy arises on the Board, the Board shall notify the
4 appointing authority of the vacancy.

5 E. The members of the Board shall select a chair and secretary
6 and such other officers as they deem necessary.

7 F. Members and employees of the Board shall be immune from suit
8 in any action, civil or criminal, based upon official acts performed
9 in good faith as members of the Board.

10 G. Members of the Board shall serve without compensation but
11 shall be reimbursed by their appointing authority for all actual and
12 necessary expenses incurred in the performance of their duties in
13 accordance with the State Travel Reimbursement Act.

14 SECTION 2. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 3.12 of Title 20, unless there
16 is created a duplication in numbering, reads as follows:

17 A. The Board on Judicial Performance Evaluation has the
18 following powers and duties:

19 1. To develop uniform procedures and techniques for evaluating
20 Justices of the Supreme Court, Judges of the Court of Criminal
21 Appeals, Judges of the Court of Civil Appeals, and district court
22 judges based on performance criteria provided in Section 3 of this
23 act;

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1 2. To develop guidelines and procedures for the continuous
2 collection of data for use in the evaluation process;

3 3. To develop surveys for persons affected by justices and
4 judges, including but not limited to attorneys, jurors, litigants,
5 law enforcement personnel, attorneys within the district attorneys'
6 and public defender's offices, employees of the court, court
7 interpreters, employees of probation offices, employees of local
8 departments of social services, and victims of crimes;

9 4. To determine the statistical validity of completed surveys;

10 5. To prepare alternatives to surveys if sample populations are
11 inadequate to produce valid results;

12 6. To produce and distribute narratives and survey reports;

13 7. To review case management data and statistics for individual
14 appellate justices and judges and district court judges provided by
15 the state court administrator;

16 8. To review written judicial opinions;

17 9. To collect information from direct courtroom observation;

18 10. To interview justices and appellate judges, district court
19 judges, and other persons and accept information and documentation
20 from interested persons;

21 11. To draft narratives that reflect the results of judicial
22 performance evaluations of justices and appellate judges and
23 district court judges;

1 12. To distribute to the public narratives that reflect the
2 results of each judicial performance evaluation of each justice or
3 judge;

4 13. To conduct public education efforts concerning the judicial
5 performance evaluation process and retention recommendations of the
6 Board;

7 14. To measure public awareness of the judicial performance
8 evaluation process through regular polling;

9 15. To promulgate rules necessary to implement and effectuate
10 the provisions of this act; and

11 16. To gather and maintain statewide statistical data and post
12 a statistical report of the statewide data on its website no later
13 than thirty (30) days prior to each retention election. The
14 statistical report shall specify:

15 a. the total number of justices and judges who were
16 eligible to stand for retention and the total number
17 of judges who were eligible for reelection,

18 b. the total number of evaluations of justices and judges
19 performed by the Board,

20 c. the total number of justices and judges who were
21 evaluated but did not stand for retention or
22 reelection, and
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1 d. the total number of justices and judges recommended as
2 "retain", "do not retain", "reelect", "do not reelect"
3 or "no opinion", respectively.

4 B. Unless recused pursuant to Section 6 of this act, each
5 member of the Board shall have the discretion to vote for or against
6 retention or reelection of a justice or judge based upon his or her
7 review of all information before the Board.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 3.13 of Title 20, unless there
10 is created a duplication in numbering, reads as follows:

11 A. The Board on Judicial Performance Evaluation shall evaluate
12 each Justice of the Supreme Court, each Judge of the Court of
13 Criminal Appeals, and each Judge of the Court of Civil Appeals based
14 on the following performance criteria:

15 1. Integrity, including but not limited to whether:

16 a. the justice or judge avoids impropriety or the
17 appearance of impropriety,

18 b. the justice or judge displays fairness and
19 impartiality toward all participants, and

20 c. the justice or judge avoids ex parte communications;

21 2. Legal knowledge, including but not limited to whether:

22 a. the justice's or judge's opinions are well-reasoned
23 and demonstrate an understanding of substantive law
24 and the relevant rules of procedure and evidence,

1 b. the justice's or judge's opinions demonstrate
2 attentiveness to factual and legal issues before the
3 court, and

4 c. the justice's or judge's opinions adhere to precedent
5 or clearly explain the legal basis for departure from
6 precedent;

7 3. Communication skills, including but not limited to whether:

8 a. the justice's or judge's opinions are clearly written
9 and understandable, and

10 b. the justice's or judge's questions or statements
11 during oral arguments are clearly stated and
12 understandable;

13 4. Judicial temperament, including but not limited to whether:

14 a. the justice or judge demonstrates courtesy toward
15 attorneys, litigants, court staff, and others in the
16 courtroom, and

17 b. the justice or judge maintains appropriate decorum in
18 the courtroom;

19 5. Administrative performance, including but not limited to
20 whether:

21 a. the justice or judge demonstrates preparation for oral
22 argument, attentiveness, and appropriate control over
23 judicial proceedings,

24 b. the justice or judge manages workload effectively, and

1 c. the justice or judge issues opinions in a timely
2 manner and without unnecessary delay;

3 6. The justice or judge participates in a proportionate share
4 of the court's workload; and

5 7. Service to the legal profession and the public by
6 participating in service-oriented efforts designed to educate the
7 public about the legal system and to improve the legal system.

8 B. The Board shall evaluate district judges based on the
9 following criteria:

10 1. Integrity, including but not limited to whether:

11 a. the judge avoids impropriety or the appearance of
12 impropriety,

13 b. the judge displays fairness and impartiality toward
14 all participants, and

15 c. the judge avoids ex parte communications;

16 2. Legal knowledge, including but not limited to whether:

17 a. the judge demonstrates an understanding of substantive
18 law and relevant rules of procedure and evidence,

19 b. the judge demonstrates awareness of and attentiveness
20 to factual and legal issues before the court, and

21 c. the judge appropriately applies statutes, judicial
22 precedent, and other sources of legal authority;

23 3. Communication skills, including but not limited to whether:
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- a. the judge's findings of fact, conclusions of law, and orders are clearly written and understandable,
- b. the judge's oral presentations are clearly stated and understandable and the judge clearly explains all oral decisions, and
- c. the judge clearly presents information to the jury;

4. Judicial temperament, including but not limited to whether:

- a. the judge demonstrates courtesy toward attorneys, litigants, court staff, and others in the courtroom,
- b. the judge maintains and requires order, punctuality, and decorum in the courtroom, and
- c. the judge demonstrates appropriate demeanor on the bench;

5. Administrative performance, including but not limited to whether:

- a. the judge demonstrates preparation for all hearings and trials,
- b. the judge uses court time efficiently,
- c. the judge issues findings of fact, conclusions of law, and orders without unnecessary delay,
- d. the judge effectively manages cases,
- e. the judge takes responsibility for more than his or her own caseload and is willing to assist other judges, and

1 f. the judge understands and complies with directives of
2 the Supreme Court; and

3 6. Service to the legal profession and the public by
4 participating in service-oriented efforts designed to educate the
5 public about the legal system and to improve the legal system.

6 SECTION 4. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 3.14 of Title 20, unless there
8 is created a duplication in numbering, reads as follows:

9 A. 1. The Board on Judicial Performance Evaluation shall
10 conduct an evaluation of each Justice of the Supreme Court, each
11 Judge of the Court of Criminal Appeals, and each Judge of the Court
12 of Civil Appeals whose term is to expire and who must stand for
13 retention election. The evaluations shall be referred to in this
14 section as "retention-year evaluations".

15 2. Retention-year evaluations shall be completed and the
16 narrative prepared and communicated to the appellate justice or
17 judge no later than forty-five (45) days prior to the last day
18 available for the appellate justice or judge to declare such
19 justice's or judge's intent to stand for retention.

20 3. Prior to the completion of the narratives for retention-year
21 evaluations, and following at least ten (10) days' notice to the
22 public and the appellate justices and judges, the Board may hold a
23 public hearing regarding all appellate justices and judges who are
24 subject to retention-year evaluations. If a public hearing is held

1 the Board shall arrange to have the public hearing electronically
2 recorded and shall make copies of the recording available to members
3 of the public. The Board shall supply a copy of the recording at no
4 cost to any justice or judge who is the subject of the hearing.

5 4. The narrative prepared for a retention-year evaluation shall
6 include an assessment of the appellate justice's or judge's
7 strengths and weaknesses with respect to the judicial performance
8 criteria contained in Section 3 of this act, a discussion regarding
9 any deficiency identified in the interim evaluation prepared
10 pursuant to Section 5 of this act, and a statement of whether the
11 Board concludes that any deficiency identified has been
12 satisfactorily addressed by the justice or judge.

13 5. Each appellate justice or judge who receives a retention-
14 year evaluation shall have the opportunity to meet with the Board or
15 otherwise respond to the evaluation no later than ten (10) days
16 following the justice's or judge's receipt of the evaluation. If
17 the meeting is held or response is made, the Board may revise its
18 evaluation.

19 6. After the requirements of paragraphs 1 through 5 of this
20 subsection are met, the Board shall make a recommendation regarding
21 the retention of each appellate justice or judge who declares his or
22 her intent to stand for retention, which recommendation shall be
23 stated as "retain", "do not retain", or "no opinion". A "no
24 opinion" recommendation shall be made only when the Board concludes

1 that results are not sufficiently clear to make a firm
2 recommendation and shall be accompanied by a detailed explanation.
3 The narrative shall include the number of Board members who voted
4 for or against the recommendation.

5 7. The Board shall release the narrative, the recommendation,
6 and any other relevant information related to a retention-year
7 evaluation to the public no later than forty-five (45) days prior to
8 the retention election.

9 B. 1. The Board shall conduct an evaluation of each district
10 and judge whose term is to expire and who must stand for reelection.
11 The evaluations shall be referred to in this subsection as
12 "reelection-year evaluations".

13 2. Reelection-year evaluations shall be completed and the
14 narrative communicated to each judge no later than forty-five (45)
15 days prior to the last day available for the judge to file for
16 reelection.

17 3. Prior to the completion of narratives for retention-year
18 evaluations, and following at least ten (10) days' notice to the
19 public and the district judges, the Board may conduct a public
20 hearing regarding all district judges who are subject to reelection-
21 year evaluations. If a public hearing is held, the Board shall
22 arrange to have the public hearing electronically recorded and shall
23 make copies of the recording available to members of the public.
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1 The Board shall supply a copy of the recording at no cost to any
2 judge who is the subject of the hearing.

3 4. The narrative prepared for a reelection-year evaluation
4 shall include an assessment of the district judge's strengths and
5 weaknesses with respect to the judicial performance criteria
6 contained in Section 3 of this act, a discussion regarding any
7 deficiency identified in the interim evaluation prepared pursuant to
8 Section 5 of this act, and a statement of whether the Board
9 concludes that any deficiency identified has been satisfactorily
10 addressed by the judge.

11 5. Each judge who receives a reelection-year evaluation shall
12 have the opportunity to meet with the Board or otherwise respond to
13 the evaluation no later than ten (10) days following the judge's
14 receipt of the evaluation. If the meeting is held or response is
15 made, the Board may revise its evaluation.

16 6. After the requirements of paragraphs 1 through 5 of this
17 subsection are met, the Board shall make a recommendation regarding
18 the reelection of each district judge who files for reelection,
19 which recommendation shall be stated as "reelect", "do not reelect",
20 or "no opinion". A "no opinion" recommendation shall be made only
21 when the Board concludes that results are not sufficiently clear to
22 make a firm recommendation and shall be accompanied by a detailed
23 explanation. The narrative shall include the number of Board
24 members who voted for or against the recommendation.

1 7. The Board shall release the narrative, the recommendation,
2 and any other relevant information to the public no later than
3 forty-five (45) days prior to the election.

4 SECTION 5. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 3.15 of Title 20, unless there
6 is created a duplication in numbering, reads as follows:

7 A. 1. During each full term of office of each Justice of the
8 Supreme Court, each Judge of the Court of Criminal Appeals, and each
9 Judge of the Court of Civil Appeals, the Board on Judicial
10 Performance Evaluation shall conduct at least one interim evaluation
11 of each justice and each judge. The evaluations shall be referred
12 to in this subsection as "interim evaluations".

13 2. Interim evaluations of Justices of the Supreme Court and
14 Judges of the Court of Civil Appeals shall be completed and
15 communicated to the Chief Justice of the Supreme Court and the
16 appellate justice or judge being evaluated. Interim evaluations of
17 Judges of the Court of Criminal Appeals shall be completed and
18 communicated to the Presiding Judge of the Court of Criminal Appeals
19 and to the judge being evaluated.

20 3. Each appellate justice or judge who receives an interim
21 evaluation shall have the opportunity to meet with the Board or
22 otherwise respond to the evaluation no later than ten (10) days
23 following the justice's or judge's receipt of the evaluation. If
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1 the meeting is held or response is made, the Board may revise its
2 evaluation.

3 4. The Board shall release the survey evaluations related to
4 interim evaluations to the public simultaneously with, and no
5 earlier than, the release of the retention-year evaluations pursuant
6 to Section 4 of this act prepared for that year.

7 B. 1. During each full term of office of each district judge,
8 the Board shall conduct at least one interim evaluation of each
9 district judge. The evaluations shall be referred to in this
10 subsection as "interim evaluations".

11 2. Interim evaluations shall be completed and communicated to
12 the Chief Justice of the Supreme Court, the Presiding Judge of the
13 Judicial Administrative District in which the district judge serves,
14 and to the district judge being evaluated.

15 3. Each district judge who receives an interim evaluation shall
16 have the opportunity to meet with the Board or otherwise respond to
17 the evaluation no later than ten (10) days following the judge's
18 receipt of the evaluation. If the meeting is held or response is
19 made, the Board may revise its evaluation.

20 4. The Board shall release the survey evaluations related to
21 interim evaluations to the public simultaneously with, and no
22 earlier than, the release of the reelection year evaluations
23 prepared for that year.

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3.16 of Title 20, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A member of the Board on Judicial Performance Evaluation
5 shall disclose to the Board any professional or personal
6 relationship with a justice or judge that may affect an unbiased
7 evaluation of the justice or judge, including involvement with any
8 litigation involving the justice or judge and the member, the
9 member's family, or the member's financial interests. The Board may
10 require the recusal of one of its members on account of a
11 relationship with a justice or judge upon a two-thirds (2/3) vote of
12 the other members of the Board.

13 B. A member of the Board shall recuse himself or herself from
14 participating in the consideration and vote on any matter involving
15 the evaluation of a justice or judge for failure to meet the
16 training, courtroom observation, interview, or opinion review
17 responsibilities provided by rule, unless excused by a two-thirds
18 (2/3) vote of the other members of the Board.

19 C. An attorney serving as a member of the Board shall not
20 request that a justice or judge being evaluated by the Board be
21 recused from hearing a case in which the attorney appears as counsel
22 of record, or request permission to withdraw from a case pending
23 before a justice or judge being evaluated, solely on the basis that
24 the attorney is serving as a member of the Board.

1 D. An attorney who appears in a matter in which opposing
2 counsel or a witness serves as a member of the Board that is
3 evaluating the justice or judge before whom the matter is set may
4 not seek withdrawal of the attorney, exclusion of the witness, or
5 recusal of the justice or judge solely on the basis that the
6 opposing counsel or witness is serving as a member of the Board.

7 E. A justice or judge being evaluated by the Board may not
8 recuse himself or herself from a case solely on the basis that an
9 attorney, party, or witness is a member of the Board, nor should a
10 justice or judge grant an attorney's request to withdraw from a
11 case, solely on the basis that the attorney, party, or witness is
12 serving as a member of the Board.

13 SECTION 7. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3.17 of Title 20, unless there
15 is created a duplication in numbering, reads as follows:

16 A. Except as provided in subsection B of this section, all
17 comments in survey reports, self-evaluations, personal information
18 protected under state or federal law, additional oral or written
19 information, content of improvement plans, and any matter discussed
20 in executive session of the Board on Judicial Performance Evaluation
21 shall remain confidential. Comments in survey reports may be
22 summarized for use in a narrative. A member of the Board shall not
23 publicly discuss the evaluation of any particular justice or judge.

1 B. Except as provided in subsection C of this section, all
2 recommendations, narratives, and survey reports are confidential
3 until released to the public on the first day following the deadline
4 for appellate justices and judges to declare their intent to stand
5 for retention or district judges to file for reelection. Any
6 comments included in the report shall be made available only to
7 members of the Board, the justice or judge being evaluated, and the
8 persons entitled to receive interim reports pursuant to Section 5 of
9 this act.

10 C. Information required to be kept confidential pursuant to
11 this act may be released only under the following circumstances:

- 12 1. To the Court on the Judiciary;
- 13 2. To the Council on Judicial Complaints; or
- 14 3. With the consent of the justice or judge being evaluated.

15 SECTION 8. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 3.18 of Title 20, unless there
17 is created a duplication in numbering, reads as follows:

18 A. The Board on Judicial Performance Evaluation is authorized
19 to accept any grants of federal or private funds made available for
20 any purpose consistent with the provisions of this act. Any funds
21 received pursuant to this section shall be credited to the Board of
22 Judicial Performance Evaluation Revolving Fund created in subsection
23 B of this section.

1 B. There is hereby created in the State Treasury a revolving
2 fund for the Board on Judicial Performance Evaluation to be
3 designated the "Board on Judicial Performance Evaluation Revolving
4 Fund". The fund shall be a continuing fund, not subject to fiscal
5 year limitations, and shall consist of all monies received by the
6 Board from monies received pursuant to subsection A of this section.
7 All monies accruing to the credit of said fund are hereby
8 appropriated and may be budgeted and expended by the Board for the
9 purpose provided for in this act. Expenditures from said fund shall
10 be made upon warrants issued by the State Treasurer against claims
11 filed as prescribed by law with the Director of the Office of
12 Management and Enterprise Services for approval and payment.

13 SECTION 9. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3.19 of Title 20, unless there
15 is created a duplication in numbering, reads as follows:

16 As used in this act, the term "district judge" includes each
17 district judge and associate district judge.

18 SECTION 10. This act shall become effective November 1, 2014.

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