

1 ENGROSSED HOUSE
2 BILL NO. 4078

By: Wallace of the House

3 and

4 Howard of the Senate
5
6

7 An Act relating to courts; defining terms; creating
8 the Office of Judicial Performance Evaluation;
9 providing purpose of Office; creating Board of
10 Judicial Performance Evaluation; stating purpose of
11 Board; providing for terms of office for members of
12 the Board of Judicial Performance Evaluation;
13 imposing certain conditions with respect to
14 membership; providing for payment to members of the
15 Board of Judicial Performance Evaluation; providing
16 for travel reimbursement; requiring approval for
17 expenses of the Office of Judicial Performance
18 Evaluation; providing certain meetings of the Board
19 of Judicial Performance Evaluation confidential and
20 exempt from Oklahoma Open Meeting Act; providing for
21 confidentiality of certain information and exempt
22 from Oklahoma Open Records Act; creating
23 Administrator position; prescribing duties of
24 Administrator; prescribing duties and powers of
Office of Judicial Performance Evaluation;
prescribing criteria for judicial performance
evaluations; requiring initial evaluations; requiring
interim evaluations; allowing response from Justice
or judge; requiring performance evaluations be shared
with certain persons; requiring election-year
evaluations; prescribing content of narratives;
allowing response from Justice or judge; requiring
performance evaluations be shared with certain
persons; authorizing improvement plans; prescribing
process; prescribing procedures based upon failure to
complete plan; providing for disclosure of certain
conflicts of interest; providing recusal process for
certain persons; requiring information be kept
confidential; prescribing Board of Judicial
Performance Evaluation duties and powers; authorizing

1 promulgation of rules; providing for codification;
2 and providing an effective date.
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4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1671 of Title 20, unless there
7 is created a duplication in numbering, reads as follows:

8 As used in this act:

9 1. "Attorney" means a person admitted to practice law before
10 the courts of this state;

11 2. "Election-year evaluation" means a judicial performance
12 evaluation conducted by the Office of Judicial Performance
13 Evaluation pursuant to Section 6 of this act of a Justice or judge
14 whose term is to expire and who must stand for reelection or
15 retention election;

16 3. "Improvement plan" means an individual judicial improvement
17 plan developed and implemented pursuant to Section 7 of this act;

18 4. "Initial evaluation" and "interim evaluation" mean
19 evaluations conducted by the Office of Judicial Performance
20 Evaluation pursuant to Section 5 of this act of a Justice or judge;

21 5. "Judge" means all active district judges, associate district
22 judges, special judges, Judges of the Oklahoma Court of Criminal
23 Appeals, and Judges of the Oklahoma Court of Civil Appeals; and

24 6. "Justice" means a Justice of the Oklahoma Supreme Court.

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1672 of Title 20, unless there
3 is created a duplication in numbering, reads as follows:

4 A. There is hereby created within the Council on Judicial
5 Complaints the Office of Judicial Performance Evaluation and the
6 Board of Judicial Performance Evaluation. The purpose of the Office
7 and the Board shall be to:

8 1. Provide Justices and judges with useful information
9 concerning their own performances; and

10 2. Conduct statewide judicial performance evaluations using
11 uniform criteria and procedures pursuant to the provisions of this
12 act.

13 B. 1. The Office of Judicial Performance Evaluation shall
14 present completed performance evaluations and recommendations to the
15 Board of Judicial Performance Evaluation which shall consist of nine
16 (9) members, only five of whom shall be members of the Bar of the
17 State of Oklahoma and only five of whom shall constitute a quorum.
18 Three members shall be appointed by the Speaker of the Oklahoma
19 House of Representatives; three members shall be appointed by the
20 President Pro Tempore of the Oklahoma State Senate; and three
21 members shall be appointed by the Governor. No more than five
22 members of the Board shall be, or shall have been in the previous
23 six (6) months, members of the same political party. Appointments
24 may include retired judicial officers, but shall not include members

1 of the Council on Judicial Complaints or Judicial Nominating
2 Commission.

3 2. Of the members first appointed to the Board of Judicial
4 Performance Evaluation, three shall serve for three (3) years and
5 until a successor is appointed and qualified; three shall serve for
6 four (4) years and until a successor is appointed and qualified; and
7 three shall serve for five (5) years and until a successor is
8 appointed and qualified. The respective terms of the first members
9 shall be determined by lot at the first meeting of the Board, and
10 the results thereof shall be certified to the Secretary of State and
11 to the appointing authority for each individual member. Thereafter,
12 each appointee shall serve for a term of five (5) years and until a
13 successor is appointed and qualified. No person shall be eligible
14 to serve more than two terms on the Board.

15 3. The members of the Board of Judicial Performance Evaluation
16 shall receive for their services the sum of One Hundred Dollars
17 (\$100.00) for each day, or fraction thereof, of attendance at its
18 meetings or other official business of the Board, and reimbursement
19 for travel expenses pursuant to the State Travel Reimbursement Act.

20 C. All expenses of the Office of Judicial Performance
21 Evaluation shall be approved by the Chair of the Council on Judicial
22 Complaints, by the Council on Judicial Complaints upon a majority
23 vote of its members, or by the Administrative Director to the
24

1 Council on Judicial Complaints as directed by the Chair of the
2 Council on Judicial Complaints.

3 D. Meetings of the Board of Judicial Performance Evaluation
4 convened for the purpose of conducting, discussing, or deliberating
5 any matter relating to performance evaluations or improvement plans
6 are confidential and are not subject to the Oklahoma Open Meeting
7 Act.

8 E. Records of the Office of Judicial Performance Evaluation
9 created for the purpose of or in furtherance of summarizing,
10 drafting, conducting, discussing, or deliberating any matter
11 relating to an election-year evaluation, improvement plan, or
12 interim evaluation are confidential and are not subject to
13 disclosure under the Oklahoma Open Records Act.

14 F. There is hereby created the position of Administrator to the
15 Office of Judicial Performance Evaluation who shall be a state
16 employee hired by the Administrative Director to the Council on
17 Judicial Complaints. The Administrator, operations, and staffing of
18 the Office shall be overseen by the Administrative Director to the
19 Council on Judicial Complaints.

20 G. The Administrator shall notify the members of the Board of
21 Judicial Performance Evaluation of the number of completed
22 performance evaluations ready for review and consideration by the
23 Board five (5) days before the Board's regular meeting. The
24 Administrator shall attend meetings of the Board concerning

1 performance evaluations and business of the Office, keep records
2 concerning performance evaluations, prepare reports required by
3 statute, and perform other tasks as the Council shall direct.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1673 of Title 20, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The Office of Judicial Performance Evaluation shall:

8 1. Train members of the Board of Judicial Performance
9 Evaluation as needed and requested to fulfil the duties established
10 pursuant to Section 10 of this act;

11 2. Collect and disseminate data on judicial performance
12 evaluations, including judicial performance surveys developed,
13 collected, and distributed pursuant to paragraph 5 of subsection B
14 of this section; and

15 3. Perform other tasks as the Board of Judicial Performance
16 Evaluation or the Council on Judicial Complaints shall direct.

17 B. The Office of Judicial Performance Evaluation shall have the
18 following powers and duties:

19 1. Review any available case management data and statistics
20 related to individual Justices and judges;

21 2. Review written judicial opinions and orders authorized by
22 Justices and judges;

23 3. Interview Justices and judges under the Board of Judicial
24 Performance Evaluation's oversight;

1 4. Accept information and documentation from interested persons
2 as necessary;

3 5. Develop surveys to evaluate the performance of Justices and
4 judges which shall be completed by attorneys, jurors, represented
5 and unrepresented litigants, law enforcement personnel, attorneys
6 within the district attorneys' and public defenders' offices,
7 employees of the court, court interpreters, employees of probation
8 offices, and employees of local departments of social services;

9 6. Determine the validity of completed surveys developed
10 pursuant to paragraph 5 of this subsection, report to the Council on
11 the validity of the surveys, and prepare alternatives to surveys
12 where sample populations are inadequate to produce valid results;

13 7. Prepare narratives for the Board of Judicial Performance
14 Evaluation that reflect the performance of Justices and judges;

15 8. Submit any information concerning or appearing to concern a
16 complaint or violation of the Code of Judicial Conduct, or other
17 law, by a judicial officer to the Administrative Director to the
18 Council on Judicial Complaints;

19 9. Submit performance evaluations of Justices and judges to the
20 Board of Judicial Performance Evaluation for approval or rejection;
21 and

22 10. Recommend, at the Office's discretion after it completes an
23 evaluation of a Justice or judge pursuant to Section 5 of this act,
24 to the Board of Judicial Performance Evaluation that it develop an

1 individual judicial improvement plan pursuant to Section 7 of this
2 act.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1674 of Title 20, unless there
5 is created a duplication in numbering, reads as follows:

6 The Office of Judicial Performance Evaluation shall evaluate
7 each Justice and judge in Oklahoma utilizing the powers and duties
8 conferred in Section 3 of this act. The evaluations shall only
9 include the following performance evaluation criteria:

10 1. Integrity including, but not limited to, whether the Justice
11 or judge:

- 12 a. avoids impropriety or the appearance of impropriety,
- 13 b. displays fairness and impartiality toward all
- 14 participants, and
- 15 c. avoids ex parte communications;

16 2. Legal knowledge including, but not limited to, whether the
17 Justice or judge:

- 18 a. demonstrates, through well-reasoned opinions and
- 19 courtroom conduct, an understanding of substantive law
- 20 and relevant rules of procedure and evidence,
- 21 b. demonstrates, through well-reasoned opinions and
- 22 courtroom conduct, attentiveness to factual and legal
- 23 issues before the court, and

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1 c. adheres to precedent or clearly explains the legal
2 basis for departure from precedent and appropriately
3 applies statutes or other sources of legal authority;

4 3. Communication skills including, but not limited to, whether
5 the Justice or judge:

6 a. presents clearly written and understandable opinions,
7 findings of fact, conclusions of law, and orders,

8 b. presents clearly stated and understandable questions
9 or statements during oral arguments or presentations,
10 and, for trial judges, clearly explains all oral
11 decisions, and

12 c. clearly presents information to the jury, as
13 necessary;

14 4. Judicial temperament including, but not limited to, whether
15 the Justice or judge:

16 a. demonstrates courtesy toward attorneys, litigants,
17 court staff, and others in the courtroom, and

18 b. maintains and requires order, punctuality, and
19 appropriate decorum in the courtroom;

20 5. Administrative performance including, but not limited to,
21 whether the Justice or judge:

22 a. demonstrates preparation for oral arguments, trials,
23 and hearings, as well as attentiveness to and
24 appropriate control over judicial proceedings,

- b. manages workload and court time effectively and efficiently,
- c. issues opinions, findings of fact, conclusions of law, and orders in a timely manner and without unnecessary delay,
- d. participates in a proportionate share of the court's workload, takes responsibility for more than his or her own caseload, and is willing to assist other Justices or judges, and
- e. understands and complies, as necessary, with directives of the Oklahoma Supreme Court, Oklahoma Court of Criminal Appeals, Oklahoma Court of Civil Appeals, the presiding judge of his or her administrative district, or the chief judge of the judicial district, as applicable; and

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

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1675 of Title 20, unless there is created a duplication in numbering, reads as follows:

A. Within the first two (2) years of a Justice's or judge's first appointment or election to the bench, the Office of Judicial Performance Evaluation shall conduct an initial evaluation of each

1 Justice and judge. The Office shall complete and communicate the
2 initial evaluations, including any recommendations for improvement
3 plans, to the Board of Judicial Performance Evaluation for approval
4 or rejection. Once approved, the Office shall communicate the
5 initial evaluation to the Justice or judge in writing.

6 B. Within two (2) years of the approval of the initial
7 evaluation of a Justice or judge by the Board or within two (2)
8 years of the effective date of this act, the Office shall conduct an
9 interim evaluation of each Justice and judge. The Office shall
10 complete and communicate the interim evaluations, including any
11 recommendations for improvement plans, to the Board of Judicial
12 Performance Evaluation for approval or rejection. Once approved,
13 the Office shall communicate the interim evaluation to the Justice
14 or judge in writing.

15 C. For judges not required to stand for reelection or retention
16 election, the Office shall conduct additional interim evaluations of
17 such judges within two (2) years following a general election. The
18 Office shall complete and communicate the interim evaluations,
19 including any recommendations for improvement plans, to the Board of
20 Judicial Performance Evaluation for approval or rejection. Once
21 approved, the Office shall communicate the interim evaluation to the
22 judge in writing.

23 D. The Board shall grant each Justice or judge who receives
24 initial and interim evaluations the opportunity to meet with the

1 Board at its next meeting or otherwise respond to the initial or
2 interim evaluations no later than ten (10) days following the
3 Justice's or judge's receipt of the initial or interim evaluation.
4 If a meeting is held or a response is made, the Board may revise the
5 initial or interim evaluation as it sees fit.

6 E. Once the initial or interim performance evaluations are
7 finalized, the Office shall share the performance evaluations as
8 follows:

9 1. For special judges, with the Chief Justice of the Supreme
10 Court, the Presiding Administrative Judge of the judicial district
11 in which the special judge serves and any judge by administrative
12 orders in the role of a direct supervisor of the special judge of
13 the judicial district in which the special judge serves, and the
14 Director of the Administrative Office of the Courts; and

15 2. For district and associate judges, with the Chief Justice of
16 the Supreme Court and the Director of the Administrative Office of
17 the Courts.

18 SECTION 6. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1676 of Title 20, unless there
20 is created a duplication in numbering, reads as follows:

21 A. The Office of Judicial Performance Evaluation shall conduct
22 an election-year evaluation for each Justice or judge whose term is
23 to expire and who must stand for reelection or retention election.

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1 B. 1. The Office shall complete an election-year evaluation
2 and related narrative to be approved by the Board of Judicial
3 Performance Evaluation. Once approved, the election-year evaluation
4 shall be communicated in writing to the Justice or judge no later
5 than forty-five (45) days prior to the last day available for the
6 Justice or judge to declare his or her intent to stand for
7 reelection or retention election.

8 2. The narrative prepared for an election-year evaluation must
9 include an assessment of the Justice's or judge's strengths and
10 weaknesses with respect to the judicial performance criteria
11 provided for in Section 4 of this act, a discussion regarding any
12 deficiency identified in an initial or interim evaluation prepared
13 pursuant to Section 5 of this act, a review of any improvement plan
14 developed pursuant to Section 7 of this act, and a statement of
15 whether the Board concludes that any deficiency identified has been
16 satisfactorily addressed, or a statement from the Board that an
17 improvement plan, if any, was satisfactorily followed by the Justice
18 or judge.

19 3. The Board shall grant each Justice or judge who receives an
20 election-year evaluation the opportunity to meet with the Board at
21 its next meeting or otherwise respond to the evaluation no later
22 than ten (10) days following his or her receipt of the evaluation.
23 If the meeting is held or a response is made, the Board may revise
24 the evaluation as it sees fit.

1 C. After the requirements of subsection B of this section are
2 met, the Council shall make a recommendation regarding the
3 performance of each Justice or judge who declares his or her intent
4 to stand for reelection or retention. The recommendations must be
5 stated as "meets performance standard" or "does not meet performance
6 standard". For a Justice or judge to receive a designation of "does
7 not meet performance standard", there must be a majority vote by the
8 Council members that the particular Justice or judge should receive
9 such a recommendation.

10 D. Once the election-year evaluation is finalized, the Office
11 shall share the performance evaluations for district and associate
12 judges with the Chief Justice of the Supreme Court and the Director
13 of the Administrative Office of the Courts.

14 SECTION 7. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1677 of Title 20, unless there
16 is created a duplication in numbering, reads as follows:

17 A. 1. If the Office of Judicial Performance Evaluation
18 recommends, pursuant to Section 5 of this act, that a Justice or
19 judge receive an improvement plan, the Board of Judicial Performance
20 Evaluation shall determine whether an individual judicial
21 improvement plan is appropriate. If the Board determines an
22 improvement plan is appropriate, the Office shall then develop an
23 improvement plan for such Justice or judge. After the Board reviews
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1 and approves the improvement plan, the Office shall have the
2 responsibility for implementing and overseeing the improvement plan.

3 2. Once the Justice or judge has completed the improvement
4 plan, the Office shall convey the results of the improvement plan
5 to the Board. The Office shall maintain a copy of the improvement
6 plan and the results in its files.

7 B. If a Justice or judge is required to complete an improvement
8 plan pursuant to this section and he or she fails to satisfactorily
9 complete the requirements of such improvement plan, the Board shall
10 automatically issue a "does not meet performance standard"
11 designation on his or her performance evaluation and shall advise
12 the Council on Judicial Complaints of such designation in the form
13 of a complaint.

14 C. Upon the completion of an improvement plan, the Office shall
15 share the results of the improvement plan as follows:

16 1. For special judges, with the Chief Justice of the Supreme
17 Court, the Presiding Administrative Judge of the judicial district
18 in which the special judge serves and any judge by administrative
19 orders in the role of a direct supervisor of the special judge of
20 the judicial district in which the special judge serves, and the
21 Director of the Administrative Office of the Courts; and

22 2. For district and associate judges, with the Chief Justice of
23 the Supreme Court and the Director of the Administrative Office of
24 the Courts.

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1678 of Title 20, unless there
3 is created a duplication in numbering, reads as follows:

4 A member of the Board of Judicial Performance Evaluation or an
5 employee of the Office of Judicial Performance Evaluation shall
6 disclose any professional or personal relationship with a Justice or
7 judge that may affect an unbiased evaluation of the Justice or
8 judge, including involvement with any litigation involving the
9 Justice or judge and the member or employee, the member's or
10 employee's family, or the member's or employee's financial
11 interests. The Board may require, by a vote, the recusal of one of
12 its members or the Office's employee because of a relationship with
13 a Justice or judge.

14 SECTION 9. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1679 of Title 20, unless there
16 is created a duplication in numbering, reads as follows:

17 A. 1. Except as specifically provided by law, all performance
18 evaluations, personal information, oral or written information,
19 content of any improvement plans, narratives, recommendations, and
20 any matter discussed by the Board of Judicial Performance Evaluation
21 concerning a performance evaluation or improvement plan is
22 confidential.

23 2. All surveys must allow for the participant's name to remain
24 confidential. Comments in surveys are confidential but may be

1 summarized in aggregate for use in performance evaluation
2 narratives.

3 B. Members of the Board of Judicial Performance Evaluation and
4 employees of the Office of Judicial Performance Evaluation shall not
5 publicly discuss the performance evaluation of a particular Justice
6 or judge.

7 SECTION 10. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1680 of Title 20, unless there
9 is created a duplication in numbering, reads as follows:

10 A. The Board of Judicial Performance Evaluation shall promptly
11 approve or reject judicial performance evaluations submitted by the
12 Office of Judicial Performance Evaluation.

13 B. The Board of Judicial Performance Evaluation shall have the
14 following powers and duties:

15 1. Promulgate rules concerning:

16 a. the performance evaluation of Justices and judges by
17 the Office of Judicial Performance Evaluation based on
18 performance evaluation criteria set forth in Section 4
19 of this act, and

20 b. the creation of a standards matrix or scorecard
21 related to the performance evaluation criteria set
22 forth in Section 4 of this act;

23 2. Review data, prepared narratives, and recommendations made
24 by the Office of Judicial Performance Evaluation;

3. Approve or reject the performance evaluations of Justices and judges submitted by the Office of Judicial Performance Evaluation;

4. Vote as to whether the Justice or judge meets the performance standard based upon the member's review of all the information available to the Council and the Office's performance evaluation; and

5. Determine whether information submitted during the performance evaluation process shall be deemed a complaint.

SECTION 11. This act shall become effective November 1, 2022.

Passed the House of Representatives the 15th day of March, 2022.

Presiding Officer of the House
of Representatives

Passed the Senate the _____ day of _____, 2022.

Presiding Officer of the Senate