

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 4078

By: Wallace

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to courts; defining terms; creating
10 the Office of Judicial Performance Evaluation;
11 providing purpose of Office; creating Administrator
12 position; prescribing duties of Administrator;
13 prescribing duties and powers of Office; prescribing
14 criteria for judicial performance evaluations;
15 requiring initial evaluation; requiring interim
16 evaluation; allowing response from Justice or judge;
17 requiring election-year evaluation; allowing response
18 from Justice or judge; authorizing improvement plans;
19 prescribing process; providing for conflicts of
20 interest; providing recusal process for certain
21 persons; requiring information be kept confidential;
22 exempting certain information from confidentiality;
23 prescribing Council on Judicial Complaints duties and
24 powers; 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 1671 of Title 20, unless there
is created a duplication in numbering, reads as follows:

As used in this act:

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

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

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

10 4. "Interim evaluation" means an interim evaluation conducted
11 by the Office of Judicial Performance Evaluation pursuant to Section
12 5 of this act during a full term of office of a Justice or judge;

13 5. "Judge" includes all active district judges, associate
14 district judges, special judges, Judges of the Oklahoma Court of
15 Criminal Appeals, and Judges of the Oklahoma Court of Civil Appeals;
16 and

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

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

21 A. There is hereby created within the Council on Judicial
22 Complaints the Office of Judicial Performance Evaluation. The
23 purpose of the Office shall be to:

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

3 2. Provide persons voting on the retention of Justices and
4 judges with fair, responsible, and constructive information about
5 individual judicial performance; and

6 3. Conduct statewide judicial performance evaluations using
7 uniform criteria and procedures pursuant to the provisions of this
8 act.

9 B. There is created the position of Administrator to the Office
10 of Judicial Performance Evaluation who shall be a state employee
11 hired by the Council on Judicial Complaints. The Administrator,
12 operations, and staffing of the Office shall be overseen by the
13 Administrative Director to the Council on Judicial Complaints.

14 C. The Administrator shall notify the members of the Council of
15 the number of completed performance evaluations ready for review and
16 consideration by the Council five (5) days before the Council's
17 regular meeting. The Administrator shall attend meetings of the
18 Council concerning performance evaluations and business of the
19 Office, keep records concerning performance evaluations, prepare
20 reports required by statute, and perform other tasks as the Council
21 shall direct.

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

1 A. The Office of Judicial Performance Evaluation shall:

2 1. Train members of the Council on Judicial Complaints as
3 needed and requested to fulfil the duties established pursuant to
4 Section 10 of this act;

5 2. Collect and disseminate data on judicial performance
6 evaluations, including judicial performance surveys developed,
7 collected, and distributed, pursuant to paragraph 5 of subsection B
8 of this section;

9 3. Conduct public education efforts concerning the judicial
10 performance evaluation process and the recommendations made by the
11 office and the Council on Judicial Complaints;

12 4. Measure public awareness of the judicial performance
13 evaluation process through regular polling; and

14 5. Perform other tasks as the Council on Judicial Complaints
15 shall direct.

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

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

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

22 3. Interview Justices and judges under the Council on Judicial
23 Complaints' 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 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 Council on Judicial Complaints
14 that reflect the performance of Justices and judges;

15 8. Submit any information concerning or appearing to concern a
16 complaint to the Administrative Director of the Council on Judicial
17 Complaints;

18 9. Submit performance evaluations of Justices and judges to the
19 Council on Judicial Complaints for approval or rejection; and

20 10. Recommend, at the staff's discretion after it completes an
21 evaluation of a Justice or judge pursuant to Section 5 of this act,
22 to the Council on Judicial Complaints that it develop an individual
23 judicial improvement plan pursuant to Section 7 of this act.
24

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

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

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

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

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

- a. demonstrates, through well-reasoned opinions and courtroom conduct, an understanding of substantive law and relevant rules of procedure and evidence,
- b. demonstrates, through well-reasoned opinions and courtroom conduct, attentiveness to factual and legal issues before the court, and
- c. adheres to precedent or clearly explains the legal basis for departure from precedent and appropriately applies statutes or other sources of legal authority;

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

- 3 a. presents clearly written and understandable opinions,
4 findings of fact, conclusions of law, and orders,
- 5 b. presents clearly stated and understandable questions
6 or statements during oral arguments or presentations,
7 and, for trial judges, clearly explains all oral
8 decisions, and
- 9 c. clearly presents information to the jury, as
10 necessary;

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

- 13 a. demonstrates courtesy toward attorneys, litigants,
14 court staff, and others in the courtroom, and
- 15 b. maintains and requires order, punctuality, and
16 appropriate decorum in the courtroom;

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

- 19 a. demonstrates preparation for oral arguments, trials,
20 and hearings, as well as attentiveness to and
21 appropriate control over judicial proceedings,
- 22 b. manages workload and court time effectively and
23 efficiently,

1 c. issues opinions, findings of fact, conclusions of law,
2 and orders in a timely manner and without unnecessary
3 delay,

4 d. participates in a proportionate share of the court's
5 workload, takes responsibility for more than his or
6 her own caseload, and is willing to assist other
7 Justices or judges, and

8 e. understands and complies, as necessary, with
9 directives of the Oklahoma Supreme Court; and

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

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

16 A. Within the first two (2) years of a Justice's or judge's
17 appointment to the bench, the Office of Judicial Performance
18 Evaluation shall conduct an initial evaluation of each Justice and
19 judge. The Office shall complete and communicate the initial
20 evaluations, including any recommendations for improvement plans, to
21 the Council on Judicial Complaints for approval or rejection. Once
22 approved, the Office shall communicate the initial evaluation to the
23 Justice or judge.

1 B. Within two (2) years of the approval of the initial
2 evaluation of a Justice or judge by the Council, the Office shall
3 conduct an interim evaluation of each Justice and judge. The Office
4 shall complete and communicate the interim evaluations, including
5 any recommendations for improvement plans, to the Council on
6 Judicial Complaints for approval or rejection. Once approved, the
7 Office shall communicate the interim evaluation to the Justice or
8 judge

9 C. The Council shall grant each Justice or judge who receives
10 an initial and interim evaluation the opportunity to meet with the
11 Council or otherwise respond to the initial or interim evaluation no
12 later than ten (10) days following the Justice's or judge's receipt
13 of the initial or interim evaluation. If a meeting is held or a
14 response is made, the Council may revise the initial or interim
15 evaluation as it sees fit.

16 D. Once the initial or interim performance evaluation is
17 finalized, the Office shall share the performance evaluation as
18 follows:

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

1 2. For district and associate judges, with the Chief Justice of
2 the Supreme Court and the Director of the Administrative Office of
3 the Courts.

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

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

10 B. 1. The Office shall complete an election-year evaluation
11 and related narrative to be approved by the Council. Once approved,
12 the election-year evaluation shall be communicated to the Justice or
13 judge no later than forty-five (45) days prior to the last day
14 available for the Justice or judge to declare his or her intent to
15 stand for reelection or retention.

16 2. The narrative prepared for an election-year evaluation must
17 include an assessment of the Justice's or judge's strengths and
18 weaknesses with respect to the judicial performance criteria
19 contained in Section 4 of this act, a discussion regarding any
20 deficiency identified in an initial or interim evaluation prepared
21 pursuant to Section 5 of this act, a review of any improvement plan
22 developed pursuant to Section 7 of this act, and a statement of
23 whether the Council concludes that any deficiency identified has
24 been satisfactorily addressed, or a statement from the Council that

1 an improvement plan, if any, was satisfactorily followed by the
2 Justice or judge.

3 3. The Council shall grant each Justice or judge who receives
4 an election-year evaluation the opportunity to meet with the Council
5 or otherwise respond to the evaluation no later than ten (10) days
6 following his or her receipt of the evaluation. If the meeting is
7 held or a response is made, the Council may revise the evaluation as
8 it sees fit.

9 C. After the requirements of subsection B of this section are
10 met, the Council shall make a recommendation regarding the
11 performance of each Justice or judge who declares his or her intent
12 to stand for reelection or retention. The recommendations must be
13 stated as "meets performance standard" or "does not meet performance
14 standard". For a Justice or judge to receive a designation of "does
15 not meet performance standard", there must be a majority vote by the
16 Council members that the particular Justice or judge should receive
17 such a recommendation.

18 D. Once the election-year evaluation is finalized, the Office
19 shall share the performance evaluation as follows:

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

3 2. For district and associate judges, with the Chief Justice of
4 the Supreme Court and the Director of the Administrative Office of
5 the Courts.

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

9 A. 1. If the Office of Judicial Performance Evaluation
10 recommends, pursuant to Section 5 of this act, that a Justice or
11 judge receive an improvement plan, the Council on Judicial
12 Complaints shall determine whether an individual judicial
13 improvement plan is appropriate. If the Council determines an
14 improvement plan is appropriate, the Office shall then develop an
15 improvement plan for such Justice or judge. After the Council
16 reviews and approves the improvement plan, the Office shall have the
17 responsibility for implementing and overseeing the improvement plan.

18 2. Once the Justice or judge has completed the improvement
19 plan, the Office shall convey the results of the improvement plan
20 to the Council. The Office shall maintain a copy of the improvement
21 plan and the results in its files.

22 B. If a Justice or judge is required to complete an improvement
23 plan pursuant to this section, and he or she fails to satisfactorily
24 complete the requirements of such improvement plan, the Council

1 shall automatically issue a "does not meet performance standard"
2 designation on his or her performance evaluation.

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

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

11 2. For district and associate judges, with the Chief Justice of
12 the Supreme Court and the Director of the Administrative Office of
13 the Courts.

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

17 A. A member of the Council on Judicial Complaints or an
18 employee of the Office of Judicial Performance Evaluation shall
19 disclose any professional or personal relationship with a Justice or
20 judge that may affect an unbiased evaluation of the Justice or
21 judge, including involvement with any litigation involving the
22 Justice or judge and the member or employee, the member's or
23 employee's family, or the member's or employee's financial
24 interests. The Council may require, by a vote, the recusal of one

1 of its members or the Office's employee because of a relationship
2 with a Justice or judge.

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

6 A. 1. Except as provided in subsection C of this section or
7 specifically provided by law, all self-evaluations, personal
8 information, oral or written information, content of any improvement
9 plans, and any matter discussed by the Council on Judicial
10 Complaints concerning a performance evaluation is confidential.

11 2. All surveys must allow for the participant's name to remain
12 confidential. Comments in surveys are confidential but may be
13 summarized in aggregate for use in performance evaluation
14 narratives.

15 3. Members of the Council on Judicial Complaints and employees
16 of the Office of Judicial Performance Evaluation shall not publicly
17 discuss the performance evaluation of a particular Justice or judge.

18 B. Except as provided in subsection C of this section, all
19 recommendations and narratives are confidential.

20 C. Information required to be kept confidential pursuant to
21 this section may be released only with the consent of the Justice or
22 judge being evaluated.
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1 SECTION 10. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 1664 of Title 20, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Council on Judicial Complaints shall promptly approve or
5 reject judicial performance evaluations submitted by the Office of
6 Judicial Performance Evaluation.

7 B. The Council on Judicial Complaints shall have the powers and
8 duties to:

9 1. Promulgate rules concerning:

10 a. the performance evaluation of Justices and judges by
11 the Office of Judicial Performance Evaluation based on
12 performance evaluation criteria set forth in Section 4
13 of this act, and

14 b. the creation of a standards matrix or scorecard
15 related to the performance evaluation criteria set
16 forth in Section 4 of this act;

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

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

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

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

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

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7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
8 03/01/2022 - DO PASS, As Amended.

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