

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 4078

By: Wallace

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5
6 AS INTRODUCED

7 An Act relating to courts; defining terms; creating
8 the Office of Judicial Performance Evaluation;
9 providing purpose of Office; creating Director
10 position; prescribing duties of Director; prescribing
11 duties and powers of Office; prescribing criteria for
12 judicial performance evaluations; requiring initial
13 evaluation; requiring interim evaluation; allowing
14 response from Justice or judge; requiring retention-
15 year evaluation; allowing response from Justice or
16 judge; requiring certain information be published on
17 website; authorizing improvement plans; prescribing
18 process; providing for conflicts of interest;
19 providing recusal process for certain persons;
20 requiring information be kept confidential; exempting
21 certain information from confidentiality; requiring
22 Office to publish on website certain information;
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. "Improvement plan" means an individual judicial improvement
4 plan developed and implemented pursuant to Section 7 of this act;

5 3. "Interim evaluation" means an interim evaluation conducted
6 by the Office of Judicial Performance Evaluation pursuant to Section
7 5 of this act during a full term of office of a Justice or judge;

8 4. "Judge" includes all active district judges, associate
9 district judges, special judges, Judges of the Oklahoma Court of
10 Criminal Appeals, and Judges of the Oklahoma Court of Civil Appeals;

11 5. "Justice" means a Justice of the Oklahoma Supreme Court;

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

17 7. "Volunteer courtroom observer program" means a statewide
18 program comprised of volunteers who provide courtroom observation
19 reports for use by the Office of Judicial Performance Evaluation in
20 judicial performance evaluations.

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

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1 A. There is hereby created within the Council on Judicial
2 Complaints the Office of Judicial Performance Evaluation. The
3 purpose of the Office shall be to:

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

6 2. Provide persons voting on the retention of Justices and
7 judges with fair, responsible, and constructive information about
8 individual judicial performance; and

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

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

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

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

4 A. The Office of Judicial Performance Evaluation shall:

5 1. Train members of the Council on Judicial Complaints as
6 needed and requested to fulfil the duties established pursuant to
7 Section 11 of this act;

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

12 3. Conduct public education efforts concerning the judicial
13 performance evaluation process and the recommendations made by the
14 office and the Council on Judicial Complaints;

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

17 5. Perform other tasks as the Council on Judicial Complaints
18 shall direct.

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

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

23 2. Review written judicial opinions and orders authorized by
24 Justices and judges;

1 3. Collect information from courtroom observation of Justices
2 and judges as well as information provided to the Office by the
3 volunteer courtroom observer program;

4 4. Interview Justices and judges under the Council on Judicial
5 Complaints' oversight;

6 5. Accept information and documentation from interested persons
7 as necessary;

8 6. Develop surveys to evaluate the performance of Justices and
9 judges which shall be completed by individuals who interact with the
10 Justice or judge including, but not limited, to attorneys, jurors,
11 represented and unrepresented litigants, law enforcement personnel,
12 attorneys within the district attorneys' and public defenders'
13 offices, employees of the court, court interpreters, employees of
14 probation offices, employees of local departments of social
15 services, and victims of crimes;

16 7. Determine the validity of completed surveys developed
17 pursuant paragraph 6 of this subsection, report to the Council on
18 the validity of the surveys, and prepare alternatives to surveys
19 where sample populations are inadequate to produce valid results;

20 8. Prepare narratives for the Council on Judicial Complaints
21 that reflect the performance of Justices and judges;

22 9. Submit any information concerning or appearing to concern a
23 complaint to the Administrative Director of the Council on Judicial
24 Complaints;

1 10. Submit performance evaluations of Justices and judges to
2 the Council on Judicial Complaints for approval or rejection;

3 11. Recommend, at the staff's discretion after it completes an
4 evaluation of a Justice or judge pursuant to Section 5 of this act,
5 to the Council on Judicial Complaints that it develop an individual
6 judicial improvement plan pursuant to Section 7 of this act; and

7 12. Develop and maintain a website for the Office of Judicial
8 Performance Evaluation.

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

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

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

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

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

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- 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;

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

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

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

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

1 b. maintains and requires order, punctuality, and
2 appropriate decorum in the courtroom;

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

5 a. demonstrates preparation for oral arguments, trials,
6 and hearings, as well as attentiveness to and
7 appropriate control over judicial proceedings,

8 b. manages workload and court time effectively and
9 efficiently,

10 c. issues opinions, findings of fact, conclusions of law,
11 and orders in a timely manner and without unnecessary
12 delay,

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

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

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

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

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

9 B. Within two (2) years of the approval of the initial
10 evaluation of a Justice or judge by the Council, the Office shall
11 conduct an interim evaluation of each Justice and judge. The Office
12 shall complete and communicate the interim evaluations, including
13 any recommendations for improvement plans, to the Council on
14 Judicial Complaints for approval or rejection. Once approved, the
15 Office shall communicate the interim evaluation to the Justice or
16 judge

17 C. The Council shall grant each Justice or judge who receives
18 an initial and interim evaluation the opportunity to meet with the
19 Council or otherwise respond to the initial or interim evaluation no
20 later than ten (10) days following the Justice's or judge's receipt
21 of the initial or interim evaluation. If a meeting is held or a
22 response is made, the Council may revise the initial or interim
23 evaluation as it sees fit.

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

4 A. The Office of Judicial Performance Evaluation shall conduct
5 a retention-year evaluation for each Justice or judge whose term is
6 to expire and who must stand for retention election.

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

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

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

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

16 D. The Office shall publish on its website the narrative, the
17 recommendation, and any other relevant information related to a
18 retention-year evaluation to the public no later than two (2) months
19 prior to the retention election.

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

23 A. 1. If the Office of Judicial Performance Evaluation
24 recommends, pursuant to Section 5 of this act, that a Justice or

1 judge receive an improvement plan, the Council shall determine
2 whether an individual judicial improvement plan is appropriate. If
3 the Council determines an improvement plan is appropriate, the
4 Office shall then develop an improvement plan for such Justice or
5 judge. After the Council reviews and approves the improvement plan,
6 the Office shall have the responsibility for implementing and
7 overseeing the improvement plan.

8 2. Once the Justice or judge has completed the improvement
9 plan, the Office shall convey the results of the improvement plan
10 to the Council. The Office shall maintain a copy of the improvement
11 plan and the results in its files.

12 B. If a Justice or judge is required to complete an improvement
13 plan pursuant to this section, and he or she fails to satisfactorily
14 complete the requirements of such improvement plan, the Council
15 shall automatically issue a "does not meet performance standard"
16 designation on his or her performance evaluation.

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

20 A. A member of the Council on Judicial Complaints or an
21 employee of the Office of Judicial Performance Evaluation shall
22 disclose any professional or personal relationship with a Justice or
23 judge that may affect an unbiased evaluation of the Justice or
24 judge, including involvement with any litigation involving the

1 Justice or judge and the member or employee, the member's or
2 employee's family, or the member's or employee's financial
3 interests. The Council may require, by a vote, the recusal of one
4 of its members or the Office's employee because of a relationship
5 with a Justice or judge.

6 B. A Justice or judge who is being evaluated by the Office may
7 not recuse himself or herself from a case solely on the basis that
8 an attorney, party, or witness in the case is a member of the
9 Council on Judicial Complaints or an employee of the Office of
10 Judicial Performance Evaluation.

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

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

19 2. Except as provided by subsection D of this section, all
20 surveys must allow for the participant's name to remain confidential
21 and comments in surveys are confidential but may be summarized in
22 aggregate for use in performance evaluation narratives.

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

4 B. Except as provided in subsection C of this section, all
5 recommendations and narratives are confidential until released to
6 the public on the first day following the deadline for Justices and
7 judges to declare their intent to stand for retention.

8 C. Information required to be kept confidential pursuant to
9 this section may be released only with the consent of the Justice or
10 judge being evaluated.

11 D. Information obtained in surveys shall be kept confidential
12 unless the information contains a specific complaint or other
13 information constituting a complaint concerning a specific Justice
14 or judge in which case the information including the participant's
15 name shall be submitted to the Administrative Director of the
16 Council on Judicial Complaints.

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

20 The Office of Judicial Performance Evacuation shall gather and
21 maintain statewide data and post a statistical report of the
22 statewide data on its website no later than thirty (30) days prior
23 to each retention election. The report must specify, at a minimum:
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1 1. The total number of Justices and judges who were eligible to
2 stand for retention and the number who declared their intent to
3 stand for reelection;

4 2. The total number of judicial performance evaluations of
5 Justices and judges performed by the Office of Judicial Performance
6 Evaluation;

7 3. The total number of Justices and judges who were evaluated
8 but did not stand for retention; and

9 4. The total number of Justices and judges who received a
10 "meets performance standard" or "does not meet performance standard"
11 recommendation, respectively.

12 SECTION 11. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1664 of Title 20, unless there
14 is created a duplication in numbering, reads as follows:

15 A. The Council on Judicial Complaints shall promptly approve or
16 reject judicial performance evaluations submitted by the Office of
17 Judicial Performance Evaluation.

18 B. The Council on Judicial Complaints shall have the powers and
19 duties to:

20 1. Promulgate rules concerning:

21 a. the performance evaluation of Justices and judges by
22 the Office of Judicial Performance Evaluation based on
23 performance evaluation criteria set forth in Section 4
24 of this act, and

1 b. the creation of a standards matrix or scorecard
2 related to the performance evaluation criteria set
3 forth in Section 4 of this act;

4 2. Promulgate rules, guidelines, and procedures concerning a
5 statewide volunteer courtroom observer program as defined in
6 Section 1 of this act;

7 3. Review data, prepared narratives, and recommendations made
8 by the Office of Judicial Performance Evaluation;

9 4. Approve or reject the performance evaluations of Justices
10 and judges submitted by the Office of Judicial Performance
11 Evaluation;

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

16 6. Determine whether information submitted during the
17 performance evaluation process shall be deemed a complaint.

18 SECTION 12. This act shall become effective November 1, 2022.

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