

Rule Change #2004(3)

CHAPTER 37. RULES GOVERNING THE COMMISSIONS  
ON JUDICIAL PERFORMANCE

Rules 1 through 24

Amended and Adopted by the Court, En Banc, February 5, 2004,  
effective immediately.

Justice Coats would not adopt the rule.

BY THE COURT:

Mary J. Mullarkey  
Chief Justice, Colorado Supreme Court

**Rule Change #2004(3)**

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CHAPTER 37. RULES GOVERNING THE COMMISSIONS  
ON JUDICIAL PERFORMANCE

Pursuant to section 13-5.5-103(1)(k), C.R.S., the State Commission on Judicial Performance (state commission) establishes the following rules. These rules have been approved by the Supreme Court and shall be applicable to the state and district commissions.

Rule

**RULE 1.- DUTIES OF ~~Commissions~~ COMMISSIONS**

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Commissions shall elect one member as a chair, or two members as co-chairs, to serve for two years, who will direct the business of the commissions, pursuant to statute, rule or guideline of the state commission.

Commissions on judicial performance evaluate the professional performance of justices, judges or magistrates and make recommendations to the electorate regarding the retention of individual justices or judges who stand for retention during any general election. In addition to other procedures and duties set forth in these rules, the commissions shall prepare and provide to the public a narrative profile and retention recommendation for each district, county and appellate justice or judge subject to retention. The state commission shall arrange to have the narrative profiles and recommendations of the state and district commissions printed in the ballot information booklet that is prepared pursuant to section ~~1-40-124.51-40-124.5~~, C.R.S.

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Rule

**RULE 2.- SOURCES OF ~~Information~~ INFORMATION**

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Each commission, in evaluating the professional performance of any justice, judge or magistrate, shall rely on official sources of information, including:

(a) **Questionnaires.** The state commission shall develop a questionnaire that will be used by all commissions to survey attorneys (including district attorneys and public defenders), jurors, litigants, court personnel, probation officers, social services caseworkers, crime victims, guardians ad litem, court appointed special advocate volunteers and law enforcement personnel who have appeared before or have professional contacts with the judge or magistrate being evaluated. In addition,

deputy sheriffs assigned to the courthouse will be surveyed. These persons will be randomly selected in numbers designed to achieve a random, statistically valid sample. These persons will be surveyed by direct mail questionnaires. The results of the surveys shall be provided to the commissions for use in evaluating the justices and judges.

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**(b) Interview with justices, judges or magistrates.**

Judicial district administrators will schedule interview sessions for judges and magistrates with district commissions. The state commission staff will schedule interview sessions for the appellate justices and judges with the state commission. All efforts to accommodate court dockets and calendars of commission members will be exercised.

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**(c) Statistics.** Information concerning the caseload and case types of a judge or magistrate being evaluated will be gathered and provided to the chair of the district commission by the district administrator. Information concerning the caseload of a justice or judge being evaluated by the state commission will be gathered and provided to the chair of the state commission by the clerk of the Colorado Supreme Court and the clerk of the Colorado Court of Appeals.

If requested by the commission, the district administrator or state court administrator shall promptly provide information kept or collected by the district administrator or state court administrator on individual judges or magistrates, which may include the number of court trials and court trial days; the number of jury trials and jury trial days; and sentence modifications pursuant to section ~~16-11-309~~16-11-309, C.R.S.

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Effective for the ~~2004~~2006 judicial performance evaluation and performance evaluations thereafter, the district administrator shall also provide open case reports and case aging reports if requested by the commission.

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**(d) Oral Interviews.** The state and district commissions

may conduct interviews with other persons who have appeared before the judge or magistrate on a regular basis. The district commissions shall ensure that the persons interviewed have had professional contact with the judge or magistrate. Such oral interviews shall be completed no later than fifteen (15) days prior to the scheduled interview between the commission and the judge or magistrate. The judge or magistrate shall be provided with a written summary of the interview that preserves the anonymity of the interviewee but informs the judge or magistrate

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of the substance of the interview no later than ten (10) days prior to the scheduled interview with the commission.

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**(e) Documentation from interested parties.** Written information concerning a judge or magistrate received from an interested party may be considered by the state and district commissions provided it contains the ~~author's~~author's name and address and is received no later than fifteen (15) days prior to the scheduled interview with the justice, judge or magistrate. The commissions may make the determination whether to include the ~~author's~~author's name and address in the copy of the document that is forwarded to the justice, judge or magistrate.

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**(f) Public hearings.** The state and district commissions may conduct public hearings to solicit public comment on justices, judges or magistrates being evaluated. Commissions are encouraged to conduct public hearings. Public hearings shall be completed no later than fifteen (15) days prior to the scheduled interview with the justice, judge or magistrate. The district commission shall give notice of the hearing not less than ten (10) days prior to such hearing. Public notice shall be given by the posting of a sign in a conspicuous place in each courthouse within the judicial district, and by notifying local news media in each county within the judicial district. The state and district commissions shall conduct public hearings pursuant to the Colorado Open Meetings Law, section ~~24-6-40~~24-6-401, et seq., C.R.S.

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**(g) Self-evaluations.** The state commission shall develop self-evaluation forms that shall be completed by each justice, judge or magistrate being evaluated. The self-evaluation requirements may include, but are not limited to a self assessment of the ~~justice's, judge's~~justice's, judge's or ~~magistrate's~~magistrate's strengths and weaknesses, goals for development and reputation in the legal community in the following areas: legal ability; integrity; communication skills; judicial temperament; administrative skills; settlement activities; judicial philosophy; community reputation; overall performance; and community service. The self-evaluation information is for the purposes of requiring the judge to conduct an appraisal of his or her performance and to provide information to the commission that may be useful for the interview or during the course of the evaluation. The self-evaluation information shall not be quoted, unless otherwise agreed to by the judge, in the narrative profile.

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**(h) Courtroom observation.** ~~Commission members are strongly encouraged~~ In order to become knowledgeable of the responsibilities and duties of the judges and to enable commissions to conduct more accurate evaluations, each commission member shall make at least one unannounced onsite visit to the courtroom to observe ~~any or all~~ at least one of the justices, judges or magistrates ~~they are~~ he or she is evaluating.

**(i) Additional information.** Information resulting from the ~~justice's, judge's or magistrate's~~ justice's, judge's or magistrate's interview may be considered and included in the evaluation if deemed appropriate by the majority of the commission members. Summaries of this new information shall be sent to the judge no later than ten (10) days following the scheduled interview.

**Rule**

**RULE 3.— ROLE OF CHIEF JUSTICE OF SUPREME COURT AND CHIEF JUDGE OF THE COURT OF APPEALS**

**(a)** The state commission shall request a meeting with the Chief Justice of the Supreme Court and the Chief Judge of the Court of Appeals to be held ~~no later than ten (10) days~~ prior to beginning the evaluation process and receiving any sources of evaluation information listed in Rule 2 for any supreme court justices or court of appeals judges-judge being evaluated. The purpose of the meeting is to allow the Chief Justice or Chief Judge of the Court of Appeals the opportunity to provide information and an overview of the appellate courts to the state commission. The meeting shall not constitute an evaluation of any ~~justice's~~ justice's or ~~judge's~~ judge's performance but shall be for informational purposes only, unless a justice or judge presently being evaluated was identified in the course of a prior judicial evaluation as having one or more particular weaknesses pursuant to Rule 3(c).

**(b)** After the state commission has completed its evaluation and approved the final version of the narrative profile and recommendation for a justice or judge, it shall provide the Chief Justice or the Chief Judge of the Court of Appeals with the independent survey analysis report specified in Rule 5, which shall include the verbatim comments, and the narrative profile and recommendation for each justice or court of appeals judge evaluated.

**(c)** After the state commission has completed its evaluation and approved the final version of the narrative profile and recommendation for a justice or judge, if the state commission

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has identified one or more particular weaknesses of the justice or judge under review, it may forward recommendations for improvement to the Chief Justice or Chief Judge of the Court of Appeals together with the report specified in Rule 3(b). The state commission shall also provide a copy of the ~~recommendations~~ ~~for recommendation for~~ improvement to the justice or judge who is the subject of the recommendations.

Rule

#### **RULE 4. - ROLE OF CHIEF JUDGE OF EACH JUDICIAL DISTRICT**

(a) The district commissions shall request a meeting with the Chief Judge of their judicial district to be held ~~no later than ten (10) days~~ prior to ~~beginning the evaluation process~~ and receiving any sources of evaluation information listed in Rule 2. The purpose of the meeting is to allow the Chief Judge the opportunity to provide to the commission members an overview of the judicial district including information such as caseloads, case types and the role of judges in the courts. The meeting shall not constitute an evaluation of any ~~judge's~~ judge's performance but shall be for informational purposes only, unless the judge presently being evaluated was identified in the course of a prior judicial evaluation as having one or more particular weaknesses pursuant to Rule 3(c).

(b) After the commission has completed ~~its evaluation and approved~~ the final version of the narrative profile and recommendation for a judge, it shall provide the Chief Judge of the ~~commission's~~ commission's judicial district with the independent survey analysis reports, specified in Rule 5, ~~which shall include the verbatim comments, and the narrative profile and recommendation~~ prepared for each judge evaluated.

(c) After the commission has completed ~~its evaluation and approved~~ the final version of the narrative profile and recommendation for a judge, if the commission has identified one or more particular weaknesses of the judge or magistrate under review, it may forward recommendations for improvement to the Chief Judge together with the report specified in Rule 3(b). The commission shall also provide a copy of the recommendation for improvement to the judge or magistrate who is the subject of the recommendation.

Rule

#### **RULE 5. - Compilation of Retention Evaluation Data COMMISSION ADMINISTRATIVE PROCEDURES**

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~~All completed surveys will be collected and statistically analyzed by the independent firm conducting the survey as authorized and approved by the state commission. Demographic information shall be separated from standard questions and comments to ensure the anonymity of the respondent. Commissions shall not receive the original questionnaires. All evaluation reports generated from the questionnaires shall be based on aggregate data. The information shall be supplied only as a composite report. Commissions shall not receive demographic information, unless the analysis of such information by the state commission or its agent proves to be statistically significant and affects evaluation of the overall professional performance of the justice, judge or magistrate being evaluated. Commissions will not receive questionnaire responses concerning any justice, judge or magistrate being evaluated if a statistically valid sample has not been collected, as determined by the state commission or its agent.~~

~~All written comments from the survey shall be reproduced verbatim, unless confidentiality cannot be assured. If confidentiality cannot be preserved, the commission may summarize the substance of the comment in order to provide it to the justice, judge or magistrate. All comments shall also be forwarded to the justice, judge or magistrate whom each comment concerns.~~

**~~RULE 6. DISCLOSURE OF RETENTION EVALUATION DATA TO COMMISSION MEMBERS AND JUSTICE, JUDGE OR MAGISTRATE BEING EVALUATED~~**

(a) Evaluation and meeting procedures. At the beginning of each performance evaluation process, the commission shall outline the evaluation procedures they will follow for the evaluations. Such procedures shall be consistent with these rules and state statute. Such procedures shall:

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- Establish the right of the majority to rule;
- Establish a quorum as a majority of members;
- Provide for motions to be made, seconded, amended, discussed, voted on
- and recorded accurately in the minutes;
- Protect the right of individuals to be heard, unless discussion is closed
- by a two-thirds vote;
- Protect the body from disruptive persons;
- Permit an agenda which may be approved by a majority;
- Require written minutes which shall be approved by a majority; and
- Permit the members to overrule the chair by a two-thirds vote.

(b) Confidentiality of meetings and attendance of non-commission members. Consistent with Rule (7), all interviews or deliberations directly concerning the retention of any justice or judge are confidential and shall be closed to the public. For the purposes of this Rule 5(b), public shall include other district commission members who are not a member of said commission and commission staff, which include the district administrator and his or her staff.

(c) Commission staff. The function of commission staff is to enable and assist the commission in the performance of its duties. Staff shall not participate in interviews or deliberations conducted by the commission concerning the evaluation of any justice or judge. Further, staff shall not draft the narrative profiles for a justice or judge.

#### **RULE 6. COMMISSION TRAINING RESPONSIBILITIES**

In addition to all other duties set forth in these rules, all commission members shall attend at least one training session per term, or the equivalent thereof as determined by the State Commission, such as reviewing a training video provided by the State Commission. To the extent possible, the State Commission shall endeavor to provide training on an annual basis that is reasonably accessible and convenient to all commission members.

A commission member who did not attend a training session as required under this rule (6), may not vote on a commission's recommendation for retention unless authorized to do so by a

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majority vote of the commission members who did fulfill the training requirements.

**RULE 7. COMPILATION OF RETENTION EVALUATION DATA**

All completed surveys will be collected and statistically analyzed by the independent firm conducting the survey as authorized and approved by the state commission. For the survey results regarding retention in both the non-attorney and attorney survey questionnaires, the percentage of responses to the "Undecided or don't know enough to make recommendation", shall not be included in or factored into the final results and as such shall not be counted against or for retention. Demographic information shall be separated from standard questions and comments to ensure the anonymity of the respondent. Commissions shall not receive the original questionnaires. All evaluation reports generated from the questionnaires shall be based on aggregate data. The information shall be supplied only as a composite report. Commissions shall not receive demographic information, unless the analysis of such information by the state commission or its agent proves to be statistically significant and affects evaluation of the overall professional performance of the justice, judge or magistrate being evaluated. Commissions will not receive questionnaire responses concerning any justice, judge or magistrate being evaluated if a statistically valid sample has not been collected, as determined by the state commission or its agent.

All written comments from the survey shall be reproduced verbatim, unless confidentiality cannot be assured. If confidentiality cannot be preserved, the commission may summarize the substance of the comment in order to provide it to the justice, judge or magistrate. All comments shall also be forwarded to the justice, judge or magistrate whom each comment concerns.

**RULE 8. DISCLOSURE OF RETENTION EVALUATION DATA TO COMMISSION MEMBERS AND JUSTICE, JUDGE OR MAGISTRATE BEING EVALUATED.**

The final report prepared by the independent firm that conducts the evaluation survey is public but shall not be released until such time as the retention recommendation is made public; except that the comments included in the report are not public and shall not be released to the public. Any comments included with questionnaires and written information received by the commission are not public and will be made available only to

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commission members and the justice, judge or magistrate being evaluated. Comments are solicited in an effort to provide feedback to the justice, judge or magistrate and to assist the justice, judge or magistrate in a self-evaluation process. Commission members have access to comments in order to assist the commission in the interview of the justice, judge or magistrate. Commission members shall not reveal the contents of any comment concerning a justice, judge or magistrate being evaluated to anyone other than other commission members, and the justice, judge or magistrate during an interview.

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Any justice, judge or magistrate being evaluated will be provided with the same information that is provided to commission members concerning that justice, judge or magistrate. The justice, judge or magistrate will receive the information no later than ten (10) days prior to any scheduled interview.

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#### **RULE 7. INFORMATION OTHERWISE ENTITLED TO PROTECTION**

#### **RULE 9. INFORMATION OTHERWISE ENTITLED TO PROTECTION**

Sensitive, personal information otherwise entitled to protection under the personnel files exemption of the Public Records Act, section ~~24-72-204~~ ~~24-72-204~~ (3) (a) (II), C.R.S., shall remain confidential.

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Members of commissions and staff shall maintain confidentiality with regard to those materials and communications so designated as confidential.

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ALL INTERVIEWS OR DELIBERATIONS DIRECTLY CONCERNING THE RETENTION OF ANY JUSTICE OR JUDGE ARE CONFIDENTIAL AND SHALL BE CLOSED TO THE PUBLIC.

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#### **~~RULE 8. DISCLOSURE OF RETENTION EVALUATION DATA TO THIRD PARTIES~~**

#### **RULE 10. DISCLOSURE OF RETENTION EVALUATION DATA TO THIRD PARTIES**

In addition to the disclosures authorized under Rule ~~68~~, upon a two-thirds majority vote of approval of the members of the state commission, the state and district commissions may release confidential information concerning a justice, judge or magistrate to:

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(a) A newsgathering organization that initiates an inquiry about a matter that has become the subject of widespread concern

and the release of information would benefit the justice, judge or magistrate and the public, and the justice, judge or magistrate signs a waiver for this purpose;

(b) A government agency or nominating commission that requests information concerning the appointment of a justice, judge or magistrate or former justice, judge or magistrate to another judicial position, and the justice, judge or magistrate signs a waiver for this purpose;

(c) An agency authorized to investigate the qualifications of persons for admission to practice law that requests information in order to evaluate a justice's, judge's, justice's, judge's or magistrate's application for admission to the bar of another state, and the justice, judge or magistrate signs a waiver for this purpose;

(d) The Chief Justice of the Supreme Court, if such information is requested with respect to the appointment or assignment of a retired justice or judge to judicial duties, and the justice, judge or magistrate signs a waiver for this purpose;

(e) The Supreme Court Attorney Regulation Committee, if an allegation is made against a justice, judge or magistrate in the course of the evaluation process which, if true, would constitute a violation of the code of professional responsibility; or

(f) The Commission on Judicial Discipline, if an allegation is made against a justice, judge, or magistrate in the course of the evaluation process, which, if true, would constitute a violation of the code of judicial conduct, or which would constitute extra-judicial conduct that reflects adversely on the judiciary.

(g) Confidential information is the information listed in Rules 2 and 79 and includes current and past data collected for the evaluation of justices, judges and magistrates, except for sensitive, personal information subject to protection pursuant to section ~~24-72-204~~ 24-72-204(3) (a) (II), C.R.S.

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~~Rule 9.~~

**RULE 11. INTERVIEW**

Commissions are required to schedule and conduct an interview with each justice, judge or magistrate being evaluated after the commission's initial review of information is complete. Neither the commission, nor the justice, judge or magistrate may waive the initial interview process.

(a) Commissions must follow all guidelines provided by the state commission regarding the personal interview of justices, judges or magistrates being evaluated.

(b) The interview shall be conducted for such a period of time as is necessary to address the concerns of the commission members and the justice, judge or magistrate being evaluated. Prior to the interview, the justice, judge or magistrate may submit written information to the commission if he or she so desires.

~~Rule 10.~~

**RULE 12. PREPARATION OF ~~Narrative Profile~~ NARRATIVE PROFILE**

Within ten (10) days following an interview with a justice, judge or magistrate, and in any event no later than seventy-five (75) days prior to the last date available for the justice or judge to declare such ~~justice's~~ justice's or ~~judge's~~ judge's intent to stand for retention, the chair of the commission shall provide the justice, judge or magistrate a complete written draft of the narrative profile. The narrative profile shall conform to the format designed by the state commission. Preparation of the narrative profile may not be delegated to any court employee or judicial officer. It is recommended that all commission members be involved and participate in the drafting of the narrative profile. A draft of the narrative profile is not to be released to any person other than the justice, judge or magistrate whom it concerns.

~~Rule 11.~~

**RULE 13. RECOMMENDATION**

(a) In addition to the information published as a narrative profile, the commission shall make a recommendation regarding the retention of each justice or judge who has declared intent to stand for retention. The recommendation shall be "Retain," "Do Not Retain," or "No Opinion." ~~A~~ The recommendation of "No Opinion" shall not be counted against or for retention.

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(b) In order to concentrate its resources on the determination of which judges are not performing their jobs as they should, the commission shall strongly consider a recommendation of "Retain" for any judge who receives an average of 2.0 or more in response to questions 1 through 5 of both the attorney and non-attorney survey questionnaires. If a judge receives less than an average of 2.0 in response to the questions 1 through 5 in either the attorney or non-attorney survey questionnaires, the Commission shall strongly consider a "Do Not Retain", unless one or more of the following applies:

(I) The nature or high number of cases of a judge's docket or caseload is such that the judge cannot appropriately manage his or her cases in a timely manner. This may be particularly true for provisional judges, who when appointed to the bench may inherit a significantly high number of cases that cannot be managed quickly.

(II) The commission believes that with additional experience on the bench and a commitment to improve his or her judicial skills, the judge should be given more time to develop his or her judicial skills and be retained for another term. The judge must agree to the recommendations contained in a performance plan that identifies areas of weaknesses in the judge's performance and makes specific recommendations for improvement.

(III) The judge's survey sample was either so small or lacking in appropriate respondent categories as to render the survey results inaccurate. If a commission believes that the results of the survey are inaccurate, it shall so notify the state commission. The state commission shall review the statistics, which review may include consultation with the independent firm that conducted the survey, and make a finding concerning the validity and use of the statistics. The decision by the State Commission concerning the accuracy and applicability of the survey results shall be forwarded to the District Commission making the request. If the state commission finds the survey inaccurate, that determination shall be binding upon the commission.

(IV) Any evaluation information obtained by the commission under Rule 2 that the commission believes justifies a "Do Retain" recommendation.

(c) A recommendation of "No Opinion" shall be given only when the commission concludes that the results of information

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gathered are not sufficiently clear to make a firm recommendation, and as such shall be accompanied by a detailed explanation.

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(d) A commission member who did not participate in the ~~judge's~~ judge's scheduled interview or perform the minimum required courtroom observation, may not vote on the ~~commission's~~ commission's recommendation for retention unless authorized to do so by a majority vote of the commission members who were present at ~~such~~ the scheduled interview, and performed the required minimum courtroom observation.

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#### **RULE 12. NARRATIVE PROFILE REQUIREMENTS**

#### **RULE 14. NARRATIVE PROFILE REQUIREMENTS**

Narrative profiles shall be reports of three to four short paragraphs describing the justice, judge or magistrate, judicial assignment, number of years on the bench and the retention recommendation. Narrative profiles shall provide the vote count recorded for each justice, judge or magistrate's recommendation and shall include comments explaining the reasons for such vote count. Narrative profiles should include information specific to the work of the justice, judge or magistrate. Narrative profiles may contain information concerning the ~~justice's,~~ judge's justice's, judge's or magistrate's professional association activities, recent awards and honors, and volunteer or other community work. Narrative profiles of those judges who are not licensed to practice law in Colorado shall reflect such. Narrative profiles need not contain biographical data, such as undergraduate school information, educational degrees, or other historical information not directly related to the practice of law. Narrative profiles for justices or judges standing for retention may include a statement of the groups of respondents surveyed, the percentage of responses received from each group who recommend that a justice or judge be retained, the percentage of responses received from each group who have no opinion as to the retention of the justice or judge, and the percentage of responses received from each group who recommend that a justice or judge should not be retained. The commission may also include the following information in the narrative profiles: ~~the justice's or judge's~~ the justice's or judge's contribution to the community, strengths and weaknesses, which may include emphasizing areas of exemplary or distinguishing performance or describing areas of significantly poor performance, and any additional information that the commission

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believes may be of assistance to the public in making an informed voting decision on the justice or judge.

District commissions shall prepare and provide the narrative profiles to the state commission no later than one hundred and twenty (120) days prior to the general election.

~~Rule 13.~~

In addition to the information published as a narrative profile, the commission shall make a recommendation regarding the retention of each justice or judge who has declared intent to stand for retention. The recommendation shall be "Retain," "Do Not Retain," or "No Opinion." A "No Opinion" shall be given only when the commission concludes that the results of information gathered are not sufficiently clear to make a firm recommendation, and such shall be accompanied by a detailed explanation. A commission member who did not participate in the judge's scheduled interview may not vote on the commission's recommendation for retention unless authorized to do so by a majority vote of the commission members who were present at such interview.

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**RULE 15. RESPONSE TO Narrative ProfileNARRATIVE PROFILE**

**(a)** Any judge or magistrate being evaluated pursuant to section ~~13-5.5-106~~13-5.5-106(3) (a), C.R.S., may respond to a draft of a narrative profile, in writing, within ten (10) days of receipt of the draft. Such a response must be directed to the chair of the commission.

**(b)** Any justice or judge being evaluated pursuant to section ~~13-5.5-106~~13-5.5-106 (1) (a) or (2) (a), C.R.S., may respond to a draft of the narrative profile, in writing, within ten (10) days of receipt of the draft. If the responding justice or judge requests an additional interview with the commission, the justice or judge shall be given an opportunity to meet with the commission to address the contents of the narrative profile. Any additional interview shall be held within ten (10) days of the request. The commission may, after such a meeting with the justice or judge being evaluated, revise its evaluation. Additionally, any commission issuing a "Do Not Retain" recommendation shall, at the justice or ~~judge's~~judge's request, include language in the narrative profile ~~summarizing the justice's or judge's~~stating the justice's or judge's position. The justice or judge may, upon review of the ~~summary~~statement, elect to withdraw the ~~summary~~statement from inclusion in the narrative profile. The chair of the commission shall provide the justice or judge with any redraft of the narrative profile, in writing, within ten (10) days following the additional interview, or, absent an additional interview, within ten (10) days of the receipt of the ~~justice's~~justice's or ~~judge's~~judge's response.

**RULE 14. RELEASE OF INTERIM EVALUATIONS**

**RULE 16. RELEASE OF INTERIM EVALUATIONS**

The district commission shall release the narrative profile and any other relevant information developed pursuant to section ~~13-5.5-106~~13-5.5-106(3), C.R.S., to the chief judge of the court and to the judge or magistrate no later than September 1 of the year in which the evaluation is performed. By September 1 of the year in which the evaluation is performed, the narrative profile and any other relevant information developed under this section shall also be available to the public, except that narrative profiles prepared pursuant to this section shall not be mailed to registered voters.

**RULE 15. RELEASE OF THE NARRATIVE PROFILE AND RECOMMENDATION**

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#### **RULE 17. RELEASE OF THE NARRATIVE PROFILE AND RECOMMENDATION**

When possible, the state commission shall release the narrative profile and the recommendation on retention prepared by the commissions to the public on the first day following the deadline for judges to declare their intent to stand for retention but no later than forty-five (45) days prior to the retention election.

~~Rule 16.~~

#### **RULE 18. REMOVAL FOR ~~Cause~~CAUSE**

~~(a.)~~ Any member of any judicial performance commission may be removed for cause by the appointing authority pursuant to section ~~13-5.5-104~~13-5.5-104, C.R.S. The state commission may recommend to the appointing authority that a member of a judicial performance commission be removed for cause. "Cause" means any malfeasance or nonfeasance in carrying out the duties and responsibilities of any judicial performance commission.

~~(b)~~ A commission member shall disclose to the commission any professional or personal relationship with the judge that may affect an unbiased evaluation of that judge, including any litigation involving the judge and the commission member, the commission ~~member's~~member's family or commission ~~member's~~member's business and any past or current application to fill a judge vacancy in the judicial district. Failure to disclose such information may be cause for removal by the appointing authority or as recommended by the state commission.

~~Rule 17.~~

#### **RULE 19. COMPLAINTS**

When a member of any district judicial performance commission or justice, judge or magistrate under evaluation believes that the judicial performance commission is operating in violation of these rules or the statute governing judicial performance commissions, such member, justice, judge, or magistrate shall notify the state commission. The state commission shall notify the chair of the particular district commission and request a written response regarding the complaint. Upon receipt of such a response, the state commission shall make an independent review and determine whether a violation of rule or statute has occurred. Findings of the state commission will be communicated to the district commission along with any instructions that are necessary to ensure that the district commission operates within these rules and the statute governing judicial performance commissions. In no event may the state commission overrule a recommendation

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regarding retention of any judge, but the state commission may provide a rebuttal recommendation to the district ~~commission's~~ commission's recommendation regarding retention of any judge when the district commission fails to comply with any instructions issued by the state commission pursuant to this Rule.

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~~**RULE 18. PARTICIPATION BY COMMISSION MEMBERS IN ACTIVITIES  
SUBSEQUENT TO DISSEMINATION OF NARRATIVE PROFILES AND  
RECOMMENDATIONS ON RETENTION**~~

**RULE 20. PARTICIPATION BY COMMISSION MEMBERS IN ACTIVITIES  
SUBSEQUENT TO DISSEMINATION OF NARRATIVE PROFILES AND  
RECOMMENDATIONS ON RETENTION**

\_\_\_\_ A commission member or the commission may publicly discuss only the narrative profile, the retention recommendation, the numerical data, information from public hearings, and such information as has been made public under Rule ~~8-10.~~ Rule 19.

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**RULE 21. RECUSAL**

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\_\_\_\_ An attorney who is serving as a commission member for a district or state judicial performance commission shall not, during the term of such service, request that a justice, judge or magistrate being evaluated by the commission be recused from hearing a case in which the attorney appears as counsel of record, or request permission to withdraw from the case pending before a justice, judge or magistrate being evaluated, solely on the basis that the attorney is serving on such performance commission.

\_\_\_\_ Any attorney who appears in a matter where opposing counsel of record serves as a member of the judicial performance commission which is evaluating the justice, judge or magistrate before whom the matter is set, may not request that the attorney be required to withdraw from the matter, or that the justice, judge or magistrate be recused from the matter on the basis that opposing counsel is serving on such performance commission.

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\_\_\_\_ A justice, judge or magistrate being evaluated by a judicial performance commission may not recuse himself or herself from a case in which an attorney member of a state or district judicial performance commission is counsel of record, nor should a justice, judge or magistrate grant a request to withdraw from a case by an attorney commission member, solely on

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the basis that the attorney is serving on the judicial performance commission conducting the evaluation.

~~\_\_\_\_\_~~ A commission member shall disclose to the ~~state's and member's~~ ~~state's and member's~~ commission, any professional or personal relationship with the justice, judge or magistrate that may affect an unbiased evaluation of that justice, judge or magistrate.

~~\_\_\_\_\_~~ A member may abstain from voting on the recommendation of the commission.

~~Rule 20-~~

#### **RULE 22. NOTICE**

~~(a+)~~ The district administrator shall cause to be published and posted at all times in a conspicuous location in each county courthouse of each judicial district affected by such commission, the names of members of the district judicial performance commission and a name, address, telephone number and e-mail address (if available) as a public contact.

~~(b)~~ The state commission shall cause to be published and posted at all times in a conspicuous location in the Colorado State Judicial Building the names of members of the state commission and a name, address, telephone number and e-mail address of the state commission director for public contact.

~~Rule 21-~~

#### **RULE 23. DISSEMINATION OF ~~Information~~ INFORMATION**

The following shall apply to the dissemination of narrative profiles and recommendations on retention of justices or judges standing for retention in office:

~~(a+)~~ **General Distribution.** Commissions may prepare and may make available, narrative profiles at the county courthouse, local libraries, major grocery outlets, and other practical public outlets.

~~(b)~~ **Newspaper.** Narrative profiles may be provided for publication in the local newspapers.

~~(c)~~ **Radio/T.V.** Commissions may contract for public service announcement airtime on local radio/ T.V. Public service announcements will direct the listener to the publication of retention recommendations. (Sample: 15 second PSA announcing that the results and recommendations concerning the election of judges standing for retention in the judicial

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district will be available in the [publication] on [date].  
Narrative profiles are included in the ballot analysis  
distributed to all registered voters.)

~~Rule 22.~~

**RULE 24. RECORDS**

The program director shall create a set of guidelines in  
cooperation with the district administrators for the purpose of  
the collection and retention of a summary of each state and  
district commission review process, data collected and  
appropriate notes for each review cycle. The information shall  
be provided to the commissions in subsequent judicial  
performance evaluation review cycles.

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