

## COLORADO REVISED STATUTES ANNOTATED

Current through all laws passed during the 2019 Legislative Session.

### TITLE 13. COURTS AND COURT PROCEDURE COURTS OF RECORD

#### ARTICLE 5.5 COMMISSIONS ON JUDICIAL PERFORMANCE

#### 13-5.5-101. Legislative declaration

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(1) It is the intent of the general assembly to provide:

- (a) A comprehensive evaluation system of judicial performance;
- (b) Information to the people of Colorado regarding the performance of judges and justices throughout the state; and
- (c) Transparency and accountability for judges and justices throughout the state of Colorado.

(2) Therefore, the general assembly finds and declares that it is in the public interest and is a matter of statewide concern to:

- (a) Provide judges and justices with useful information concerning their own performances, along with training resources to improve judicial performance as necessary;
- (b) Establish a comprehensive system of evaluating judicial performance to provide persons voting on the retention of judges and justices with fair, responsible, and constructive information about individual judicial performance;
- (c) Establish an independent office on judicial performance evaluation with full authority to implement the provisions of this article 5.5; and
- (d) Conduct statewide judicial performance evaluations, as well as judicial performance evaluations within each judicial district, using uniform criteria and procedures pursuant to the provisions of this article 5.5.

#### *History*

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**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1765, Section 1, effective August 9. L. 2019: (1)(b), (1)(c), (2)(a), and (2)(b) amended, (SB 19-187), ch. 374, p. 3396, Section 1, effective May 30.

#### *Notes*

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Editor's note: This article 5.5 was added in 1988. It was repealed and reenacted in 2017, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this article 5.5 prior to 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 5.5, see the comparative tables located in the back of the index.

Editor's note: This section is similar to former Section 13-5.5-101 as it existed prior to 2017.

## 13-5.5-102. Definitions

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As used in this article 5.5, unless the context otherwise requires:

- (1) "Attorney" means a person admitted to practice law before the courts of this state.
- (2) "Commission" means both the state and district commissions on judicial performance, established in section 13-5.5-104, unless the usage otherwise specifies the state commission or a district commission.
- (3) "Commissioner" means an appointed member of the state commission or one of the district commissions on judicial performance established in section 13-5.5-104.
- (4) "Department" means the state judicial department.
- (5) "Executive director" means the executive director of the office on judicial performance evaluation created in section 13-5.5-103.
- (6) "Fund" means the state commission on judicial performance cash fund, created in section 13-5.5-115.
- (7) "Improvement plan" means an individual judicial improvement plan developed and implemented pursuant to section 13-5.5-110.
- (8) "Interim evaluation" means an interim evaluation conducted by a commission pursuant to section 13-5.5-109 during a full term of office of a justice or judge.
- (9) "Judge" includes all active judges.
- (10) "Justice" means a justice serving on the supreme court of Colorado.
- (11) "Office" means the office on judicial performance evaluation created in section 13-5.5-103.
- (12) "Retention year evaluation" means a judicial performance evaluation conducted by a commission pursuant to section 13-5.5-108 of a justice or judge whose term is to expire and who must stand for retention election.
- (13) Repealed.
- (14) "Volunteer courtroom observer program" means a systemwide program comprised of volunteers who provide courtroom observation reports for use by state and district commissions in judicial performance evaluations. The state commission shall develop rules, guidelines, and procedures for the volunteer courtroom observer program pursuant to section 13-5.5-105 (2)(i).

### *History*

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**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1766, Section 1, effective August 9. L. 2019: (9) amended and (13) repealed, (SB 19-187), ch. 374, p. 3397, Section 2, effective May 30.

## 13-5.5-103. Office on judicial performance evaluation - executive director - duties - oversight

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- (1) The office on judicial performance evaluation is established in the judicial department. The state commission on judicial performance, established pursuant to section 13-5.5-104, shall oversee the office.
- (2) The state commission shall appoint an executive director of the office. The executive director serves at the pleasure of the state commission. The executive director's compensation is the same as that which the general assembly establishes for a judge of the district court. The state commission shall not reduce the executive director's compensation during the time that he or she serves as executive director. The executive director shall hire additional staff for the office as necessary and as approved by the state commission.
- (3) Subject to the state commission's supervision, the office shall:
  - (a) Staff the state and district commissions when directed to do so by the state commission;
  - (b) Train state and district commissioners as needed and requested;
  - (c) Collect and disseminate data on judicial performance evaluations, including judicial performance surveys developed, collected, and distributed, pursuant to section 13-5.5-105 (2);
  - (d) Conduct public education efforts concerning the judicial performance evaluation process and the recommendations made by the state and district commissions;
  - (e) Measure public awareness of the judicial performance evaluation process through regular polling; and
  - (f) Complete any other duties as assigned by the state commission.
- (4) Office expenses are paid for from the state commission on judicial performance cash fund created pursuant to section 13-5.5-115.

### *History*

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**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1767, Section 1, effective August 9.

### *Notes*

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Editor's note: This section is similar to former Section 13-5.5-101.5 as it existed prior to 2017.

### 13-5.5-104. State commission on judicial performance - district commissions on judicial performance - established - membership - terms - immunity - conflicts

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(1) The state commission on judicial performance is established, and a district commission on judicial performance is established in each judicial district of the state. In appointing the membership of each commission, the appointing entities must, to the extent practicable, include persons from throughout the state or judicial district and persons with disabilities and take into consideration race, gender, and the ethnic diversity of the state or district. Justices and judges actively performing judicial duties may not be appointed to serve on a commission. Former justices and judges are eligible to be appointed as attorney commissioners; except that a former justice or judge may not be assigned or appointed to perform judicial duties while serving on a commission.

(2) Repealed.

(3)(a) The state commission consists of eleven members, appointed on or before March 1, 2019, as follows:

(I) The speaker of the house of representatives shall appoint one attorney and one nonattorney;

(II) The minority leader of the house of representatives shall appoint one nonattorney;

(III) The president of the senate shall appoint one attorney and one nonattorney;

(IV) The minority leader of the senate shall appoint one nonattorney;

(V) The chief justice of the supreme court shall appoint two attorneys; and

(VI) The governor shall appoint two nonattorneys and one attorney.

(b) The terms of state commissioners appointed prior to January 31, 2019, shall continue until such time as his or her term was originally set to expire; except that the term of the two nonattorneys appointed by the chief justice of the supreme court pursuant to subsection (2)(a)(IV) of this section expires on January 31, 2019.

(c) This subsection (3) becomes effective February 1, 2019.

(4)(a) Each district commission consists of ten members, appointed on or before March 1, 2019, as follows:

(I) The speaker of the house of representatives shall appoint one attorney and one nonattorney;

(II) The president of the senate shall appoint one attorney and one nonattorney;

(III) The minority leader of the house of representatives shall appoint one nonattorney;

(IV) The minority leader of the senate shall appoint one nonattorney;

(V) The chief justice of the supreme court shall appoint two attorneys; and

(VI) The governor shall appoint two nonattorneys.

(b) The terms of district commissioners appointed prior to January 31, 2019, shall continue until such time as his or her term was originally set to expire; except that the following commissioners' terms expire on January 31, 2019:

(I) The two nonattorneys appointed by the chief justice of the supreme court pursuant to subsection (2)(a)(IV) of this section; and

(II) The attorney appointed by the governor pursuant to subsection (2)(a)(III) of this section.

(c) This subsection (4) becomes effective February 1, 2019.

(5)(a) The term for a commissioner is four years and expires on November 30 of an odd-numbered year. The term of a commissioner appointed to replace a member at the end of the commissioner's term begins on December 1 of the same year.

(b) The original appointing authority shall fill any vacancy on a commission, but a commissioner shall not serve more than two full terms including any balance remaining on an unexpired term if the initial appointment was to fill a vacancy. Within five days after a vacancy arises on a commission, the commission with the vacancy shall notify the original appointing authority of the vacancy. The original appointing authority shall make an appointment within forty-five days after the date of the vacancy. If the original appointing authority fails to make the appointment within forty-five days after the date of the vacancy, the state commission shall make the appointment.

(c) The appointing authority may remove a commissioner whom he or she appointed for cause.

(6) Each commission shall elect a chair every two years by a vote of the membership.

(7) State and district commissioners and employees of the state or a district commission are immune from suit in any action, civil or criminal, based upon official acts performed in good faith as commissioners and employees of the state or a district commission.

(8) A commissioner shall recuse himself or herself from an evaluation of the person who appointed the commissioner to the commission.

## *History*

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**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1768, Section 1, effective August 9.L. 2019: (5)(b) amended, (SB 19-187), ch. 374, p. 3397, Section 3, effective May 30.

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Editor's note:

(1) This section is similar to former Sections 13-5.5-102 and 13-5.5-104 as they existed prior to 2017.

(2) Subsection (2)(c) provided for the repeal of subsection (2), effective January 31, 2019. (See L. 2017, p. 1768.)

## Case Notes

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### ANNOTATION

Annotator's note. Since Section 13-5.5-104 is similar to former Section 13-5.5-102 as it existed in 2005, a relevant case construing that provision has been included in the annotations to this section.

Effect of 1997 amendment was to establish that terms of all members expire on November 30 of even-numbered years. *Romanoff v. State Comm'n on Judicial Performance*, 126 P.3d 182 (Colo. 2006).

A member may serve past the expiration of the member's term until a successor is appointed. *Romanoff v. State Comm'n on Judicial Performance*, 126 P.3d 182 (Colo. 2006).

Original appointing official may not appoint a successor more than 45 days after the expiration of a member's term. The state commission is authorized to appoint a successor when the original appointing official fails to make the appointment within 45 days after the expiration of a member's term. *Romanoff v. State Comm'n on Judicial Performance*, 126 P.3d 182 (Colo. 2006).

## 13-5.5-105. Powers and duties of the state and district commissions - rules

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(1) In addition to any other powers conferred or duties assigned upon the separate commissions by this article 5.5, all commissions have the following powers and duties:

(a) To review any available case management data and statistics provided by the state court administrator, the state commission, and district commissions related to individual justices and judges. A district commission may ask the state court administrator to provide supplemental information and assistance in assessing a judge's overall case management.

(b) To review written judicial opinions and orders authorized by justices and judges under the commission's oversight;

(c) To collect information from courtroom observation by commissioners of justices and judges, as well as information provided to the commissions by the volunteer courtroom observer program;

(d) To interview justices and judges under the commission's oversight and to accept information and documentation from interested persons as necessary, including judicial performance surveys;

(e) To make recommendations and prepare narratives that reflect the results of performance evaluations of justices and judges; and

(f) At an individual commission's discretion after it completes an interim evaluation of a justice or judge pursuant to section 13-5.5-109, to recommend that the chief justice or appropriate chief judge develop an individual judicial improvement plan pursuant to section 13-5.5-110.

**(2)** In addition to other powers conferred and duties imposed upon the state commission by this article 5.5 and section 13-5.5-106, the state commission has the following powers and duties:

- (a)** To appoint and supervise the executive director of the office on judicial performance evaluation;
- (b)** To assist the executive director in managing the office and providing fiscal oversight of the office's operating budget;
- (c)** To review data, prepare narratives, and make recommendations related to individual supreme court justices and judges of the court of appeals in accordance with sections 13-5.5-108 and 13-5.5-109;
- (d) (I)** To develop surveys to evaluate the performance of justices and judges, which surveys are completed by individuals who interact with the court, including but not limited to attorneys, jurors, represented and unrepresented litigants; law enforcement personnel; attorneys within the district attorneys' and public defenders' offices, employees of the court, court interpreters, employees of probation offices, and employees of local departments of social services; and victims of crimes, as defined in section 24-4.1-302 (5);

**(I.5)** The surveys developed pursuant to subsection (2)(d)(I) of this section are to be distributed primarily through electronic means, and the state commission shall make efforts to locate electronic mail addresses for the parties identified in said subsection.

**(II)** To develop rules, guidelines, and procedures to make the results of surveys developed pursuant to this subsection (2)(d) readily available to all parties set forth in subsection (2)(d)(I) of this section;

**(III)** To develop rules, guidelines, and procedures to provide interested parties with accessible and timely opportunities to review the surveys developed pursuant to this subsection (2)(d); and

**(IV)** To develop rules, guidelines, and procedures to make the surveys developed pursuant to this subsection (2)(d) and any available survey reports available to the public;

**(e)** To determine the validity of completed surveys developed pursuant to this subsection (2), report to the district commissions on the validity of the surveys for their districts, and prepare alternatives to surveys where sample populations are inadequate to produce valid results;

**(f)** To produce and distribute survey reports and public narratives that reflect the results of each judicial performance evaluation;

**(g)** To develop rules, guidelines, and procedures for the review of the deliberation procedures established by the district commissions; except that the state commission does not have the power or duty to review actual determinations made by a district commission;

**(h)** To promulgate rules pursuant to section 13-5.5-106 concerning:

**(I)** The evaluation of justices and judges based on performance evaluation criteria set forth in section 13-5.5-107;

(II) The creation of a standards matrix or scorecard related to the performance evaluation criteria set forth in section 13-5.5-107; and

(III) The continuous collection of data for use in the evaluation process, including surveys developed pursuant to subsection (2)(d) of this section;

(i) To develop rules, guidelines, and procedures concerning a systemwide judicial training program and a systemwide volunteer courtroom observer program; and

(j) To prepare a report pursuant to section 13-5.5-114.

(3) In addition to other powers conferred and duties imposed upon a district commission by this article 5.5, in conformity with the rules, guidelines, and procedures adopted by the state commission pursuant to section 13-5.5-106 and the state commission's review of the deliberation procedures pursuant to subsection (2) of this section, each district commission has the following powers and duties:

(a) To obtain information from parties and attorneys regarding judges' handling of cases with respect to the judges' fairness, patience with pro se parties, gender neutrality, racial disparity, and handling of emotional parties;

(b) To review data, prepare narratives, and make evaluations related to judges pursuant to the provisions of sections 13-5.5-108 and 13-5.5-109; and

(c) Upon completing the required recommendations and narratives pursuant to subsection (1) of this section, to collect all documents and other information, including all surveys and copies, received regarding each judge who was evaluated and forward such documents and information to the state commission within thirty days.

(4) Unless recused pursuant to a provision of this article 5.5, each commissioner of the state and district commissions has the discretion to evaluate the performance of a justice or judge under the commission's oversight and vote as to whether the justice or judge meets the performance standard based upon the commissioner's review of all of the information available to the commission.

## *History*

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**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1770, Section 1, effective August 9. L. 2019: (2)(d)(I), (2)(d)(III), and (2)(h)(II) amended and (2)(d)(I.5) added, (SB 19-187), ch. 374, p. 3397, Section 4, effective May 30.

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Editor's note: This section is similar to former Sections 13-5.5-103 and 13-5.5-105 as they existed prior to 2017.

## 13-5.5-106. Rules, guidelines, and procedures

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- (1) The state commission shall adopt rules, guidelines, and procedures as necessary to implement and effectuate the provisions of this article 5.5, including rules, guidelines, and procedures governing the district commissions.
- (2) The state commission shall consider proposed rules, guidelines, or procedures from the judicial department; except that nothing in this section requires the state commission to seek approval from the judicial department. The state commission retains the authority for the adoption of final rules, guidelines, or procedures. The state commission may, at its discretion and within existing appropriations and resources, retain independent legal counsel to review any rules, guidelines, or procedures adopted pursuant to this section or section 13-5.5-105.
- (3) The state commission may adopt rules, guidelines, or procedures that provide guidance to commissioners regarding the review or interpretation of information obtained as a result of the evaluation process and the criteria contained in section 13-5.5-107. Any such rules, guidelines, or procedures must:
  - (a) Take into consideration the reliability of survey data and be consistent with section 13-5.5-105; and
  - (b) Not divest any commissioner of his or her ultimate authority to decide whether a justice or judge meets the minimum performance standards, as established by the state and district commissions.
- (4) The state commission shall post a notice of the proposed rule, guideline, or procedure; allow for a period for public comment; and give the public an opportunity to address the state commission concerning the proposed rule, guideline, or procedure at a public hearing.

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**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1773, Section 1, effective August 9.

## 13-5.5-107. Judicial performance evaluation criteria

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- (1) The state commission and each district commission shall evaluate each justice and judge in Colorado utilizing the powers and duties conferred upon each commission in section 13-5.5-105. The evaluations must only include the following performance evaluation criteria:
  - (a) Integrity, including but not limited to whether the justice or judge:
    - (I) Avoids impropriety or the appearance of impropriety;
    - (II) Displays fairness and impartiality toward all participants; and
    - (III) Avoids ex parte communications;
  - (b) Legal knowledge, including but not limited to whether the justice or judge:

- (I) Demonstrates, through well-reasoned opinions and courtroom conduct, an understanding of substantive law and relevant rules of procedure and evidence;
  - (II) Demonstrates, through well-reasoned opinions and courtroom conduct, attentiveness to factual and legal issues before the court; and
  - (III) Adheres to precedent or clearly explains the legal basis for departure from precedent and appropriately applies statutes or other sources of legal authority;
- (c) Communication skills, including but not limited to whether the justice or judge:
- (I) Presents clearly written and understandable opinions, findings of fact, conclusions of law, and orders;
  - (II) Presents clearly stated and understandable questions or statements during oral arguments or presentations, and, for trial judges, clearly explains all oral decisions; and
  - (III) Clearly presents information to the jury, as necessary;
- (d) Judicial temperament, including but not limited to whether the justice or judge:
- (I) Demonstrates courtesy toward attorneys, litigants, court staff, and others in the courtroom; and
  - (II) Maintains and requires order, punctuality, and appropriate decorum in the courtroom;
- (e) Administrative performance, including but not limited to whether the justice or judge:
- (I) Demonstrates preparation for oral arguments, trials, and hearings, as well as attentiveness to and appropriate control over judicial proceedings;
  - (II) Manages workload and court time effectively and efficiently;
  - (III) Issues opinions, findings of fact, conclusions of law, and orders in a timely manner and without unnecessary delay;
  - (IV) 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
  - (V) Understands and complies, as necessary, with directives of the Colorado supreme court; and
- (f) 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.

## *History*

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**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1773, Section 1, effective August 9.

## *Notes*

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Editor's note: This section is similar to former Section 13-5.5-105.5 as it existed prior to 2017.

## 13-5.5-108. Judicial performance evaluations in retention election years - procedure - recommendations

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(1) Judicial performance evaluations for justices or judges whose terms are to expire and who must stand for retention election are conducted as follows:

(a) The state commission shall conduct a judicial performance evaluation of each such justice of the supreme court and judge of the court of appeals; and

(b) The district commission shall conduct a judicial performance evaluation for each district judge and county judge.

(2)(a) The applicable commission shall complete a retention year evaluation and related narrative to be communicated to the justice or judge no later than forty-five days prior to the last day available for the justice or judge to declare his or her intent to stand for retention.

(b) The narrative prepared for a retention year evaluation must include an assessment of the justice's or judge's strengths and weaknesses with respect to the judicial performance criteria contained in section 13-5.5-107, a discussion regarding any deficiency identified in an interim evaluation prepared pursuant to section 13-5.5-109, a review of any improvement plan developed pursuant to section 13-5.5-110, and a statement of whether the applicable commission concludes that any deficiency identified has been satisfactorily addressed, or a statement from the chief justice or appropriate chief judge that an improvement plan, if any, was satisfactorily followed by the justice or judge.

(c) The applicable commission shall grant each justice or judge who receives a retention year evaluation the opportunity to meet with the commission or otherwise respond to the evaluation no later than ten days following his or her receipt of the evaluation. If the meeting is held or a response is made, the applicable commission may revise its evaluation.

(3) After the requirements of subsection (2) of this section are met, the applicable commission shall make a recommendation regarding the performance of each justice or judge who declares his or her intent to stand for retention. The recommendations must be stated as "meets performance standard" or "does not meet performance standard". For a justice or judge to receive a designation of "does not meet performance standard", there must be a majority vote by the commission members that the particular justice or judge should receive such a recommendation.

(4) District commissions shall forward recommendations, narratives, and any other relevant information, including any completed judicial surveys, to the state commission according to the provisions of section 13-5.5-105.

(5) The state commission shall release the narrative, the recommendation, and any other relevant information related to a retention year evaluation, including the information forwarded pursuant to section 13-5.5-105, to the public no later than two months prior to the retention election. The state commission shall arrange to have the narrative and recommendation for each justice and judge standing for retention printed in the ballot information booklet prepared pursuant to section 1-40-124.5 and mailed to electors pursuant to section 1-40-125.

## *History*

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**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1775, Section 1, effective August 9.

## *Notes*

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Editor's note: This section is similar to former Section 13-5.5-106 as it existed prior to 2017.

### 13-5.5-109. Judicial performance evaluations in interim years between elections - procedure

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(1) Within the first two years of a justice's or judge's appointment to the bench, the appropriate commission shall conduct an initial evaluation of each justice and each judge. The appropriate commission shall complete and communicate its judicial performance interim evaluations as follows:

- (a) The state commission shall communicate its findings, including any recommendations for improvement plans, to the chief justice of the supreme court or the chief judge of the court of appeals and the appellate justice or judge who was evaluated; and
- (b) The applicable district commission shall communicate its findings, including any recommendations for improvement plans, to the chief judge of the district and the judge who was evaluated.

(2) If a commission recommends an improvement plan, the procedure development and implementation for such a plan will follow the guidelines set forth in section 13-5.5-110.

(3) The appropriate commission, at its discretion, may conduct a subsequent interim evaluation of each justice and each judge during the years between when the justice or judge stands for retention, if applicable.

(4) The appropriate commission shall grant each justice or judge who receives an initial or interim evaluation the opportunity to meet with the commission or otherwise respond to the initial or interim evaluation no later than ten days following the justice's or judge's receipt of the initial or interim evaluation. If a meeting is held or a response is made, the appropriate commission may revise its initial or interim evaluation.

## *History*

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**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1776, Section 1, effective August 9.

## *Notes*

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Editor's note: This section is similar to former Section 13-5.5-106.3 as it existed prior to 2017.

## 13-5.5-110. Individual judicial improvement plans

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(1)(a) If the state commission or a district commission recommends, pursuant to section 13-5.5-109 (1), that a justice or judge receive an individual judicial improvement plan, the commission shall communicate such recommendation to the chief justice or appropriate chief judge. The chief justice or chief judge shall then develop an improvement plan for such judge and shall send the improvement plan to the state commission for review. After the state commission reviews and approves the improvement plan, the chief justice or chief judge shall have the responsibility for implementing and overseeing the improvement plan.

(b) Once the justice or judge has completed the improvement plan, the chief justice or chief judge shall convey the results of the improvement plan activities to the appropriate commission, which will then maintain a copy of the improvement plan and the statement of results in its files.

(2) If a justice or judge is required to complete an improvement plan pursuant to this section, and he or she fails to satisfactorily complete the requirements of such improvement plan, the appropriate commission shall automatically issue a "does not meet performance standard" designation on his or her performance evaluation summary.

### *History*

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**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1777, Section 1, effective August 9.

## 13-5.5-111. Judicial performance evaluations - senior judges. (Repealed)

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### *History*

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**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1777, Section 1, effective August 9. L. 2019: Entire section repealed, (SB 19-187), ch. 374, p. 3398, Section 5, effective May 30.

## 13-5.5-112. Recusal

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(1) A commissioner shall disclose to his or her commission any professional or personal relationship with a justice or judge that may affect an unbiased evaluation of the justice or judge, including involvement with any litigation involving the justice or judge and the commissioner, the commissioner's family, or the commissioner's financial interests. A commission may require, upon a two-thirds vote of the other commissioners, the recusal of one of its commissioners because of a relationship with a justice or judge.

(2) A justice or judge who is being evaluated by a state or district commission may not recuse himself or herself from a case solely on the basis that an attorney, party, or witness in the case is a commissioner on the evaluating commission.

### *History*

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**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1777, Section 1, effective August 9.

### *Notes*

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Editor's note: This section is similar to former Section 13-5.5-106.4 as it existed prior to 2017.

## 13-5.5-113. Confidentiality

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(1) Except as provided in subsection (3) of this section, all self-evaluations, personal information protected under section 24-72-204 (3)(a)(II), additional oral or written information, content of any judicial improvement plans, and any matter discussed in executive session is confidential except as otherwise specifically provided by rule. All surveys must allow for the participant's name to remain confidential. Comments in surveys are confidential but may be summarized in aggregate for use in judicial performance evaluation narratives. A commissioner shall not publicly discuss the evaluation of a particular justice or judge.

(2) Except as provided in subsection (3) of this section, all recommendations and narratives are confidential until released to the public on the first day following the deadline for justices and judges to declare their intent to stand for retention.

(3) Information required to be kept confidential pursuant to this article 5.5 may be released only under the following circumstances:

- (a) To the supreme court attorney regulation committee, as provided by rule of the state commission;
- (b) To the commission on judicial discipline, as provided by rule of the state commission; or
- (c) With the consent of the justice or judge being evaluated.

### *History*

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**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1778, Section 1, effective August 9.

### *Notes*

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Editor's note: This section is similar to former Section 13-5.5-106.5 as it existed prior to 2017.

## 13-5.5-114. Reporting requirements - "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" report

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(1) The state commission shall gather and maintain statewide data and post a statistical report of the statewide data on its website no later than thirty days prior to each retention election. The report must specify, at a minimum:

- (a) The total number of justices and judges who were eligible to stand for retention and the number who declared their intent to stand for reelection;
- (b) The total number of judicial performance evaluations of justices and judges performed by the state and district commissions;
- (c) The total number of justices and judges who were evaluated but did not stand for retention; and
- (d) The total number of justices and judges who received a "meets performance standard" or "does not meet performance standard" recommendation, respectively.

(2) Beginning in January 2019, and every two years thereafter, the state commission shall report on the activities of the commissioners to the joint judiciary committee of the general assembly as part of its "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" presentation required by section 2-7-203.

### *History*

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**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1778, Section 1, effective August 9.

## 13-5.5-115. State commission on judicial performance cash fund - acceptance of private or federal grants - general appropriations

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The state commission is authorized to accept any grants of federal or private funds made available for any purpose consistent with the provisions of this article 5.5. Any money received pursuant to this section must be transmitted to the state treasurer, who shall credit the same to the state commission on judicial performance cash fund, which is hereby created. The fund also includes the amount of the increases in docket fees collected pursuant to sections 13-32-105 (1) and 42-4-1710 (4)(a). Any interest derived from the deposit and investment of money in the fund is credited to the fund. Any unexpended and unencumbered money remaining in the fund at the end of any fiscal year remains in the fund and shall not be credited or transferred to the general fund or another fund. Money in the fund may be expended by the state commission, subject to annual appropriation by the general assembly, for the purposes of this article 5.5. In addition, the general assembly may make annual appropriations from the general fund for the purposes of this article 5.5.

## *History*

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**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1779, Section 1, effective August 9.

## *Notes*

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Editor's note: This section is similar to former Section 13-5.5-107 as it existed prior to 2017.

## 13-5.5-116. Private right of action - definition

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(1) Final actions of the state commission are subject to judicial review as provided for in this section. For purposes of this section, "final action" means a rule, guideline, or procedure adopted by the state commission pursuant to this article 5.5. A "final action" does not include a final recommendation regarding a justice or a judge that is made by the state commission or a district commission pursuant to section 13-5.5-108 or 13-5.5-109, an improvement plan developed pursuant to section 13-5.5-110, surveys developed pursuant to section 13-5.5-105 (2)(d), or any aspect of an individual justice's or judge's individual judicial performance evaluation.

(2) A person adversely affected or aggrieved by a final action of the state commission may commence an action for judicial review in the Denver district court within thirty-five days after such action becomes effective. Upon a finding by the court that irreparable injury would otherwise result, the reviewing court shall postpone the effective date of the state commission's action to preserve the rights of the parties, pending conclusion of the review proceedings.

(3) If the court finds no error, it shall affirm the state commission's final action. If the court finds that the state commission's action is arbitrary or capricious; a denial of a statutory right; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, purposes, or limitations; not in accord with the procedures or procedural limitations set forth in this article 5.5 or as otherwise required by law; an abuse or clearly unwarranted exercise of discretion; based upon findings of fact that are clearly erroneous on the whole record; unsupported by substantial evidence when the record is considered as a whole; or otherwise contrary to law, then the court shall hold the action unlawful, set it aside, restrain enforcement, and afford such other relief as may be appropriate. In all cases under review, the court shall determine all questions of law, interpret the statutory and constitutional provisions involved, and apply the interpretation to the facts duly found or established.

## *History*

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**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1779, Section 1, effective August 9.