

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 59th Legislature (2023)

4   HOUSE BILL 2850

                                  By: Wallace

5  
6  
7                                   AS INTRODUCED

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

1 Performance Evaluation duties and powers; authorizing  
2 promulgation of rules; providing for codification;  
3 and providing an effective date.

4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

8 As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 A. The Office of Judicial Performance Evaluation shall:

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

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

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

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

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

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

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

- 1       4. Accept information and documentation from interested persons  
2 as necessary;
- 3       5. Develop surveys to evaluate the performance of Justices and  
4 judges which, shall be completed by attorneys, jurors, represented  
5 and unrepresented litigants, law enforcement personnel, attorneys  
6 within the district attorneys' and public defenders' offices,  
7 employees of the court, court interpreters, employees of probation  
8 offices, and employees of local departments of social services;
- 9       6. Determine the validity of completed surveys developed  
10 pursuant to paragraph 5 of this subsection, report to the Council on  
11 the validity of the surveys, and prepare alternatives to surveys  
12 where sample populations are inadequate to produce valid results;
- 13       7. Prepare narratives for the Board of Judicial Performance  
14 Evaluation that reflect the performance of Justices and judges;
- 15       8. Submit any information concerning or appearing to concern a  
16 complaint or violation of the Code of Judicial Conduct, or other  
17 law, by a judicial officer to the Administrative Director to the  
18 Council on Judicial Complaints;
- 19       9. Submit performance evaluations of Justices and judges to the  
20 Board of Judicial Performance Evaluation for approval or rejection;  
21 and
- 22       10. Recommend, at the Office's discretion after it completes an  
23 evaluation of a Justice or judge pursuant to Section 5 of this act,  
24 to the Board of Judicial Performance Evaluation that it develop an

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

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

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

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

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

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

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

24



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 A. 1. If the Office of Judicial Performance Evaluation  
18 recommends, pursuant to Section 5 of this act, that a Justice or  
19 judge receive an improvement plan, the Board of Judicial Performance  
20 Evaluation shall determine whether an individual judicial  
21 improvement plan is appropriate. If the Board determines an  
22 improvement plan is appropriate, the Office shall then develop an  
23 improvement plan for such Justice or judge. After the Board reviews  
24

1 and approves the improvement plan, the Office shall have the  
2 responsibility for implementing and overseeing the improvement plan.

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

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

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

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

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

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

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

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

20           A. 1. Except as specifically provided by law, all performance  
21 evaluations, personal information, oral or written information,  
22 content of any improvement plans, narratives, recommendations, and  
23 any matter discussed by the Board of Judicial Performance Evaluation  
24



1 concerning a performance evaluation or improvement plan is  
2 confidential.

3 2. All surveys must allow for the participant's name to remain  
4 confidential. Comments in surveys are confidential but may be  
5 summarized in aggregate for use in performance evaluation  
6 narratives.

7 B. Members of the Board of Judicial Performance Evaluation and  
8 employees of the Office of Judicial Performance Evaluation shall not  
9 publicly discuss the performance evaluation of a particular Justice  
10 or judge.

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

14 A. The Board of Judicial Performance Evaluation shall promptly  
15 approve or reject judicial performance evaluations submitted by the  
16 Office of Judicial Performance Evaluation.

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

19 1. Promulgate rules concerning:

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

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

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

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

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

15           SECTION 11. This act shall become effective November 1, 2023.

16  
17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated  
18 02/09/2023 - DO PASS.