

M.R. 3140

IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS

Order entered December 22, 2021.

(Deleted material is struck through, and new material is underscored.)

On December 6, 2021, Rule 58 was amended but contained a clerical error as to its effective date, which is corrected *nunc pro tunc* to December 6, 2021, as shown below.

Corrected Rule 58

Rule 58. Judicial Performance Evaluation

(a) Definitions.

(1) Whenever the word “judge” is used in this rule, it includes only circuit and associate judges.

(2) Whenever the pronoun “he” is used in this rule, it includes the feminine as well as the masculine form.

(b) Preamble. The courts, the public and the bar have a vital interest in a responsive and respected judiciary. In its supervisory role and pursuant to its power over the court system and judges, the court has determined that the periodic evaluation of a judge’s performance is a reliable method to promote judicial excellence and competence. Accordingly, the court has authorized a program of mandatory judicial performance evaluation. The program shall be supervised by the court and shall be implemented and monitored by a committee appointed by the court designated as the Judicial Performance Evaluation Committee, which shall establish procedures to implement this program.

(c) Purpose. There shall be a mandatory program of judicial performance evaluation for the purpose of achieving excellence in the performance of individual judges and the improvement of the judiciary as a whole.

(d) Confidentiality. The program must be conducted candidly and in strict confidence so that evaluations may be based on objective criteria and the areas for improvement determined fairly. Except as provided herein, the disclosure of evaluation information would be counterproductive to the goals of the evaluation program, reduce the free flow of comment, and result in the termination of the program. The following rules of confidentiality are essential to the successful implementation of the judicial evaluation program.

(1) Information Obtained. Except as provided herein, all information, questionnaires, notes, memoranda, electronic and computer data, and any other data obtained and used in the course of any judicial performance evaluation shall be privileged and strictly confidential. For

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the purpose of self-improvement, only the individual judge evaluated and the agents assigned to present the data to the judge will be permitted to know to which judge particular information applies. However, under Illinois Supreme Court Rule 21(b)-(d), if a chief judge has reason to believe that a judge's conduct negatively affects the operations of the court or public confidence in the court and the judge continues to fail to perform his or her judicial duties or to comply with a directive of the chief judge within the prescribed time period under that rule (collectively the alleged unsatisfactory conduct or performance) and if the chief judge documents in writing this alleged unsatisfactory conduct or performance, the chief judge, in his or her discretion, may request the Supreme Court to approve the obtaining of any past judicial performance evaluations of that judge. Thereafter, in its discretion, the Supreme Court can approve or not approve the request. The chief judge's request and the Supreme Court's decision shall not be made public. If the Supreme Court approves the request, the chief judge and the judge will receive any such evaluations. The chief judge can only use any such evaluation for the purposes of Rules 21 and 58. Moreover, as part of this process and as part of its administrative and supervisory powers under the Illinois Constitution (article VI, section 16), the Supreme Court, in its discretion, may obtain and review any judicial performance evaluations of the judge. A request by a chief judge or the Supreme Court for access to any judicial performance evaluation applies only to those evaluations created after the effective date of this amendment. The information, in summary form only and without disclosing the names of individual judges, may also be used separately by the Supreme Court and its designated agents for the purposes of improvement of the judiciary, and for use in administering the courts and for the development of judicial education programs. The identity of any person who provides information shall be privileged and held confidential and shall not be made available to any person. In addition, information disclosing a criminal act may be provided to law enforcement authorities at the direction of the Supreme Court. Requests for such information shall be made by written petition setting forth in particularity the need for such information. All information and data provided to law enforcement authorities pursuant to this paragraph shall no longer be deemed privileged and confidential. As to all information and data obtained in the operation of the program for judicial performance evaluation, the members of the Oversight Committee are hereby exempted from the requirements of the following rules of this court: Article I, Rule 63B(3) (Code of Judicial Conduct), and Article VIII, Rule 8.3 (Illinois Rules of Professional Conduct), except as herein provided.

(2) Admissibility as Evidence. Except as disclosed pursuant to paragraph (d)(1) hereof, all information, questionnaires, notes, memoranda or other data declared to be privileged and confidential hereby shall not be admissible as evidence, nor discoverable in any action of any kind in any court or before any tribunal, board, agency or person.

Adopted September 30, 1988, effective October 1, 1988; amended April 1, 1992, effective August 1, 1992; amended March 1, 2011, effective immediately; amended Dec. 6, 2021, eff. Jan. 1, 2022~~2021~~.

Committee Comments
(December 6, 2021)

The changes to Rule 58 maintain the essential confidentiality of this evaluation process but add an exception to the rule. Amended Rule 58 allows the chief judges and the Supreme Court in limited circumstances to have access to the judicial performance evaluations of circuit court and associate judges whose conduct allegedly negatively impacts the operations of the courts or the public confidence in the courts or who persistently fail to perform satisfactorily or to comply with the directives of the chief judges.

Paragraph (d)(1) is amended and adopts and summarizes Rule 21(b)-(d). Now, if a chief judge has reason to believe that a judge's conduct negatively affects the operation of the court or public confidence in the court and the judge continues to fail to perform his or her judicial duties or to comply with a directive of the chief judge within prescribed time periods within that rule, and if the chief judge documents in writing this alleged unsatisfactory conduct or performance, the chief judge, in his or her discretion, may request the Supreme Court to approve the obtaining of any past judicial performance evaluations of that judge. (Previously, judges were subject to one such evaluation in their judicial careers; now they will be subject to more frequent evaluations.) Thereafter, the Supreme Court, in its discretion, may approve or not approve the request. If the request is approved, the chief judge and the judge will receive any such evaluations. A chief judge can only use such evaluations for purposes of Rules 21 and 58. The Supreme Court, in its discretion, may also obtain and review such evaluations. To maintain confidentiality, the chief judge's request and the Supreme Court's decision on the request shall not be made public.

Because this limited confidentiality exception is new, a request by a chief judge or the Supreme Court for access to the judicial performance evaluations of a circuit court or associate judge applies only to those judicial performance evaluations initiated after the effective date of this amendment.