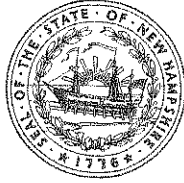


STATE OF NEW HAMPSHIRE
SUPREME COURT

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July 2, 2012

His Excellency, Governor John Lynch
State House, Rooms 208-214
Concord, N.H. 03301

Peter Bragdon, President
N.H. Senate
State House, Room 302
Concord, N.H. 03301

William O'Brien, Speaker
N.H. House
State House, Room 312
Concord, N.H. 03301

Senator Matthew Houde, Chair
Senate Judiciary Committee
LOB, Room 101-A
Concord N.H. 03301

Hon. Robert Rowe, Chair
House Judiciary Committee
LOB, Room 208
Concord, N.H. 03301

Re: Judicial Performance Evaluation Program

Dear Governor Lynch, President Bragdon, Speaker O'Brien, Senator Houde and Representative Rowe:

As required by RSA 490:32, we are submitting our 2012 report on judicial performance evaluations conducted for the New Hampshire Supreme Court and for those judges of the Superior Court and the Circuit Court and marital masters who were scheduled for evaluation in 2011 in accordance with the statutory timetable (at least once every three years). Also included in this

report are the results for judicial performance evaluations conducted in the trial courts 2009 and 2010 and caseload statistical analysis for the Supreme Court for 2009, 2010, and 2011.

BACKGROUND

The New Hampshire Judicial Branch has conducted judicial performance evaluations of its trial courts for 25 years; in 2000 the program was expanded to include evaluation of the Supreme Court and the administrative judges. A uniform system was developed for evaluation of trial court judges, including a "Performance Evaluation Questionnaire," for use by the public, a "Self-Evaluation Form" for judges and an "Evaluation Summary" to be used by the Administrative Judges. Questionnaires that reflected the role of the appellate court were developed as part of the performance evaluation program for the Supreme Court. In a pilot program in 2008, respondents were asked for the first time to evaluate the performance of individual Supreme Court justices; in 2011, the survey returned to the practice of evaluating the performance of the court as a body which had been the procedure since the program began in 2001.

Under the current judicial performance evaluation program, all trial court judges are evaluated at least once every three years; the Supreme Court justices evaluate each other annually and distribute judicial performance evaluation questionnaires every three years.

Changes to the judicial performance evaluation program, in the form of amendments to RSA 490:32, were adopted during the 2012 legislative session and are effective July 22, 2012. The amended statute requires the Supreme Court to consult with administrative judges and with other "non-judicial officers" about the design and implementation of the judicial performance evaluation program. The Supreme Court is currently considering adoption of court rules to address this change by establishing a "Judicial Performance Evaluation Advisory Committee" to advise the court on design and implementation of the judicial performance evaluation program.

SUPREME COURT

Supreme Court Rule 56, which governs the performance evaluation of Supreme Court justices, describes the four components of the evaluation process for the Supreme Court and its justices: an annual assessment of whether the court has met objective performance standards; the completion of a self-evaluation form by each justice; a meeting of the justices to evaluate each justice's performance; and, every three years, the distribution of

questionnaires designed to assess the court's performance to a representative sample of attorneys and parties who appeared before the court.

2011 STATISTICAL ANALYSIS

The Supreme Court clerk's office undertook a statistical analysis of the court's performance in relation to the performance standards adopted in 2001. The 2001 performance standards include time standards for performing different phases of the appellate process, such as screening, briefing, and decision-making. In setting the time standards, the court decided upon the average length of time that one could reasonably expect the court to complete that phase of the appellate process. While the standards do not require that every case be processed within the time periods identified, the standards serve as goals for both court and staff to process cases as promptly and efficiently as possible.

For this analysis, the clerk's office reviewed all 924 cases disposed of in 2011, some of which were filed prior to 2011, and calculated the average time that it took to complete each phase of the appellate process. The court's performance was then compared to the judicial performance standards. As the chart below reflects, the court met all of the time standards, except one, in its handling of cases disposed of in 2011.

CASES DISPOSED OF IN 2011

<u>Phase</u>	<u>Time Standard</u>	<u>Average for All Cases</u>
Screening	90 days	39 days
Filing of appellant's brief	60 days after record filed	69 days
Filing of appellee's brief	50 days after appellant's brief	49 days
Oral argument	180 days after appellee's brief	116 days
Decision	180 days after oral argument or submission	Opinion 89 days Order 10 days
Ruling on motions for reconsideration/ rehearing	60 days	27 days

As the chart shows, the court did not meet the standard for the length of time from the filing of the record to the filing of the opening brief. This was due primarily to the court granting motions for extensions of time for briefing filed by the parties. The court intends to monitor such requests more carefully in the future.

The average length of time from the filing of an appeal to the closing of the case was 221 days.

In addition to the time standards analysis, each justice completed a self-evaluation form and the justices met to evaluate each other's performance. Their evaluations focused on continuing efforts to promptly handle and dispose of cases filed with the court.

Statistical reports from 2010 and 2009 can be found in **APPENDIX A.**

2011 SUPREME COURT JUDICIAL PERFORMANCE EVALUATION SURVEY

In December 2011, questionnaires related to the performance of the Supreme Court and court operations were distributed to a representative sample of attorneys and unrepresented parties and to all judges and marital masters. The 2011 attorney survey sample included those identified as having participated in oral argument before the Supreme Court justices in 2010. The sample of unrepresented parties included those whose cases were briefed and decided on the merits in 2010.

Attorneys, judges and marital masters completed questionnaires online using "SurveyMonkey," an electronic survey tool which was first used by the Supreme Court in the 2008 Judicial Performance Evaluation Pilot Project (previous surveys were done manually). The electronic survey is programmed so that responses cannot be attributed to an individual respondent; responses are compiled automatically by the survey program. Unrepresented litigants were contacted by mail, and provided with a hard copy of the survey; a self-addressed stamped envelope was included to return to the Administrative Office of the Courts (AOC). A representative from the AOC Human Resources Department compiled the results of the survey of unrepresented parties. To insure the confidentiality of the respondents, the AOC representative also reviewed all written comments to eliminate any information that could identify a particular respondent or a case.

Respondents were asked to evaluate performance on a scale ranging from the lowest ranking of "deficient" to the highest ranking of "excellent."

The percentage of responses to the 2011 survey increased for all three groups over 2008, most significantly for judges and marital masters. The 2011 survey was completed by 63 percent of lawyers contacted compared to 52 percent in 2008; 64 percent of all judges and marital masters compared to 36 percent in 2008; and 28 percent of unrepresented parties compared to 19 percent in 2008. **See APPENDIX B.**

Overall, the 2011 survey showed significant improvement since 2008 in the experience of pro se litigants who come to the appellate court without legal assistance. Some examples:

- In 2011, more than 50 percent of pro se parties said “excellent” or “good” when asked to evaluate the court in terms of “being fair and impartial to each side in a case” compared to 25 percent in 2008. In the 2008 survey, 50 percent of pro se parties responded “below average” or “deficient” in this category, compared to 39 percent in 2011.
- Among unrepresented parties, when asked if the court staff was “friendly, courteous and patient” the “excellent” rating was 63 percent in 2011, compared to 36 percent in 2008. The “excellent” rating for the staff among attorneys in this category jumped from 69 percent in 2008 to 83 percent in 2011.
- Attorneys and unrepresented parties also gave the staff high marks for being willing, available and able to answer questions and again the “excellent” rankings increased from 2008 to 2011. Among attorneys, 95 percent ranked the staff as “excellent” (77 percent) or “good” (18 percent) in 2011; among unrepresented parties, 76 percent rated the staff as “excellent” (61 percent) or “good” (15 percent).
- Asked about the clarity of the court’s written opinions, 79 percent of attorneys said “excellent” (34 percent) or “good” (46 percent), rankings similar to those in 2008. Among pro se litigants, in 2011 54 percent said “excellent” or “good” compared to 61 percent in 2008.
- Seventy percent of attorneys gave the court an “excellent” (29 percent) or “good” (41 percent) rating when asked if the court’s opinions were issued in a timely manner, down slightly from 2008. Twenty-three percent of attorneys in 2011 rated the timeliness of the court’s opinions as “average.”
- Among unrepresented parties, 27 percent responded “excellent” (20 percent) or “good” (7 percent) in 2011 when asked to respond to the court’s performance in “treating parties and attorneys equally regardless of race, sex or economic status,” compared to 39 percent in 2008 (21 percent “excellent” and 18 percent “good”). In both 2008 and 2011, more than one-third of unrepresented parties

did not answer or gave no grade on this statement. More than 85 percent of attorneys responded “excellent” or “good” in 2011 and 2008.

- When asked if the court rules were “easy and clear to follow,” 57 percent of pro se parties responded “excellent” or “good” in 2011 compared to 46 percent in 2008. Among attorneys 77 percent said “excellent” or “good” in 2011 compared to 69 percent in 2008.

A full summary of all results from the 2011 performance evaluation survey can be found in **APPENDIX C**. Graphics illustrating the survey results are available on the Judicial Branch website, www.courts.state.nh.us. Click on Judicial Performance Evaluations.

TRIAL COURT EVALUATION PROCEDURE

Evaluations are conducted for the Superior Court in accordance with RSA 490:32 and Supreme Court Rule 56. Each justice being evaluated is furnished a Self-Evaluation Form which is returned to the Chief Justice for comparison with the results of the evaluation by others. Each clerk of court where the justice being evaluated customarily presides is required to supply the Chief Justice with names of 50 lawyers, litigants, witnesses, jurors, court officers and staff members who have had interaction with the specific justice being evaluated over the last three years. The Superior Court Center then generates letters to these various individuals requesting that they complete a Judicial Performance Evaluation Questionnaire, along with instructions on how to access the questionnaires on our website. The names of the justices being evaluated are publicly posted in clerks’ offices and published in the *New Hampshire Bar News*, as is a notice relative to the availability of the questionnaires.

The Performance Evaluation Questionnaire, the Self-Evaluation Form and the Evaluation Summary for the trial courts identify seven areas considered in the evaluations:

1. Performance (including ability to identify and analyze issues, judgment and application of the law) - 11 questions
2. Temperament and Demeanor - 8 questions
3. Judicial Management Skills - 7 questions
4. Legal Knowledge - 3 questions
5. Attentiveness - 2 questions
6. Bias and Objectivity - 3 questions
7. Degree of Preparedness - 2 questions

The scale utilized is as follows:

- 5 = Excellent
- 4 = Very Good
- 3 = Satisfactory
- 2 = Fair
- 1 = Unsatisfactory

Upon the expiration of the deadline imposed for the completion of questionnaires, "SurveyMonkey" is used to compile the results. The Chief Justice then schedules an appointment with each justice at which time the results are discussed and a redacted version of the comments (to preserve the respondents' confidentiality) is shared with the justice. The interview includes non-questionnaire information relating to the justice received by the Chief Justice, including letters of complaint and unsolicited letters of commendation, as well as information received from judicial conduct authorities regarding grievances or complaints filed against the justice.

The evaluation process for the Circuit Court is the same as the Superior Court. A link to access the survey is posted on the Judicial Branch website. All information concerning this process is published in the *New Hampshire Bar News* with the applicable deadline. Letters for each judge being evaluated are mailed to the respective state agencies, litigants and lawyers, asking them to participate in the survey. Hard copies were available for anyone who did not have Internet access.

SUPERIOR COURT
2011

During the calendar year 2011, performance evaluations of eight superior court justices were conducted by Chief Justice Tina L. Nadeau of the New Hampshire Superior Court. A total of 236 questionnaires were returned for the justices evaluated in 2011.

The overall mean for the eight judicial officers evaluated in 2011 was 3.9. A mean overall score of 3.9 puts these justices well above the "satisfactory" level. By category, the mean score for all eight judicial officers were as follows:

1. Performance	3.8
2. Temperament & Demeanor	3.9
3. Judicial Management Skills	3.8
4. Legal Knowledge	3.9
5. Attentiveness	4
6. Bias & Objectivity	4
7. Degree of Preparedness	3.9

The evaluations conducted since 2001 reflect that, as a group, the justices and marital masters of the superior court achieved an overall rating at or near “very good.”

2010

During the calendar year 2010, a performance evaluation of one (1) marital master was conducted by former Chief Justice Robert J. Lynn of the New Hampshire Superior Court.

A total of 56 questionnaires were returned for the master evaluated in 2010. The overall mean for the marital master evaluated in 2010 was 3.8. A mean overall score of 3.8 puts this marital master well above the “satisfactory” level. By category, the mean score for this marital master was as follows:

1. Performance	3.7
2. Temperament & Demeanor	4.0
3. Judicial Management Skills	3.5
4. Legal Knowledge	3.9
5. Attentiveness	4.0
6. Bias & Objectivity	3.9
7. Degree of Preparedness	3.6

2009

During the calendar year 2009, performance evaluations of four (4) superior court justices and one (1) marital master were conducted by former Chief Justice Lynn. For the justices and masters evaluated in 2009, a total of 156 questionnaires were returned.

The overall mean for the five (5) judicial officers evaluated was 4.2, with 3 scoring equal to or above the mean, and 2 scoring below. A mean overall score of 4.2 puts these justices and marital master, like their counterparts evaluated in previous years, at the “very good” level. By category, the mean scores for all five judicial officers were as follows:

1. Performance	4.2
2. Temperament & Demeanor	4.2
3. Judicial Management Skills	4.1
4. Legal Knowledge	4.4
5. Attentiveness	4.3
6. Bias & Objectivity	4.3
7. Degree of Preparedness	4.2

CIRCUIT COURT
2011

During year 2011, a total of 20 performance evaluations were conducted for judges and marital masters within the three divisions (family, district and probate) of the circuit court (formerly the District and Probate Courts and the Family Division).

Currently, within these three divisions there are 50 circuit court judges. Pursuant to RSA 490-F:6 judges may be certified solely in the district or probate division or dual judge sitting in both district and family or probate and family or in all three divisions. At this time, there are a total of 10 family division marital masters in the circuit court.

District Division/Family Division Judges

The information in this section covers judges who have been certified as family division judges who sit in both district and family divisions.

A total of 490 Performance Evaluation Questionnaires were distributed for 6 judges, for an average of 82 per judge. A total of 301 completed surveys were returned.

The mean overall score for the judges evaluated in 2011 was 4.1, a rating of "very good."

By category, the mean scores for all 6 judges were as follows:

1. Performance	4.0
2. Temperament & Demeanor	4.1
3. Judicial Management Skills	4.0
4. Legal Knowledge	4.1
5. Attentiveness	4.2
6. Bias & Objectivity	4.2
7. Degree of Preparedness	3.9

Administrative Judge Edwin W. Kelly is in the process of evaluating 3 district/family division judges for calendar year 2012. Two judges who were scheduled to be evaluated during 2012 have either retired or resigned.

District Division Judges

The information in this section covers judges who sit exclusively in district divisions.

A total of 783 Performance Evaluation Questionnaires were distributed for 11 judges, for an average of 71 per judge. A total of 319 completed surveys were returned.

The mean overall score for the judges evaluated in 2011 was 4.2, a rating of "very good."

By category, the mean scores for all 11 judges were as follows:

1. Performance	4.1
2. Temperament & Demeanor	4.2
3. Judicial Management Skills	4.2
4. Legal Knowledge	4.2
5. Attentiveness	4.3
6. Bias & Objectivity	4.3
7. Degree of Preparedness	4.1

Judge Kelly or his designee is in the process of evaluating 4 district division judges for calendar year 2012. One judge who was scheduled to be evaluated during 2012 has either retired or resigned.

Probate, Family and District Division Judges

The information in this section covers one judge sitting in all three divisions.

A total of 49 Performance Evaluation Questionnaires were distributed for this judge with 33 questionnaires returned.

The mean overall score for the judges evaluated in 2011 was 4.4, a rating above "very good."

1. Performance	4.3
2. Temperament & Demeanor	4.6
3. Judicial Management Skills	4.2
4. Legal Knowledge	4.3
5. Attentiveness	4.6
6. Bias & Objectivity	4.6
7. Degree of Preparedness	4.1

Judge Kelly is in the process of evaluating 2 judges for calendar year 2012. These two judges are certified to sit in probate and family divisions.

Family Division Marital Masters

The information in this section covers marital masters sitting in family division. Judicial Performance evaluations were conducted for 2 marital masters rather than 3 since a marital master retired during the year.

A total of 146 Performance Evaluation Questionnaires were distributed for the 2 marital masters for an average of 73 per person. A total of 63 completed surveys were returned.

The mean overall score for the marital masters evaluated in 2011 was 3.4%, a rating of "satisfactory."

By category, the mean scores for the 2 marital masters are as follows:

1. Performance	3.3
2. Temperament & Demeanor	3.6
3. Judicial Management Skills	3.3
4. Legal Knowledge	3.4
5. Attentiveness	3.6
6. Bias & Objectivity	3.4
7. Degree of Preparedness	3.3

Judge Kelly or his designee will be evaluating 3 marital masters for calendar year 2012.

DISTRICT COURT 2010

During year 2010, Judge Kelly or his designee completed the performance evaluations of 16 judges serving on what was then known as the District Court (now the Circuit Court District Division). At the time, there were 47 judges in the district court. The information in this section covers both judges who sat exclusively in district courts, as well as those judges who have been certified as family division judges and sat in both district and family courts.

A total of 1,421 Performance Evaluation Questionnaires were distributed for 16 judges, for an average of 89 per judge. A total of 468 completed surveys were returned.

The mean overall score for the judges evaluated in 2010 was 4.2, a rating of "very good."

By category, the mean scores for all 16 judges were as follows:

1. Performance	4.1
2. Temperament & Demeanor	4.3
3. Judicial Management Skills	4.1
4. Legal Knowledge	4.3
5. Attentiveness	4.4
6. Bias & Objectivity	4.3
7. Degree of Preparedness	4.1

2009

During year 2009, Judge Kelly or his designee completed the performance evaluations of nine judges. At the time, there were fifty-two judges in what was then the District Court (now the Circuit Court District Division). The information in this section covers both judges who sat exclusively in district courts, as well as those judges who have been certified as family division judges and sat in both district and family courts.

A total of 755 Performance Evaluation Questionnaires were distributed for nine judges, for an average of 84 per judge. A total of 223 completed surveys were returned.

The mean overall score for the judges evaluated in 2009 was 4.2, a rating of "very good."

By category, the mean scores for all nine judges were as follows:

1. Performance	4.1
2. Temperament & Demeanor	4.3
3. Judicial Management Skills	4.0
4. Legal Knowledge	4.3
5. Attentiveness	4.3
6. Bias & Objectivity	4.4
7. Degree of Preparedness	4.1

FAMILY DIVISION **2010**

During year 2010, Judge Kelly or his designee completed the performance evaluations of 3 marital masters. At that time, there were 11 masters in the family division.

A total of 281 Performance Evaluation Questionnaires were distributed for the 3 marital masters for an average of 94 per master. A total of 123 completed responses were returned.

The mean overall score for the masters evaluated in 2010 was 3.0, a rating of "satisfactory."

By category, the mean scores for the three marital masters are as follows:

1. Performance	2.8
2. Temperament & Demeanor	3.2
3. Judicial Management Skills	2.8
4. Legal Knowledge	3.0
5. Attentiveness	3.3
6. Bias & Objectivity	3.0
7. Degree of Preparedness	2.9

2009

During year 2009, Judge Kelly or his designee completed the performance evaluations of two marital masters and one judge who sat exclusively in family division locations.

A total of 213 Performance Evaluation Questionnaires were distributed for the two marital masters and a family division judge, for an average of 71 per judge or master. A total of 76 completed surveys were returned.

The mean overall score for the judge and two masters evaluated in 2009 was 4.3, a rating of "very good."

By category, the mean scores are as follows:

1. Performance	4.2
2. Temperament & Demeanor	4.3
3. Judicial Management Skills	4.2
4. Legal Knowledge	4.3
5. Attentiveness	4.5
6. Bias & Objectivity	4.5
7. Degree of Preparedness	4.3

PROBATE COURT
2010

During 2010, David King, then the Administrative Judge of the Probate Court, completed two judicial evaluations. Judge King was also evaluated by the Chief Justice of the Supreme Court in 2010.

The overall score for the three judges evaluated were 4.6, 4.6 and 4.4 with 5 being the best score. The actual overall scores were by category. The mean scores for each judge were as follows:

1. Performance	4.39, 4.48, 4.29
2. Temperament & Demeanor	4.88, 4.66, 4.45
3. Judicial Management Skills	4.14, 4.35, 4.17
4. Legal Knowledge	4.53, 4.52, 4.38
5. Attentiveness	4.91, 4.66, 4.46
6. Bias & Objectivity	4.94, 4.79, 4.62
7. Degree of Preparedness	4.43, 4.51, 4.282.9

2009

During 2009, Judge King completed two evaluations. In 2009, survey forms were made available through the Probate Court Administrative Office; since 2010 forms have been available electronically.

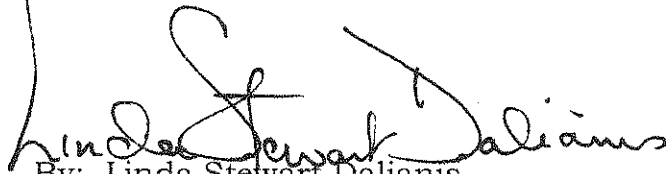
The overall score for the two judges evaluated was 3.9 and 4.5 with 5 being the best score. The actual overall scores were by category. The mean scores for each judge is as follows:

1. Performance	3.9, 4.3
2. Temperament & Demeanor	3.8, 4.7
3. Judicial Management Skills	3.5, 4.1
4. Legal Knowledge	3.8, 4.5
5. Attentiveness	4.3, 4.7
6. Bias & Objectivity	3.9, 4.7
7. Degree of Preparedness	4.0, 4.3

CONCLUSION

All of us in the Judicial Branch believe that the judicial performance evaluation process is an important tool for insuring public confidence in our court system through accountability and transparency. We look forward to working with the Judicial Performance Advisory Committee in an ongoing effort to further improve our current program.

Respectfully submitted,
NEW HAMPSHIRE SUPREME COURT



By: Linda Stewart Dalianis
Chief Justice