

STATE OF NEW HAMPSHIRE
SUPREME COURT

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June 30, 2014

Her Excellency, Maggie Hassan
Governor, State of New Hampshire
State House, Rooms 208
Concord, N.H. 03301

Senator "Chuck" Morse, President
New Hampshire Senate
State House, Room 302
Concord, N.H. 03301

Hon. Terie Norelli, Speaker
New Hampshire House
State House, Room 312
Concord, N.H. 03301

Senator Sharon Carson, Chair
Senate Judiciary Committee
LOB, Room 101
Concord N.H. 03301

Hon. Marjorie Smith, Chair
House Judiciary Committee
LOB, Room 208
Concord, N.H. 03301

Dear Governor Hassan, President Morse, Speaker Norelli, Senator Carson and Representative Smith:

It is our pleasure to submit the 2014 report on judicial performance evaluations of New Hampshire judges and marital masters evaluated in 2013 as required by RSA 490:32. The 2014 evaluation results will be included in the 2015 report to the governor and legislative leadership.

Background

For the past 27 years, the New Hampshire Judicial Branch has conducted a judicial performance evaluation (JPE) program in all of its trial courts. In 2000, following the adoption of Supreme Court Rule 56, the program was expanded to include evaluation of the Supreme Court, the chief justice of the superior court and the administrative judges of the circuit court. The Supreme Court evaluation results are included in this report. Evaluations of the chief justice of the superior court and the administrative judges are scheduled to occur in 2014 and will be reported in 2015.

Under the current JPE program, all trial court judges and marital masters are evaluated at least once every three years in accordance with Supreme Court Rule 56. A standardized evaluation form for use in all the trial courts was approved and the Supreme Court adopted uniform Trial Court Performance Standards in categories such as temperament, demeanor and legal knowledge.

Since 2001, JPE reports have been prepared and submitted to the governor and legislative leadership. Copies of all reports are available to the public on the Judicial Branch website.

Commitment to Improvement, Accountability and Transparency

In an effort to evaluate and enhance the JPE program, the Judicial Branch has for several years participated, along with judicial performance evaluation scholars from other states, in a working group facilitated by the Institute for the Advancement of the American Legal System (IAALS) based in Denver, Colorado. The Institute is one of the nation's leading organizations for research and development of programs to enhance judicial performance, with a particular focus on evaluation procedures, transparency, and accountability.

In 2012, following amendments to RSA 490:32, the Supreme Court established a Judicial Performance Advisory Committee for the purpose of strengthening our judicial performance evaluation program. The committee is charged with making recommendations to Supreme Court about the design and implementation of the program. The committee, which meets in public at the Administrative Office of the Courts, is composed of judges, lawmakers and representatives of the state's legal community.

The committee includes the Chief Justice of the Superior Court, the Administrative Judge of the Circuit Court, the chairs of the Senate and House Judiciary Committees, the executive director of the New Hampshire Public Defender, the executive director of the Judicial Council (or designee), the deputy attorney general, and the chair of the New Hampshire Bar Association's Committee on Cooperation with the Courts (or designee).

Associate Supreme Court Justice Carol Ann Conboy serves as the Supreme Court's representative to the committee. Judicial Branch Public Information Officer Carole Alfano, who assists with the administration of our JPE program, serves as the committee's executive secretary.

The committee held its first work session on May 13, 2013. Since then, the committee has met seven times. Minutes of all meetings, the date and location of upcoming meetings, and background information about New Hampshire's JPE program, are available on the Judicial Branch website at <http://www.courts.state.nh.us/sitewidelinks/evaluations.htm>.

For the period of July 1, 2013 to June 30, 2014:

- The committee had the honor of hosting two guest speakers. The first, Professor Jordan Singer, from New England School of Law, is a nationally-recognized expert on judicial performance evaluation. He discussed his observations and suggestions concerning the JPE forms currently being used in New Hampshire and concerning New Hampshire's approach to judicial performance evaluation compared to other states. The second, Dr. Andrew Smith from the University of New Hampshire Survey Center, is well known for conducting political polls at the local, regional, and national levels. Dr. Smith shared his expertise on how to best construct survey questions in order to generate the most useful responses. Dr. Smith also agreed to continue to participate in the committee's work, including assisting in the redesign of the current JPE forms.
- The committee worked closely with its legislative members, Sen. Sharon Carson and Rep. Marjorie Smith, to clarify inconsistencies in RSA 490:32 regarding the confidentiality of judicial performance evaluations. The result was the drafting of SB 249 which Governor Hassan signed into law on April 14, 2014. The amendment went in to effective immediately.
- The committee devoted considerable time to redesigning the current judicial performance evaluation form for trial court judges and the juror feedback survey. Significant improvements have been made in reducing the length of the forms and improving the wording of the questions with the goal of improving the quality and usefulness of the responses. The committee expects that the new forms will be utilized in the 2014 evaluations.
- The committee recognizes the value of a "portfolio approach" to judicial evaluations which extends beyond the use of evaluation forms. The committee also appreciates that essential to the evaluation process is the training of newly appointed judges and on-going education of more experienced judges. Currently, new judges participate in a month-long training program. Other current training and evaluation tools include: mentoring, use of bench books, attendance by veteran judges at court proceedings to evaluate new judges, review by administrative judges of randomly selected CD recordings of proceedings, and case flow management meetings. The committee plans to explore how this portfolio approach to training and evaluation may be expanded.

SUPREME COURT EVALUATION PROCEDURES

Supreme Court Rule 56, which governs the performance evaluation of the Supreme Court and its justices, describes the components of the evaluation process including: an annual assessment of whether the court has met objective performance standards; an annual self-evaluation 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.

To determine whether the court met objective performance standards, 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, which were set by the Supreme Court, represent the court's judgment of the average length of time that it should take to complete various phases of the appellate process, such as screening, briefing, and decision-making. Although the standards do not require that every case be processed within the time periods identified, they serve as reasonable goals for the justices and staff to process cases as promptly and efficiently as possible.

For this analysis, the clerk's office reviewed the 876 cases disposed of in 2013, many of which were filed prior to 2013, and calculated the average length of time that it took to complete each phase of the appellate process. The court's performance was then compared to the performance standards. As the chart below reflects, the court met all of the time standards in its handling of cases disposed of in 2013.

Cases Disposed of in 2013

<u>Phase</u>	<u>Time Standard</u>	<u>Average for All Cases</u>
Screening	90 days	44 days
Filing of appellant's brief	60 days after record filed	53 days
Filing of appellee's brief	50 days after appellant's brief	49 days
Oral argument	180 days after appellee's brief	115 days
Decision	180 days after oral argument or submission	Opinion 88 days Order 10 days

<u>Phase</u>	<u>Time Standard</u>	<u>Average for All Cases</u>
Ruling on motions for reconsideration/ rehearing	60 days	24 days

The average length of time from the filing of an appeal to the closing of the case was 218 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 pending cases.

Supreme Court Rule 56(III) requires that questionnaires be distributed every three years to evaluate the performance of the Supreme Court and the Supreme Court justices. Supreme Court questionnaires were distributed in 2011 and will be distributed again in 2014.

TRIAL COURT EVALUATION PROCEDURES

Evaluations are conducted for the Superior Court and the Circuit Court in accordance with RSA 490:32 and Supreme Court Rule 56. Each Superior Court justice and Circuit Court judge being evaluated is furnished a Self-Evaluation Form which is returned to the Office of the Chief Justice of the Superior Court or the Administrative Judge of the Circuit Court. Court staff supply the Chief Justice or Administrative Judge with names of lawyers, litigants, witnesses, jurors, court officers and staff members who have had interaction with the justice or judge being evaluated during the prior three years. The offices of the Chief Justice and the Administrative Judge then send letters to those individuals requesting completion of a Judicial Performance Evaluation Questionnaire for the justice or judge.

The Judicial Branch uses *SurveyMonkey* as its electronic survey tool. The questionnaire for each justice and judge being evaluated is posted on the Judicial Branch website where it can be completed by persons contacted by the court or by any other person interested in the evaluation process. The names of the justices and judges being evaluated are publicly posted in clerks' offices and published in the New Hampshire Bar News; thus, notice of the availability of the questionnaires is given so that individuals without access to the Internet may participate in the evaluation process.

Upon the expiration of the deadline set for the completion of questionnaires, *SurveyMonkey* is used to compile the results. The Chief

Justice or the Administrative Judge or the Deputy Administrative Judge then meets with each justice or judge at which time the results are discussed and a redacted version of the narrative comments (to preserve the respondents' confidentiality) is shared with the justice or judge. The evaluation process also includes review of other information relating to the justice or judge received by the Chief Justice or the Administrative Judge, including letters of complaint and unsolicited letters of commendation, as well as information received from the Judicial Conduct Committee regarding grievances or complaints filed against the justice or judge.

The same performance evaluation procedure is followed for marital masters.

The Performance Evaluation Questionnaire, the Self-Evaluation Form and the Evaluation Summary for the trial courts identify seven areas considered in the evaluation of a judge or marital master:

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

Superior Court

Currently there are 19 Superior Court justices. Performance evaluations are conducted for each judge every three years. Since no judges were due for evaluation in 2013, performance evaluations were not conducted in 2013. Chief Justice Tina L. Nadeau reports that six evaluations will be conducted in 2014.

Circuit Court

During calendar year 2013, a total of 16 performance evaluations were conducted for judges and marital masters within the three circuit court divisions (family, district and probate).

Currently, the circuit court is comprised of a total of 48 judges, 29 full time and 19 part time, and 5 family division marital masters. Pursuant to RSA 490-F:6 judges who were on the bench on July 1, 2011, when the circuit court was created, have been certified in one or more divisions. All judges appointed to the circuit court after July 1, 2011 are automatically certified to sit in all three divisions of the court.

Circuit Court Judges

A total of 1,350 Performance Evaluation Questionnaires were distributed for 15 judges, with an average of 90 per judge. A total of 492 completed surveys were returned, which is a 36% total return rate.

The mean overall score for the judges evaluated in 2013 was 4.0, a rating of "very good."

By category, the mean scores for these 15 judges were as follows:

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

Of the 18 judges scheduled to be evaluated in calendar year 2014, two judges retired during calendar year 2013, and a third circuit court judge was appointed to the superior court. Deputy Administrative Judge David D. King has begun the process of evaluating 15 judges for calendar year 2014.

Family Division Marital Masters

A Judicial Performance Evaluation was conducted for one marital master this year. A total of 90 Performance Evaluation Questionnaires were distributed for this marital master. A total of 32 completed surveys were returned, which is a 36% return rate.

The mean overall score for the marital master evaluated in 2013 was a 3.4, a rating of “satisfactory.”

By category, the mean scores for the one marital master are as follows:

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|-------------------------------|-----|
| 1. Performance | 3.4 |
| 2. Temperament & Demeanor | 3.2 |
| 3. Judicial Management Skills | 3.5 |
| 4. Legal Knowledge | 3.9 |
| 5. Attentiveness | 3.1 |
| 6. Bias & Objectivity | 3.5 |
| 7. Degree of Preparedness | 3.3 |

Judge King has begun the process of evaluating two marital masters for the calendar year 2014.

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. The Supreme Court looks 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