

June 26, 2015

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

Dear Governor Hassan, President Morse, Speaker Jasper, Senator Carson and Representative Rowe:

It is our pleasure to submit the 2015 report on judicial performance evaluations of New Hampshire judges and marital masters evaluated in 2014 as required by RSA 490:32. The 2015 evaluation results will be included in the 2016 report to the governor and legislative leadership.

## **Background**

For the past 28 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 occurred in 2014.

Under the current JPE program, all trial court judges and martial 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) 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 consists of 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'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 ten 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, 2014 to June 30, 2015, the committee devoted the majority of its time to redesigning the current judicial performance evaluation forms for Supreme Court justices, and 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 grading scale was changed from five points to four. These new forms were utilized in the 2014 evaluations.

The committee reviewed the training and education programs currently in use by the administrators of the Superior and Circuit Courts. Tina L. Nadeau, Chief Justice of the Superior Court, and David D. King, Deputy Administrative Judge for the Circuit Court, prepared summaries of these programs, which are included in this report.

The committee welcomed Rep. Robert Rowe, Chair of the House Judiciary Committee, as a new member. He replaced Rep. Marjorie Smith who was a significant, long-time contributor to the work of the committee.

It was determined that the committee will soon be able to conclude its work as directed under RSA 490:32; thereafter, the committee will meet on an annual or semi-annual basis to review the evaluation process and consider any further changes.

## **SUPREME COURT EVALUATION PROCEDURES**

Supreme Court Rule 56, which governs the performance evaluation of Supreme Court justices, describes the components of the evaluation process for the Supreme Court and its justices: an 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.

### **Objective Performance Standards**

The Supreme Court clerk's office performed a statistical analysis of the court's performance in relation to the performance standards adopted by the Supreme Court in 2001. The 2001 performance standards represent the court's judgment of the length of time that it should take, on average, to complete each phase of the appellate process, such as screening, briefing, and decision-making. The standards do not require that every case be processed within the time periods identified; rather, they serve as goals for the justices and staff to process cases promptly and efficiently.

For this analysis, the clerk’s office reviewed the 920 cases disposed of in 2014, many of which were filed prior to 2014, 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 judicial performance standards. As the chart below reflects, the court met all of the time standards in its handling of cases disposed of in 2014.

**Cases Disposed of in 2014**

<b><u>Phase</u></b>	<b><u>Time Standard</u></b>	<b><u>Average for All Cases</u></b>
Screening	90 days	47 days
Filing of appellant’s brief	60 days after record filed	53 days
Filing of appellee’s brief	50 days after appellant’s brief	47 days
Oral argument	180 days after appellee’s brief	130 days
Decision	180 days after oral argument or submission	Opinion 101 days Order 13 days
Ruling on motions for reconsideration/ rehearing	60 days	26 days

The average length of time from the filing of an appeal to the closing of the case was 224 days.

**Self Evaluation and Evaluation Meeting**

As required by Rule 56, each justice completed a self-evaluation questionnaire in 2014. The justices then met to evaluate each other’s performance. The justices reviewed the court’s overall performance and discussed ideas for improving the appellate process.

## **Distribution of Questionnaires to Parties and Counsel**

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. Questionnaires had last been distributed in 2011; thus, questionnaires were distributed in 2014. Prior to distribution of the questionnaires, the Judicial Performance Evaluation Advisory Committee revised the questionnaires. One questionnaire was designed for completion by trial judges and marital masters, and a second questionnaire was designed for completion by lawyers and self-represented parties. After the redesigned questionnaires were approved by the court, they were distributed in late 2014.

Questionnaires were sent to all 59 full-time judges and marital masters via their court email addresses. Twenty six electronic responses were received, a 44% return rate. The overwhelming majority of judges and marital masters who responded “agreed” or “strongly agreed” that the court’s decisions are timely, that the decisions are thorough and clear and provide adequate guidance for future cases, and that the court adequately explains the reasons for its decisions.

The lawyers and self-represented parties’ questionnaire was distributed to all lawyers who argued cases before the Supreme Court in 2013, and to self-represented parties whose cases were decided on the merits in 2013. Email addresses were available for all lawyers; questionnaires were distributed to lawyers electronically. Questionnaires were sent by email to 42 self-represented parties for whom email addresses were available. The questionnaire was sent in paper format to 196 self-represented parties for whom email addresses were unavailable. 160 electronic responses were received from lawyers and self-represented parties, and 22 paper responses were received, for an overall return rate of 42%.

The questionnaire distributed to lawyers and self-represented parties covered the entire appeal process, from filing to decision. Respondents indicated that they were able to find information and forms necessary for filing an appeal on the judicial branch website. They stated that the staff of the Supreme Court clerk’s office had been able to answer their questions about the appellate process and had treated them courteously. Respondents reported that, during oral argument, the justices paid attention and treated everyone fairly and respectfully. The vast majority of respondents reported that they understood the court’s decision in their cases. The questionnaire invited respondents to make suggestions about how the court could improve the process. In general, respondents offered constructive suggestions for possible changes. The justices reviewed all of the comments submitted and made some changes to the court’s processes based on the comments.

# TRIAL COURT TRAINING & EVALUATION PROCEDURES

## TRAINING

### Superior Court Judges

#### Materials Provided

Upon confirmation, new judges engage in a month-long intensive training and supervision program. Initially, the judges are provided a bench book which includes over 400 pages covering, among other topics, ethics, criminal process, civil process, jury instructions, media coverage, contempt powers and witness issues. In addition, judges are provided a second bench book covering criminal justice and sentencing issues. This material includes studies on evidence-based sentencing, managing criminal-justice-involved individuals with drug issues, drug court outcomes report, felony case flow management, and PEW Charitable Trusts' studies regarding prison costs. The judges are also provided with a condensed version of the bench book for reference in court which includes a plea colloquy, a *pro se* colloquy, jury instructions, criminal and civil voir dire questions for use during jury selection, the elements of certain criminal offenses, and rules of evidence.

#### Initial Training

During the first week of training, new judges meet with several members of the Judicial Branch staff and receive general substantive training as follows:

- First, the judges meet for a day with the Chief Justice who reviews issues regarding ethics, recusal requests, limitations on political and financial activities, demeanor, requirement of timeliness of orders, dealing with the clerks and staff, dealing with law clerks, decision making, *pro se* litigants, contempt powers, etc. The judges also observe a drug court session.
- The judges receive training on Odyssey, the court's case management system. They then meet with the Director of the Administrative Office of the Courts, director of HR, Legal Counsel, Budget Director and IT director.
- The judges receive judicial writing training from UNH Law Professor Sophie Sparrow.
- The judges receive anti-discrimination training from the Director of Judicial Education.

- The judges meet with Supreme Court Justice Carol Ann Conboy to discuss court room procedure, judicial demeanor, ensuring the accuracy of the record, managing complex cases, etc.
- The judges receive training on our new jury management software.
- The judges receive a tour of the Call Center.
- The judges meet with Carole Alfano, Public Information Officer.
- The judges receive training on procedural due process.
- The judges view an on-line training course for new judges from the National Judicial College.
- Within 30 days of their confirmation, new judges tour the County House of Corrections and the State Prison.

### **Mentoring**

The new judges are each assigned a mentor, who is either a sitting judge or a senior active judge. The mentor observes the judge in court at least one day per month for six months and reviews his/her observations with the new judge and the Chief Justice and provides feedback to the new judge about improving performance. The mentor is also assigned to be available at all times if the new judge has questions about cases, process or procedure.

### **Job Shadowing**

The next three weeks of training require the new judges to shadow a sitting judge at a different court house each week. During this period, the new judge sits in on hearings, trials, and jury selection with the presiding judge, observes chambers meetings between the presiding judge and attorneys, and participates in research and writing exercises with the presiding judge. In addition, the new judge observes the clerk office operations and becomes familiar with the case processing practices of the staff.

If a new judge is assigned to a one-judge court house, a senior active judge is assigned to mentor the new judge for several weeks after the official one month training, depending on the availability of the senior judge.

## **Self-evaluation**

After sitting for 6 months, the new judge is required to complete a self-evaluation which is reviewed with the Chief Justice and the mentor judge. Goals for improvement and further training are identified.

## **National Judicial College**

Supreme Court rules require that new judges attend a two-week course at the National Judicial College, or a similar program elsewhere, within two years of appointment. The training is designed to assist new judges with decision making, rules of evidence, complex case management, demeanor and procedural due process.

The Judicial Branch also takes advantage of any free programs offered by the National Judicial College and other organizations by designating and sending judges to these programs. In addition, the court invites outside speakers and facilitators to come to New Hampshire at no cost to present programs. An example is the criminal justice and mental health program scheduled for the fall of 2015.

When a judge either self-identifies or is determined to have specific needs, e.g. writing, a program is designed to meet his/her needs.

## **Ongoing training**

The Director of Judicial Education regularly provides information regarding Webinars, course offerings and seminars to the Chief Justice for a determination about what programs should be offered to judges.

At least four times per year, the Chief Justice organizes half-day or full day training sessions for all the judges on such topics as expert testimony, evidence, constitutional issues, civil discovery matters, sentencing, bail, and case flow principles.

The Chief Justice also reviews audio tapes of hearings from time to time to ensure judges are providing thoughtful access to justice.

The Chief Justice reviews monthly reports from the clerks to ensure that orders are issued within 60 days of the hearing or trial. The Chief Justice also reviews monthly reports indicating the age of pending cases to determine whether any action should be taken at an individual or systemic level to improve the time it takes to resolve cases.



## **Circuit Court Judges**

Training and education for Circuit Court judges falls into three categories: newly appointed judges, judges who were appointed to a court prior to the creation of the circuit court who wish to be certified in another division of the circuit court, and ongoing training/education programs for sitting judges.

### **Newly appointed judges**

Judges appointed to the Circuit Court bench, with no prior experience, undergo an intense training which begins upon confirmation, and before the judge begins to hear cases. Training is provided for all new judges in all three divisions of the Circuit Court - district, probate and family - as well as general training on all aspects of being a judge. The initial training program is approximately two weeks and includes both classroom training with experienced judges and in-court observation by experienced judges in each of the divisions. Over 500 pages of materials are provided as part of this initial training.

### **Day 1 - General information**

This day is spent with the administrative judges and covers a wide range of topics which include administrative issues such as mileage reimbursement, use of the list serves, judicial education schedule, on-call system, video hearings, monitorless hearings, internet policy, use of leave time, dictation system, Judicial Information Bulletin Board (JIBB), weighted caseload, case management, courtroom security, overdue order list and overview of the anti-discrimination policy. The administrative judges also provide training on order-writing, the media, interpreters, ethics/Code of Judicial Conduct, including recusal issues, procedural fairness, and contempt. Judges are given a tour of the call center and domestic violence registry at the Trial Court Center.

### **Day 2 - District Division**

Topics and materials include bail orders, search/arrest warrants, arraignments, classification of offenses/jurisdiction, plea colloquies, motor vehicle stops, DWI, landlord/tenant and civil/small claims.

### **Day 3 - Family Division**

Topics and materials cover domestic violence (forms, hearings, registry), abuse and neglect cases, guardianship, adoption and surrender, delinquency and Children in Need of Services (CHINS).

## **Day 4 - Family Division**

Marital issues are discussed, including process, parenting rights and responsibilities, division of assets and financial considerations, and child support.

## **Day 5 - Probate Division**

Topics include jurisdiction, guardianship of incapacitated persons, trusts and estates, fiduciary fees, petitions to partition property, adoption, name changes, powers of attorney, Uniform Transfer to Minors Act, involuntary admissions, Bureau of Elderly and Adult Services (BEAS) topics and custody of remains of deceased persons.

Judges also receive training during this time on dealing with self-represented parties and a presentation from Justice Carol Ann Conboy on ensuring the accuracy of the record, including tips on judicial writing and dealing with self-represented parties.

The training days are spread out over approximately two weeks. When judges are not in the classroom, they are scheduled in courts observing experienced judges in the three divisions. At the conclusion of the training, new judges are assigned mentors with whom they can consult with questions. Each of the divisions maintains an active list serve which is also a helpful tool for new judges to ask questions and quickly receive answers from experienced judges. There are other tools available as well, such as bench books and case summaries of reported, and non-reported, Supreme Court decisions, as well as sample orders.

New judges are required to attend training on the Anti-Discrimination Policy with the Director of Judicial Education and meet with Carole Alfano for practical tips and information for dealing with the media.

### **Existing judges requesting certification in another division**

It is the goal to have all judges certified in at least two divisions of the circuit court to allow maximum flexibility in scheduling. Judges who were appointed to a court prior to July 1, 2011 were either appointed to the District Court or the Probate Court. Pursuant to RSA 490-F:6, these judges must be certified by the Supreme Court to sit in a division other than that to which they were initially appointed, or previously certified. These certifications are made pursuant to Supreme Court Rule 61(5). Training covers essentially the same topics discussed above for new judges. The Probate certification training is two full days, as is the training for the Family Division.

Given that any judge who has sought certification in another division has received the training, and that all judges appointed after July 1, 2011 are appointed to the Circuit Court, and thus able to hear cases in all three divisions, there are no further certification programs contemplated at this time.

## **On-going Judicial Education**

The on-going training needs of the Circuit Court judges are primarily met with in-house programs, put on by a combination of experienced Circuit Court judges, members of the New Hampshire Bar, and outside presenters. The current schedule provides for a training event every other month, which rotates through the three divisions of the court so that there are two trainings per division each year. Generally these trainings are mandatory for all judges who sit in the division for which the training is held, and optional for others.

In addition to in-house training, judges are sent to appropriate out-of-state trainings as funds or scholarships are available. Priority for out of state programs is given to newer judges and several have taken advantage of these programs since the creation of the circuit court. When funds are spent to send a judge to an out of state program on a specialized topic, the attending judge is usually expected to share what he/she has learned with other judges at a later training program.

## **EVALUATIONS**

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 New Performance Evaluation Questionnaire, the Self-Evaluation Form and the Evaluation Summary for the trial courts include thirteen areas to be considered in the evaluation of a judge or marital master. The evaluator is asked to consider whether the judge or master:

- Starts court on time.
- Is prepared to hear a case when taking the bench.
- Treats people fairly and with respect.
- Pays attention during hearings and trials.
- Asserts appropriate control over the proceedings.
- Allowed a fair opportunity for parties to be heard.
- Clearly explains to jurors their role in the trial process.
- Uses common sense in handling cases.
- Knows the law.
- Follows the law.
- Issues decisions in a timely manner.
- Issues decisions that are thorough.
- Issue decisions that are easy to understand.

The new form also includes three additional questions allowing for more expanded comments:

- Tell us what you perceive to be this judge's particular strength.
- Please tell us what particular constructive criticism you would offer.
- While avoiding any specific details in your particular case, please share any additional comments regarding this judge that you believe are important.

The forms utilize a new four-point scale for evaluations which replaces a five-point scale used in the past to answer the statements above:

**New Scale**

- 4 = Strongly Agree
- 3 = Agree
- 2 = Disagree
- 1 = Strongly Disagree

**Old Scale**

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

### Superior Court Evaluation Results

During the calendar year 2014, performance evaluations of six Superior Court justices were conducted by Chief Justice Tina L. Nadeau. The evaluations were conducted in accordance with RSA 490:32 (Supp. 2007) and Supreme Court Rule 56.

A total of 175 questionnaires were returned for the six justices evaluated in 2014. Evaluators are asked to answer a series of questions using one of four weighted responses as follows; 1 “Strongly Disagree”, 2 “Disagree”, 3 “Agree” and 4 “Strongly Agree”. A rating of less than 3 would be considered less than satisfactory.

By category, the mean scores of the justices who were evaluated are as follows:

- |                                                                          |     |
|--------------------------------------------------------------------------|-----|
| 1. The judge starts court on time                                        | 3.5 |
| 2. The judge is prepared to hear a case when taking the bench.           | 3.7 |
| 3. The judge treats people fairly and with respect.                      | 3.6 |
| 4. The judge pays attention during hearings and trials.                  | 3.7 |
| 5. The judge asserts appropriate control over the proceedings.           | 3.6 |
| 6. The judge allowed a fair opportunity for parties to be heard.         | 3.6 |
| 7. The judge clearly explains to jurors their role in the trial process. | 3.7 |
| 8. The judge uses common sense in handling cases.                        | 3.4 |
| 9. The judge knows the law.                                              | 3.6 |
| 10. The judge follows the law.                                           | 3.5 |
| 11. The judge issues decisions in a timely manner.                       | 3.4 |
| 12. The judge's decisions are thorough.                                  | 3.4 |
| 13. The judge's decisions are easy to understand.                        | 3.5 |

The overall mean for the six judicial officers evaluated in 2014 was 3.6, a rating within the range of “Agree to Strongly Agree”. The Superior Court is very proud of these results and believes that the citizens of New Hampshire should be proud of them also.

Chief Justice Nadeau has begun the process of evaluating seven justices for the calendar year 2015.

## Circuit Court Evaluation Results

During calendar year 2014, a total of 17 performance evaluations were conducted for judges and marital masters presiding within the three divisions of the circuit court (family, district and probate).

Currently there are 51 judicial officers in the Circuit Court, 30 full time judges, 16 part time judges, 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.

A total of 1,596 Performance Evaluation Questionnaires were distributed for the 17 judicial officers being evaluated for an average of 94 per judge or marital master. A total of 616 completed surveys were returned which equates to a 39% total return rate.

Evaluators were asked to answer a series of questions using one of four weighted responses, as follows, 1 "strongly disagree" 2 "disagree", 3 "Agree", and 4 "Strongly Agree". The mean overall score for those evaluated in 2014 was 3.4, a rating within the range of "Agree to Strongly Agree". A rating of less than 3 would be considered less than satisfactory.

By category, the mean scores of the judges who were evaluated are as follows:

1. The judge starts court on time.	3.2
2. The judge is prepared to hear a case when taking the bench.	3.5
3. The judge treats people fairly and with respect.	3.4
4. The judge pays attention during hearings and trials.	3.6
5. The judge asserts appropriate control over the proceedings.	3.5
6. The judge allowed a fair opportunity for parties to be heard.	3.4
7. The judge uses common sense in handling cases.	3.4
8. The judge knows the law.	3.4
9. The judge follows the law.	3.4
10. The judge issues decisions in a timely matter.	3.3
11. The judge's decisions are thorough.	3.3
12. The judge's decisions are easy to understand.	3.3

One of the judges evaluated during the 2014 calendar year failed to meet a satisfactory judicial performance standard and will be re-evaluated within 18 months. A correction plan has been put into place to make sure that this judge's performance is monitored and improved.

Of the 13 judges and marital masters scheduled to be evaluated in calendar year 2015, one judge retired during calendar year 2014. Deputy Administrative Judge David D. King has begun the process of evaluating 12 judges and marital masters for calendar year 2015.

## 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

A handwritten signature in black ink that reads "Linda Stewart Dalianis". The signature is written in a cursive, flowing style.

By: Linda Stewart Dalianis  
Chief Justice