

June 30, 2004

His Excellency, Governor Craig Benson
State House
Concord, NH 03301

Thomas R. Eaton, President of the Senate
State House, Room 302
Concord, NH 03301

Gene G. Chandler, Speaker of the House
State House, Room 308
Concord, NH 03301

Senator Andrew R. Peterson, Chair
Senate Judiciary Committee
State House, Room 106
Concord, NH 03301

Hon. Henry P. Mock, Chair
House Judiciary Committee
LOB, Room 208
Concord, NH 03301

Re: Judicial Performance Evaluation Program

Dear Governor Benson, President Eaton, Speaker Chandler, Senator Peterson,
and Representative Mock:

This is our fourth annual report of the revised judicial performance evaluation program instituted by New Hampshire Supreme Court rule for the entire judicial branch in March 2001. Judicial performance evaluation began in New Hampshire in the trial courts in 1987. During 2000 and early 2001, the then-existing judicial performance evaluation program was examined and revised. For the trial courts, uniform forms were developed for use by the public (Performance Evaluation Questionnaire), the judge being evaluated (Self-Evaluation Form), and

the administrative judge conducting the evaluation (Evaluation Summary). The program was extended to include the supreme court and the administrative judges. For the supreme court, a different Performance Evaluation Questionnaire and Self-Evaluation Form were developed. A more detailed description of the enhanced judicial performance evaluation program is contained in our first annual report to you, dated June 29, 2001.

Under the enhanced judicial performance evaluation program, each trial court judge is to be evaluated at least once every three years. This year's report covers our activities under this program for 2003, the last year of the first three-year cycle under the revised judicial performance evaluation program.

In reviewing this year's report and comparing it to past reports, the reader should be aware of a change made in the trial court questionnaires in 2003. The scale has been reversed from that used in 2001 and 2002, such that excellent = 5; very good = 4; satisfactory = 3; fair = 2; and unsatisfactory = 1. This change has been made to put the scale in accord with the common understanding that the higher the score, the greater the rating. Thus, a 1.9 in the report covering 2001 and 2002 is the equivalent of a 4.1 in this year's report, covering 2003.

SUPREME COURT

In 2003, Supreme Court Rule 56(III), which governs the performance evaluation of judges, was amended to require that the questionnaires designed to evaluate the performance of the supreme court be distributed every three years, instead of annually. Many attorneys and parties who appear before the court do so on a regular basis, and some people had received questionnaires one or more times each year since the judicial performance evaluation program was instituted in the supreme court. The court was concerned that if people were surveyed too frequently, they would stop participating in the survey. The rule was amended to decrease the frequency of performance evaluation questionnaires and to make it consistent with the frequency of evaluations in the trial courts. As a result of this amendment, performance evaluation questionnaires were not distributed in 2003 for the supreme court. Since the last distribution of questionnaires for the supreme court was in 2002, the amended rule requires that the next distribution be in 2005. The supreme court does perform other aspects of the evaluation process on an annual basis, including the justices self-evaluation and an analysis of the court's performance in relation to the judicial performance time standards.

In 2003, the supreme court's performance evaluation included the justices' self evaluation of themselves and their performance as a court. Their evaluations focused on continuing efforts to promptly handle and dispose of cases filed with the court.

The supreme court clerk's office undertook a statistical analysis of the court's performance during 2003 based on the supreme court performance standards that were adopted in 2001. The 2001 performance standards consist of time standards for performing various aspects of the appellate process, such as screening, briefing, decision-making. In setting each time standard, the court decided upon the average length of time that it would be reasonable to expect the court to complete that stage of the appellate process. The time that it takes to complete a stage in any particular case may be, for many reasons not within the court's control, greater or less than the standard. While the standards do not require that every case be processed within the time periods identified, the standards serve as goals for both the court and staff to process all cases as promptly and efficiently as possible.

As part of its judicial performance evaluation process, the clerk's office analyzed the court's performance against these performance standards. Data was compiled on all cases disposed of in 2003, a total of 893 cases. The chart shown below reflects the court's performance in relation to the time standards.

CASES DISPOSED OF IN 2003.

<u>Stage</u>	<u>Time Standard</u>	<u>Average for All Cases</u>
Screening	90 days	69 days
Filing of appellant's brief	60 days after record filed	64 days
Filing of appellee's brief	50 days after appellant's brief	47 days
Oral argument	180 days after appellant's brief	85 days
Opinion/Decision	180 days after oral argument or submission	65 days
Ruling on motions for reconsideration/ rehearing	60 days	38 days

As the chart indicates, the only time standard that the court did not meet was the standard relating to the time period from filing of the record to the filing of the appellant's brief. An analysis of the data shows that, in a handful of cases, circumstances resulted in an unusual delay between the filing of the record and the filing of the first brief. For example, in one case briefing was stayed for approximately two years pending further proceedings in the superior court. In another, briefing was stayed after receipt of the transcript pending a decision in another case. If these two cases were not included in the analysis, the average time from filing of the record to filing of the first brief would be 59 days, which is within the time standard.

In summary, during 2003, 842 new cases were filed with the court, and the court disposed of 893. At the end of 2003, the number of pending cases was only 338, the lowest in recent years. As these statistics show, the justices and the court have been very successful in keeping up with the court's caseload.

SUPERIOR COURT

During calendar year 2003, performance evaluations of ten (10) superior court justices were conducted by Walter L. Murphy, former Chief Justice of the New Hampshire Superior Court. The evaluations were conducted in accordance with RSA 490:32 (Supp. 2003) and Supreme Court Rule 56. For the three year period 2001 through 2003, a total of twenty-eight (28) superior court justices have been evaluated. Although each justice is normally evaluated once every three years, one of the evaluations conducted in 2003 was a follow-up to a 2001 evaluation of a justice whose performance, while within the satisfactory range, was found to be significantly below the mean for all justices.

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 randomly distributes seventy-five Performance Evaluation Questionnaires for each justice being evaluated to lawyers, litigants, staff, court officers, witnesses and jurors and provides additional questionnaires to other members of the public who make inquiry in their office. The names of the justices being evaluated are publicly posted in the clerks' offices and published in the *New Hampshire Bar News*, along with a notice relative to the availability of the questionnaires. All the recipients of questionnaires are furnished a postage pre-paid envelope pre-addressed to the Superior Court Center and marked "Confidential." For the ten justices evaluated in 2003, a total of 333 questionnaires were returned.

Upon the expiration of the deadline imposed for the return of the completed questionnaires, the evaluations are forwarded to the Administrative Office of the Courts for scanning and compilation. When the results are furnished to the Superior Court Center, the chief justice schedules an individual appointment with each justice at which the results are discussed and an expurgated 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 relating to grievances filed with judicial conduct authorities, as a result of which the chief justice, if necessary, may take appropriate remedial action.

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

As mentioned above, the scale utilized in 2003 was reversed from that used in 2001 and 2002, such that in 2003 and in the future:

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

The overall mean for the ten justices evaluated was 4.1, with six scoring above the mean, and four scoring below. A mean overall score of 4.1 puts these justices, like their counterparts evaluated in 2001 and 2002, at the "very good" level. By category, the mean scores for all ten justices were as follows:

- | | |
|-------------------------------------|-----|
| 1. Performance | 4.1 |
| 2. Temperament & Demeanor | 4.2 |
| 3. Judicial Management Skills | 4.0 |
| 4. Legal Knowledge | 4.1 |
| 5. Attentiveness | 4.3 |
| 6. Bias & Objectivity..... | 4.3 |
| 7. Degree of Preparedness | 4.0 |

The justice whose 2001 evaluation was below the norm, and who was re-evaluated ahead of schedule in 2003, achieved an overall score of 3.6, which places the justice well above the "satisfactory" (and indeed closer to "very good" than to "satisfactory"). In addition, the comments on this justice's performance received from third parties were generally complimentary and indicate that the justice has addressed a number of the issues that had been of concern during the prior evaluation.

The evaluation of one of the justices evaluated under the revised program for the first time in 2003 was significantly below the norm (3.1 overall), albeit still within the "satisfactory" range. Chief Justice Murphy expressed considerable concern to this justice. In response, the justice questioned the accuracy and integrity of the process and the information provided. Further inquiries made by Chief Justice Murphy confirmed the original results with respect to the first four categories, particularly in the area of criminal law and procedure and interpersonal relationships with court officers and staff. In more recent discussions with Chief Justice Lynn, this justice has acknowledged the need for improvement in a number of areas. Subsequent to the evaluation, the justice was reassigned and indications from the new assignment suggest that the justice's performance has improved somewhat, although areas of concern remain. Chief Justice Lynn plans to monitor this justice's performance closely and to schedule a re-evaluation for 2005 rather than 2006, as would normally be the case. In addition, prior to the next evaluation, the justice will be required to complete a judicial education program covering the areas of judicial decision-making and demeanor.

Over the last three years, all but one of the currently-sitting superior court justices has been evaluated. The sole justice who has not been evaluated was the one appointed in December 2002. The initial evaluation of that justice is scheduled to occur in 2005. The evaluations reflect that, as a group, the justices of the superior court achieve an overall rating of above "very good." Both the justices of the superior court and the citizens of our state should be proud of these results.

DISTRICT COURT

During 2003, the Administrative Judge of the District Court, Edwin W. Kelly, completed the performance evaluations of fifteen judges. Currently, there are sixty-seven judges in the district court. Two judges that were to be evaluated in 2003 retired.

The evaluation process is the same in the district court as that described above for the superior court. A total of 1,111 Performance Evaluation Questionnaires were distributed for fifteen judges, for an average of seventy-four per judge. The return of 521 made for a response rate of 47%.

The district court had the same change in the rating system as did the superior court from the previous years, going from 1 previously being the best grade to 5 now being the best. In this regard, the mean overall score for the judges evaluated in 2003 was 4.1, a rating of "very good."

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

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

There were no judges re-evaluated in 2003. 2003 completed the three-year cycle whereby all sitting district court judges have been evaluated, excluding newly hired judges.

The Administrative Judge of the District Court will be evaluating twenty judges for 2004, which will include one newly-hired judge sworn in during 2001.

PROBATE COURT

During 2003, the Administrative Judge of the Probate Courts, John R. Maher, completed two judicial performance evaluations. The probate court consists of ten judges, one for each county.

Names and addresses of active practitioners and agencies are provided to the administrative judge and mailings are generated directly from the office of the administrative judge. Also, notices are printed in the *New Hampshire Bar News*, inviting practitioners to request a form, and the notice also appears on the New Hampshire Bar Association's e-bulletin. *Pro se* persons can obtain blank forms from the counter at the probate court where the judge presides. The Questionnaires are also being provided by e-mail attachment, if an individual so requests.

The overall score for the two judges evaluated was 4.5, with 5 being the best score. By category, the scores for the two judges were as follows:

1. Performance.....	4.3 and 4.4
2. Temperament & Demeanor	4.7 and 4.5
3. Judicial Management Skills	4.3 for both
4. Legal Knowledge	4.6 and 4.5
5. Attentiveness	4.7 and 4.6
6. Bias & Objectivity.....	4.7 and 4.6
7. Degree of Preparedness	4.2 and 4.3

Again, as noted in prior years, the judges need more administrative days for writing and research. The cases are becoming more complex and contested. Presently the weighted caseload provides only twelve administrative days in a calendar year.

CONCLUSION

This report marks the conclusion of the first three year cycle of the supreme court's revised judicial performance evaluation program instituted in 2001. Overall judges from all levels of our courts have consistently been evaluated at higher than the "very good" level. One of the judicial performance evaluation program's strengths, however, is that it allows administrative judges to monitor performance issues where an evaluation has been lower than desired. With the support of the administrative judges, the very few judges in that situation have been able to improve their performance. New Hampshire's judges expect a high level of performance from themselves, and the citizens of our State rightfully expect a high level of performance from their judges. The judicial performance evaluation reports of the past three years confirm that these expectations are being met.

Respectfully submitted,
NEW HAMPSHIRE SUPREME COURT

By: John T. Broderick, Jr.
Chief Justice