

June 30, 2005

His Excellency, Governor John Lynch  
State House  
Concord, NH 03301

Thomas R. Eaton, President of the Senate  
State House, Room 304  
Concord, NH 03301

W. Douglas Scamman, Speaker of the House  
State House, Room 312  
Concord, NH 03301

Senator Joseph A. Foster, Chair  
Senate Judiciary Committee  
State House, Room 107  
Concord, NH 03301

Hon. Cynthia J. Dokmo, Chair  
House Judiciary Committee  
LOB, Room 208  
Concord, NH 03301

*Re: Judicial Performance Evaluation Program*

Dear Governor Lynch, President Eaton, Speaker Scamman, Senator Foster,  
and Representative Dokmo:

This is our fifth 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, 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 2004, the first year of the second 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. At that time, the scale was 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 reports covering 2001 and 2002 is the equivalent of a 4.1 in the report covering 2003 and in this report covering 2004.

## SUPREME COURT

The Supreme Court amended the appellate rules, effective January 1, 2004, to make the majority of appeals from trial court decisions "mandatory" appeals, i.e., appeals that are automatically accepted for briefing and appellate review. The effect of this change was to greatly increase the number of cases accepted for appellate review. In 2004, 898 new cases were filed with the court and 645 cases were accepted. In comparison, during 2003, 842 cases were filed with the court and 347 were accepted. Because after January 1, 2004, most cases were accepted for briefing and appellate review, cases were not disposed of as quickly during 2004. The number of cases disposed of in 2004 was 704, compared to 893 in 2003. At the end of 2004, the number of pending cases was 523. It is anticipated that the number of dispositions will increase during 2005 as cases filed after the rule amendment are briefed and decided. The number of pending cases is likely to remain higher under the mandatory appellate process than under the discretionary because cases will take longer to proceed through the briefing and decision-making process.

In 2004, 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 2004 based on the supreme court performance standards 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 one could reasonably 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 in all cases disposed of during 2004. Data was compiled on all 704 cases disposed of in 2004, and the average time to complete each stage of the appellate process was calculated. The court's performance was then compared to the established time standard. As the chart shown below reflects, the court met all of the time standards.

#### CASES DISPOSED OF IN 2004.

<u>Stage</u>	<u>Time Standard</u>	<u>Average for All Cases</u>
Screening	90 days	48 days
Filing of appellant's brief	60 days after record filed	54 days
Filing of appellee's brief	50 days after appellant's brief	40 days
Oral argument	180 days after appellant's brief	68 days
Opinion/Decision	180 days after oral argument or submission	57 days
Ruling on motions for reconsideration/ rehearing	60 days	31 days

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 in the supreme court 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 and 2004 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 this year, in 2005.

### SUPERIOR COURT

During calendar year 2004, performance evaluations of seven (7) superior court justices and one (1) marital master were conducted by Robert J. Lynn, Chief Justice of the New Hampshire Superior Court. The evaluations were conducted in accordance with RSA 490:32 (Supp. 2004) and Supreme Court Rule 56.

Each justice or master 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 or master being evaluated customarily presides randomly distributes seventy-five Performance Evaluation Questionnaires for each justice or master 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 seven justices and one master evaluated in 2004, a total of 346 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 a redacted version of the comments (to preserve the respondents' confidentiality) is shared with the justice or master. The interview includes non-questionnaire information relating to the justice or master 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 or master.

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 is as follows:

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

The overall mean for the eight judicial officers evaluated was 4.2, with five scoring above the mean, and two scoring below. A mean overall score of 4.2 puts these justices and master, like their counterparts evaluated in previous years, at the "very good" level. By category, the mean scores for all eight judicial officers were as follows:

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

The justice evaluated in 2003 whose performance was significantly below the norm (3.1 overall) has completed a remedial course entitled "Enhancing Judicial Bench Skills" and has been reassigned to a different court location. The justice will be re-evaluated in 2005, ahead of the normal three-year schedule. In addition, Chief Justice Lynn will also be evaluating eight other justices and four marital masters during 2005.

The evaluations conducted since 2001 reflect that, as a group, the justices and marital masters of the superior court achieve an overall rating of above "very good." The superior court is very proud of these results and believes that the citizens of New Hampshire should also be proud of them.

## DISTRICT COURT

During 2004, the Administrative Judge of the District Court, Edwin W. Kelly, completed the performance evaluations of nineteen judges. Currently, there are sixty-six judges in the district court. One judge that was to be evaluated in 2004 retired. There were no judges re-evaluated outside the normal three-year cycle in 2004.

The evaluation process is the same in the district court as that described above for the superior court. A total of 1,335 Performance Evaluation Questionnaires were distributed for the nineteen judges, for an average of seventy per judge. The return of 621 made for a response rate of 47%.

The mean overall score for the judges evaluated in 2004 was 4.1, a rating of "very good."

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

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

The Administrative Judge of the District Court will be evaluating twenty-five judges for 2005, which will include six newly-hired judges sworn in during 2002.

## PROBATE COURT

During 2004, the Administrative Judge of the Probate Courts, John R. Maher, completed one judicial performance evaluation. A second evaluation was conducted by Chief Justice Broderick because it was the administrative judge that was being evaluated.

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 overall score for the two judges evaluated was 4.6, with 5 being the best score. By category, the scores for the two judges were as follows:

1. Performance ..... 4.8 and 4.2
2. Temperament & Demeanor ..... 5.0 and 4.3
3. Judicial Management Skills ..... 4.6 and 4.2
4. Legal Knowledge ..... 4.8 and 4.5
5. Attentiveness ..... 4.9 and 4.5
6. Bias & Objectivity ..... 5.0 and 4.4
7. Degree of Preparedness ..... 4.8 and 4.0

### CONCLUSION

Since the supreme court's revised judicial performance evaluation program was instituted in 2001, judges from all levels of our courts have consistently been evaluated at higher than the "very good" level. That level of evaluation by the users of the courts continued in 2004. In fact, 2004 marked the highest evaluation levels to date. 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. That strength of the system also continued to be evident in 2004. I am personally pleased with and proud of the performance of New Hampshire's judges. The citizens of New Hampshire deserve nothing less than a high level of performance from their judges. The judicial performance evaluation reports of this year and past years confirm that their judges are providing that level of performance.

Respectfully submitted,  
NEW HAMPSHIRE SUPREME COURT

By: John T. Broderick, Jr.  
Chief Justice

cc: Supreme Court Justices  
Administrative Justices  
Donald D. Goodnow, Esq.