

June 30, 2006

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

Theodore L. Gatsas, 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 Gatsas, Speaker Scamman, Senator Foster,
and Representative Dokmo:

This is our sixth 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 almost twenty years ago, 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 2005, the middle 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 now 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 beyond.

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 2005, 938 new cases were filed with the court and 732 cases were accepted. During 2005, the court disposed of 897 cases. At the end of 2005, there were 570 pending cases on the Supreme Court's docket.

In 2005, 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 evaluate and improve the mandatory appeal process, and 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 2005 based on the supreme court performance standards adopted in 2001. It analyzed the court's performance in all cases disposed of during 2005 and calculated the average time to complete each stage of the appellate process. The court's performance was then compared to the established time standard. 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 the chart shown below reflects, the court met all of the time standards.

CASES DISPOSED OF IN 2005

<u>Stage</u>	<u>Time Standard</u>	<u>Average for All Cases</u>
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	45 days
Oral argument	180 days after appellant's brief	93 days
Opinion/Decision	180 days after oral argument or submission	67 days
Ruling on motions for reconsideration/ rehearing	60 days	31 days

Supreme Court Rule 56(III) requires that questionnaires be distributed every three years to evaluate the performance of the Supreme Court justices. During 2005, the Supreme Court distributed 209 judicial performance evaluation questionnaires to a sampling of parties and attorneys involved in cases at the court. Of these, 48 questionnaires were returned.

The questionnaire seeks to evaluate three aspects of the court's performance: performance and management skills, temperament and demeanor of the justices, and bias and objectivity. Each section includes at least two and generally several questions relating to the aspect of the court's performance being evaluated. Respondents, who are not permitted to identify themselves in their responses, are asked to evaluate the court's performance on a scale of 1 through 5 (5=excellent, 4= very good, 3=satisfactory, 2= fair, and 1= unsatisfactory). The results of the questionnaires were compiled and the mean response for each question was calculated.

In the category of performance and judicial management skills, respondents gave the court a mean score of 3.7. (A score of 3 means the performance is

satisfactory. A score of 4 means the performance is very good.) Within this category, respondents rated various aspects of the court's performance as follows:

	<u>Mean</u>
Ability to identify and analyze issues	3.8
Application of laws and rules	3.7
Thoroughness of opinions	3.6
Clarity of opinions	3.6
Timeliness of opinions	3.8

In the category of temperament and demeanor, respondents gave the court a mean score of 4.0, or very good. The scores for various aspects within this category were:

Fostering a general sense of fairness	4.1
Courtesy to participants	4.2
Open-mindedness	3.7
Patience	3.9
Demeanor	3.9
Attentiveness	3.9
Preparedness	3.9

In the category of bias and objectivity, respondents gave the court a mean score of 4.3, in the range between very good and excellent. Within this category, respondents scored the court as follows:

Absence of bias and prejudice based on race sex, ethnicity, religion, social class, or other factor	4.5
Appropriate treatment of attorneys	4.1

The questionnaire also asked respondents to evaluate the performance of other court personnel. Again, the respondents were asked to rate the performance of court personnel on a scale of 1 (unsatisfactory) to 5 (excellent). The overall mean score in this category was 4.2. The results of responses to the questions relating to their dealings with other court personnel are set forth below:

Friendly and courteous	4.2
Available to answer questions	4.1
Knowledge/ability to answer questions	4.4
Willingness to take time to explain things	4.0
Promptness of responses to inquiries	4.2
Sufficient notice of oral argument scheduling	4.0

In summary, the results of the questionnaires indicate that most respondents found the performance of the court and court personnel in most categories to be in the range of excellent to very good. In the category of the court's performance and judicial management skills, most respondents rated the court in the range of very good to satisfactory.

SUPERIOR COURT

During calendar year 2005, performance evaluations of nine (9) superior court justices and four (4) marital masters 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. 2005) 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 distributed seventy-five Performance Evaluation Questionnaires for each justice or master to lawyers, litigants, staff, court officers, witnesses and jurors and provided additional questionnaires to other members of the public who made inquiry in the clerk's office. The names of the justices and masters being evaluated are publicly posted in the clerks' offices and published in New Hampshire Bar News, as is a notice relative to the availability of the questionnaires. All the recipients of questionnaires were furnished a postage pre-paid envelope pre-addressed to the Superior Court Center and marked "Confidential." For the justices and masters evaluated in 2005, a total of 434 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

The scale utilized is as follows:

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

The overall mean for the thirteen (13) judicial officers evaluated was 4.3, with eight (8) scoring equal to or above the mean, and five (5) scoring below. A mean overall score of 4.3 puts these justices and masters, like their counterparts evaluated in previous years, at the “very good” level. By category, the mean scores for all thirteen judicial officers were as follows:

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

As noted in last year’s report, the justice whose 2003 evaluation was significantly below the norm was required to complete a remedial course in 2004 entitled "Enhancing Judicial Bench Skills" and was reassigned to a different court location. This justice was re-evaluated ahead of schedule in 2005 (the justice normally would not have been re-evaluated until 2006). The results of the 2005 evaluation showed a very significant improvement in every one of the component categories of the evaluation. This judge’s overall performance is now in the “above average” range and falls well within the mainstream of the judge’s superior court colleagues.

Chief Justice Lynn will be evaluating seven (7) justices and one (1) marital master in 2006.

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 be proud of them also.

DISTRICT COURT

During 2005, the Administrative Judge of the District Court, Edwin W. Kelly or his designee, completed the performance evaluations of twenty-five judges. Currently, there are seventy-one judges in the district court. One judge that was to be evaluated in 2005 stepped down. There were no judges re-evaluated in 2005.

The evaluation process is the same in the district court as that described above for the superior court. A total of 1,600 Performance Evaluation Questionnaires were distributed for twenty-five judges, for an average of sixty-four per judge. The return of 700 made for a response rate of 44%.

The mean overall score for the judges evaluated in 2005 was 4.2, a rating of "very good."

By category, the mean scores for all twenty-five judges were as follows:

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

The Administrative Judge of the District Court will be evaluating sixteen judges for 2006, which will include one newly hired judge sworn in late in the year 2002. Three judges that were to be evaluated in 2006 retired in calendar year 2005.

PROBATE COURT

During 2005, the Administrative Judge of the Probate Courts, John Maher, completed two judicial performance evaluations.

Names and addresses of active practitioners and agencies were provided to the Office of the Administrative Judge by the register and mailings were generated

directly from this office. Also, notices were printed in the Bar News inviting practitioners to request a form, and the notice appeared on the Bar's e-Bulletin.

The overall score for both judges evaluated was 4.3 and 4.4, with 5 being the best score. By category, the scores for the 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

The first recommendation of the just released Report and Recommendations of the New Hampshire Citizens Commission on the State Courts is that the judicial branch create a customer-service-based court environment. We plan to implement many of the Commission's recommendations. Our judicial performance evaluation reports of the past several years, including this one, demonstrate that we have a solid foundation on which to build a customer service environment. The citizens of New Hampshire have consistently rated the performance of their judges at a high level. With that as the foundation, we will work to provide excellent service to all citizens of New Hampshire as we strive to provide a system of justice of which all can be proud.

Respectfully submitted,
NEW HAMPSHIRE SUPREME COURT

By: John T. Broderick, Jr.
Chief Justice

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