June 30, 2017

His Excellency, Governor Chris Sununu
State House, Room 208
Concord, NH 03301

Sen. Charles Morse, President
New Hampshire Senate
State House, Room 302
Concord, NH 03301

Rep. Shawn Jasper, Speaker
New Hampshire House
State House, Room 312
Concord, NH 03301

Sen. Sharon Carson, Chair
Senate Judiciary Committee
State House, Room 100
Concord, NH 03301

Rep. Joseph Hagan, Chair
House Judiciary Committee
LOB, Room 208
Concord, NH 03301

Dear Governor Sununu, President Morse, Speaker Jasper, Senator Carson and Representative Hagan:

   It is our pleasure to submit a report on judicial performance evaluations of New Hampshire judges and marital masters evaluated in 2016, as required by RSA 490:32. The 2017 evaluation results will be included in the 2018 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 for 2016 are included in this report.

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 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 the 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 Robert J. Lynn serves as the Supreme Court’s representative to the committee. He recently replaced Associate Supreme Court Justice Carol Ann Conboy who retires effective July 1, 2017. Judicial Branch Communications Manager 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 twelve 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:


During 2016:

- The committee approved changing the annual JPE reports to cover the calendar year as opposed to the fiscal year.

- The committee recognized the success of the Family Division's Complex Case Docket established in 2015 by the Administrative Judge of the Circuit Court, Edwin W. Kelly. The marital cases assigned to this docket take more than twelve months to resolve. They also involve high-value or complex assets, complex or novel legal issues, high-conflict parties, numerous pleadings and multi-day hearings. This new approach is providing quicker resolution to these complex cases and frees up time in other dockets so that other cases may be heard and resolved more quickly.

- The committee confirmed through the National Center for State Courts (NSCS) that New Hampshire is one of only 17 states to conduct judicial evaluations. The remaining 33 states do not.

SUPREME COURT EVALUATION PROCEDURES

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

In 2001, the Supreme Court adopted performance evaluation time standards for the court. 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.
Each year, the clerk’s office analyzes the cases disposed of during the prior year to determine whether the court met these performance standards. For purposes of this report, the clerk’s office analyzed the 727 cases that the Supreme Court disposed of in 2016 (many of which were filed prior to 2016). It calculated the average length of time that it took to complete each phase of the appellate process, such as screening, briefing, etc. 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 2016.

**Cases Disposed of in 2016:**

<table>
<thead>
<tr>
<th>Phase</th>
<th>Time Standard</th>
<th>Average for All Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Screening</td>
<td>90 days</td>
<td>41 days</td>
</tr>
<tr>
<td>Filing of appellant’s brief</td>
<td>60 days after record filed</td>
<td>55 days</td>
</tr>
<tr>
<td>Filing of appellee’s brief</td>
<td>50 days after appellant’s brief</td>
<td>45 days</td>
</tr>
<tr>
<td>Oral argument</td>
<td>180 days after appellee’s brief</td>
<td>82 days</td>
</tr>
<tr>
<td>Decision</td>
<td>180 days after oral argument or submission</td>
<td>Opinion 98 days</td>
</tr>
<tr>
<td>Ruling on motions for reconsideration/rehearing</td>
<td>60 days</td>
<td>Order 8 days</td>
</tr>
</tbody>
</table>

The length of time from the filing of an appeal to the closing of the case was 200 days, on average.

**Self-Evaluation and Evaluation Meeting**

As required by Rule 56, each justice completed a self-evaluation questionnaire in 2016. The justices 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. Supreme Court questionnaires were distributed in 2014 and will be distributed again in the fall of 2017.
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 who desires to complete an evaluation form. 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.

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:

- Performance
  (Including ability to identify and analyze issues, judgment, and application of the law)
- Temperament & Demeanor
- Judicial Management Skills
- Legal Knowledge
- Attentiveness
- Bias & Objectivity
- Degree of Preparedness
Superior Court

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 is required to supply the Chief Justice with names of 50 lawyers, litigants, witnesses, jurors, court officers and staff members who have had interaction with the specific justice being evaluated over the last three years. The Superior Court Center then generates letters to these various individuals requesting that they complete a Judicial Performance Evaluation Questionnaire, along with instructions on how to access the questionnaires on our website. The names of the justices being evaluated are publicly posted in clerks' offices and published in the New Hampshire Bar News, as is a notice relative to the availability of the questionnaires.

There were no superior court justices who were due for evaluations in the 2016 calendar year. In 2017, Chief Justice Tina L. Nadeau of the New Hampshire Superior Court will be conducting performance evaluations on 8 superior court justices. The evaluations will be done in accordance with RSA 490:32 (Supp. 2007) and Supreme Court Rule 56.

Circuit Court

During calendar year 2016, a total of 8 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 42 judicial officers in the circuit court, 29 full time judges, 11 part time judges, and 2 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 880 Performance Evaluation Questionnaires were distributed for the 8 judicial officers being evaluated for an average of 110 per judge or marital master. A total of 380 completed surveys were returned which equates to a 43% total return rate. The evaluator is 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 2016 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 and marital masters 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. 3.4
3. The judge treats people fairly and with respect. 3.3
4. The judge pays attention during hearings and trials. 3.5
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. 3.3
8. The judge knows the law. 3.4
9. The judge follows the law. 3.3
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 judicial officers evaluated during the 2016 calendar year, Judge Edward Tenney, was reevaluated last year because he had failed to meet a satisfactory judicial performance standard in 2014 (2.8/5.0). While his evaluation for 2016 showed some improvement, it was still below the satisfactory average of 3.0 (2.9) and therefore the confidentiality provision of RSA 490:32 is deemed to be waived. As a result of these two evaluations, this judge has met with the administrative judges of the circuit court and agreed to follow a performance improvement plan, which has been shared with the Justices of the Supreme Court. The plan includes transferring the judge to a new location with a different case mix, outside education, conducting brown bag meetings with members of the bar, random review of dockets and records, regular follow-up meetings with the administrative judges and a further evaluation to be conducted in the Fall of 2017, which will target stakeholders in the new court districts where Judge Tenney now presides.

Of the 18 judges and marital masters scheduled to be evaluated in calendar year 2017, 3 judges have retired and 2 judges will retire during calendar year 2017. Deputy Administrative Judge David D. King has begun the process of evaluating 13 judges and marital masters for calendar year 2017.
By category, the mean scores of the judges and marital masters who were evaluated are as follows:

1. The judge starts court on time. 3.3
2. The judge is prepared to hear a case when taking the bench. 3.5
3. The judge treats people fairly and with respect. 3.5
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. 3.3
8. The judge knows the law. 3.4
9. The judge follows the law. 3.3
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. 3.4

One of the judicial officers evaluated during the 2015 calendar year failed to meet a satisfactory judicial performance standard and will be reevaluated within 18 months. A correction plan has been put into place to make sure that future performance is monitored and improved.

Of the 10 judges and marital masters scheduled to be evaluated in calendar year 2016, 1 judge has retired and 1 judge will be retiring during calendar year 2016. Deputy Administrative Judge David D. King has begun the process of evaluating 8 judges and marital masters for calendar year 2016.

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

By: Linda Stewart Dalianis
Chief Justice