June 30, 2018

His Excellency, Gov. Christopher Sununu
State House, Room 208
Concord, NH 03301

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

Rep. Gene Chandler, 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 Chandler, 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 2017, as required by RSA 490:32. The 2018 evaluation results will be included in the 2019 report to the governor and legislative leadership.
Background

For the past 29 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.

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 Evaluation 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 New Hampshire Supreme Court, 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).

Chief Justice Robert J. Lynn serves as the Supreme Court’s representative to the committee. 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 sixteen times. Minutes of all meetings and background information
about New Hampshire's JPE program, are available on the Judicial Branch website at:


During 2017:

- The committee met on March 6 and May 17.
- Chief Justice Robert J. Lynn assumed the chairmanship of the JPE Committee
  upon the retirement of Associate Supreme Justice Carol Ann Conboy.
- The committee made suggestions for and reviewed the draft of the 2016 Annual
  JPE Report.

**SUPREME COURT EVALUATION PROCEDURES**

According to Supreme Court Rule 56, III, the performance evaluation process for
the Supreme Court justices consists of four components: 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 to a
representative sample of attorneys and parties to assess the court's performance.

**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 certain phases of the
appellate process. The standards do not anticipate that every case be processed within
the time standards; 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 the prior year to
evaluate the court's performance vis-à-vis the performance standards. For this report,
the clerk's office analyzed the 719 cases disposed of in 2017 (many of which were filed
prior to 2017). It calculated the average length of time that it took to complete different
phases 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 for cases disposed of in 2017.
Cases Disposed of in 2017:

<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>42 days</td>
</tr>
<tr>
<td>Filing of appellant’s brief</td>
<td>60 days after record filed</td>
<td>56 days</td>
</tr>
<tr>
<td>Filing of appellee’s brief</td>
<td>50 days after appellant’s brief</td>
<td>49 days</td>
</tr>
<tr>
<td>Oral argument</td>
<td>180 days after appellee’s brief</td>
<td>93 days</td>
</tr>
<tr>
<td>Decision</td>
<td>180 days after oral argument or submission</td>
<td>Opinion 102 days</td>
</tr>
<tr>
<td>Ruling on motions for reconsideration/rehearing</td>
<td>60 days</td>
<td>Order 10 days</td>
</tr>
</tbody>
</table>

On average, cases disposed of during 2017 were pending for 196 days from the filing of an appeal to the closing of the case.

Self Evaluation and Evaluation Meeting

As required by Rule 56, each justice completed a self-evaluation questionnaire in 2017. 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, Ill requires that questionnaires be distributed every three years to evaluate the performance of the Supreme Court and the Supreme Court justices.

In the fall of 2017, questionnaires were distributed to attorneys and self-represented parties. Surveys were sent to 153 attorneys who argued cases before the court in 2016. Surveys were sent to 122 self-represented parties who received a decision on the merits in 2016. The surveys were sent to all attorneys electronically. Surveys were sent electronically to self-represented litigants for whom the court had an email address. If no email address was available, self-represented parties were sent paper copies of the survey with an addressed and postage-prepaid envelope to return the survey. The same survey was used for attorneys and self-represented parties.

Approximately 36% of attorneys and self-represented litigants who were sent the survey by email, responded. Approximately 22% of self-represented litigants who received paper surveys responded.
The survey included questions about the entire appellate process, from the process of filing an appeal to disposition. The majority of respondents reported that they visited the Supreme Court website for information about the appeal process and that they were able to find what they were looking for on the site. Nearly 80% of respondents reported that they contacted the Supreme Court clerk’s office for information about the appeal process and that the staff was able to provide the information that they needed, and that they were treated courteously.

The survey included several questions about oral arguments. Respondents whose cases were argued before the full court or a 3JX panel agreed that the justices were familiar with the issues in their cases (over 95% of respondents), that the justices treated everyone fairly and respectfully (over 97%), and that the justices paid attention during oral argument (over 96%).

When asked about the court’s decision in their cases, 95% of respondents said that they understood the court’s decision in their cases.

The survey asked respondents to provide their suggestions for improving different aspects of the appellate process. The court reviewed all of the comments and suggestions. It has made some changes to the oral argument process based on the suggestions, and is considering whether changes to other aspects of the appellate process should be made.

**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**

During the calendar year 2017, performance evaluations of eight superior court justices were conducted by Chief Justice Tina L. Nadeau of the New Hampshire Superior Court. The evaluations were conducted in accordance with RSA 490:32 (Supp. 2007) and Supreme Court Rule 56.

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.

Upon the expiration of the deadline imposed for the completion of questionnaires, Survey Monkey is used to compile the results. The Chief Justice then schedules an appointment with each justice at which time the results are discussed and a redacted 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 from judicial conduct authorities regarding grievances or complaints filed against the justice.
A total of 269 questionnaires were returned for the eight justices evaluated in 2017. 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.                         3.4
2. The judge is prepared to hear a case when taking the bench.  3.6
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. 3.6
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.                               3.5
10. The judge follows the law.                            3.4
11. The judge issues decisions in a timely manner.         3.3
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 eight judicial officers evaluated in 2017 was 3.5, 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.

There will be eight justices evaluated in the calendar year 2018.

CIRCUIT COURT

During calendar year 2017, a total of 13 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, 30 full time judges, 10 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 1180 Performance Evaluation Questionnaires were distributed for the 13 judicial officers being evaluated for an average of 91 per judge or marital master. A total of 556 completed surveys were returned which equates to a 47% 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 2017 was 3.5, 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. 3.4
2. The judge is prepared to hear a case when taking the bench. 3.6
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. 3.5
6. The judge allowed a fair opportunity for parties to be heard. 3.5
7. The judge uses common sense in handling cases. 3.4
8. The judge knows the law. 3.5
9. The judge follows the law. 3.5
10. The judge issues decisions in a timely matter. 3.3
11. The judge's decisions are thorough. 3.4
12. The judge's decisions are easy to understand. 3.4

A judicial officer due for an evaluation during the 2017 calendar year was placed on administrative leave because of suspected irregularities with his survey responses; he subsequently resigned his position as a full-time judge. Because the full extent of his irregularities did not come to light until 2018, the situation will be discussed in more detail in the 2018 JPE Annual Report.

During calendar year 2018, no marital masters are scheduled to be evaluated. Of the 13 judges scheduled to be evaluated in calendar year 2018, 1 judge has retired and 1 judge will retire. Deputy Administrative Judge David D. King has begun the process of evaluating 11 judges for calendar year 2018.

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: Robert J. Lynn
Chief Justice