

**State of New Hampshire
Judicial Branch
Judicial Performance Evaluation (JPE) Advisory Committee
January 10, 2014
9:00am**

Attendees

Associate Supreme Court Justice Carol Ann Conboy, Superior Court Chief Justice Tina Nadeau, Circuit Court Deputy Administrative Judge David King, Sen. Sharon Carson, Rep. Marjorie Smith, Attorney Christopher Keating (Judicial Council), Attorney Randy Hawkes (Public Defender), Supreme Court Clerk Eileen Fox and Carole Alfano, Judicial Branch Public Information Officer.

Absent due to scheduling conflicts

Deputy Attorney General Ann Rice, Attorney Daniel Will (NH Bar Association),

Minutes of the Meeting

On Friday, January 10, 2014, the JPE Advisory Committee met at the Trial Court Center in Concord. Due to poor weather, the meeting began at 9:15am. Corrections to the minutes of the October 11, 2013, committee meeting will be addressed at the next meeting.

Judge Conboy introduced the meeting's special guest speaker Professor Andrew Smith from the University of New Hampshire Survey Center. Prof. Smith is well-known for conducting political polls at the local, regional, and national levels. His areas of expertise include trends regarding political candidates and issues, the NH Primary, and presidential politics. During the presidential election, his polling data are often cited by national news organizations. Prof. Smith was invited to share his thoughts regarding the evaluation forms currently used by JPE.

Judge Nadeau and Judge King began the meeting by sharing an overview of the Judicial Performance Evaluation process with Prof. Smith. They explained the forms, survey vehicle and sampling, along with how the review process is carried out with individual judges.

Both judges also noted being discouraged by low return rates and the reality that a survey may be hijacked by one disgruntled party. In their experience, this can create a disproportionately negative score for a judge due to the low number of people who actually participate in the survey. Nadeau and King made it clear they are committed to improving the survey's return rate in order to create a more accurate reflection of a judge's performance.

Prof. Smith shared the following thoughts on surveys and the survey process:

- When considering a survey, the number one goal is to understand the population being asked to respond.
- Every question on a survey should solicit answers that can be used.
- Be clear about why the questions are being asked.
- Confidentiality is key to getting honest answers.
- Surveys should be used as decision-making tools. It follows that questions should be structured towards this objective.
- In business, the best surveys stress finding out what the problems are in an organization and how to fix them, versus in government where a survey is often used as a “hammer”.
- Judges will be more likely to support and respond to a survey’s results if they believe the specific purpose behind the survey is to improve the quality of the judicial system and not encourage personal attacks.
- A low response rate allows a judge to “dismiss” the survey results.
- The survey process should be seen as fair and open, as well as consistent across the survey pool.
- A survey should look at things across time, not just at one point in time. Survey results are only a piece of the entire evaluation process.
- *Fun Factoid:* People will answer almost any question, except how much money they make.

During Prof. Smith’s presentation, committee members considered a variety of questions. As a group, members wondered if it would be beneficial to create separate forms for the different groups surveyed such as lawyers, and *pro se* litigants. Rep. Smith asked if race and gender questions are important.

Randy Hawks and Judge Conboy suggested a separate poll of jurors immediately following a trial. Rep. Smith proposed establishing more of a “portfolio” approach to judicial evaluation, which might include, in addition to the survey results, peer review, administrative judges listening to CD’s of hearings and input from specially trained court watchers. However, she wondered who would have access to all the material.

Judge Conboy supported the portfolio approach and noted that administrative judges' comments should be an official part of the review process. She also shared the concern about low return rate on surveys.

Chris Keating stated his support for improving the current evaluation process with the goal of making judge's better and giving the public greater confidence in the judiciary. He also proposed creating a new position that would be charged with managing the evaluation process. Committee members reacted positively to his idea.

Prof. Smith said the committee should consider recommending that a new position be dedicated to coordinating judicial performance evaluations. Assuming a portfolio approach to evaluation, it is clear that the administrative judges will require substantial assistance.

Sen. Carson discussed her plans to fast track SB 249 in an attempt to correct inconsistencies in the statute pertaining to the issue of "confidentiality".

The committee agreed to redesign the current survey form. A sub-committee was established to start the process which includes: Judge King, Chris Keating and Carole Alfano. Prof. Smith also volunteered to participate. Chris and Carole made plans to meet on Monday, January 13, at 10:00am to begin the project. On Wednesday, January 15, at 1:00pm they will share a draft of a new evaluation form with Judge King at his Trial Court Center office.

The next meeting of the full JPE Committee was set for Friday, February 14 at 1:30pm at the AOC in Concord, Training Room A. Carole will reserve the room.

The meeting adjourned at 10:30am

Submitted by Carole Alfano, Executive Secretary to the Committee