

**State of New Hampshire  
Judicial Branch  
Judicial Performance Evaluation (JPE) Advisory Committee**

*June 28, 2021  
10:00 am  
Supreme Court*

***Attendees***

Supreme Court Chief Justice Gordon MacDonald, Superior Court Chief Justice Tina L. Nadeau, Circuit Court Administrative Judge David D. King, Deputy Attorney General Jane Young, Executive Director, NH Judicial Council Sarah Blodgett, NH Supreme Court Clerk Timothy Gudas, Attorney Jonathan Eck of the NH Bar Association, and Judicial Branch Communications Manager Susan Warner.

***Absent due to scheduling conflicts:***

Sen. Sharon Carson, Rep. Edward Gordon, Attorney Randy Hawkes of the Office of NH Public Defender.

***Introduction***

On Monday, June 28, Chief Justice MacDonald welcomed members to the annual meeting of the Judicial Performance Evaluation (JPE) Advisory Committee at the Supreme Court.

Chief Justice MacDonald shared the status of the annual report. A draft is in final edits and will be ready for submission by June 30.

***Minutes of the Meeting on May 28, 2020***

Chief Justice MacDonald asked for revisions to the minutes for 2020, and Judge King noted that in the final paragraph the date needed to be amended to February 2021. With this correction the minutes were approved.

***Judicial Evaluations Court by Court***

**Supreme Court**

Clerk Tim Gudas reviewed the Supreme Court evaluation process and resulting report. He noted that the process includes three components: 1) analysis of time standards of various parameters, 2) a self-evaluation process, and 3) survey sent out every three years.

**The self-evaluation surveys** were done a year ago for 2020. The Chief has since requested the evaluations be done on a calendar year basis rather than in mid-year. Thus the self-evaluations and the Court's evaluation of its performance for 2021 will be done in December 2021 rather than this July.

**On the time analysis standards**, there are several that are evaluated annually, including:

- Filing of appellant's brief
- Filing of appellee's brief
- Oral argument
- Decision
- Ruling on motion for reconsideration or rehearing

Of these only "filing of appellant's brief" did not meet the time standard. These were, on average, one day over the standard (61 days versus 60).

Going forward, the Court is considering whether these evaluation metrics should be focused more on court performance rather than attorney performance. Briefs in criminal cases, in particular, are rarely filed within 60 days. The Court will review these metrics this year and assess whether these should be changed.

**As for the external 3-year survey**, it was sent to attorneys and self-represented parties who argued before the Court in 2019 late this past fall. Feedback was largely positive (with a few negative comments from litigants who did not agree with the Court's final decision). Two areas are being considered for a continuous improvement process. These include:

1. Improve on rules, forms, website, and e-Filing system to make as user friendly as possible.
2. Continue evaluating the process for posting unpublished final orders versus opinions.

Attorney Blodgett asked what percentage of those who received a survey responded. Clerk Gudas stated that the response rate was approximately 15 percent for self-represented litigants and approximately 30 percent for attorneys.

### Circuit Court

Judge King shared that 19 performance evaluations occurred this year for 2020. Surveys were sent out and the return rate was 38 percent with more than 700 surveys returned. The court was pleased with the results, noting that since all judges now hear family division cases, the results are much more balanced than in previous years (i.e., it's difficult to make both sides happy in family cases and this was skewing results for judges that heard only these cases).

Only one judge had a subpar score, but he has seen improvement in all areas since the previous survey and missed the cut by only one point. There is some concern that some survey takers were only cursorily reading the survey and, wanting to mark him negatively, did so across the board. For example, one of his deficit areas was "starting court on time," when in fact it has been observed that he is extremely punctual. This judge will be working on his bench skills and has been meeting 1:1 with an experienced marital master for mentoring in this area. He will be attending a training session called Enhancing Judicial Bench Skills in Charleston, SC in October. Judge King is confident this judge will continue to improve and has learned how to appreciate critical feedback better already. This judge will be reevaluated in 18 months.

The Chief Justice noted that he had witnessed improvement with this judge as well and that the intervention by Judge King and others was working.

### Superior Court

Judge Nadeau noted that the Superior Court conducted seven evaluations this year, two of which were for new judges who had worked for only a year. This process of evaluating new judges early helps define areas to improve early and improves long-term performance. The overall average for judges in the Superior Court was 3.4, which is excellent.

She prepares a blind spreadsheet of all the judges being evaluated across the metrics being analyzed and shares it with the judges so they can see how they compare with the other judges. Judges take this process very seriously. She offers to discuss results with them and sits down with any judge who scores low (3.1 or 3.2). One judge who was due for evaluation is retiring and opted not to complete the review.

### ***Comments and Questions***

Attorney Eck asked what the trial courts were seeing as the lowest mean score. Judge King noted the report cited “thoroughness of decision” which scored a 3.2. Also noted that “starting court on time” is sometimes cited because discussions/deals in the hallway can also delay court.

Judge Nadeau noted that a couple of the Superior Court judges ran into the challenge of “gets orders out on time,” which is 60 days.

Judge King mentioned that the Court has been discussing how to make the survey process more secure, as occasionally they see issues with people trying to bias the results. There were discussions with Professor Smith after issues in a previous year but the Courts discovered a more secure survey system would entail a new IT project and could be expensive.

Attorney Eck asked how response rates have been to evaluation surveys since the move to *Survey Monkey*. Both King and Nadeau said it’s been comparatively better.

Chief Justice MacDonald noted that the Bar Foundation is doing a survey with a private vendor that is anonymous but still ensures only one response per participant. He will look into it and circle back with the administrative judges.

### ***Next Year***

With no further questions, the Chief Justice asked for a motion to adjourn. Judge King moved and Deputy Young seconded. The meeting was dismissed at 10:20 and the Chief Justice noted that Susan will be in touch with the Committee in early 2022 to set up next year’s meeting.

***Minutes submitted by Susan Warner.***