

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

*May 12, 2022  
1 pm  
Supreme Court*

***Attendees***

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

***Absent Due to Scheduling Conflicts***

Sen. Sharon Carson, Rep. Edward Gordon, Deputy Attorney General James Boffetti

***Introduction***

The Judicial Performance Evaluation Advisory Committee came to order at 1:05 pm. The Chief Justice welcomed the returning members and noted with the legislature in session we are not expecting Sen. Carson or Rep. Gordon to attend. Deputy Attorney General James Boffetti is out of state at a conference. Judge Nadeau will be attending but is expected to be a few minutes late.

***Minutes of the Meeting on June 28, 2021***

Judge King made a motion to approve the minutes from the meeting on June 28, 2021, and it was seconded by Director Blodgett. The minutes were accepted as submitted. Attorney Hawkes abstained from voting as he was absent last year.

***Status of the 2021 Report***

Ms. Warner reviewed the timeline for the report, noting that after the meeting she would gather reports from Judges King and Nadeau and from Clerk Gudas. These will be compiled into a single report for the Chief Justice, which when approved, will be circulated to the committee. It will be submitted to the Governor and Legislature by the end of June.

***Judicial Evaluations Court by Court***

**[Supreme Court](#)**

Clerk Tim Gudas described the four portions of the Supreme Court evaluation process. The first is annual compliance with court performance according to specific time standards. Secondly, each

justice completes the self-evaluation form and there is a meeting of the all justices to discuss the court's performance. Every three years, the Supreme Court also distributes questionnaires to those who have received a final decision on the merits. This was last performed in the fall of 2020. The next time will be the fall of 2023.

The Court this year did approve a new self-evaluation form. The review process for the form included three options: continue to use the same one from the early 2000s, use one recommended by the American Bar Association for judicial self-evaluations, or move to the one recommended by the Institute for the Advancement of the American Legal System, which is affiliated with the University of Denver. The Court chose to switch over to the ABA form, which was the most up to date and covers all of the relevant subject areas.

### Time analysis standards

There are several categories used to measure the Supreme Court's performance. These are included below.

The number of days from filing to accepting an appeal, or the time from filing to review.

- The time standard is 90 days. The Supreme Court's average of 48 days in 2021 was down from 53 in 2020.

How quickly an appeal moves from the filing of the record to the appellant's brief.

- The time standard is 60 days. This past year it was 53, which was actually down from 61 in 2020. Last year this is the one category where the Court was slightly over the standard.

The timing from the filing of appellant's brief to appellee's brief.

- The standard is 50. This past year the Court achieved 41 days, down from 47.

Scheduling of oral argument from the last brief filed.

- The standard is 180 days. This past year the Court's average was 101, which was down from 111.

The time from oral argument to opinion.

- The standard that was established in 2001 was 180 days. This past year it was 115, which is up from 105 in 2020. The average time from filing of a case to close was 211, up from 209 in 2020.

In terms of cases that are submitted to the Court for decision outside of oral arguments that are fully briefed:

- The number of days from submissions to final order was 9 days, down from 14 in 2020.

From filing the motion for rehearing or reconsideration to decision:

- The average number of days was 25, down from 27 in 2020.

The Court was on time in all these standards and was quicker to disposition in six out of the seven of the categories compared to 2020.

## Discussion

Attorney Hawkes asked if COVID was a factor in the longer disposition times in 2020. Clerk Gudas noted that 2020 did include a three- or four-week period when everything was shut down, and cases were given an extension even though there was not an automatic moratorium on filing.

Attorney Eck asked if the volume of filings was comparable in both years. Clerk Gudas noted that they were similar. In 2021, the court received 614 appeals versus 2020, in which 607 were filed. But both those years were still below pre-pandemic years by about 100 to 115 appeals, probably because of impacts to the trial courts which had their own delays.

Director Blodgett asked if child protection appeals had been increasing. Clerk Gudas agreed that these are going up over the last few years, while every other category was probably trending down. (Judge King commented that Clerk Gudas was kind enough to pull some numbers for Judge King's use at the legislature, and almost a third of the appeals were from Family Division.)

Clerk Gudas noted the statutory change that took place which sent abuse and neglect appeals to the Supreme Court rather than to Superior Court likely affected this increase. In the years prior to the change, fewer than five appeals were abuse and neglect cases and it has increased substantially.

Director Blodgett noted that while the Judicial Council has done training for parent attorneys on appellate advocacy, the Supreme Court is still a challenge for them. Clerk Gudas noted Court staff would more than happy to offer additional training just not on individual performance.

## Superior Court

Justice Nadeau reported that the Superior Court conducted 5 judge evaluations in 2021 and received 124 total questionnaires for these judges. The overall mean score was 3.5.

Normally the Court mails out about 50 notices per judge to attorneys and litigants. About 250 notices went out and they received about a 41 percent return, which was probably helped by a presentation to the Bar and a notice in the Bar News.

This coming year the Superior Court will be evaluating five judges including two new first-year judges (rather than waiting the typical 3 years). Judge Nadeau noted that this review will be delayed until July so that it can include those two new judges.

## Circuit Court

Judge King reported that the Circuit Court was due to evaluate 14 judicial officers this past year. During the process, five were lost through retirement or resignation, so nine were evaluated. The mean score in this evaluation was also 3.5.

Judge King noted that while the Circuit Court in the past had some judges who saw only family cases or only saw district cases, now pretty much all of them, with the exception of two judges, do both.

While it might be expected that this would bring the mean score down, it's actually gone up over the last several years. The mean is now at 3.5, which is particularly good news because all nine judges being evaluated have heavy family dockets. One judge was on the low side, but still received 3.2. When his scores were examined more closely, the return rate was low (15) and the comments indicated that his scores were likely skewed by one or more disgruntled self-represented litigants.

Judge King noted that all of the judges being evaluated do a self-evaluation. Interestingly, judges that score the highest always give themselves the worst grades. Judge King also commented that the Survey Monkey process being used still works well and mentioned that of the 811 questionnaires sent out, the Court received back 188, or about 23 percent.

### Next Year's Challenges

Judge King noted the challenge next year will be evaluating 13 new judges that were appointed last year and how to divide that up. He typically prefers to evaluate them after the first year, but with the usual nine or ten that are up for their three-year review, he will probably split the new group into early appointed and later appointed and evaluate the early new group as well the standard three-year group. He then expects the second new group will be done at 18 months instead of 12.

Judge King also discussed the questionnaire, which he said was greatly improved with the help of Professor Smith from UNH, Professor Singer from the New England School of Law, an expert on judicial evaluations, as well as other experts convened by Justice Conboy, then chair of the revising committee, and Rep. Smith.

### Discussion

Attorney Hawkes inquired about the judge who scored low in 2019 and 2020, was he taken off the confidentiality list. How is he doing now?

Judge King commented this judge is still under the watchful eye of a more senior judge who regularly still meets with him. But noted he has made a very significant improvement according to both staff and practitioners.

Attorney Eck asked if questionnaires for the Circuit Court were distributed by the Bar Association like the Superior Court's.

Judge King commented that it is essentially done the same way. The Court goes through the Odyssey files and randomly picks cases from each judge and sends notice to either lawyers or self-represented parties, typically a total of 50, who have appeared in front of the judge at least twice. Then on a rolling basis the Court posts five judges to be evaluated at a time in the Bar News. So over the course of the year, the Court is constantly doing groups of evaluations.

Clerk Gudas was asked if any of the 3-year questionnaires for Supreme Court go to any self-represented litigants as well as a person who actually practiced in front of the court. Gudas responded that it goes to both. Last year, questionnaires were sent to attorneys who argued a case in the preceding year and to self-represented litigants who received a decision based on the merits. It doesn't go, for example, to self-represented litigants in landlord/tenant cases whose appeals get dismissed as untimely filed.

Attorney Eck also asked if there have been in the last 12 months, an unusual number of judicial nominees come through. Judge Nadeau noted that when she was nominated it was 7 years before the next judge was added to the Superior Court. But in the last ten years the Superior Court has had sixteen new judges.

Both Judge King and Judge Nadeau commented that the new judges are performing and adjusting well, with 90 percent digging in and learning the ropes from mentor judges.

Judge King noted that the Circuit Court is not quite 11 years old. There are only three judges left who were full-time judges on the bench when it was created. And next year, he will be the only one. Sixty percent of Circuit Court judges have been on the bench for five years or less. Judge Nadeau noted in Superior Court that 50 percent have been on the bench 5 years or less. Judge King doesn't like to put new circuit court judges in one-judge courts, but with 34 locations many of those have less than one judge, so it's a challenge.

### ***Next year***

With no further questions, the Chief Justice asked for a motion to dismiss. Judge King moved and Clerk Gudas seconded. The meeting was dismissed at 1:30 p.m.

The Chief Justice noted that the Committee may want to pick a date other than when the legislature is in session in May 2023, either a Monday or a Friday. It was noted to the minutes.