

# THE STATE OF NEW HAMPSHIRE SUPREME COURT

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

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

Representative Sherman Packard, Speaker  
New Hampshire House  
State House, Room 312  
Concord, NH 03301

Senator Sharon Carson, Chair  
Senate Judiciary Committee  
State House, Room 106  
Concord, NH 03301

Representative Edward Gordon, Chair  
House Judiciary Committee  
LOB, Room 208  
Concord, NH 03301

Dear Governor Sununu, President Morse, Speaker Packard, Senator Carson and Representative Gordon:

This letter reports on judicial performance evaluations of New Hampshire judges and marital masters evaluated in 2020, as required by RSA 490:32. The 2021 evaluation results will be included in the report issued in 2022 to the governor and legislative leadership.

## **Background**

For the past 30 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. The trial courts use a standardized evaluation form 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 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 Gordon MacDonald serves as the Supreme Court's representative to the committee. Judicial Branch Communications Manager Susan Warner, who assists with the administration of the 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 nineteen times. The most recent meeting took place on June 28, 2021. Minutes of all meetings and background information about New Hampshire's JPE program, are available on the Judicial Branch website at <http://www.courts.state.nh.us/sitewidelinks/evaluations.htm>

This report will summarize evaluation procedures and performance evaluation results for each of the three courts.

## **Supreme Court**

### **Performance 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. These 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 674 cases disposed of in 2020 (many of which were filed prior to 2020). 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 but one of the time standards for cases disposed of in 2020. The standard not met was 60 days for an appellant's brief to be filed following the court's receipt of the transcript or record. The one-day overage is attributable to the number and length of extensions granted to appellants in criminal cases.

#### **Cases Disposed of in 2020**

<b>Phase</b>	<b>Time Standard</b>	<b>2020 Average</b>
Screening	90 days	53 days
Filing of appellant's brief	60 days after record filed	61 days
Filing of appellee's brief	50 days after appellant's brief	47 days
Oral argument	180 days after appellee's brief	111 days
Decision	180 days after oral argument or submission	Opinion 105 days Order 14 days
Ruling on motion for reconsideration or rehearing	60 days	27 days

On average, cases disposed of during 2020 were pending for 209 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 2020. 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. In the late fall of 2020, questionnaires were distributed to attorneys and self-represented parties. Surveys were sent to 144 attorneys who argued cases before the court in 2019. Surveys were sent to 222 self-represented parties who received decisions on the merits in 2019. The surveys were sent electronically to all attorneys and 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 a pre-addressed and postage-prepaid envelope to return the survey. The same survey was used for attorneys and self-represented parties.

Approximately 27% of the attorneys and 12% of the self-represented litigants who were sent the survey responded. The survey included questions about the entire appellate process, from filing an appeal to disposition. 90% of the respondents who reported that they had visited the Supreme Court website for information about the appeal process stated that they were able to find what they were looking for on the site. Of the respondents who reported that they had contacted the Supreme Court clerk's office for information about the appeal process, more than 90% stated that the staff was able to provide the information they needed, and 100% stated that the staff treated them courteously.

The survey included several questions about oral arguments. The respondents whose cases were argued before the court or a 3JX panel universally agreed (100%) that the justices were familiar with the issues in their cases, that the justices treated everyone fairly and respectfully, and that the justices paid attention during oral argument.

When asked about the court's written decision in their cases, 90% of all respondents said that they understood the court's decision. The survey asked respondents to provide their suggestions for improving different aspects of the appellate process. The court has reviewed all of the comments and suggestions and, with the recent resumption of normal and full operations, is considering which of the suggested improvements may be implemented most efficiently and productively.

## **Superior and Circuit Courts**

### **Performance 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 trial courts use *SurveyMonkey* as their 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 individuals without access to the Internet receive notice of the availability of questionnaires and 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 Performance Evaluation Results**

During the calendar year 2020, performance evaluations of nine superior court justices were conducted by Superior Court Chief Justice Tina L. Nadeau in accordance with RSA 490:32 and Supreme Court Rule 56. Two of the nine justices were new justices (having served only one



year) who were evaluated to get early feedback on their performance rather than waiting three years. These justices will now go into the regular three-year rotation.

Each justice being evaluated is furnished a Self-Evaluation Form which is returned to the Chief Justice for comparison with the results of the evaluations by others. Each clerk of court where the justice being evaluated customarily presides is required to supply the Chief Justice with the names of fifty 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 sends 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 of the availability of the questionnaires.

After the deadline for the completion of questionnaires, *SurveyMonkey* 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 236 questionnaires were returned for the nine justices evaluated in 2020. Evaluators were 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 is 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.	3.3
2. The judge is prepared to hear a case when taking the bench.	3.5
3. The judge treats people fairly and with respect.	3.4
4. The judge pays attention during hearings and trials.	3.6
5. The judge asserts appropriate control over the proceedings.	3.4
6. The judge allowed a fair opportunity for parties to be heard.	3.5
7. The judge clearly explains to jurors their role in the trial process.	3.7
8. The judge uses common sense in handling cases.	3.3
9. The judge knows the law.	3.4
10. The judge follows the law.	3.3
11. The judge issues decisions in a timely manner.	3.3
12. The judge's decisions are thorough.	3.2
13. The judge's decisions are easy to understand.	3.3

The overall mean for the nine judicial officers evaluated in 2020 was 3.4, a rating within the range of “Agree to Strongly Agree.” The Superior Court is very proud of these results and believes that the people of New Hampshire should be proud of them also.

Five justices will be evaluated in the calendar year 2021.

### **Circuit Court Performance Evaluation Results**

During calendar year 2020, a total of 19 performance evaluations were conducted for judges and one master presiding in the Circuit Court. Currently there are 38 judicial officers in the Circuit Court: 31 full-time judges, 5 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, which is now the vast majority of Circuit Court judges, sit in all three divisions of the court. As of this report, only 4 full-time judges remain on the Circuit Court bench who were appointed prior to July 1, 2011.

A total of 1,808 Performance Evaluation Questionnaires was distributed for the 19 judicial officers being evaluated, for an average of 95 per judge or master. A total of 694 completed surveys were returned which equates to a 38% total return rate. Evaluators were asked to answer a series of questions using one of four weighted responses: 1 “Strongly Disagree”, 2 “Disagree”, 3 “Agree”, and 4 “Strongly Agree.” The mean overall score for those evaluated in 2020 was 3.5, a rating within the range of “Agree to Strongly Agree.” A rating of less than 3 is considered less than satisfactory.

By category, the mean scores of the judges and the marital master 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.	3.7
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.	3.4
9. The judge follows the law.	3.4
10. The judge issues decisions in a timely matter.	3.4
11. The judge's decisions are thorough.	3.4
12. The judge's decisions are easy to understand.	3.5

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Of the 19 judges and marital masters who were scheduled to be evaluated in calendar year 2020, 1 judge has retired. In addition, rather than wait 3 years to evaluate new judges, the Circuit Court evaluated 5 recently appointed judges this year in order to give them feedback on their performance. These judges will then go into the regular 3-year rotation.

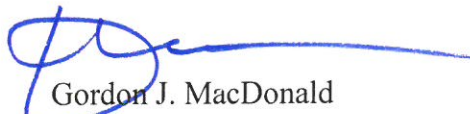
One of the judicial officers evaluated during the 2018 calendar year, Judge Michael Alfano, failed to meet a satisfactory judicial performance standard and was reevaluated in 2020 pursuant to RSA 490:32, III. While the 2020 evaluation showed improvement in every measured category except one, it was still just below the satisfactory average of 3.0 (2.9), and therefore the confidentiality provision of RSA 490:32 is deemed to be waived. A correction plan has been put into place for this judge to make sure that his performance is monitored, and future scores will be improved.

Administrative Judge David King has begun the process of evaluating 10 judges for calendar year 2021. Of the 16 judges who had been scheduled to be evaluated in 2021, 5 have retired and 1 has resigned. In addition, rather than waiting 3 years for a statutory evaluation, the Circuit Court will evaluate 1 recently appointed judge, so she may get early feedback on her performance. This judge will then go into the regular 3-year rotation.

### **Conclusion**

All of us within the Judicial Branch believe that the Judicial Performance Evaluation process is important for ensuring public confidence in our court system through accountability and transparency. We will continue with our ongoing efforts to further improve our Judicial Performance Evaluation process. If you have any questions, concerns, or comments about the information in this report, please contact me directly.

Respectfully submitted,



Gordon J. MacDonald  
Chief Justice