Bill as Introduced

HB 53 – AS INTRODUCED

1999 SESSION

99-0055
09/10

HOUSE BILL ***53***

AN ACT establishing a process for reviewing judges.

SPONSORS: Rep. Hunter, Hills 7; Rep. Pepino, Hills 40

COMMITTEE: Judiciary

ANALYSIS

This bill requires the governor and executive council to review each judge every 7 years following the judge's initial appointment. As part of this review, the governor and council shall conduct a public hearing. The governor and council must prepare a report of the results of each review, which will be available for public inspection.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

99-0055
09/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine

AN ACT establishing a process for reviewing judges.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Review of Judges. Amend RSA 4:44 to read as follows:

4:44 Hearing Prior to Confirmation of Judicial Appointment; ***Review of Judges***.

I. Prior to making any judicial appointment with the governor under the provisions of the constitution, the executive council shall hold a public hearing to allow any member of the public who so desires to offer testimony on the prospective judicial appointee. Notice of the hearing shall be provided at least 7 days prior to the date of the hearing in at least 2 newspapers of statewide circulation. Prior to making the judicial appointment, the executive council shall consider the testimony made at the public hearing.

II. The governor and executive council shall, every 7 years after appointment of a judge, conduct a review of such judge. As part of this review, the governor and council shall hold a public hearing with the same conditions and notice requirements as the public hearing conducted on judicial appointees under paragraph I. The governor and council shall prepare a report of the results of each review, which shall be available for public inspection.

2 Effective Date. This act shall take effect 60 days after its passage.

Amendments

Rep. Mock, Carr. 3
Rep. L. Jean, Hills. 17
Rep. Craig, Hills. 38
October 19, 1999
1999-2121h
09/01

Amendment to HB 53

Amend the title of the bill by replacing it with the following:

AN ACT relative to qualifications and appointments of marital masters.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Qualifications and Appointments of Marital Masters. Amend RSA 491 by inserting after section 25 the following new section:

491:26 Marital Masters.

I. Marital masters selected to serve in the marital master program, pursuant to New Hampshire superior court rule, shall possess the following qualifications:

(a) Professional experience in family law matters.

(b) Legal and personal qualities including, but not limited to:

(1) Knowledge of family matters, including related matters such as tax and pension law;

(2) Personal maturity so as to understand and make decisions on matters before the court; and

(3) Personal qualities of patience and understanding of the difficult personal matters which are the subject of divorce and a willingness to deal with complex family matters in a non-adversarial manner.

II. The governor shall nominate and the council shall confirm all new marital masters. The governor and council shall approve those seeking a renewed contract term and the terms and conditions of the marital master contract.

2 Effective Date. This act shall take effect upon its passage.

1999-2121h

AMENDED ANALYSIS

This bill establishes certain qualifications for marital masters. The bill requires marital masters to be nominated by the governor and confirmed by the executive council. The bill also requires the governor and council to approve marital master contracts.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 53, est. a process for reviewing judges Date Jan. 13, 1999

Committee ~~JUDICIARY~~

**** Please Print All Information ****

Name	Address	Phone	Representing	(check one) Pro	Con
Richard Marples	21 Dartmouth St	627-1837	NH-11	X	
Sheila Roberge	Bedford	472-8391	NH Senate	✓	

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # Cont. of HB 53 Date 2/9/99

Committee Judiciary

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
HOWARD L. WILSON	PO Box 91, ANDOVER	735-5427	SELF	Y	
JACK SAUNDERS	234 Lost Rd. Hampton	926-8926	Self & Town Rep.		X
W. Cushman	Box 92 - New CASTLE	436-5493	Self	✓	

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 53

BILL TITLE: establishing a process for reviewing judges.

DATE: Jan. 13, 1999

LOB ROOM: 208 **Time Public Hearing Called to Order:** 9:34 a.m.

Time Adjourned: (see Testimony)

(please circle if present)

Committee Members: Reps. Mock, Peterson, Jacobson, Keans, Bergin, Dokmo, L. Jean, Rowe, Ford, Withee, Dudley, Piccoli, Soltani, Woods, Wall, DePecol, J. Pratt, Craig, Lasky, Mitchell, Solow and Wood.

Bill Sponsors: Rep. Hunter, Rep. Pepino

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Public Hearing Called to Order: 9:34 a.m.
Time Adjourned: 10:45 a.m.
Hearing Reopened: 11:15 a.m.
Hearing Recessed: 12:30 p.m.

*Rep. Bruce Hunter, sponsor, supporting
- -submitted written testimony
- -emphasized the need for periodic review
- -cited public sympathy for same
- - questions put forth by Reps. Bergin, and Craig to Rep. Hunter as to effect on impartiality, Rep. Hunter summarized there would be no adverse effects on impartiality
- -question by Rep. Dudley – would the review be made public?, Rep. Hunter answered yes

Chairman Mock advised that hearing would be recessed

HEARING REOPENED:

*Rep. Leo Peipino
- -sponsor, supporting
- -submitted written testimony to committee

Frederic K. Upton, NH Supreme Court and Judicial Conduct Committee
- -opposing bill

-testified that there was now good judicial accountability
-question from Rep. Soltani as to periodic review by Judicial Conduct Committee
-answered on confidentiality of committee proceedings – said they were becoming more open
-answered general question put forth by committee about the working of the judicial conduct committee

question from Rep. Jacobson – how does the Judicial Conduct Comm. square with the constitution that requires "open" government

Randall Cooper, N.H. Bar Asso. testifying for information only
-answered questions regarding bill
Question – Rep. Jacobson – rulemaking and the ommission of late of the Legislature in the process
-agreed it was an issue

Walter Peterson – Peterborough, representing self
-answered questions from the committee
-against all review processes
-favors lifetime appointments

Rep. Mirski, reluctantly supports bill
-there are provisions to take care of "wayward judges"
-not in favor of elected judges
-must make process more open, but we need independent judiciary
-believes some type of review is necessary

HEARING RECESSED AT 10:50

HEARING RECONVENED AT 11:56

George Moore, Manchester, representing NH Bar Association
-opposed to bill
-cited no distinction in the type of accountability present in the bill
-defended the Judicial Conduct Committee
Question – Rep. Peter Begin – why are these bills coming forward?
-answer – mainly because of Judge Fairbanks and a politically charged atmosphere

*Hon. Tom Stawasz
-spoke in support of the bill – submitted written testimony

George Hast, Sherryland Village, Tilton
-spoke in support of the bill
-egocentric, political, appointments for payback,
-generally condemned the entire state judicial process from appointment to common practice

*Paul Clements, supporting bill
-representing National Conference of Fathers and Children
-bill is an exercise in constitutional checks and balances

*Joe Haas, representing himself as a member of VOCALS
-supports bill with a suggested abbreviated time lapse for review

Jay Lewis, Weirs Beach
-supports bill
-supports abbreviated time frame

Theodore Kamasinski, JUSTCITE
-supports bill
-gave general opening statements – will return at a later time to give further arguments in support of this bill

Respectfully submitted,

Rep. Loren J. Jean, Clerk

SPEAKING – SUPPORTING

Jay Lewis, Box 5262, Weirs Beach 02347
Paul Clements, 15 Baker Avenue, Greenville
George Hast, Sherryland Village, Tilton
Hon. Thomas P. Stawasz, Box 452, Hollis
Rep. Bruce Hunter, Hill
Rep. Leo Pepino
Joe Haas, P. O. Box 218, Ashland (with amendment)
Rep. Paul Mirski, RFD Box 244, Enfield
Theodore Kamasinski, P. O Box 32, Pittsfield

SPEAKING – OPPOSING

George R. Moore, 111 Amherst St., Manchester, NH. Bar Assn.
Walter Peterson, P. O. Box 3100, Peterborough, representing self
Frederic K. Upton, 10 Centre St., Concord, representing NH Supreme Court and Judicial Conduct Committee

SPEAKING – FOR INFORMATION ONLY

Randall F. Cooper, Eaton, NH, representing NH Bar Assn.

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 53

BILL TITLE: establishing a process for reviewing judges.

DATE: 1/13/99

LOB ROOM: 208 **Time Public Hearing Called to Order:** 9:34 - AM

Time Adjourned: 10:45 AM

Reopened 11:15 AM

(please circle if present) Recessed 12:30 PM

Committee Members: Reps. Mock, Peterson, Jacobson, Keans, Bergin, Dokmo, L. Jean, Rowe, Ford, Withee, Dudley, Piccoli, Soltani, Woods, Wall, DePecol, J. Pratt, Craig, Lasky, Mitchell, Solow and Wood.

Bill Sponsors: Reps. Hunter, Pepino

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

HB - 53

Sponsor Hunter:
Submitted written testimony, emphasized the need for periodic review. Cited public sympathy for same.
? by Begin, Craig affect on impartiality questioned Sponsor, summized there would be no effect.
? Reconi, Rowe, Keens, Peterson, Soltani, Rudbey

Rudbey ? if the review would be more public the answer is yes.
Chairman advised the committee that bill would be heard / will be released ? continued

Co Sponsor Lee Peperis.
Read written testimony. did not submit

Frederick Optow: Atty. appeared bill. Testified that there was more good judicial accountability read from written testimony.
? Soltani. periodic review by Judicial conduct committee, answered ? on confidentiality of committee proceedings, said they were becoming more open.
Answered general questions about the working of the judicial conduct committee.
? Jacobson How does Jud. Com. square with the const. which requires "open" court.

Info only - Neutral.

Randall Cooper: N.H. Bar assoc: Spoke against answered questions

Davidson > subbreaking and the omnission of Slate of the Leg. in the process. Agreed it was an issue.

Walter Peterson: appeal. amend > from committee against all newer processes favors historic appointments.

Muise: Reluctantly supports. Are provisions to take care of 'wayward' judges. Not in favor of elected judges. Must make process more open, but we need independent judiciary. Believes some type of review is necessary.

Recessed 10:50

Re Convened 11:56

George Moore: appeal cited no distinction in the types of accountability present in the bill. Defended judicial conduct committee

Begin: Why Bills coming forward

Ans. Fairbanks + Politicaly charged atmosphere

Tom Stavros: Testified in favor. Submitted written testimony.

George Hoyt. Test. in support, egocentric political, appeared for payback, misrepresented issues, avenues for appointment. Generally condemned the entire State judicial process from appointment to common practice.

Paul Clements: Test. in favor. Representing National conference of Fathers + Children. Bill is an expression in constitutional checks + balance.

Josph Haas: Supported bill with a suggested abbreviated time lapse for review. Submitted written testimony.

Jay Lewis: Supports bill. again supports abbreviated time frame.

Theodore Kamuswski: General opening statements. will return at a later time to further arguments for support of this bill.

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 53 CONTINUED

BILL TITLE: establishing a process for reviewing judges.

DATE: Feb. 9, 1999

LOB ROOM: 208 **Time Public Hearing Called to Order:** 10:15 a.m.

Time Adjourned: 11:15 a.m.

(please circle if present)

Committee Members: Reps. Mockler, Peterson, Jacobson, Keans, Bergin, Dokmo, L. Jean, Rowe, Ford, Wither, Dudley, Picconi, Soltani, Woods, Wall, DePecol, J. Pratt, Craig, Lasky, Mitchell, Solow and Wood.

Bill Sponsors: Reps. Hunter, Pepino

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Jack Sanders, representing self and Tom Rath
- -opposing bill
- -responded to committee questions
- -felt that any review process would be prejudicial to an independent Judiciary
- -submitted written testimony

Joe Haas, supporting with amendment
- -reminded committee that we live in a republic not a democracy as was mentioned in Tom Rath's written testimony.

Respectfully submitted,

Rep. Loren L. Jean, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 53 - Continuation

BILL TITLE: establishing a process for reviewing judges.

DATE: 2/9/99

LOB ROOM: 208

Time Public Hearing Called to Order: 10:15

Time Adjourned: 11:15

(please circle if present)

Committee Members: Reps. Mock, Peterson, Jacobson, Keans, Bergin, Dokmo, L. Jean, Rowe, Ford, Withee, Dudley, Picconi, Soltani, Woods, Wall, DePecol, J. Pratt, Craig, Lasky, Mitchell, Solow and Wood.

Bill Sponsors: Rep. Hunter, Rep. Pepino

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Politics

Electing good people

HB-53

Jack Sanders: Appeared in opposition. Responded to committee questions. Felt that any review process would be prejudicial to an independent Judiciary. Submitted written testimony.

Joe Haas: Reminded committee that we live in a Republic not a Democracy - as was mentioned in Tom Raths written testimony.

Sub-Committee Minutes

Judiciary Committee
Subcommittee Assignments for 1999 Re-Referred Bills

Subcommittee on "Judicial Reform"

CACR 2 — relating to supreme court rules. Providing that supreme court rules shall be subject to review and approval by a special legislative committee.

CACR 22 — relating to 7-year terms for state judges. Providing that all state judges appointed on or after January 1, 2001 be commissioned for 7-year terms, which may be renewed.

✓ **HB 53** — establishing a process for reviewing judges.

HB 568 — establishing a review panel to review judicial officers.

Members:		
	Rep. Mock, Chair	Rep. Craig
	Rep. Rowe	Rep. Soltani
	Rep. Jean	Rep. Keans
	Rep. Lasky	Rep. Woods
	Rep. Wall	Rep. Picconi

Subcommittee on HB 575

limiting railroad liability for passenger and tourist rail service.

Members:		
	Rep. Bergin, Chair	Rep. Ford
	Rep. Withee	Rep. Mock
	Rep. Solow	Rep. Wood
	Rep. Mitchell	

Subcommittee on SB 85-FN

including the judiciary as a public employer under the public employee labor relations act.

Members:		
	Rep. Dokmo, Chair	Rep. Keans
	Rep. Picconi	Rep. Craig
	Rep. Jean	Rep. Mock

Judiciary and Family Law Committee
Judicial Reform Subcommittee Organizational Meeting

August 19, 1999
10:00 a.m. – Room 303 LOB

CACR 2	Relating to supreme court rules. Providing that supreme court rules shall be subject to review and approval by a special legislative committee.
CACR 22	Relating to 7-year terms for state judges. Providing that all state judges appointed on or after January 1, 2001 be commissioned for 7-year terms, which may be renewed.
HB 53	Establishing a process for reviewing judges.
HB 568	Establishing a review panel to review judicial officers.

Present: Subcommittee Members Reps. A. Picconi, B. Lasky, S. Keans, H. Mock; Committee Researcher Kevin Moquin; Reps. J. Pratt, N. Ford, M. Smith; Eileen Fox, Supreme Court Counsel; John MacIntosh, N.H. Bar Association.

Chairman Mock stated his feeling is that the general public has a problem with the courts because of their immunity to sanctions.

One approach we should take is to develop a standard of criteria that needs to be met in order to be nominated by the Governor. Rep. Ford has federal criteria list.

Chairman Mock has asked that we take the section from the Family Court bill that deals with criteria of marital masters and put in a separate, stand-alone piece of legislation.

Seven-year reappointment issue. Problems: (a) within a matter of 7 years the total judiciary could be turned over without regard to qualifications; (b) how would someone in 6th year of term react to politically connected defendants.

Rep. J. Pratt would be interested in the role the Bar Association plays both in this state and others. J. MacIntosh: For years the Bar has had a process candidly done in confidence and then ranks the individuals, including demeanor. Governor may ignore. Mr. MacIntosh will supply the process.

Rep. Smith cautioned the committee not to "over fix" the problem or "throw the baby out with the bath water" in their zeal to compensate for the few bad judges.

Rep. J. Pratt: CACR 2 goes into effect at the federal level unless, within 90 days, the Congress turns it down.

The subcommittee will reconvene on September 1st at 10:00 a.m. for the full day.

Respectfully submitted,

Representative Sandra B. Keans

Henry P. Mock
Chairman
Andrew R. Peterson
Vice Chairman

State of New Hampshire

HOUSE OF REPRESENTATIVES
Legislative Office Building, 33 North State Street
Concord, NH 03301-6328
TEL: (603) 271-3184
TDD Access: Relay NH 1-800-735-2964

COMMITTEE ON JUDICIARY

MEMORANDUM

TO: **"Judicial Reform" Subcommittee Members**

Rep. James W. Craig
Rep. Loren J. Jean
Rep. Sandra B. Keans
Rep. Bette R. Lasky
Rep. Al J. Picconi
Rep. Robert H. Rowe
Rep. Tony F. Soltani
Rep. Janet G. Wall
Rep. Phyllis L. Woods

FROM: **Representative Henry P. Mock, Subcommittee Chair**
PO Box 237, Jackson, NH 03846-0237
(603) 356-5109 / majorchip@landmarknet.net

DATE: **August 19, 1999**

SUBJ: **Subcommittee Work Sessions**

The next subcommittee work sessions for the "Judicial Reform Subcommittee" will be held on Wednesday, September 1 and September 8, 1999 at 10:00 a.m. to continue the work on the bills listed below. At our first work session held today, only four of the ten subcommittee members were present. I know this is a busy time of year, however, please make every effort to be present for the next two work sessions.

Should you have any questions, please do not hesitate to contact me.

CACR 2	relating to supreme court rules. Providing that supreme court rules shall be subject to review and approval by a special legislative committee.
CACR 22	relating to 7-year terms for state judges. Providing that all state judges appointed on or after January 1, 2001 be commissioned for 7-year terms, which may be renewed.
✓ **HB 53**	establishing a process for reviewing judges.
HB 568	establishing a review panel to review judicial officers.

cc: Judiciary Committee Members

State of New Hampshire

FILE

STATE HOUSE

CONCORD

TDD Access: Relay NH 1-800-735-2964

Work Session of the Judicial Reform Subcommittee

9/1/99
10:00 AM to 10:40 AM
Legislative Office Building, Room 208

Meeting called by: Rep. Henry Mock

Type of meeting: Work Session

Attendees: Rep. Rowe, Rep. L. Jean, Rep. Lasky, Rep. J. Wall, Rep. Craig, Rep. Soltani, Rep. Keans, Rep. Woods, Rep. Picconi

Agenda

1. Evaluation/Qualifications for Judges
2. Qualifications/Appointment/Review of Marital Masters
3. RSAs/Constitutional Articles/Case Law Relating to Lesislative Authority Over Judicial Appointments
4. The Role of the New Hampshire Bar Association in Judicial Appointments

Additional Information

Resource persons: Kevin Moquin, House Committee Research, Tel: 271-3600

Special notes:

SUBCOMMITTEE WORK SESSION

COMMITTEE: **Judicial – Subcommittee on Judicial Reform**

BILL NUMBER: **CACR 2, relating to supreme court rules.**

CACR 22, relating to 7-year terms for state judges.

HB 53, establishing a process for reviewing judges.

HB 568, establishing a review panel to review judicial officers.

DATE: **Wednesday, September 1, 1999** LOB ROOM: **208**

TIME CALLED TO ORDER: **10:00 a.m.** TIME ADJOURNED: **12:45 p.m.**

SUBCOMMITTEE MEMBERS PRESENT: **Reps. Mock (Chair), Keans (Chair), Rowe, Lasky, Craig, Soltani, Woods, and Picconi.**

OTHERS PRESENT: **Rep. Solow, Kevin Moquin (Committee Researcher), Eileen Fox (Counsel to the Supreme Court), Jennifer Comer (Executive Director of NH Trial Lawyers), Kevin Duggan (NH Trial Lawyers), Jon MacIntosh (NH Bar Association)**

Evaluation of Judges

Rep. Mock commented that during session he found there was not a lot of support for term limits and thought a more productive approach would be looking at an evaluation process.

Eileen Fox, Counsel to the Supreme Court, said forms are used currently in the system.

I. District Court – sent to police, DCYF, county attorney, NH Public Defenders Office, NH State Police, various lawyers/prosecutors using court. The committee is developing questions to ask administrative judges when they appear next week.

II. Superior Court – sent to attorneys and staff in court.

Howard Zibel, Clerk of Supreme Court of NH, requested to appear on September 8, if possible.

Kevin Duggan, NH Trial Lawyers (Manchester), said he opposes bills relating to judicial review and term limits and believes the longstanding protections are adequate. He does not understand the motivation for this legislation, but suspects it is Claremont and one case should not change the longstanding procedures and constitution. Judge Nadeau has been in touch with trial lawyers

to get an opinion. If there are problems, how do we to correct them? The Association has developed a survey for the membership to rate judges. He said it was an eye-opener, i.e. the comments on extremes of both ends (most moderate on check off). The form was used for Municipal Courts, Superior Courts, and Probate Courts. The Association has not rated candidates for judgeships and recognizes the nature of the business is adversarial, therefore, so many unhappy litigants particularly in divorce cases (hates to see). He opposes the bill changing the court rule authority as well. To do, believes there is a benefit to ranking the process politically.

Jon MacIntosh, New Hampshire Bar Association, said a screening procedure was recommended by NH Bar Association and offered to the Governor, which may or may not participate. Governor John Sununu refused. Some doubt that with the constitutional power to appoint, the Legislature can set qualifications. Rep. Rowe asked if there was a problem if a lawyer has complaint and brings to administrative judge and it becomes known to judge, must disclose to client. His experience is that most judges offer recusal before lawyer requests. He will supply historical data on correlation between assessment with actual appointment.

RECOMMENDATION TO THE FULL COMMITTEE:

❒ See Below
❒ No Recommendation Yet

RESPECTFULLY SUBMITTED,

Rep.Sandra B. Keans, Clerk
For the Subcommittee

Rev. 7/99

SUBCOMMITTEE WORK SESSION

COMMITTEE: **Judicial – Subcommittee on Judicial Reform**

BILL NUMBER: **CACR 2, relating to supreme court rules.**

CACR 22, relating to 7-year terms for state judges.

✓HB 53, establishing a process for reviewing judges.

HB 568, establishing a review panel to review judicial officers.

DATE: **Wednesday, September 8, 1999** LOB ROOM: **208**

TIME CALLED TO ORDER: **10:00 a.m.** TIME ADJOURNED: **4:10 p.m.**

SUBCOMMITTEE MEMBERS PRESENT: **Reps. Mock (Chair), Keans (Chair), Rowe, Lasky, Craig, Soltani, Woods, Picconi, Wall, and L. Jean.**

OTHERS PRESENT: **Rep. Dyer, Rep. Solow, Rep. J. Pratt, Sen. Roberge, Kevin Moquin (Committee Researcher), Judge Morrill, (for Judge Nadeau), Eileen Fox (Counsel to the Supreme Court), Howard J. Zibel (Clerk of Supreme Court), Donna Craig (Howard Zibel Assistant)**

Howard J. Zibel, Clerk of Supreme Court and Executive Secretary of the JCC, has no direct involvement in the evaluation of judges. (See written testimony attached.) Major rules change: (a) is an "after the fact" change, i.e. when complaint is concluded will be made public, and (b) even if dismissed, judge will see and offered opportunity to put a response in file. The purpose is not to embarrass or besmirch the judge, but rather to make them better judges. For example: (1) Judge with DWI after denying continuing drinking and (2) judge called police officer who arrested his brother.

Between 1960 and 1980, all 50 states had formed Judicial Conduct Committees. He recognizes there is a perception of potential intimidation and therefore not a lot of complaints come from lawyers. JCC does not necessarily wait for a pattern of behavior before acting. A great many complaints arise out of marital matters with words like "biased" included. Obviously, the JCC does not deal with facts of case, but judges' behavior. The JCC can not be used as a separate appeal process. Seven votes are needed to bring action.

It would be very rare, but there may be a situation where a judge does not follow the law intentionally in an order and could therefore be actionable before JCC, e.g., sentence to ten years when RSAs call for six years maximum. It is obviously very provable.

Judges orders and findings are exempt from the committee's jurisdiction. There is no where for a judge to be reeducated if he disregards the law. Not looked at by JCC because can be thought of as "findings and rulings." The public perception is wrong as to how many judges are reprimanded. There were 31 cases of reprimand last year and the public knew nothing about it. The Supreme Court will be the final decision-maker if complaints are to be made public. Mr. Zibel thinks this will happen as have proposed new rules.

Rep. Merton S. Dyer, E. D. & A. Committee, (see handout) spoke of the judges retirements and the new judge retirement system. Presently, retirement is eight years for full-time judges with a non-contributory by justices and state provides all funds. You must retire at age 70, will receive ¾ of his last salary, and has to have served seven years. To retire at age 65, you have to have served 10 years. If declared permanently disabled, judges get benefits as well.

The proposed retirement plan would only include judges appointed after the bill goes into effect. The defined contribution plan by state and judges. Judge could say where money is invested and would be vested at a rate of 20 percent per year for five years. Could leave bench and get retirement money. The bill would do nothing for judges in position now. Not looked at retirement system for part-time ECS.

Eileen Fox, Counsel to the Supreme Court, said has been working on judicial retirement system for new judges and has concerns about the judicial branch having a plan that would attract people to judicial service and keep them there, i.e., a little older, experienced and will stay. The judicial branch thinks there would be a defined benefit plan and tells at the end what benefit would be and would this be more appropriate. In addition, wants to make sure tax implications won't be against present judges in system. A six percent contribution by individuals and four percent by state is what is being proposed now. This will work with legislative committee as far as a defined benefit plan versus a defined contribution plan.

The committee recessed at 12:00 Noon and reconvened at 1:00 p.m.

Judge Edwin Kelley, Administrative Judge of District and Municipal Courts, used the form for four to five years. (Seventy-nine judges in his district.) Twenty-five go out – not signed. Judge gets compilation. Also gets on regular basis, letters of complaint to supplement the process. Everyone gets a response within 30 days. Actually listens to tapes from court. (All cases are taped.) Sometimes, he will sit down with judge to listen to tapes.

In cases of pure misconduct has obligation to pass to JCC. Always work in conjunction with the Supreme Court for removal or reassignment. Notified by JCC in severe cases, especially discipline that required monitoring. Fifty to sixty individual letters of complaint per year. The response back to complainant always carries the notation that they may file with JCC.

Rep. J. Pratt asked, do you have authority to order continuing education in an area. Judge Kelley said would, but also would get concurrence of Supreme Court, by an informal call to Judge Brock who quickly meets with associate – quick turn around.

Judge Morrill, for Judge Nadeau, read a handout of Judge Nadeau's statement. The evaluation process takes place every 2 to 2-1/2 years. Speaking for himself, he feels evaluations are helpful and honest. The incentive is to him, this evaluation is "his grade" for his work in his profession. Judge Nadeau get about 25 evaluation (unsolicited) per year, both positive and negative. There is approximately 12 hours of continuing education required each year for judges (which is determined by the Supreme Court). Take the oath, office, etc. seriously and discussions (reprimands) with Chief Justice taken seriously. He feels burnout can be a concern to him personally and feels a retirement system could change that. He is required on the Judicial Code of Ethics to report any infraction see to JCC, with some self-policing involved.

Judge Mahar, Probate Court, feels settling the retirement issue would help burnout and issues of having to stay put for perhaps 40 years. (He used the example of a spouse who gets job offer out of state.) They send out 70-80 evaluation forms on each judge and get back approximately 50 forms. Then goes to see judge in each court and goes over the evaluations. He also does self-assessment. When going over evaluation form, he tells you where judge is strong or weak. Would not hesitate to go to Supreme Court if judge would not respond to his comments. Judge Mahar keeps a copy and the judge being evaluated keeps a copy. Overall, he feels evaluations are positive and productive. He has been trying to make the courts more uniform.

Chairman Mock went over the bills (CACR 2, CACR 22, HB 53, HB 568) wanted to know how the committee wants to proceed. On CACR 2, a discussion ensued to eliminate the last sentence of 73-a. Also, there was a discussion on the wording of CACR 1.

The subcommittee adjourned at 4:10 p.m. The next meeting is scheduled for September 15 to vote on the bills.

RECOMMENDATION TO THE FULL COMMITTEE:

❒ See Below
❒ No Recommendation Yet

RESPECTFULLY SUBMITTED,

Rep. Sandra B. Keans, Clerk
For the Subcommittee

SUBCOMMITTEE WORK SESSION

COMMITTEE: **Judicial – Subcommittee on Judicial Reform**

BILL NUMBER: **CACR 2, relating to supreme court rules.**

CACR 22, relating to 7-year terms for state judges.

✓**HB 53, establishing a process for reviewing judges.**

HB 568, establishing a review panel to review judicial officers.

DATE: **Wednesday, September 15, 1999** LOB ROOM: **208**

TIME CALLED TO ORDER: **10:05 a.m.** TIME ADJOURNED: **12:40 p.m.**

SUBCOMMITTEE MEMBERS PRESENT: **Reps. Mock (Chair), Keans (Clerk), Rowe, Lasky, Craig, Picconi, Wall, and L. Jean.**

OTHERS PRESENT: **Rep. J. Pratt**

Rep. Rowe presented a proposal for a five-year term for Chief Justice of Supreme, Superior Court. This does not mean removal from the court. Reps. Picconi, Keans, Lasky, Wall and Craig spoke against this proposal. Looking for a statute not constitutional evaluation. Rep. Jean spoke in favor of this proposal.

Chairman Mock presented a proposal for statutes to deal with performance evaluations of judges adding to RSA 490:32. There was a thorough work session on the proposal. Chairman Mock will redraft with agreed upon changes.

The next meeting is scheduled for September 22, 1999 at 9:30 a.m. At that time, the subcommittee will vote on all these re-referred bills.

RECOMMENDATION TO THE FULL COMMITTEE: ☐ See Below ☐ No Recommendation Yet

---

RESPECTFULLY SUBMITTED,

Rep. Sandra B. Keans, Clerk
For the Subcommittee

Judiciary and Family Law Committee
Judicial Reform Subcommittee Meeting

September 29, 1999
9:30 a.m. – Room 208 LOB

CACR 2	Relating to supreme court rules. Providing that supreme court rules shall be subject to review and approval by a special legislative committee.
HB 568	Establishing a review panel to review judicial officers.
CACR 22	Relating to 7-year terms for state judges. Providing that all state judges appointed on or after January 1, 2001 be commissioned for 7-year terms, which may be renewed.
HB 53	Establishing a process for reviewing judges.

Subcommittee Members Present: Subcommittee Members Rep. Mock, Chairman; Rep. Keans, Rep. Laskey, Rep. Craig, Rep. Picconi, Rep. Woods, Rep. Soltani, Rep. Wall, Rep. Jean.

The meeting was called to order at 9:40 a.m.

The subcommittee started by discussing the proposed amendments to RSA 490:32 and then agreed to go forward with its proposal and approved drafting of an amendment to RSA 490:30. Rep. Soltani offered an amendment to CACR 2, stating that rules cannot be inconsistent to the RSAs.

Subcommittee Executive Session:

CACR 2 Rep. Jean moved OTP/A (#1999-2015h), seconded by Rep. Rep. Woods.
Vote: 7 yeas and 2 nays.

HB 568 Rep. Soltani moved, seconded by Rep. Jean, that the bill be struck and amendments be proposed to RSA 490:32 and RSA 490:30. (Two amendments are being drafted into legal format dealing with RSA 490:32 and RSA 490:30.) The motion was OTP/A.
Vote: 9 yeas and 0 nays.

CACR 22 The subcommittee felt that 7-year terms were an inappropriate move to make with the courts in N.H.
Rep. Craig moved ITL, seconded by Rep. Laskey.
Vote: 7 yeas and 2 nays.

HB 53 The subcommittee believes the evaluation process should be allowed to work. The minority wants a periodic review.
Rep. Keans moved ITL, seconded by Rep. Craig.
Vote: 5 yeas and 3 nays.

Respectfully submitted,

Representative Sandra B. Keans

9:40
208

Judicial Reform Study Comm.

9/22/98

called to order 9:40

I Committee started by discussing the proposed amendments to R.S.A. 490:32
Sub Subcommittee has agreed to go forward w proposal

II SUBCOMMITTEE APPROVED FOR DRAFTING OF AMEND. TO RSA 490:3

III SOLTANI OFFERED AMENDMENT CACR 2 STATING THAT RULES CAN NOT BE INCONSISTENT W THE RSA's

EXECUTIVE SESSION OF SUBCOMMITTEE

CACR 2

LOREN JEAN MOVED CACR 2 OTP/Am 2nd BY WOODS → 7-2 199-205h

~~#2~~ 7 YEAS 2 NAYS

HB 568 (9-0) OTP/Am 2nd JEAN SOLTANI MOVED BILL BE STRUCK AND ADD PROPOSED AMENDMENTS TO RSA 490:32 AND RSA 490:30

UNANIMOUS 9 YEAS 0 NAYS

CACR 22: CRAIG ITL 2ND LASKEY (7-2)

ROLL CALL: PICONNI, CRAIG, WOODS, LASKEY,

~~BY EAS~~ 5-7 - NAYS 2

HB53 - KEANE ITL CRAIG 2ND (5-3)

HOUSE COMMITTEE ON JUDICIARY

RE-REFER SUBCOMMITTEE WORK SESSION ON

BILL TITLE: HB53

DATE: 9/22/99

Subcommittee Members: Reps. MOCK, KEANS, WOODS, LASKEY, JEAN, PICONNI, CRAIG, SOLTANI, WALL

Comments and Recommendations:

THE SUB.COM BELIEVES THE EVALUATION PROCESS SHOULD BE ALLOWED TO WORK.
THE MINORITY WANTS A PERIODIC REVIEW.

Amendments:

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. KEANS

Seconded by Rep. CRAIG

Vote: 5-3

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. _____

Seconded by Rep. _____

Vote: _____

Respectfully submitted,

Rep. Sandra B. Keans

Subcommittee Chairman/Clerk

Testimony

FILE

RULE 39. COMMITTEE ON JUDICIAL CONDUCT

(1) Pursuant to RSA 490:4 (Supp. 1977) and to provide for the orderly and efficient administration of the Code of Judicial Conduct, Rule 38 of the Rules of the Supreme Court, there is hereby established a committee on judicial conduct.

(2) *Appointment of Committee*

(a) The committee on judicial conduct shall consist of eleven members appointed by the supreme court. One member shall be an active or retired justice of the supreme court; one an active or retired justice of the superior court; one a district court judge; one a probate court judge; two New Hampshire Bar Association members; and five citizens not of the bar or bench.

(b) The committee address shall be:

Executive Secretary
Committee on Judicial Conduct
Supreme Court Building
Concord, New Hampshire 03301

(3) *Terms of Office*

The term of each member shall be four (4) years, and members may be reappointed to successive terms without limitation.

(4) *Vacancy*

(a) A vacancy in the office of the committee shall occur

(1) When a member ceases to be a member of the committee; or

(2) When a judge who is a member of the committee ceases to hold the office which he or she held at the time of selection; or

(3) When a lawyer ceases to be admitted to practice in the courts of this State or is appointed to a judicial office; or

(4) When a citizen appointee becomes a lawyer or a judge; or

(5) When a member ceases to be domiciled in New Hampshire.

(b) A vacancy shall be filled by selection of a successor with the same qualifications as those required for the selection of his predecessor in office. A member selected to fill a

vacancy shall hold office for the unexpired term of his or her predecessor.

Each vacancy in the office of the committee shall be filled within thirty days after the vacancy occurs.

(c) Members may retire by submitting their resignations to the committee, which shall certify each vacancy to the supreme court.

(d) No member may participate in any proceedings before the committee involving his or her own conduct.

(e) Whenever a member is disqualified from participating in a particular proceeding, or is unable to participate by reason of prolonged absence or physical or mental incapacity, the court, upon written request of the chairperson, may appoint an alternate to participate in any such proceeding or for the period of any such disability, any such alternate to have the same qualifications as those required for the selection of the member who is being replaced.

(5) *Expenses of the Committee and Staff*

(a) The expenses shall be paid from appropriations of funds, if any are available, to the committee on judicial conduct through the supreme court budget.

(b) Members shall serve without compensation for their services, but shall be reimbursed for necessary expenses incurred in the performance of their duties, subject to the availability of funds.

(c) The committee may employ or appoint an executive secretary and other employees, including counsel, to perform such duties as it shall direct, subject to the availability of funds. The attorney general may, if requested by the committee, act as its counsel generally or in any particular investigation or proceeding.

(d) The executive secretary of the committee shall be the clerk of the supreme court or any other person designated by the supreme court.

(6) *Quorum and Chairperson*

(a) A quorum for the transaction of business by the committee shall be seven members. No act of the committee shall be valid unless concurred in by seven of its members.

Members of the committee may participate in a meeting of the committee by means of a conference telephone or similar

communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by these means shall constitute presence in person at a meeting.

(b) The committee shall elect from its members a chairperson and a vice-chairperson, each of whom shall serve a term of two years. The vice-chairperson shall act as chairperson in the absence of the chairperson. In the absence of both the chairperson and the vice-chairperson, the members present may select one among them to act as temporary chairperson.

(7) *Meetings of the Committee*

Meetings of the committee shall be held at the call of the chairperson, the vice-chairperson, or the executive secretary or at the written request of three members of the committee.

(8) *Annual Report*

On or before December 31 of each year, the committee shall prepare a report summarizing its activities during the preceding year. One copy of this report shall be filed with the chief justice of the supreme court and other copies may be made available to the public by a majority vote of the full committee with the approval of the supreme court.

(9) *Complaints and Investigations*

(a) Who May File Complaints: Complaints may be filed only by any person who is directly affected by the conduct complained of or was present when the conduct complained of occurred.

(b) Complaints: The committee shall consider all complaints, submitted in writing and signed by a complainant having standing and not obviously unfounded or without merit, alleging conduct on the part of a judge complained against that may be contrary to the Code of Judicial Conduct, or alleging conduct on the part of a master or referee complained against that may be contrary to canons 1, 2, and 3 of the Code of Judicial Conduct. The committee shall not consider complaints against a judge or master or referee relating to his rulings. Such matters should be left to the appellate process. The committee shall also consider written complaints by a complainant having standing and not obviously unfounded or without merit against court stenographers or reporters and any clerk of court or deputy clerk, including registers of probate and any persons performing the duties of a clerk or register, alleging conduct that may be contrary to canons 1, 2, 3 A(1)-(3) and (5)-(7) and 3 B of the Code of Judicial Conduct. Following evaluation of a complaint by the committee, the executive secretary shall provide the person complained against with a copy of the complaint,

except that such person shall not be notified of a complaint that the committee is without jurisdiction to consider unless otherwise determined. The person complained against shall respond in writing to the merits of the complaint within twenty days after receipt from the committee of a copy thereof and the committee's request for a response. Whenever the executive secretary provides a clerk of court or deputy clerk or register of probate, or other person performing the duties of a clerk or register, or court stenographer or court reporter, with a copy of a complaint against such person, the executive secretary shall at the same time give notice of the complaint to the chief justice or administrative judge of the court system in which such person serves. In such instances, the chief justice or administrative judge shall send a copy of the complaint to the presiding justice of the particular court in which such person serves.

(c) Investigation: An investigation of the complaint shall be conducted by the chairperson or the committee's designee.

(d) Hearings or Trials in Process: The committee shall not ordinarily investigate any complaint while a hearing or trial giving rise to the complaint is in process. The committee may waive this rule by vote of six members of the committee in an appropriate case.

(e) If the matter is not informally resolved or adjusted and if the investigation does not disclose probable cause to warrant further proceedings, the person submitting the statement, criticism or complaint shall be so notified but nevertheless a hearing may be requested by the person complained against. The person complained against shall be notified of the committee's findings and action.

(f) Inquiries Initiated by Committee: An inquiry relating to the conduct of a judge, master, referee, stenographer or reporter, or clerk of court or deputy clerk, including a register of probate or any person performing the duties of a clerk or register, may be initiated by the committee on its own motion, without a signed written complaint, upon any reasonable basis. If by virtue thereof the committee determines that sufficient cause exists for further inquiry, it may proceed to an investigation which shall be conducted by the chairperson or the committee's designee. Notice of the initiation of an inquiry by the committee on its own motion and of any resulting investigation shall be given to the person whose conduct is the subject of the inquiry or investigation at such time or times as the committee deems appropriate.

(10) *Hearings*

The person whose conduct is being investigated shall be given an opportunity to explain and be heard before the committee in

advance of any unfavorable action.

(a) Notice of Hearing: Notice of the hearing shall be given to the person and the complainant by mail prepaid at least thirty days prior to any hearing. Such notice to the judge, master, or referee whose conduct is being investigated shall include the following:

(1) A general factual summary of the complaint, or if the committee has proceeded on its own motion, a general factual summary of the charges generated by the committee's inquiry,

(2) those standards of the Code of Judicial Conduct which are alleged to have been violated,

(3) the time, date and place of the meeting or hearing,

(4) the fact that all further notices concerning the hearing, including any adjournments thereof, shall be given by the chairperson,

(5) the fact that the committee and the judge, master, or referee whose conduct is being investigated may be represented by counsel at the hearing, and may have witnesses present.

(b) The hearing shall be held before the committee with a record thereof by a stenographer to be paid for by the committee. The hearing shall be open to the public.

(c) If, after the hearing, the committee determines that there has been a violation of the Code of Judicial Conduct, but that the violation is not of a sufficiently serious nature to warrant the imposition of formal discipline by the supreme court, it shall dispose of the matter by informal resolution or adjustment. Such disposition may take the form of admonishing the judge, issuing a reprimand, requiring corrective action, directing professional counseling or assistance, imposing conditions on the judge's conduct, or other similar remedial action, or any combination of the foregoing.

(d) If, after the hearing, the committee determines that the person complained against has violated the Code of Judicial Conduct and that the violation is of a serious nature so as to warrant formal disciplinary action, censure or suspension, the committee shall file a report of its findings with the supreme court together with a record of the proceedings. Said report and record and all further proceedings before the court shall be public.

(e) The committee shall have subpoena powers. Every witness in any hearing before the committee shall be sworn to tell the truth.

(f) Evidence necessary to establish a violation of the Code of Judicial Conduct shall be clear and convincing but no judge shall be compelled to testify.

(g) The committee may respond publicly to any unjustified criticism of a judge.

(h) Committee action shall require a vote of at least seven members concurring in any action under (c) and (d) above.

(11) *Review by Supreme Court*

Upon receipt of a report of its findings from the committee under 10(d), the supreme court shall set the matter down for hearing which shall be open to the public. At such hearing the judge or master or referee complained against shall have the opportunity to appear in person and/or by counsel and be heard on the facts and the law. The supreme court shall file a written opinion and judgment directing such disciplinary action as it finds just and proper, or exonerating the judge or master or referee complained against.

(12) *Counsel Fees*

Any judge or master complained against shall be entitled to counsel. Upon application, the committee may, in its discretion and subject to the availability of funds, pay such portion as it deems equitable of the fee and expenses of the judge's or master's counsel.

(13) *Immunity*

Each person shall be immune from civil liability for all of his statements made in good faith to the committee or to the supreme court or given in any investigation or proceedings pertaining to a complaint against a judge, master, or referee. The protection of this immunity does not exist as to statements made to others. The committee, its staff, counsel, and investigators shall be immune from civil liability for any conduct arising out of the performance of their duties.

(14) *Duty of Participants*

All participants in the proceedings shall conduct themselves so as to maintain the confidentiality mandated by Supreme Court Rule 40. Violation of this duty shall constitute an act of contempt of the supreme court.

FILE

RULE 40. PROCEDURAL RULES OF COMMITTEE ON JUDICIAL CONDUCT

(1) Applicability and Definitions.

(a) All proceedings of the committee on judicial conduct, created by Supreme Court Rule 39, shall be governed by these rules.

(b) As used herein, the following terms shall have the following meanings:

(1) "Judge" includes a full-time marital master for all purposes of the Code of Judicial Conduct, and includes a referee or other master insofar as complaints arise under canons 1, 2, and 3 of the Code of Judicial Conduct. "Judge" shall also include court stenographers or reporters and clerks of any court or deputy clerks, including registers of probate and any persons performing the duties of a clerk or register, with respect to canons 1, 2, 3 A(1)-(3) and (5)-(7), and 3 B of the Code of Judicial Conduct.

(2) "Proceeding" includes each step taken or which may be taken under these rules with respect to a complaint filed with the committee alleging misconduct of a judge, or with respect to an inquiry concerning the conduct of a judge which the committee has initiated on its own motion.

(3) For the purposes of these rules, a "hearing" is that procedure which follows a statement of formal charges.

(2) Meetings, Conduct of Business, Staff, Quorum and Disqualification.

(a) The committee may, by vote, establish regular or stated meeting dates. In addition, special meetings of the committee may be called by the chairperson, the vice-chairperson, or the executive secretary, or at the written request of three members of the committee.

(b) The business of the committee may be transacted by telephone, exchange of correspondence, or other informal poll of members, unless one or more members object; provided, however, that no formal charges shall be instituted or regular investigation ordered or unfavorable action taken against a judge except upon deliberation and the affirmative vote of at least seven members at a meeting of the committee.

Members of the committee may participate in a meeting of the committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by these means shall constitute presence in person at a meeting.

(c) The executive secretary shall perform the duties and responsibilities prescribed by these rules and such other duties and responsibilities as the committee may determine from time to time. He shall receive all complaints, information, and inquiries, and process the same under the direction and supervision of the committee. He shall maintain the committee's records, maintain statistics concerning the operation of the committee, and prepare an annual report of the committee's activities for presentation to the committee. He shall coordinate investigations ordered by the committee, and ensure that they are conducted discreetly and with dispatch. Subject to the direction and control of the committee, he shall have charge of the disbursement of expense funds available to the committee through the supreme court's budget. Generally, he shall supervise the work of other personnel employed by the committee, direct the activities of the committee's office, and endeavor to keep members of the committee properly informed about its business.

(d) The committee may employ such private investigators, special counsel, experts and other personnel as the committee in its discretion deems necessary for the efficient discharge of its duties, subject to the availability of funds. The function of special counsel shall be to gather and present evidence in support of formal charges filed by the committee against a judge at a hearing held to consider such charges, and, in the case of supreme court review, to support before the supreme court the committee's report of its findings.

(e) A quorum for the transaction of business by the committee shall be seven members. No action of the committee shall be valid unless concurred in by seven of its members, except as otherwise provided in these rules.

(f) No member of the committee shall participate in any proceeding in which his or her impartiality might reasonably be questioned. If a member personally appears before a judge against whom a complaint is pending, or has reason to believe that he or she will appear before a judge against whom a complaint is pending, such member shall not take part in the proceeding.

(g) If a quorum of the committee cannot be obtained by reason of the disqualification or absence of members thereof, the chairperson or the executive secretary shall request the supreme court to designate a temporary replacement or replacements. Any such temporary replacement shall have the same qualifications as the member replaced.

(3) Confidentiality of Proceedings.

(a) Except as provided in this section, all proceedings before the committee, and all information, communications, materials, papers, files and transcripts, written or oral, received or developed by the committee in the course of its work, shall be confidential. No member of the committee or its staff and no employee of the committee shall disclose such proceedings, information, communications, materials, papers, files and transcripts, except in the course of official duty or as otherwise authorized in this section.

(b) A complainant shall keep confidential the fact that a complaint has been filed with the committee until either the complaint is dismissed, a statement of formal charges is prepared and filed as described in section 7(a) of this rule, or the complainant is notified that the committee has disposed of the complaint by taking appropriate remedial action as described in subsection (h) of this section.

(c) Upon preparation and filing of a statement of formal charges, the complaint or notice of inquiry, the judge's response, the statement of formal charges, all pleadings filed thereafter, the hearing, and the committee's disposition shall be public. The committee's deliberations shall be confidential.

(d) If a matter against a judge is disposed of by informal resolution or adjustment, and if the judge shall thereby have received three or more informal dispositions during the preceding five years, the following shall be, after notice to the judge, available to the public: the complaints or notices of inquiry, the judge's responses, and the committee's findings and dispositions in all of the proceedings.

(e) If a judge is publicly charged, through independent sources, with involvement in a proceeding before the committee, or publicly charged with conduct likely to become the subject of such a proceeding, the committee may, at the request or with the consent of the judge involved, issue brief public statements as it deems appropriate in order to confirm or deny the pendency of the proceeding, to clarify the procedural aspects thereof, to explain the right of the judge to a fair hearing without prejudgment, and to state that the judge denies the allegations.

(f) If the pendency of a proceeding before the committee is generally known to the public, through independent sources, and the subject matter thereof is of broad public interest or speculation, and public confidence in the administration of justice may be threatened because of lack of information concerning the status of the proceeding and the requirements of due process, the committee may, on its own motion, issue brief statements as it may deem appropriate in order to confirm the

existence of the investigation, to clarify the procedural aspects of the proceeding, to explain that the judge is entitled to due process, and to state that the judge denies the allegations.

(g) If the committee, at any stage of a proceeding, dismisses a complaint or formal charges, whether from insufficiency of the complaint or because there is insufficient cause to proceed further with the matter or for other reason, the committee shall inform the complainant of such disposition. In addition, the committee may, at the request or with the consent of the judge concerned, issue a short explanatory statement to the public.

(h) If the committee disposes of a proceeding by informal resolution or adjustment prior to the filing of formal charges, it shall inform the complainant of the form of informal resolution or adjustment. However, if the committee provides for monitoring or review of remedial action that it may require or conditions it may impose in connection with any informal resolution, it may make such disclosure of the terms of such informal resolution to the administrative judge or other person to whom such monitoring or review is delegated by the committee as necessary to enable such judge or person properly to perform such function.

(i) This section shall not be construed to prohibit the committee from preparing and releasing to the public materials which are not related to any particular proceeding or situation. Such materials may include explanations of:

(1) The jurisdiction of the committee and the limitations upon its powers and authority;

(2) The procedure for filing complaints; and

(3) The internal procedures of the committee.

In addition, the committee may release periodic statistical reports of its work which do not identify or permit the identification of any person involved in any proceeding before the committee other than persons involved in proceedings governed by subsections (c) and (d) of this section.

(j) Nothing herein shall prevent the committee from responding to unjustified public criticism of a judge which is not the subject of a proceeding, and the committee may so respond in appropriate cases.

(k) Any violation of these provisions relating to confidentiality shall constitute contempt of the supreme court. The committee may enforce these provisions by appropriate proceedings for contempt before any justice of the supreme court.

Notwithstanding the provisions of this rule, the committee may disclose to an appropriate law enforcement authority any matter that comes before it.

Comment

One of the protections of the confidentiality provision is that a complainant is not liable for good faith statements contained in a complaint or made in the course of its proceedings.

Nothing in the rule of confidentiality prevents a complainant from disclosing publicly the conduct of a judge which he or she believes violates the code of conduct or is otherwise inappropriate. The immunity from civil liability does not apply to such disclosures. The rule does prohibit a complainant, however, from disclosing publicly the fact that a complaint against the judge about the conduct has been filed with the committee until a statement of formal charges is prepared and filed as described in section 7(a) of this rule or until the complaint is finally disposed of by the committee.

Once a complaint has been disposed of by the committee, a complainant may make a public disclosure concerning the filing of a complaint including the conduct complained of and the action of the committee. The duty of confidentiality upon the committee remains, however, unless one of the specified exceptions provided by the rules applies.

(4) Initial Review of Complaints.

(a) Each complaint shall be submitted in writing and signed by the complainant, and shall be directed to the Executive Secretary, Committee on Judicial Conduct, Frank Rowe Kenison Supreme Court Building, Concord, New Hampshire 03301. The executive secretary shall acknowledge the receipt of all complaints as quickly as possible. A copy of the complaint shall be sent to each member of the committee for review. Following evaluation by the committee, the executive secretary shall send a copy of the complaint to the judge, except that the judge shall not be notified of a complaint dismissed pursuant to subsections (b), (c) or (d) of this section unless otherwise determined. In the case of such dismissals, the complainant shall be notified that as a result of the committee's finding, the judge complained against has not and will not receive notice of the complaint or the action of the committee.

(b) The committee shall evaluate each complaint promptly after receipt to ascertain whether the committee has jurisdiction to consider the same under Rule 38 of the Supreme Court. If it clearly appears on the face of the complaint or from preliminary inquiries by the committee that--,

(1) the complainant lacks standing (*i.e.* is not a person directly affected by the conduct complained of, or is not a person who was present when the conduct complained of occurred), or

(2) the complaint relates to a judge's findings and rulings or is a substitute for an appeal, or

(3) the complaint does not allege conduct on the part of the judge which, if established, would be contrary to the Code of Judicial Conduct, the committee shall dismiss the complaint, and shall notify the complainant in writing that the matter raised is outside the committee's jurisdiction, assigning the reason therefor.

(c) If the committee determines, upon preliminary review, that a complaint is obviously without merit or is obviously unfounded, it shall dismiss the complaint and advise the complainant in writing of such action.

(d) The committee shall dismiss any complaint arising out of acts or omissions occurring more than one year prior to the receipt of the complaint, and the complainant shall be so advised in writing. However, when the last episode of an alleged pattern of recurring judicial conduct arises within the one-year period, the committee may consider all prior acts or omissions alleged to be a part of such pattern.

(e) Receipt by the committee of a complaint which is repetitive of a prior complaint, whether from the same or a different source, following disposition of the initial complaint, shall be acknowledged, but the committee shall take no further action thereon.

(f) Any complaint which appears to have merit, but which is defective in some respect so that the committee cannot act thereon, or requires clarification, may be returned to the complainant for curative action or clarification and resubmission.

(g) A complaint relating to a trial or judicial proceeding in progress shall be held in abeyance until the termination of the trial or proceeding, unless the

committee for good cause votes to proceed immediately with such complaint.

(5) Response by Judge.

(a) Except where the complaint has been dismissed pursuant to subsections (b), (c), or (d) of section 4 of this rule, the judge complained against shall respond in writing to the merits of the complaint within twenty days after receipt from the committee of a copy thereof. Such response shall be filed with the executive secretary, who shall, after receipt of a written request from the complainant, provide to the complainant a copy of the judge's response or the substance thereof in the discretion of the committee.

(b) In addition to such required response, the judge may submit to the committee such other matters as he may choose.

(5-a) Inquiries Initiated by Committee.

The committee may initiate an inquiry concerning the conduct of any judge on its own motion, without a signed written complaint, upon any reasonable basis, including conduct that is a matter of public record, reports in the news media and information provided by sources considered reliable by the committee. No such inquiry shall be initiated by the committee except upon the affirmative vote of six or more members of the committee taken at a meeting thereof. Notice of the initiation of an inquiry by the committee on its own motion shall be given to the judge by the committee at such time as it deems appropriate. The committee may delay giving such notice to the judge to avoid possible compromise of the inquiry and any resulting investigation or for other good reason.

(6) Preliminary Investigation.

(a) The committee may order an investigation of any complaint properly before it, or of any proceeding initiated by the committee on its own motion, upon the affirmative vote of seven or more members of the committee taken at a meeting thereof. Such investigation shall be conducted under the direction of the chairperson and in such manner as he may determine.

(b) The judge shall be notified of the investigation and whether it is upon a complaint or on the committee's own motion, and afforded a reasonable opportunity to present such relevant matters as he may choose. In any proceeding where the committee is acting on its own motion,

notice of the investigation may be deferred and given to the judge at such time as the committee deems appropriate.

(c) In conducting an investigation, the chairperson may require that any statement or written information furnished to the committee or its employees be given under oath or affirmation subject to the penalties for perjury or false swearing in official proceedings pursuant to RSA ch. 641. It may also require a complainant to verify his complaint under oath or affirmation, subject to such penalties for perjury or false swearing in official proceedings.

(d) Persons contacted for information shall be informed of their obligation to maintain confidentiality.

(e) Judges, clerks of court, court attaches, members of the bar and other officers of the court shall comply with the reasonable requests of the committee for assistance and cooperation in the conduct of any investigation by the committee.

(f) During the course of its investigation, the committee may informally resolve the matter with the consent of the judge. Such informal resolution may take the form of written advice or admonishment, the requirement of remedial action, or the imposition of conditions, or any combination thereof. The committee may provide for monitoring or review by an administrative judge or other suitable person of any remedial action it may require or conditions it may impose in connection with an informal resolution or adjustment. The consent of the judge to informal resolution of the matter shall constitute a waiver of his right to a hearing. If a complaint is disposed of by way of informal resolution or adjustment, disclosure to the complainant shall be limited as provided in subsection (h) of section (3) of this rule.

(g) Upon completion of the investigation, if the matter has not been informally resolved pursuant to subsection (f) of this section, the committee shall determine whether the investigation has disclosed probable cause to warrant formal proceedings. If the committee does not determine that the investigation has disclosed probable cause to warrant formal proceedings, the committee shall dismiss the complaint or terminate the inquiry commenced on its own motion, as the case may be, and shall promptly notify the judge and the complainant (if any) in writing of such dismissal or termination.

(7) Statement of Formal Charges, Notice of Hearing, and Answer.

(a) If, after investigation the committee concludes, by the affirmative vote of seven or more members taken at a meeting, that probable cause to warrant formal proceedings exists, it shall prepare and file a formal statement of charges and shall set a time and place of hearing before itself. The committee shall promptly serve the judge, by registered or certified mail, postage prepaid, with a copy of the formal statement of charges together with a notice of hearing.

(b) The formal statement of charges shall (i) state whether the committee is proceeding on the basis of a written complaint or on its own motion, (ii) contain a clear summary of the allegations against the judge and of the alleged facts forming the basis of such allegations (including facts developed by the investigation), (iii) identify and cite those standards of the Code of Judicial Conduct alleged to have been violated, and (iv) advise the judge of his duty to answer as provided in subsection (f) of this section.

(c) The formal statement of charges together with the notice of hearing shall be served on the judge at least thirty days prior to the hearing date assigned.

(d) The notice of hearing shall include the following:

(1) the date, time and place of the hearing;

(2) the fact that both the committee and the judge may be represented by counsel at the hearing, may secure the attendance of witnesses and the production of documents by subpoena, and may examine and cross-examine witnesses;

(3) the identity of any special counsel for the committee; and

(4) the fact that all further notices concerning the hearing, including any adjournments thereof, shall be given by the chairperson or pursuant to his direction.

(e) The committee shall give notice to the complainant of the date, time and place of the hearing. He shall be entitled to attend the hearing as an observer, and may be required to attend and participate therein as a witness, but shall have no other function or right with respect to the hearing.

(f) Within twenty days after receipt of the formal statement of charges, the judge shall file an answer with the executive secretary, setting forth all denials, affirmative defenses, mitigating circumstances and other matters which the judge intends to raise at the hearing.

(g) At any time prior to final decision, the committee may allow or require an amendment of the formal statement of charges, and may allow an amendment of the answer. When an amendment is made to the formal statement of charges, whether before or after commencement of the hearing, the judge shall be afforded a reasonable opportunity to answer the matters newly charged, as determined by the chairperson, and shall answer such matters within the time allowed. In any such case, the judge shall also be afforded a reasonable time, as determined by the chairperson, in which to prepare his defense to the matters newly alleged.

(h) For good cause shown, the chairperson may extend the time within which the judge is required to file his answer, and may grant a continuance of the scheduled hearing, but no such extension or continuance shall be for a period longer than thirty days without the concurrence of the committee.

(i) The committee may terminate the proceeding and dismiss the complaint and formal statement of charges following the answer by the judge, or at any time thereafter, and shall in that event give notice to the judge and the complainant that it has found insufficient cause to proceed.

(8) Discovery and Subpoena Powers.

(a) At any time after the filing of a formal statement of charges, the judge or his counsel shall, upon written request, be entitled, as a matter of course:

(1) to obtain the names and addresses of all persons known to the committee to have relevant information;

(2) to examine and copy any of the following:

(A) statements of the complainant;

(B) statements of persons claiming to have knowledge of the acts, omissions or events underlying the formal proceeding;

(C) investigative reports made by or for the committee in connection with the proceeding; and

(D) any other writing or item which is relevant to the proceeding, or which appears likely to lead to relevant information.

(3) to discovery to the extent permitted in civil proceedings.

Anything in this section to the contrary notwithstanding, the committee shall not be required to disclose to the judge the identity of any informant who will not be called as a witness in support of the charges, and who has declined to sign a written complaint, unless the alleged misconduct was directed at the informant.

(b) The judge shall make available to the committee, as a matter of course, upon the written request of the chairperson, executive secretary, or special counsel, any specified material which would be discoverable in civil proceedings in this State. The committee shall be entitled to discovery to the extent permitted in civil proceedings.

(c) Nothing in this section shall authorize access to any information, writing or other item which is privileged by law, or which is protected as an attorney's work product.

(d) If disclosure is not forthcoming as provided in subsection (a) or (b) of this section, the judge or the committee may move to compel discovery before a justice of the supreme court.

(e) The committee shall have the power to subpoena witnesses, compel their attendance and testimony, and require the production of books, records, documents or other evidence or material deemed relevant to the investigation or hearing. Such subpoena powers may be exercised for the committee by the chairperson, the executive secretary or special counsel to the committee.

(f) The subpoena powers of the committee shall be exercised in behalf of the judge, upon his written request or the written request of his counsel.

(g) If any witness disobeys a subpoena of the committee, either as to his appearance or as to the production of things specified in the subpoena, or refuses to testify or answer questions, the committee may apply to a justice of the supreme court for an order compelling compliance with the subpoena or compelling him to testify.

(h) Witnesses summoned to appear shall be entitled to the same fees and mileage expenses provided by law for witnesses in regular judicial proceedings. The expenses of witnesses shall be borne by the party calling them.

(9) Conduct of Hearing.

(a) The hearing shall be open to the public.

(b) The committee may proceed with the hearing at the time and place fixed, whether or not the judge has filed an answer or appears for the hearing. The committee may draw an unfavorable inference from the failure of the judge to answer or appear; but no such failure, standing alone, shall be sufficient to meet the standard of proof.

(c) The committee shall have the burden of establishing by clear and convincing evidence a violation of the Code of Judicial Conduct. The judge shall not be required to testify or present affirmative evidence in his own behalf.

(d) The judge shall be entitled to counsel of his choice, and shall have the right to adduce evidence, produce and cross-examine witnesses, and present all relevant arguments.

(e) The committee shall not be bound by the technical rules of evidence, and may admit evidence which it considers to be reliable, material, and relevant. The chairperson shall rule on objections to the receipt of evidence, subject to being overruled by a majority of the committee present at the hearing. The chairperson may defer ruling on an objection to the receipt of evidence, and admit evidence subject to later ruling thereon.

(f) The hearing shall be recorded verbatim by stenographic, electronic or other means approved by the committee. A transcript of the hearing shall be provided to the judge without cost. The judge may tape record the hearing with the permission of the committee.

(g) The decision of the committee shall be based solely on the record evidence presented to the committee at the hearing, but shall not be based solely on hearsay evidence. The committee shall exclude from its consideration any information reviewed in earlier stages of the proceeding, unless such information is received in evidence at the hearing so as to become a part of the record.

(h) At any time after the hearing is closed but prior to final decision, the committee may reopen the hearing for the taking of additional evidence. The judge and the complainant shall be given such notice of any such supplemental session as the circumstances may reasonably require.

(10) Dispositions Following Hearing.

(a) The committee shall render its decision promptly after the hearing.

(b) If the committee decides that a violation of the Code of Judicial Conduct has not been established, the proceeding shall be dismissed, and the judge and the complainant shall be so notified.

(c) If the committee determines, by the affirmative vote of at least seven of its members, that there has been a violation of the Code of Judicial Conduct, but that the violation is not of a sufficiently serious nature to warrant the imposition of formal discipline by the supreme court, it shall dispose of the matter by informal resolution or adjustment. Such disposition may take the form of admonishing the judge, issuing a reprimand, requiring corrective action, directing professional counseling or assistance, imposing conditions on the judge's conduct, or other similar remedial action, or any combination of the foregoing. The committee may provide for monitoring or review by an administrative judge or other suitable person of any remedial action it may require or conditions it may impose in connection with an informal resolution or adjustment. If a proceeding is disposed of by informal resolution or adjustment pursuant to this subsection (c), disclosure to the complainant shall be limited as provided in subsection (h) of section (3) of this rule.

All admonishments, reprimands and other informal adjustments shall be reduced to writing.

(d) If the committee determines, by the affirmative vote of at least seven of its members, that the judge complained against has violated the Code of Judicial Conduct and that the violation is of a serious nature so as to warrant formal disciplinary action by the supreme court, the committee shall prepare a summary report of the proceeding and of its findings. Such report shall include the recommendations of the committee (if any) concerning the sanctions to be imposed. Any member who dissents from the determination of the committee may prepare a minority opinion which shall be appended to the report of the

committee. The committee shall also prepare a record of the proceeding, which shall include the committee's formal statement of charges, the judge's answer, any other pleadings, and a transcript of the hearing. The committee's report and the record of the proceeding, certified by the chairperson or the executive secretary, shall be filed with the supreme court. Contemporaneously with such filing, copies shall be served on the judge, and proof of such service shall be filed with the court.

(11) Use of Closed Files.

(a) A closed file may be referred to by the committee in subsequent proceedings in the following circumstances:

(1) Where a complaint or formal charges have been dismissed for any reason or there has been a finding of insufficient cause to proceed, and the subsequent proceeding raises similar allegations against the judge or is based upon a similar occurrence or factual situation, the closed file may be used to exonerate the judge or may be made a part of the investigation of the new complaint; or

(2) Where, after the disposition of a prior proceeding by informal resolution or adjustment, the judge fails to refrain from acting in the manner that caused the prior complaint to be filed and a subsequent complaint is filed alleging similar conduct which is established or proven, the closed file may be used as evidence tending to show that the problem is a continuing one; or

(3) Where, following the hearing of subsequent related or unrelated charges, the committee determines that a violation of the Code of Judicial Conduct has occurred, the closed file may be referred to in connection with the decision as to the nature of the informal resolution to be imposed by the committee or as to the sanction to be recommended to the supreme court for imposition by the court.

(12) Amendment of Rules.

The committee may from time to time submit amendments of these rules to the supreme court for approval.

FILE

JUDICIAL PERFORMANCE EVALUATION IN SUPERIOR COURT

JUDICIAL PERFORMANCE EVALUATION IN SUPERIOR COURT
JOSEPH P. NADEAU, CHIEF JUSTICE
NEW HAMPSHIRE SUPERIOR COURT

I regret I cannot meet with you personally to discuss superior court judicial evaluations. I hope this statement addresses issues of concern to the committee.

First, I would like to emphasize that the purpose of judicial performance evaluations is to provide trial judges with insight into their conduct on the bench as perceived by lawyers, litigants, clerks, staff, bailiffs and myself.

The process begins by the judge filling out a self assessment form (**Attachment A**) which provides the opportunity to reflect on his or her work as a judge. The judge can also comment on how his or her job is affected by such things as scheduling, education and resources. The judges ends the completed form to me for review and use in our final interview..

Next, I ask each clerk to make a list of the attorneys and law firms who regularly practice in the court where the judge sits. I then send a form (**Attachment B**)to those firms and any other firms which I feel should be included.

An evaluation form is also sent to all court personnel who work in the courthouse where the judge presides. These forms provide clerks and bailiffs,(**Attachment C**) office staff, law clerks, and court reporters (**Attachment D**) a chance to rate the judge in many categories. The categories are those which are used by most jurisdictions which conduct such evaluations. The forms also provide space for additional comments and observations.

The forms are confidential and anonymous. Confidentiality and anonymity are important because they permit people to provide an honest view of the judge's performance. Employees, attorneys and litigants know they will suffer no disadvantage because of the information provided. They also know the information will be used only for evaluation and improvement not for personal attack. Since the forms are not public, there is no concern that one isolated event will gain disproportionate attention.

Not surprisingly, most comments for most judges are highly favorable. But, even if a judge receives only one unfavorable survey, I do not disregard it. Rather, unfavorable surveys are use as a learning tools. Even if observations may be uncommon, they deserve attention. I ask the judge to recognizes that these observations or perceptions come from someone who feels strongly about the conduct described.

We also discuss how judges can avoid even a single instance of bad temper or uncharacteristic conduct. We discuss how judges can respond to contentious litigants or troublesome attorneys in positive ways, and how judges can avoid times of impatience and work hard to make certain that even unhappy litigants perceive the judge as a fair and tolerant person.

Finally, the forms also reinforce positive conduct and inform judges when they are on the right track. Judges know when the conduct described, whether positive or negative, is typical and make genuine efforts to work on areas that need improvement.

Occasionally someone asks whether these evaluations can be made public so that anyone can see the surveys and comments. Of course they can. But I have two thoughts about that suggestion. The first is that it is unnecessary. Any individual or group can solicit information about judges by conducting their own inquiries or surveys. They can gather information and make whatever use of it they desire. Also, most judicial activity takes place in a public courtroom open to all and frequently covered by the media.

My second thought is that making the surveys public will change the process. Such a public airing of administrative evaluations risks the prospect that the focus will be directed away from performance review and toward personal vilification. There is a serious risk that a small unrepresentative group would use information selectively to create the unwarranted impression that there is a serious problem with judicial performance.

For these reasons if surveys were to be made public, it seems to me those who fill out the surveys should be required to identify themselves. How else can a judge defend against what he or she believes to be unfair or untrue comments? With the cover of anonymity, it would take very little effort to create the false impression that the performance of a particular judge is questionable.

It is very frustrating to me to hear someone repeat an anonymous and usually unfounded allegation involving a judge without identifying the court, the judge or the circumstances. Judges must make difficult decisions. They must control the courtroom and everyone who comes before them. Judges are human beings and no matter how hard every judge tries to exercise their responsibilities in the most judicious manner they will occasionally make mistakes.

Finally, I ask the legislature to reflect on the harm to government of providing an additional opportunity to make unwarranted attacks on its institutions by a small vocal minority. I believe the process we have in place allows us to deal with human frailties without creating the unfounded and unwarranted impression of disarray that a handful of disgruntled litigants might like to convince the public exists. I believe our 28 superior court judges and 11 marital masters earn and deserve public confidence for their daily handling of thousands of cases throughout the state.

2/1/99 **(Attachment A)**

PERSONAL EVALUATION FORM - JUSTICE

Personal Information:

Types of cases you have heard in each category in the last year. (Estimate percentages)

Civil, Equity _____
Criminal _____
Marital _____
Other _____

1. How often have you been able to review case files prior to hearings or trials?
Never_ Rarely_ Sometimes____ Most of the time____ Always

2. How often would you like to be able to review case files prior to hearings or trials?
Never___Rarely___Sometimes____ Most of the time____ Always

3. How often have you had to stay late, or arrive early, to accommodate emergency of special scheduling problems?
Never_ Rarely___Sometimes____ Most of the time____ Always

4. Do you generally involve attorneys, litigants, and court staff when making scheduling decisions about special situations, such as working late or through the lunch hour?
Never___Rarely___Sometimes____ Most of the time____ Always

5. Do you think you take a fair share of the difficult work on the docket?
Never____Rarely__Sometimes____ Most of the time____ Always

6. Do you feel pushed by the caseload to the point where "moving cases" takes precedence over quality of justice concerns?
Never___Rarely___Sometimes____ Most of the time____ Always

7. How often do you feel you are sufficiently familiar with the law and the facts that apply to the cases you are hearing?
Never___Rarely___Sometimes____ Most of the time____ Always

8. Do you think you give attorneys a fair opportunity to make their argument to the court?
Never___Rarely___Sometimes____ Most of the time____ Always

9. Do you think that litigants and attorneys leave the courtroom when you are presiding having understood what has happened and what is to happen next?
Never___Rarely___Sometimes____ Most of the time____ Always

10. How often have you found it necessary to intervene in cases being presented in the courtroom, in order to ensure justice is done, above and beyond exact procedural and legal requirements?
Never___Rarely___Sometimes____ Most of the time____ Always

11. How would you describe your style of courtroom control?
Easy going____ Somewhat controlling____ Very controlling

12. How would you describe your settlement style? (i.e. do you actively participate?)
Never___Rarely___Sometimes____ Most of the time__ Always

13. How would you rate the amount of continuing education you have received since being appointed to the Superior Court?
Less than sufficient_____ Sufficient_____ More than sufficient

14. How would you rate the amount of continuing education you have received during the past two years?
Less than sufficient____Sufficient____More than sufficient

15. Are there any areas in which you would like more education?

16. Are there any innovations which you would like to try?

19. Are you satisfied with your overall performance?
YES ____ YES, but room for improvement____ NO

OTHER COMMENTS:

(Attachment B)

2\1\99 **SUPERIOR COURT PERFORMANCE EVALUATION - ATTORNEY**

Please rank performance in the areas with which you are familiar. **1 (low)->10 (high)** **RANK**

1. Accessibility to staff	
2. Conscientiousness and diligence	
3. Patience and tolerance	
4. Effectiveness of communication	
5. Shows respect for staff	
6. Has earned your respect	
7. Allows me to perform my job	
8. Attentiveness to court business	
9. Promptness in rendering decisions	
10. Efficiency in use of court time	
11. Familiarity with and use of court forms	
12. Familiarity with office procedures	
13. Accessibility to counsel	
14. Handling of complex cases and issues	
15. Control in courtroom	
16. Decisiveness of decisions and rulings	
17. Attentiveness to witnesses and counsel	
18. Knowledge of law	
19. Knowledge of evidence	
20. Knowledge of procedure	
21. Understanding & compassion	
22. Fairness and equality of treatment	
23. Freedom from racial, religious or gender bias	
24. Level of professionalism	
COMPARE TO OTHER SUPERIOR CT JUDGES\MASTERS **A-(top third), B-(middle), C-(lower third)**	

Number of years in practice._____

Number of hearings before this judge or master._____

Number of appearances before other judges or masters.___

Civil____, #Criminal____, #Marital____.

(Please make any additional comments on the back of this page

ADDITIONAL COMMENTS:

It is not necessary to sign this form but you may do so if you wish.
Please return to:

New Hampshire Superior Court Center
Judicial Evaluation - Confidential
99 North State Street
Concord N.H. 03301

(Attachment C)

2\1\99 **SUPERIOR COURT PERFORMANCE EVALUATION CLERK/BAILIFF**

JUSTICE\MASTER_____

Please rank performance: 1 (low) -> 10 (high) RANK

Accessibility to counsel	
Conscientiousness and diligence	
Patience and tolerance	
Effectiveness of communication	
Handling of complex cases and issues	
Control in courtroom	
Decisiveness of decisions and rulings	
Attentiveness to witnesses and counsel	
Promptness in rendering decisions	
Efficiency in use of court time	
Knowledge of law	
Knowledge of evidence	
Knowledge of procedure	
Understanding & compassion	
Fairness and equality of treatment	
Freedom from racial, religious or gender bias	
Level of professionalism	
COMPARE TO OTHER SUPERIOR CT JUDGES\MASTERS A-(top third), B-(middle), C-(lower third)	

Number of years employee in judicial branch._____
Number of other judges\masters with whom you have worked_____

ADDITIONAL COMMENTS

It is not necessary to sign this form but you may do so if you wish.

(Attachment D)

2\1\99 SUPERIOR COURT PERFORMANCE EVALUATION - STAFF

Please rank performance in the areas with which you are familiar. **1 (low)->10 (high)** **RANK**

1. Accessibility to staff	
2. Conscientiousness and diligence	
3. Patience and tolerance	
4. Effectiveness of communication	
5. Shows respect for staff	
6. Has earned your respect	
7. Allows me to perform my job	
8. Attentiveness to court business	
9. Promptness in rendering decisions	
10. Efficiency in use of court time	
11. Familiarity with and use of court forms	
12. Familiarity with office procedures	
13. Accessibility to counsel	
14. Handling of complex cases and issues	
15. Control in courtroom	
16. Decisiveness of decisions and rulings	
17. Attentiveness to witnesses and counsel	
18. Knowledge of law	
19. Knowledge of evidence	
20. Knowledge of procedure	
21. Understanding & compassion	
22. Fairness and equality of treatment	
23. Freedom from racial, religious or gender bias	
24. Level of professionalism	
COMPARE TO OTHER SUPERIOR CT JUDGES\MASTERS A-(top third), B-(middle), C-(lower third)	

Number of years you have worked in judicial branch._____
Number of other judges or masters with whom you have worked.____

(Please make any additional comments on the back of this page.)

ADDITIONAL COMMENTS:

It is not necessary to sign this form but you may do so if you wish.
Please return to:

New Hampshire Superior Court Center
Judicial Evaluation - Confidential
99 North State Street
Concord N.H. 03301

FILE

PRESENTATION ON JUDICIAL CONDUCT COMMITTEE BEFORE SUBCOMMITTEE STUDYING CACR 2, CACR 22, HB 53 AND HB 568

September 8, 1999

by Howard J. Zibel, Executive Secretary
Judicial Conduct Committee

Last week, I understand this committee had some questions about the scope and operation of the Judicial Conduct Committee. Before I answer your specific questions, I would like to explain the organization of the Judicial Conduct Committee (JCC or committee) and discuss how the JCC processes and reviews complaints. My desire is to give you a better understanding of the workings of the committee.

I. ORGANIZATION OF JCC

The JCC was established on June 23, 1977, to receive and review complaints against judges for violations of the Code of Judicial Conduct. The word "judges" is used very broadly in this context. It includes masters, referees, clerks, deputy clerks, registers and deputy registers of probate, and court stenographers and reporters. It is so used in this presentation.

Originally, the JCC had seven members - three judges, two lawyers, and two lay people. In 1991, the membership was increased to nine by adding one judge and one lay person, Then, just last year, the size of the JCC was increased again by two to eleven members, this time adding two lay members. Thus, the current composition of the committee is four judges, two lawyers,

and five lay members.

Over the twenty-two year history of the JCC, lay representation has gone from the smallest segment of the committee to the largest. Judges have always comprised less than half of the membership. All of the members are appointed by the supreme court. Members serve four year terms and are eligible for reappointment. The current members are as follows:

Name	Member Type	Member Since
Robert L. Chiesa	Lawyer	1983
Raymond A. Cloutier	Probate Court	1991
Anne Coughlin	Public	1998
Douglas S. Hatfield, Jr.	District Court	1983
David A. Hodges, Sr.	Public	1990
William R. Johnson	Supreme Court	1989
Donna K. Lencki	Public	1998
Joseph M. McDonough, III	Lawyer	1997
Walter L. Murphy	Superior Court	1993
John R. Newsom	Public	1994
Terrence R. Pfaff	Public	1999

Justice Johnson of the supreme court is the chair, and public member David Hodges is the vice-chair. All members serve as volunteers and receive no compensation for their services.

II. METHOD OF PROCESSING AND REVIEWING COMPLAINTS

All complaints must be in writing. When a complaint is filed with the committee, it is assigned a docket number such that, for example, the first complaint filed this year is JC-99-001. Subsequent complaints are numbered consecutively throughout the year. Last year, the JCC received fifty-three complaints.

The first action taken on a complaint is an initial review by me and the assistant executive secretary for two purposes.

First, we determine if the complaint contains a sufficient statement of the allegations such that the committee will be able to understand it. Second, we are looking to see if the complaint contains any allegation of criminal conduct by a judge. RSA 490:30, III, which the legislature passed in 1988, requires that if a complaint contains an allegation of criminal conduct, the chair of the committee will send it to the attorney general for investigation. While the attorney general investigates a complaint alleging criminal misconduct, the JCC must suspend its work on the complaint. The forwarding of complaints to the attorney general is rare, but it does happen.

If the complaint contains a sufficient statement of the allegations and contains no alleged criminal conduct, the JCC sends a letter to the complainant acknowledging the complaint. The complaint will be on the committee's next agenda for discussion, and copies of the complaint are sent to all committee members prior to the meeting. If criminal conduct is alleged not only is the complaint sent to the attorney general, but the complainant is also sent a letter informing him or her of that action. Finally, if the complaint contains an insufficient statement of the allegations against the judge, we send the complainant a long letter explaining the work of the committee and enclosing copies of the Code of Judicial Conduct, the procedural rules of the committee, and a cover sheet which tries to get the complainant to focus the complaint. Two facts are worthy of note at this stage. The first is that all people

filing complaints with the JCC will get a letter acknowledging it. These letters usually go out within a week of the filing of the complaint. Second, at this initial stage, before committee consideration of the complaint, no notification of the complaint is sent to the judge against whom the complaint was filed.

When a complaint is ready for action by the committee, copies of the complaint are distributed to all committee members, and the complaint is placed on the committee's next agenda. Usually seven committee meetings are scheduled each year; however, some special meetings are often added so that in recent years the committee has generally met an average of eight times per year. At each meeting, the full committee, except for members who are recused from a matter, will discuss each complaint on the agenda. Many are dismissed for lack of jurisdiction. The most common reasons for such a dismissal are that the complaint relates to the judge's findings or rulings and is, therefore, merely a substitute for an appeal or that the complaint does not allege conduct that would be a violation of the Code of Judicial Conduct. If a complaint is so dismissed, the complainant gets a letter informing him or her of the dismissal and the reasons for it. Under the current rules, if the complaint is dismissed by the committee at the time of its initial consideration, the judge complained against is not notified of the complaint or the committee's action.

If a complaint is not dismissed for lack of jurisdiction when initially discussed by the committee, the judge complained

against is asked for a response. A judge asked to respond has twenty days to do so. When a judge is asked to respond, a letter is written to the complainant informing him or her of the action taken by the committee. The judge's response will then be placed on the next agenda after the JCC receives it, and it will be distributed to the committee members. After the JCC considers the judge's response, it may dismiss the complaint, begin an investigation, or offer the judge informal resolution. If the JCC dismisses the complaint, the complainant, as mentioned above, gets a letter informing him or her of the dismissal and the reasons for it.

One of the choices mentioned above that the committee has at this point is informal resolution. An informal resolution is used where the judge has committed a minor violation of the Code of Judicial Conduct. The judge must agree to the informal resolution because an informal resolution means no hearing will be held and the judge must waive his or her right to a hearing. An example of the kind of case in which an informal resolution has been used is the failure of a judge to render a prompt decision. Informal resolutions are confidential; however, if a judge has three of them in a five year period, they all become public. Despite this confidentiality, if a complaint results in an informal resolution, the complainant is informed by letter of the informal resolution and the reasons for it. One of the conditions of an informal resolution may involve monitoring or review of the judge by the administrative judge of the judge's

court or some other suitable person.

If the committee votes to conduct an investigation, the investigation usually consists of inviting those with knowledge of the matter to appear before the full committee. Sometimes the committee hires a private investigator to conduct the investigation. At the end of the investigation, the committee can dismiss the complaint, reach an informal resolution with the judge, or commence formal charges. The former two results have already been discussed, and the complainant will be informed of these resolutions by letter. If formal charges are brought, the complaint will at that point become public and a hearing will be held before the full committee. Again, after formal hearing, the committee can dismiss the complaint or reach an informal resolution, both of which will be communicated to the complainant by letter. At this point, the third option is to bring a petition to the supreme court requesting the imposition of discipline. That petition is public. In both cases where public petitions have been brought before the supreme court, the discipline requested has been suspension. Neither the JCC nor the supreme court has the power to remove a judge from office. Only the legislature through impeachment or the legislature and Governor and council through address have that power.

In sum, the judicial conduct system in New Hampshire is a system that works. Complaints are carefully processed and considered by the committee. Complainants are kept informed of the progress of their complaints. Misconduct is appropriately

treated. The backbone of this system is a very hard-working and dedicated committee. The amount of material that committee member must go through to prepare for a meeting is daunting. Nevertheless, all committee members come prepared to discuss each and every matter. The JCC members, who serve as volunteers, deserve substantial thanks for their dedication.

FILE

Supreme Court of New Hampshire

Committee on Judicial Conduct

Role and Operations of the Committee and Report for 1997

Frank Rowe Kenison
Supreme Court Building
Concord, New Hampshire 03301-1476

Supreme Court of New Hampshire

Committee on Judicial Conduct

Role and Operations of the Committee and Report for 1997

Honorable William R. Johnson, Chair
David A. Hodges, Sr., Vice-Chair
Robert L. Chiesa, Esquire
Honorable Raymond A. Cloutier
Anne Coughlin
Honorable Douglas S. Hatfield, Jr.
Donna K. Lencki
Joseph M. McDonough, III, Esquire
Honorable Walter L. Murphy
John R. Newsom
Donna P. Sytek

THE STATE OF NEW HAMPSHIRE
SUPREME COURT
COMMITTEE ON JUDICIAL CONDUCT

FRANK ROWE KENISON
SUPREME COURT BUILDING
CONCORD, N.H. 03301-1476
P.O. Box 1476

Howard J. Zibel, Esquire
Executive Secretary
Donna R. Craig
Assistant Executive Secretary
(603) 271-2646

TDD Access: Relay NH 1-800-735-2964
(nonconfidential calls only)

November 1998

To the Supreme Court of New Hampshire:

Pursuant to Supreme Rule 39(8), ***Annual Report***, the Committee on Judicial Conduct respectfully submits this annual report of its activities during the period from January 1, 1997, through December 31, 1997.

In the interest of increasing public awareness of the committee and its work, the report also provides some background on the committee's role in providing New Hampshire's citizens with a means for filing formal complaints about violations of New Hampshire's Code of Judicial Conduct.

Honorable William R. Johnson, Chair

David A. Hodges, Sr., Vice-Chair

Robert L. Chiesa, Esquire

Honorable Raymond A. Cloutier

Anne Coughlin

Honorable Douglas S. Hatfield, Jr.

Donna K. Lencki

Joseph M. McDonough, III, Esquire

Honorable Walter L. Murphy

John R. Newsom

Donna P. Sytek

Howard J. Zibel, Executive Secretary

Donna R. Craig, Assistant Executive Secretary

CONTENTS

Committee membership 1

Dedication: Retirement of Frederic K. Upton 2

Background on the Committee and its Work 3

The Committee in 1997:
Changes in Members and Staff 4

How the Committee Works:
Handling the Complaint Stream 4

Disposing of the Complaints:
Committee Meetings and Discussions 5

Committee Often Mistaken
for Appeals Court 5

Investigating a Complaint's Validity 5

Resolving Cases Informally 6

Serious Misconduct Cases Become Public 6

Confidential Aspects of the Committee's Work 7

Operations for 1997 8

Breakdown of Complaints by Court System 9

Ten-year Trends 9

Appendix A—Complaint Information Letter A–1

Appendix B—Complaint Cover Sheet A–4

COMMITTEE ON JUDICIAL CONDUCT

1997 Membership

JUDICIAL MEMBERS

Honorable William R. Johnson
(Supreme Court), Vice Chair
(Elected Chair 9/26/97)

Honorable Raymond A. Cloutier
(Probate Court)

Honorable Douglas S. Hatfield, Jr.
(District Court)

Honorable Walter L. Murphy
(Superior Court)

ATTORNEY MEMBERS

Frederic K. Upton, Esquire
Chair (Retired 8/1/97)

Joseph M. McDonough, III, Esquire
(Appointment effective 8/1/97)

Robert L. Chiesa, Esquire

PUBLIC MEMBERS

David A. Hodges, Sr.

John R. Newsom

Donna P. Sytek

DEDICATION
Frederic K. Upton

Frederic K. Upton announced his retirement as a member of the Judicial Conduct Committee at the end of his term in 1997, concluding twenty years of service on the committee—eight as Chair. Fred Upton is the ultimate role model for the legal profession and, in fact, for any profession: a person of the highest integrity who donates his time, talents, and energy to the improvement of his community.

From the perspective of the Judicial Conduct Committee, Fred has been both a creator and a leader. He was one of the original members of the committee when it was established in 1977, and during his twenty years of service, he continually helped to create a new vision for the committee as he worked to interpret the original Code of Judicial Conduct and to adopt the 1990 Code.

As a leader he has demonstrated a work ethic held in awe by the members of the committee. He has exhibited a sensitivity to those who have filed complaints with the committee, as well as to the judiciary itself—and to the diverse views of the committee members as they thrash out suitable responses to complaints that are under consideration. His penetrating analysis of each complaint set a standard for the committee as it worked to carry out its responsibilities effectively and efficiently.

Fred's passion for an independent judiciary of the highest integrity made him an advocate for strict interpretation and enforcement of the Code of Judicial Conduct. Any violation of the Code brought strong words and recommendations for discipline. At the same time, he was an outspoken defender of judges and other members of the judiciary who were unable to defend themselves from often malicious and unjustified attacks. Fred Upton's tireless dedication and commitment in his role as a member and then leader of the New Hampshire Judicial Conduct Committee has been a significant factor in strengthening the New Hampshire judiciary and helping it to meet the needs of New Hampshire citizens.

The committee here formally recognizes and celebrates the extraordinary contributions of Frederic K. Upton as a member and Chair of the Judicial Conduct Committee from 1977 to 1997, and wishes him the very best of good health and happiness in his retirement from the committee. His contribution cannot be duplicated but will be warmly remembered and emulated. We are proud to have Fred Upton as our friend and colleague.

Douglas S. Hatfield, Jr.
(for the Committee)

BACKGROUND ON THE COMMITTEE AND ITS WORK

All fifty of the United States have created committees, or commissions, that are organized to receive and consider citizen complaints about judicial conduct—that is, about the behavior of judges and other court personnel, as opposed to the decisions and rulings that are a part of any judicial proceeding.

Litigants who find themselves involved in court actions may not agree with a judge's decisions, of course, and may decide to appeal those decisions to a higher court to test whether their objections are legally valid.

But they may also object to a judge's conduct—to the way a judge (or other court official or employee) *behaves* in performing his or her duties. Such objectionable behavior might include rudeness, bias, favoritism, conflict of interest, impropriety, or lack of integrity or diligence, among other possibilities.

The states' judicial conduct committees have been established to provide their citizens with a means for having such complaints considered formally, where disciplinary action can be taken or recommended when the complaints are found to be valid.

New Hampshire's Judicial Conduct Committee, established in 1977, is a committee of the New Hampshire Supreme Court. All of its members are appointed by the court, may be reappointed to successive terms without limitation, and serve without compensation.

The committee's objective is to enforce the high standards of behavior that are mandated by New Hampshire's Code of Judicial Conduct. This Code applies to virtually everyone who is a part of the state's judicial system—including judges, marital masters, referees, clerks, deputy clerks, registers of probate, persons performing the duties of clerk or register, and court stenographers and reporters.

The powers and procedures of the committee are governed by Supreme Court Rules 39 and 40, and its primary duty is to enforce Supreme Court Rule 38, which spells out quite specifically which kinds of conduct are in violation of the seven canons of the Code of Judicial Conduct.

This report, a formal accounting to the supreme court on 1997 committee operations, is designed also as a means of helping the Executive, Legislative, and Judicial branches of New Hampshire's government, as well as the general public, to a fuller understanding of what the Judicial Conduct Committee does in the public's interest. In addition to covering the committee's activities during the calendar year 1997, the report also provides a statistical analysis of complaints over the last ten years.

The Committee in 1997: Changes in Members and Staff

During 1997 there were nine members of the committee serving staggered four-year terms. By design, this total included four members who were judges, each representing one of New Hampshire's four court systems—the supreme court, the superior courts, the district courts, and the probate courts; two who were lawyers and members of the bar; and three who were citizens representing the general public.

In September 1997, the supreme court announced that the total membership of the committee would be expanded to eleven, through the addition of two more public members. Thus, at the end of the year the committee consisted of its traditional membership, with two new members to be appointed in 1998.

The committee elects one of its members to be Chair, and one to be Vice-Chair. Its staff consists of one part-time executive secretary and one part-time assistant executive secretary. On the retirement of Frederic Upton as Chair in August 1997, the committee elected Vice Chair William Johnson as Chair, with the Vice Chair remaining vacant until the new members of the committee could be appointed.

On July 2, 1997, Joseph M. McDonough, III, Esq., of Manchester, was appointed as a new attorney member to replace retiring member and Chair Frederic K. Upton. Mr. McDonough's appointment and Mr. Upton's retirement were effective August 1, 1997. On November 17, 1997, supreme court Clerk Howard J. Zibel was appointed Executive Secretary of the committee, replacing Deputy Clerk David S. Peck. Ms. Donna Craig continued as Assistant Executive Secretary.

How the Committee Works: Handling the Complaint Stream

The committee considers any complaint that is submitted in writing and that is signed by the complainant. As will be seen in the Operations section that follows, ninety-seven complaints were considered in 1997, many of them extensively detailed. In the case of a telephone inquiry by a potential complainant, the assistant executive secretary sends the caller a complaint information letter that spells out how the committee and its complaint system work for the benefit of complainants (see appendix A).

The rules also permit the committee, on its own initiative and without a written complaint, to investigate conduct that it learns about and believes may be in violation of the Code.

All complaints are docketed, and each complainant is sent an acknowledgment of his or her complaint. If the substance of the complaint is not clear, the complainant is asked to fill out a summary "cover sheet." This summary enables committee members to keep in mind, as they read, who is filing the complaint, what the complaint is all about, and what kind of supporting evidence they should be looking for. The committee feels that this summarizing and focusing of the accusation can

also be helpful to the complainant. A copy of the cover sheet is included as appendix B.

Copies of all complaints are distributed to all members of the committee, who review them in preparation for the next meeting. If the complaint alleges conduct that would constitute a crime, the Chair of the committee must refer the matter to the attorney general, and the committee suspends its consideration of the matter until any criminal proceedings are concluded.

Disposing of the Complaints: Committee Meetings and Discussions

When the committee meets, it reviews each complaint on the agenda—those that are new and those that have been carried forward—and decides whether to investigate or dismiss the complaint. If it is dismissed at this stage, the complainant is notified and given the reasons. Many complaints are dismissed because they are clearly unfounded, or prove to be after preliminary inquiry. Others are dismissed because they complain about behavior that does not violate the Code of Judicial Conduct.

Occasionally, a complaint relates to conduct that dates back more than one year, which is beyond the committee's jurisdiction. Such a complaint may be dismissed because it is "stale." If the last episode of an alleged pattern of recurring judicial behavior occurs within this one-year period, however, the committee may consider all prior behavior as an alleged part of a pattern.

Committee Often Mistaken for Appeals Court

The most common reason for dismissing a complaint is that it reflects the complainant's dissatisfaction with a judge's decision or ruling. *The Judicial Conduct Committee has no jurisdiction in such a situation, and is unable to act on any complaint that is simply a substitute for an appeal. The committee's jurisdiction relates solely to the conduct of judges and other court personnel who are found to have violated the Code of Judicial Conduct.*

Unfortunately, the committee spends much of its time dealing with such misdirected complaints: of the sixty-one complaints that were dismissed by the committee in 1997, for example, twenty-six, or forty-three percent, were based on the fact that they were substitutes for appeals from judges' rulings.

Investigating a Complaint's Validity

If the committee determines that a complaint against a judge appears to have merit, the committee requires the judge to respond in writing to the substance of the complaint within twenty days, and the complainant is notified.

When anyone else who is subject to the Code of Judicial Conduct is complained against—a clerk of court, deputy clerk, or register of probate, for example—and the complaint appears to have merit, the committee similarly asks for a response from that person within twenty days. In such a case, copies of the complaint and the response

are then provided to the chief justice or the administrative judge of the court system that is involved, who forward them, in turn, to the appropriate presiding justice.

Where a judge is involved, upon receipt of the judge's response, the committee again considers the complaint and may vote to conduct an investigation, which usually consists of inviting those with knowledge of the matter to appear before the committee. Occasionally, the committee may hire a private investigator to conduct the investigation.

After the investigation—and considering the response and perhaps interviewing the judge and/or the complainant—the committee may decide to dismiss the complaint. The judge's response, or a summary, would then be provided to the complainant, who would also be notified of the committee's decision.

Resolving Cases Informally

In some circumstances, such as when there has been a relatively minor infraction of the Code or conduct that warrants advice from the committee, the complaint may be resolved "informally." Such an informal resolution is private and may take the form of a written notice to the person who has violated the Code. In such a case, the recipient is advised that a record has been made of the infraction. He or she may then be further admonished that any Code violation, however minor, is serious; if three such violations occur in a five-year period, the full record becomes public.

Alternatively, in more serious instances, the committee might require that remedial action be taken by the judge or other offending person, or that conditions be imposed on his or her work schedule. In such a situation, the committee expresses disapproval of the conduct and requires agreement by the judge or other person to the terms of the informal action.

By agreeing to such an informal resolution, the judge or other offender waives the right to a hearing, and the complainant is notified of the informal disposition.

Serious Misconduct Cases Become Public

When more serious misconduct is found, the committee may commence formal proceedings, and at that point everything becomes public: the complaint itself, the judge's response, the statement of formal charges, all pleadings filed thereafter, the hearing, and the committee's final disposition.

If, after the hearing, the committee finds that such grave misconduct has occurred as to warrant formal disciplinary action by the supreme court, the committee files a report of its findings with the court, including its recommendations, if any, as to the sanctions that might be imposed. The court then holds a hearing that is open to the public, and at the conclusion of the hearing it produces a written opinion or order that directs such disciplinary action as it thinks just—or, alternatively, that exonerates the judge.

Confidential Aspects of the Committee's Work

Although New Hampshire's system of justice is an open system—typically, court proceedings and records are publicly accessible, on the assumption that the system will function most fairly if it is subject to public scrutiny—there are times when a degree of confidentiality is necessary to preserve the system's integrity.

Such is the case with the Supreme Court's Judicial Conduct Committee. While some of the committee's work is open to the public, and recent rules changes have enlarged that portion considerably, it is still necessary to keep a significant part of the proceedings confidential. There are several reasons for this policy. One is that it encourages the filing of serious complaints that can be considered by the committee outside the glare of publicity, while at the same time it discourages the filing of frivolous complaints that seek little more than public attention.

The policy also makes it easier for witnesses to come forward when that is appropriate. Further, it allows for the informal resolution of complaints that are not major violations of the Code but call for some action by the committee and some acknowledgment by the judge or other court official that the Code should be adhered to closely.

These rules of confidentiality also protect complainants. As long as the complaints are filed with the committee and the complainants abide by the committee's rules, judges and others who are complained against are unable to sue complainants for libel.

Committee rules prohibit any member of the committee or its staff from disclosing details of the committee's work unless such disclosure is specifically authorized. Again, a judicial conduct proceeding becomes public if the committee develops a statement of formal charges. Also, as has been noted, if a judge has received more than three "informal" dispositions of valid complaints in the preceding five years, the complaints, responses, and dispositions shall also be available to the public.

Otherwise:

- A complainant must keep confidential the fact that he or she has filed a complaint until the complaint has been dismissed, or formal charges have been filed, or the complainant has been notified that the committee has disposed of the complaint by taking remedial action.
- *This requirement does not prevent any complainant from talking publicly and critically about the behavior of a judge, however. It simply rules out disclosure of the fact that the committee has received a complaint.*
- Immunity from libel suits applies only to statements made in good faith in a complaint to the committee or in judicial conduct proceedings.

OPERATIONS FOR 1997

During calendar year 1997, the committee met five times and considered seventy-nine new complaints, in addition to seventeen that were carried forward from prior years and one that was initiated by the committee itself. Sixty-seven complaints against seventy-five individuals were disposed of (see table on next page).

As in previous years, the primary reason for disposing of a complaint—in sixty-four percent of the cases—was that it was beyond the committee's jurisdiction: either it reflected dissatisfaction with the trial judge's findings or rulings, or it alleged behavior that was not in violation of the Code of Judicial Conduct (see Table 3).

Specifically:

- *Twenty-six* of the sixty-seven complaints disposed of, or 39 percent, were dismissed because they had to do with trial judges' decisions, and did not involve misconduct.
- *Seventeen* complaints, or another 25 percent, were dismissed because they did not allege conduct that would be in violation of the Code.
- *Ten* complaints were felt by the committee to be unfounded, and were dismissed on that basis.
- *Five* complaints were dismissed because there were insufficient grounds to proceed further.
- *Two* complaints referred to conduct that occurred more than a year earlier, and thus were "stale."
- *One* was dismissed because the judge had retired, and no further action was warranted.
- *Five* cases of Code violations were found, and resulted in informal resolutions with the consent of the judges involved.
- *One* case resulted in a letter of advice to the judge to be more sensitive in dealing with difficult litigants.

As of December 31, 1997, thirty cases were pending, including four that were awaiting resolution of a related hearing or trial, and two that had been referred to the attorney general. The committee is required by rule, which it can waive, to suspend consideration of any complaint that has to do with any current hearing or trial. Also, by statute, the committee chair must refer to the attorney general any complaint that alleges criminal activity, and the committee must suspend its consideration of the complaint during that referral.

Breakdown of Complaints by Court System

Following is a breakdown of complaints disposed of in 1997, according to the court system involved and the personnel against whom the complaints were filed:

Disposition of Complaints—1997

Personnel	Supreme	Superior	District	Probate	Totals
Judges	2	17	28	5	52
Masters		13			13
Clerks		2	3		5
Registers					0
General	1	1	3		5
TOTAL	3	33	34	5	75

Ten-year Trends

The tables that follow illustrate trends over the last decade—by source, position complained against, and disposition; and by numbers of complaints filed, disposed of, and pending at the end of each year. (Discrepencies in totals are due to multiple or consolidated complaints and/or dispositions.)

Table 1 shows the sources of the complaints received by the committee from 1988 to 1997. By far the largest number of complaints—about ninety-two percent—came from private citizens. Attorneys initiated a little over three percent of the complaints, and judges about two percent. The committee itself initiated another two percent

TABLE 1: Complaint Sources

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	Total
CITIZENS											
	48	57	55	36	67	51	69	59	70	75	587
ATTORNEY											
	2	1	3	2	1	3	3	2	2	1	20
JUDGES											
		3		2	2		1	1	3	1	13
COMMITTEE INITIATED											
		1	1	2	2	2		2	2	3	13
OTHER											
		1	1	1	1		2		1		7

Table 2 breaks down the complaints by judicial or court position during the 1988–1997 decade. The largest number of complaints (fifty-one percent) related to the district court system, which handles the greatest number of cases. Another forty-three percent related to the superior courts, with the probate courts accounting for another four percent, and the supreme court and the court system as a whole for the remaining two percent.

TABLE 2: Complaints by Judicial Position

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	Total
SUPREME COURT											**11**
Judges								3	3	2	**8**
Clerks											
General		1				1				1	**3**
SUPERIOR COURT											**297**
Judges	10	16	11	16	15	21	35	17	15	17	**173**
Masters	8	4	9	3	8	9	8	15	9	13	**86**
Clerks	2				2	4	4	2	4	2	**20**
General	2	4	6	3		1	1			1	**18**
DISTRICT COURT											**332**
Judges	24	26	32	20	31	32	32	34	25	28	**284**
Clerks	4	5	1		5	2	3	4	6	3	**33**
General	2		4	3	1			1	1	3	**15**
PROBATE COURT											**24**
Judges	2	3	2	2	1	2	2	2	1	5	**22**
Registers			1								**1**
General					1						**1**
COURT SYSTEM											**5**
			1		1	2			1		**5**

Between 1988 and 1997, the committee disposed of 631 complaints. Table 3 breaks down the disposition of complaints by type.

By far the most common reason for disposing of a complaint has been that the committee lacked jurisdiction—either the complaint had to do with a judge's ruling, or it did not allege behavior that was in violation of the Code of Judicial Conduct. Almost two-thirds of the total, or 408 cases, were dismissed on these grounds, and of that total, nearly three-fourths (291, or seventy-one percent) were dismissed because they were objecting to judges' rulings.

During these ten years, thirty-one complaints were found to be valid, and twenty-seven resulted in informal resolutions, including letters of reprimand, admonishment, or advice. Four cases resulted in referrals by the committee to the supreme court. Of these, one was dismissed by the court, one was remanded to the committee for a reprimand, and two resulted in suspension of the judges.

TABLE 3: Disposition of Complaints

DISPOSTIONS	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	Total
DISMISSALS											**600**
Lack of jurisdiction											**408**
Judges' rulings	*15*	*30*	*33*	*25*	*31*	*30*	*36*	*36*	*29*	*26*	*291*
No violation	*14*	*6*	*17*	*5*	*9*	*8*	*15*	*10*	*16*	*17*	*117*
Unfounded without merit	4	4	4	12	15	11	9	6	5	10	**80**
No violation found	6	3	1	1		1	1	2	1		**16**
Insufficient information	5	1				1			5		**12**
Insufficient cause to proceed	3	7	7	4	3	14	8	7	7	5	**65**
Beyond 1-year time limit/moot/ no standing	1		1	4	1	1		2	5	3	**18**
Complaint withdrawn	1										**1**
SUSTAINMENTS											**31**
Reprimands/ admonishments/ cautionary letters	1	5	2	2	3	3	4		1	6	**27**
Recommendation to supreme court			2				1	1			**4**

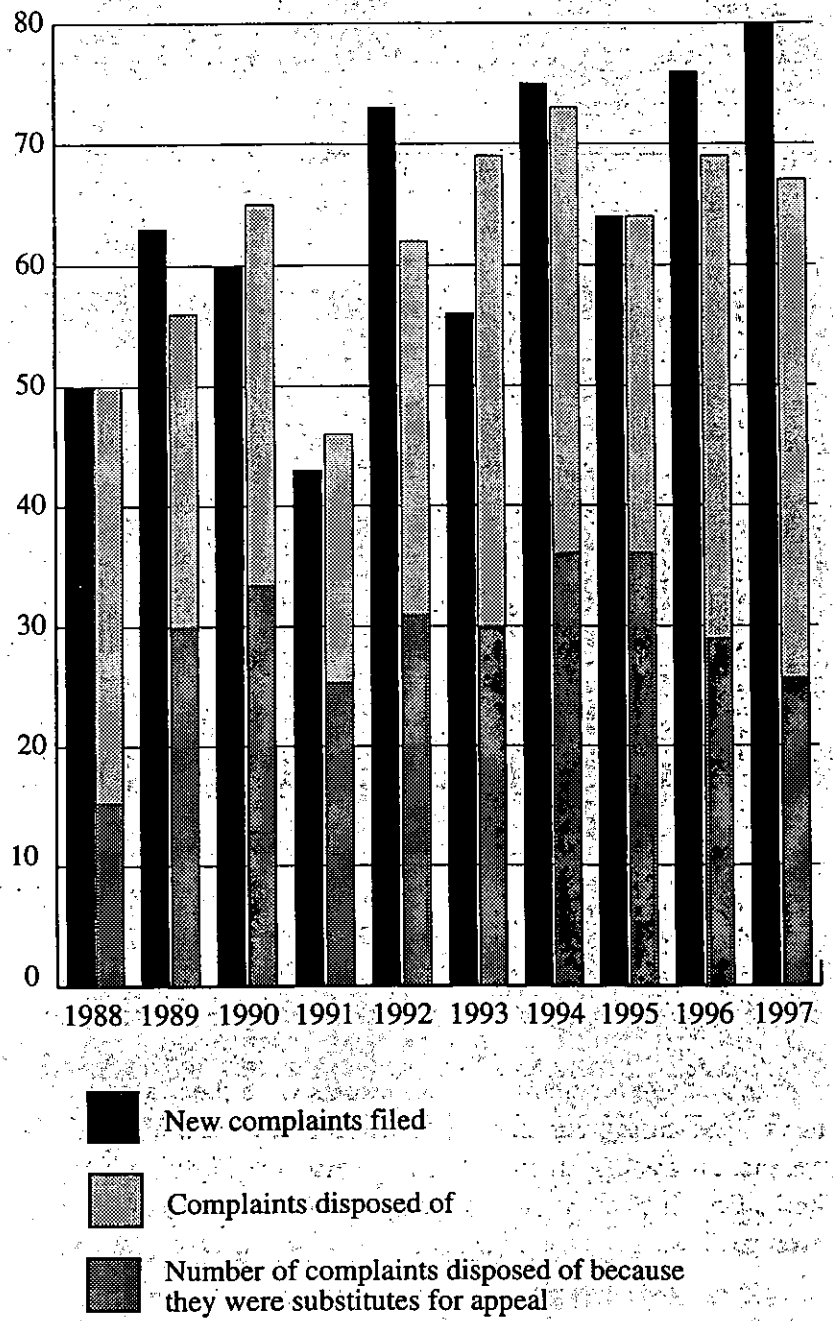
Table 4 shows the number of complaints pending on January 1 of each year from 1988 to 1997, and also, in each year, the number of complaints filed and the number disposed of (the latter reflects a consolidation of complaints).

During these ten years, 640 complaints were filed, with a trend toward increasing numbers of complaints toward the end of the decade: the average number of complaints was fifty-eight per year in the first five years, and during the last five years this rose to an average of over seventy per year, or an increase of over twenty percent.

TABLE 4: 10-Year Summary

COMPLAINTS	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	Total
Complaints pending on Jan. 1	12	12	19	14	11	21	8	10	10	17	**132**
No. of new complaints filed	50	63	60	43	73	56	75	64	76	80	**640**
No. of complaints disposed of	50	56	65	46	62	69	73	64	69	67	**621**

Complaint Flow—1988–1997



APPENDICES

Appendix A:

Complaint Information Letter

Appendix B:

Complaint Cover Sheet

Honorable William R. Johnson, Chair
David A. Hodges, Sr., Vice-Chair
Robert L. Chiesa, Esquire
Honorable Raymond A. Cloutier
Anne Coughlin
Honorable Douglas S. Hatfield, Jr.
Donna K. Lencki
Joseph M. McDonough, III, Esquire
Honorable Walter L. Murphy
John R. Newsom
Donna P. Sytek

THE STATE OF NEW HAMPSHIRE
SUPREME COURT
COMMITTEE ON JUDICIAL CONDUCT

FRANK ROWE KENISON
SUPREME COURT BUILDING
CONCORD, N.H. 03301-1476
P.O. Box 1476

Howard J. Zibel, Esquire
Executive Secretary
Donna R. Craig
Assistant Executive Secretary
(603) 271-2646

TDD Access: Relay NH 1-800-735-2964
(nonconfidential calls only)

Dear _____,

In response to your telephone call, I am enclosing a copy of Supreme Court Rule 38 (the Code of Judicial Conduct), Supreme Court Rule 39 (the Committee on Judicial Conduct), and Supreme Court Rule 40 (Procedural Rules of the Committee on Judicial Conduct).

As you may know, the Judicial Conduct Committee has eleven members, consisting of judges, lawyers, and public representatives, and meets six or more times a year.

All of the members read all of the complaints that are filed with the Committee. Since each meeting agenda can contain as many as fifteen or more complaints, however, and since each complaint can be lengthy and can include many pages of attachments, the Committee asks each complainant to fill out a summary "Cover Sheet." This summary enables Committee members to keep in mind, as they read, who is filing the complaint, what the complaint is all about, and what kind of supporting evidence they should be looking for. The Committee feels that this summarizing and focusing of the accusation can also be helpful to the complainant.

Attached is such a Cover Sheet, which we ask that you fill out and return to the Committee in order that it may be considered by the Committee along with your complaint. Again, this summary information will not be a substitute for your complaint, which will be read and considered in its entirety by each Committee member. The Cover Sheet is simply designed to enable the members to read each complaint, no matter how complicated and detailed, while looking for the instances of judicial misconduct (and for the supporting evidence) that are being complained about.

The Committee also urges you to be aware of what it does and does not do. It does not review the judges' findings and rulings, for example, unless it can be shown that these have been the result of persistent bad-faith disregard of the law. Unfortunately, the Committee has found that a sizeable majority of the complaints it receives must be dismissed because they essentially involve dissatisfaction with a judge's decisions, findings and rulings, rather than misconduct, and so are a substitute for an appeal. A complaint that merely

alleges that a judge made a wrong decision or ignored the facts or misapplied the law is outside the Committee's jurisdiction. In such a case you may wish to consult a lawyer about filing an appeal. The Committee has no power to change the result in a particular case; only an appellate court can do that.

Three other important rules regarding acceptance of complaints should be mentioned:

1. The complainant must be a person who either witnessed the alleged judicial misconduct or was directly affected by it.

2. The conduct complained of must be judicial misconduct - that is, conduct that is contrary to the Code of Judicial Conduct. Some examples of judicial misconduct are improper demeanor, rudeness and mistreatment of litigants; offensive remarks; gender or other bias; favoritism; receiving private communications from parties or their lawyers; conflicts of interest; excessive delay in decision-making; neglect of administrative duties; and conduct off the bench bringing the judicial office into disrepute.

3. Complaints arising out of conduct that took place over one year prior to receipt of the complaint will ordinarily be dismissed for staleness. If, however, the last episode of an alleged pattern of recurring judicial conduct occurs within the one-year period, the Committee may consider all prior acts or omissions alleged to be a part of the pattern.

The Committee investigates complaints that come within its jurisdiction in a thorough and vigorous manner. In this connection, you should be aware that the Committee has access to trial transcripts and audiotapes.

The proceedings of the Committee are generally confidential, and you are forbidden to divulge to anyone the fact you have filed a complaint until the Committee has either filed a statement of formal charges against the judge or has finally disposed of the complaint. The Committee's rules contain the following Comment, which helps to explain the confidentiality rules:

COMMENT

One of the protections of the confidentiality provision is that a complainant is not liable for good faith statements contained in a complaint or made in the course of its proceedings.

Nothing in the rule of confidentiality prevents a complainant from disclosing publicly the conduct of a judge which he or she believes violates the code of conduct or is otherwise inappropriate. The immunity from civil liability does not apply to such disclosures. The rule does prohibit a complainant, however, from disclosing publicly the fact that a complaint against the judge about the conduct has been filed with the committee until a statement of formal charges is prepared and filed as described in section 7(a) of [Supreme Court Rule 40]

or until the complaint is finally disposed of by the committee. Once a complaint has been disposed of by the committee, a complainant may make a public disclosure concerning the filing of a complaint including the conduct complained of and the action of the committee. The duty of confidentiality upon the committee remains, however, unless one of the specified exceptions provided by the rules applies.

For a more detailed explanation of the confidentiality rules, please review Supreme Court Rule 40(3).

A complainant has no right to appear before the Committee in support of his or her complaint, but may be required to attend as a witness in the course of a Committee investigation or hearing.

As you fill out the attached Cover Sheet, and as you consider your complaint as a whole, please be sure the complaint conforms to these rules governing the Committee's work. This will help you and, at the same time, it will help the Committee.

Thank you for cooperating with the Committee's requests. If I may be of any assistance, please call.

Very truly yours,

_____

Assistant Executive Secretary

New Hampshire Supreme Court
Committee on Judicial Conduct

Complaint Cover Sheet

Docket No. JC-_____

(Please Print Responses)

Complainant's (Your) Name: _____

Name of Person or Persons You Are Complaining Against (Judge, Master, Clerk or other Official):

_____

Court in Which Alleged Misconduct Occurred: _____

Names of Parties in Underlying Action or Suit: _____

Date or Dates of Alleged Misconduct: _____

Did you witness the alleged misconduct? ☐ **Yes** ☐ **No**

If not, state briefly how you are affected by it?

_____

Having read the letter which accompanies this form, please describe briefly the nature of the judicial misconduct about which you are complaining and summarize the supporting evidence.

_____

_____

_____

_____

_____

_____

_____

_____

Date: _____

_____
Signature of Complainant

JUDICIAL PERFORMANCE EVALUATION IN SUPERIOR COURT

JUDICIAL PERFORMANCE EVALUATION IN SUPERIOR COURT
JOSEPH P. NADEAU, CHIEF JUSTICE
NEW HAMPSHIRE SUPERIOR COURT

I regret I cannot meet with you personally to discuss superior court judicial evaluations. I hope this statement addresses issues of concern to the committee.

First, I would like to emphasize that the purpose of judicial performance evaluations is to provide trial judges with insight into their conduct on the bench as perceived by lawyers, litigants, clerks, staff, bailiffs and myself.

The process begins by the judge filling out a self assessment form (**Attachment A**) which provides the opportunity to reflect on his or her work as a judge. The judge can also comment on how his or her job is affected by such things as scheduling, education and resources. The judges ends the completed form to me for review and use in our final interview..

Next, I ask each clerk to make a list of the attorneys and law firms who regularly practice in the court where the judge sits. I then send a form (**Attachment B**)to those firms and any other firms which I feel should be included.

An evaluation form is also sent to all court personnel who work in the courthouse where the judge presides. These forms provide clerks and bailiffs,(**Attachment C**) office staff, law clerks, and court reporters (**Attachment D**) a chance to rate the judge in many categories. The categories are those which are used by most jurisdictions which conduct such evaluations. The forms also provide space for additional comments and observations.

The forms are confidential and anonymous. Confidentiality and anonymity are important because they permit people to provide an honest view of the judge's performance. Employees, attorneys and litigants know they will suffer no disadvantage because of the information provided. They also know the information will be used only for evaluation and improvement not for personal attack. Since the forms are not public, there is no concern that one isolated event will gain disproportionate attention.

Not surprisingly, most comments for most judges are highly favorable. But, even if a judge receives only one unfavorable survey, I do not disregard it. Rather, unfavorable surveys are use as a learning tools. Even if observations may be uncommon, they deserve attention. I ask the judge to recognizes that these observations or perceptions come from someone who feels strongly about the conduct described.

We also discuss how judges can avoid even a single instance of bad temper or uncharacteristic conduct. We discuss how judges can respond to contentious litigants or troublesome attorneys in positive ways, and how judges can avoid times of impatience and work hard to make certain that even unhappy litigants perceive the judge as a fair and tolerant person.

Finally, the forms also reinforce positive conduct and inform judges when they are on the right track. Judges know when the conduct described, whether positive or negative, is typical and make genuine efforts to work on areas that need improvement.

Occasionally someone asks whether these evaluations can be made public so that anyone can see the surveys and comments. Of course they can. But I have two thoughts about that suggestion. The first is that it is unnecessary. Any individual or group can solicit information about judges by conducting their own inquiries or surveys. They can gather information and make whatever use of it they desire. Also, most judicial activity takes place in a public courtroom open to all and frequently covered by the media.

My second thought is that making the surveys public will change the process. Such a public airing of administrative evaluations risks the prospect that the focus will be directed away from performance review and toward personal vilification. There is a serious risk that a small unrepresentative group would use information selectively to create the unwarranted impression that there is a serious problem with judicial performance.

For these reasons if surveys were to be made public, it seems to me those who fill out the surveys should be required to identify themselves. How else can a judge defend against what he or she believes to be unfair or untrue comments? With the cover of anonymity, it would take very little effort to create the false impression that the performance of a particular judge is questionable.

It is very frustrating to me to hear someone repeat an anonymous and usually unfounded allegation involving a judge without identifying the court, the judge or the circumstances. Judges must make difficult decisions. They must control the courtroom and everyone who comes before them. Judges are human beings and no matter how hard every judge tries to exercise their responsibilities in the most judicious manner they will occasionally make mistakes.

Finally, I ask the legislature to reflect on the harm to government of providing an additional opportunity to make unwarranted attacks on its institutions by a small vocal minority. I believe the process we have in place allows us to deal with human frailties without creating the unfounded and unwarranted impression of disarray that a handful of disgruntled litigants might like to convince the public exists. I believe our 28 superior court judges and 11 marital masters earn and deserve public confidence for their daily handling of thousands of cases throughout the state.

2/1/99 **(Attachment A)**

PERSONAL EVALUATION FORM - JUSTICE

Personal Information:

Types of cases you have heard in each category in the last year. (Estimate percentages)

Civil, Equity _____
Criminal _____
Marital _____
Other _____

1. How often have you been able to review case files prior to hearings or trials?
Never_ Rarely_ Sometimes____ Most of the time____ Always

2. How often would you like to be able to review case files prior to hearings or trials?
Never___Rarely___Sometimes____ Most of the time____ Always

3. How often have you had to stay late, or arrive early, to accommodate emergency of special scheduling problems?
Never_ Rarely___Sometimes____ Most of the time____ Always

4. Do you generally involve attorneys, litigants, and court staff when making scheduling decisions about special situations, such as working late or through the lunch hour?
Never___Rarely___Sometimes____ Most of the time____ Always

5. Do you think you take a fair share of the difficult work on the docket?
Never____Rarely__Sometimes____ Most of the time____ Always

6. Do you feel pushed by the caseload to the point where "moving cases" takes precedence over quality of justice concerns?
Never___Rarely___Sometimes____ Most of the time____ Always

7. How often do you feel you are sufficiently familiar with the law and the facts that apply to the cases you are hearing?
Never___Rarely___Sometimes____ Most of the time____ Always

8. Do you think you give attorneys a fair opportunity to make their argument to the court?
Never___Rarely___Sometimes____ Most of the time____ Always

9. Do you think that litigants and attorneys leave the courtroom when you are presiding having understood what has happened and what is to happen next?
Never___Rarely___Sometimes____ Most of the time____ Always

10. How often have you found it necessary to intervene in cases being presented in the courtroom, in order to ensure justice is done, above and beyond exact procedural and legal requirements?
Never___Rarely___Sometimes____ Most of the time____ Always

11. How would you describe your style of courtroom control?
Easy going____ Somewhat controlling____ Very controlling

12. How would you describe your settlement style? (i.e. do you actively participate?)
Never___Rarely___Sometimes____ Most of the time__ Always

13. How would you rate the amount of continuing education you have received since being appointed to the Superior Court?
Less than sufficient_____ Sufficient_____ More than sufficient

14. How would you rate the amount of continuing education you have received during the past two years?
Less than sufficient____Sufficient____More than sufficient

15. Are there any areas in which you would like more education?

16. Are there any innovations which you would like to try?

19. Are you satisfied with your overall performance?
YES ____ YES, but room for improvement____ NO

OTHER COMMENTS:

(Attachment B)

2\1\99 **SUPERIOR COURT PERFORMANCE EVALUATION - ATTORNEY**

Please rank performance in the areas with which you are familiar. **1 (low)->10 (high)** **RANK**

1. Accessibility to staff	
2. Conscientiousness and diligence	
3. Patience and tolerance	
4. Effectiveness of communication	
5. Shows respect for staff	
6. Has earned your respect	
7. Allows me to perform my job	
8. Attentiveness to court business	
9. Promptness in rendering decisions	
10. Efficiency in use of court time	
11. Familiarity with and use of court forms	
12. Familiarity with office procedures	
13. Accessibility to counsel	
14. Handling of complex cases and issues	
15. Control in courtroom	
16. Decisiveness of decisions and rulings	
17. Attentiveness to witnesses and counsel	
18. Knowledge of law	
19. Knowledge of evidence	
20. Knowledge of procedure	
21. Understanding & compassion	
22. Fairness and equality of treatment	
23. Freedom from racial, religious or gender bias	
24. Level of professionalism	
COMPARE TO OTHER SUPERIOR CT JUDGES\MASTERS A-(top third), B-(middle), C-(lower third)	

Number of years in practice._____

Number of hearings before this judge or master._____

Number of appearances before other judges or masters.___

Civil____, #Criminal____, #Marital____.

(Please make any additional comments on the back of this page

ADDITIONAL COMMENTS:

It is not necessary to sign this form but you may do so if you wish.
Please return to:

New Hampshire Superior Court Center
Judicial Evaluation - Confidential
99 North State Street
Concord N.H. 03301

(Attachment C)

2\1\99 SUPERIOR COURT PERFORMANCE EVALUATION CLERK/BAILIFF

JUSTICE\MASTER_____

Please rank performance: 1 (low) -> 10 (high) RANK

Accessibility to counsel	
Conscientiousness and diligence	
Patience and tolerance	
Effectiveness of communication	
Handling of complex cases and issues	
Control in courtroom	
Decisiveness of decisions and rulings	
Attentiveness to witnesses and counsel	
Promptness in rendering decisions	
Efficiency in use of court time	
Knowledge of law	
Knowledge of evidence	
Knowledge of procedure	
Understanding & compassion	
Fairness and equality of treatment	
Freedom from racial, religious or gender bias	
Level of professionalism	
COMPARE TO OTHER SUPERIOR CT JUDGES\MASTERS A-(top third), B-(middle), C-(lower third)	

Number of years employee in judicial branch._____
Number of other judges\masters with whom you have worked_____

ADDITIONAL COMMENTS

It is not necessary to sign this form but you may do so if you wish.

(Attachment D)

2\1\99 SUPERIOR COURT PERFORMANCE EVALUATION - STAFF

Please rank performance in the areas with which you are familiar. **1 (low)->10 (high) RANK**

1. Accessibility to staff	
2. Conscientiousness and diligence	
3. Patience and tolerance	
4. Effectiveness of communication	
5. Shows respect for staff	
6. Has earned your respect	
7. Allows me to perform my job	
8. Attentiveness to court business	
9. Promptness in rendering decisions	
10. Efficiency in use of court time	
11. Familiarity with and use of court forms	
12. Familiarity with office procedures	
13. Accessibility to counsel	
14. Handling of complex cases and issues	
15. Control in courtroom	
16. Decisiveness of decisions and rulings	
17. Attentiveness to witnesses and counsel	
18. Knowledge of law	
19. Knowledge of evidence	
20. Knowledge of procedure	
21. Understanding & compassion	
22. Fairness and equality of treatment	
23. Freedom from racial, religious or gender bias	
24. Level of professionalism	
COMPARE TO OTHER SUPERIOR CT JUDGES\MASTERS A-(top third), B-(middle), C-(lower third)	

Number of years you have worked in judicial branch._____
Number of other judges or masters with whom you have worked._____

(Please make any additional comments on the back of this page.)

ADDITIONAL COMMENTS:

It is not necessary to sign this form but you may do so if you wish.
Please return to:

New Hampshire Superior Court Center
Judicial Evaluation - Confidential
99 North State Street
Concord N.H. 03301

FILE

Table 4.3
QUALIFICATIONS OF JUDGES OF STATE APPELLATE COURTS AND GENERAL TRIAL COURTS

State or other jurisdiction	U.S. citizenship (years)		Years of minimum residence: In state		Years of minimum residence: In district		Minimum age		Member of state bar (years)		Other	
	A	T	A	T	A	T	A	T	A	T	A	T
Alabama	5	5	(a)	(a)	...	1	25	25	...	...	...	...
Alaska	★	★	5 (a)	5 (a)	...	...	...	...	★ (b)	★ (b)	...	...
Arizona	...	...	10 (c)	5	(d, e)	1	30	30	10 (c)	5	(f, g)	(f, g)
Arkansas	★	★	2	2	...	...	30	28	(h, i)	(h, i)	(f)	(f)
California	...	...	...	...	...	...	...	...	10 (i)	10 (i)	...	...
Colorado	...	...	(e)	...	...	(e)	...	...	5	5	(g)	(g)
Connecticut	...	...	...	...	...	...	18	18	10	10	...	...
Delaware	...	...	(a)	(a)	...	...	...	...	(h)	(h)	...	...
Florida	...	...	(e)	(e)	★	★	...	...	10	5	(g)	(g)
Georgia	3	3	★	(a)	...	...	...	30	7	7	...	...
Hawaii	★	★	★ (a)	★ (a)	...	...	...	...	10	10	...	...
Idaho	★	★	2	1	...	(e)	30	30	10	10	...	...
Illinois	★	★	★	★	★	★	...	...	★	★	...	...
Indiana	★	★	...	...	★	★	...	...	10 (i)	★	...	...
Iowa	...	...	...	...	...	...	...	...	★	...	...	...
Kansas	...	...	...	...	...	★	30	30	★ (i)	★ (i)	...	...
Kentucky	★	★	2	2	2	2	...	...	8	8	...	...
Louisiana	...	...	2	2	2	2	...	...	5	5	...	...
Maine	...	...	...	...	...	...	...	...	(h)	(h)	(f)	(f)
Maryland	...	...	5 (a,e)	5 (a,e)	6 mos.	6 mos.	30	30	★	★	(f)	(f)
Massachusetts	...	...	...	...	...	...	...	...	...	...	...	...
Michigan	...	...	(e)	...	(e)	(e)	...	...	★	★	(g)	(g)
Minnesota	...	...	...	...	...	...	...	...	★ (h)	★ (h)	...	...
Mississippi	...	...	(a)	(a)	...	...	30	26	5	5	...	...
Missouri	15	10	(e)	(e)	★	1	30	30	★	★	...	...
Montana	★	★	2	2	...	...	...	...	5	5	...	...
Nebraska	★	★	3	...	★ (e)	★	30	30	5 (i)	5 (i)	...	...
Nevada	...	...	2 (e)	2 (e)	...	...	25	25	★	...	...	...
New Hampshire	...	...	...	...	...	...	...	...	...	...	(j)	(j)
New Jersey	...	...	...	(k)	...	(k)	...	...	10	10	...	...
New Mexico	...	...	3	3	...	★	35	35	10 (h,i)	6 (h,i)	...	...
New York	...	...	★	★	...	...	18	18	10	10	...	...
North Carolina	...	...	...	...	...	★	...	...	★	★	...	...
North Dakota	★	★	★	★	...	★	...	...	★ (h)	★ (h)	...	...
Ohio	...	...	...	★	...	★	...	...	6 (i)	6 (i)	(g)	(g)
Oklahoma	...	...	(e)	...	(e)	(e)	30	...	5 (i)	4 (i)	...	...
Oregon	★	★	3	3	(e)	1	...	...	★	★	...	...
Pennsylvania	★	★	1 (a)	1 (a)	...	★	...	...	★	★	...	...
Rhode Island	...	...	...	...	...	...	21	...	...	...	...	...
South Carolina	★	★	5 (a)	5 (a)	...	...	26	26	5	5	...	...
South Dakota	★	★	★	★	★ (e)	★ (e)	...	...	★	★	...	...
Tennessee	...	...	5 (a)	5	...	1	35 (l)	30	★ (h)	★ (h)	...	...
Texas	★	★	(a)	(a)	(d)	2	35	...	★ (i)	★ (i)	...	...
Utah	★	★	5 (m)	3	...	★	30 (n)	25	★	★	...	...
Vermont	...	...	5	5	...	...	...	...	★ (i)	★ (i)	...	...
Virginia	...	...	★	★	...	★	...	...	5	5	...	...
Washington	...	...	1	1	1	1	...	...	★ (o)	★	...	...
West Virginia	...	...	5	★	...	...	30	30	10 (i)	★ (i)	...	...
Wisconsin	...	...	10 days	10 days	10 days	10 days	...	...	5	5	...	...
Wyoming	★	★	3	2	...	...	30	28	9 (h,i)	(h)	...	...
Dist. of Columbia	★	★	...	...	90 days	90 days	...	...	5 (i)	5 (i)	...	(p)
No. Mariana Islands	...	★	...	...	...	...	...	30	...	(h)	...	...
Puerto Rico	★	★	5	...	...	...	...	25	10	★ (i)	...	...

Sources: National Center for State Courts, *State Court Organization 1993*; state constitutions and statutes.

Note: The information in this table is based on a literal reading of the state constitutions and statutes. Requirements that an individual be a member of the state bar or a qualified elector may imply additional requirements.

Key:

A — Judges of courts of last resort and intermediate appellate courts.

T — Judges of general trial courts.

★ — Provision; length of time not specified.

. . . — No specific provision.

(a) Citizen of the state. In Alabama, Mississippi and Tennessee (court of criminal appeals), five years; in Georgia, three years.

(b) Must have been engaged in active practice of law for specific number of years. Alaska: appellate eight years; trial five years.

(c) For court of appeals, five years.

(d) For court of appeals judges only.

(e) Qualified elector. For Arizona court of appeals, must be elector of county of residence. For Michigan Supreme Court, elector in state; court of appeals, elector of appellate circuit. For Missouri Supreme and appellate courts, electors for nine years; for circuit courts, electors for three years. For Oklahoma Supreme Court and Court of Criminal Appeals, elector for one year; court of appeals and district courts, elector for six months. For Oregon court of appeals, qualified elector in county.

(f) Specific personal characteristics. Arizona, Arkansas good moral character. Maine sobriety of manners. Maryland integrity, wisdom and sound legal knowledge.

(g) Nominee must be under certain age to be eligible. Arizona under 70. Colorado under 72, except when name is submitted for vacancy. Florida under 70, except upon temporary assignment or to complete a term. Michigan, Ohio under 70.

(h) Learned in law.

(i) Years as a practicing lawyer and/or service on bench of court of record in state may satisfy requirement. Arkansas appellate: eight years; trial: six years. Indiana 10 years admitted to practice or must have served as a circuit, superior or criminal court judge in the state for at least five years. Kansas appellate: 10 years; trial: five years. Texas appellate: 10 years; trial: four years. Vermont five of 10 years preceding appointment. West Virginia appellate: 10 years; trial: five years. Puerto Rico appellate: 10 years; trial: five years.

(j) Except that record of birth is required.

(k) There are 260 restricted superior court judgeships that require residence within the county at time of appointment and reappointment. There are 144 unrestricted judgeships for which assignment of county is made by the Chief Justice.

(l) Thirty years for judges of court of appeals and court of criminal appeals.

(m) Supreme Court is five; court of appeals is three.

(n) Supreme Court is 30 years; court of appeals is 25 years.

(o) For court of appeals, admitted to practice for five years.

(p) Superior court judges must also have 5 years of legal government practice or service as law school faculty.

DRAFT AMENDMENT

490:35 Marital Masters.

I. Marital masters selected to serve in the Marital Master Program pursuant to New Hampshire Superior Court rule 12 shall possess the following qualifications:

(a) Professional experience in family law matters;

(b) Legal and personal qualities including, but not limited to:

(1) Knowledge of family matters, including related matters such as tax and pension law;

(2) Personal maturity so as to understand and make decisions on matters before the court; and

(3) Personal qualities of patience and understanding of the difficult personal matters which are the subject of divorce and a willingness to deal with complex family matters in a non-adversarial manner.

II. The governor shall nominate and the council shall confirm all new marital masters. The governor and council shall approve those seeking a renewed contract term and the terms and conditions of the marital master contract.

HOUSE COMMITTEE RESEARCH OFFICE
New Hampshire House of Representatives
4th Floor, Legislative Office Building
Concord, New Hampshire 03301
TDD Access: Relay NH
1-800-735-2964

603-271-3600

FILE

To: Henry J. Mock, Committee Chair
Judiciary and Family Law Committee

From: Kevin B. Moquin, Committee Researcher
House Committee Research

Date: August 31, 1999

Re: Legislative authority in relation to the nomination and appointment of judicial officers.

You asked me to verify what power the legislature has in relation to the evaluation, nomination and appointment of judicial officers. In reviewing this issue, I have looked at the state constitution, the state statutes and state case law.

The New Hampshire Constitution, pt. I, art. 37 provides that, "In the government of this state, the three essential powers thereof, to wit, the legislative, executive, and judicial, ought to be kept as separate from, and independent of, each other as the nature of a free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of union and amity." (Attachment 1). Pt. II, art. 46 further provides in part that "all judicial officers . . . shall be nominated and appointed by the governor and council . . ." (Attachment 2). The New Hampshire Supreme Court has stated, "The ***method of selection*** of constitutional officers is provided by the constitution and ***may not be altered by the legislature. All other officers occupy positions established by the legislature and the method of their election or appointment is determined by the legislature.***" (Emphasis added.) ***Opinion of the Justices***, 115 N.H. 159, 161 (1975). (Attachment 3).

Furthermore, the court has stated that "the Governor has broad discretion to select ***the means*** he will use in executing a constitutional duty." ***Opinion of the Justices***, 117 N.H. 398, 402 (1977), ***citing Opinion of the Justices,*** 334 N.E.2d. 604, 609 (Mass. 1975). (Attachment 4). This opinion was issued in response to a bill that proposed to create a judicial selection commission to recommend at least three candidates for all judicial appointments. In spite of the fact that the commission's

powers were merely advisory and that the Governor still retained the power to nominate or appoint some other person not recommended by the commission, the supreme court found the proposed legislation to be "an unconstitutional encroachment upon powers of the Governor and the Council . . . by 'altering' or 'changing' the selection process for judges." ***Opinion of the Justices***, 117 N.H 401-3. Thus, in the past, the supreme court has interpreted the power of the legislature to be relatively narrow, while allowing the governor broad discretion in selecting the means of judicial appointment.

All of this is relevant to two questions that have been raised by the subcommittee: 1) Does the legislature have the power to require that the governor and council use certain criteria or qualifications in nominating and appointing judicial officers; and 2) Does the legislature have the power to limit the terms of the office of chief justice of the supreme and superior courts so long as such legislation does not limit a justices ability to serve on the court during good behavior?

In response to the first question, it would seem doubtful that the court would find legislative authority to require the use of such criteria or qualifications. As previously noted, the governor and council's authority in this area is broad and the legislature retains no power to alter the method of selection of judicial officers. While N.H. RSA 4:44, which requires the governor and council to hold a hearing prior to any judicial appointment, may raise some questions about the extent of legislative power over the appointment process, this law was only adopted in 1997 and has never been tested in court (Attachment 5).

In response to the second question, the answer appears less clear. We would need to know whether the chief justice of either of these courts is a constitutional or statutory officer. The New Hampshire Constitution mentions the chief justice of the supreme court in two articles. N.H. Const., pt. II, arts. 40, 73-a. (Attachments 6 & 7). However, the constitution does not specifically provide a procedure for the nomination and appointment of a chief justice. Furthermore, the constitution makes no mention of a chief justice for the superior court. RSA 490:1 (Attachment 8) and RSA 491:1 (Attachment 9) provide for a chief justice of the supreme and the superior court respectively. Thus, it may be easier to argue that the chief justice of the superior court is a legislative officer and that the legislature has some control over the length of his or her tenure. Though it is not clear, one can infer from the constitution that the chief justice of the supreme court is a constitutional officer and, therefore, that the legislature is subject to constitutional limitations with regard to the power to limit the chief justice's term.

We would further need to know whether the chief justices of the supreme and superior courts are judicial officers for purposes of their nomination and appointment. N.H. Constitution, pt. II, art. 73 states that "all judicial officers . . . shall hold their offices during good behavior." (Attachment 10) The two chief justices are, without doubt, judicial officers insofar as they have been appointed as

justices to their respective courts, and, as such, the legislature cannot interfere with their power to continue in office during good behavior. However, whether specifically the ***office of chief justice*** of either court is a judicial office subject to pt. II, art. 73 is a question which has not been addressed.

In summary, the legislature's authority to regulate the judicial appointment and nomination process appears to be extremely limited. Moreover, the office of chief justice of the supreme court appears to be a constitutional office rather than a legislative office. Thus, the legislature probably has little power to regulate the term of this office. Lastly, the office of chief justice of the superior court appears to be a legislatively created office. However, it is an open question as to whether the office is technically a judicial office, and thus subject to the constitutional requirement that any appointee to the office shall hold office during good behavior. If I may be of further assistance, please do not hesitate to contact me.

Attachment 1

FILE

Art. 37. Separation of Powers.

In the government of this state, the three essential powers thereof, to wit, the legislative, executive, and judicial, ought to be kept as separate from, and independent of, each other, as the nature of a free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of union and amity.

Annotations

Analysis

1. Generally.
2. Purpose.
3. Overlapping of powers.
4. Encroachment.
5. Delegation of powers.
6. Legislative powers.
7. Judicial powers.
8. Executive powers.
9. Administrative agencies.
10. Immunities.
11. Compatible offices.

1. Generally.

Separation of the three co-equal branches of government is essential to protect against a seizure of control by one branch that would threaten the ability of New Hampshire's citizens to remain a free and sovereign people; the doctrine is thus violated when one branch usurps an essential power of another. Petition of Mone, 143 N.H. - , 719 A.2d 626 (1998).

If the people are to remain free and retain their sovereignty, then government must be limited; the separation of powers is essential to this end. State v. LaFrance, 124 N.H. 171, 471 A.2d 340 (1983).

Separation of powers between the legislative, executive and judicial branches of government is a vital part of the state constitution. In re Gamble, 118 N.H. 771, 394 A.2d 308 (1978).

This article does not require the erection of impenetrable barriers between the branches of government. Opinion of the Justices, 113 N.H. 287, 306 A.2d 55 (1973).

The separation of powers of the legislative, executive and judicial branches of the government is an important part of its constitutional fabric. Opinion of the Justices, 102 N.H. 195, 152 A.2d 878 (1959).

The separation of powers effected by the constitution in the creation of the three departments of government is a vital limitation upon the powers and not merely a convenient and variable assignment of duties. Opinion of the Justices, 86 N.H. 597, 166 A. 640 (1933).

2. Purpose.

Separation of powers prevents usurpation of controlling authority by one branch of government, since each branch acts as a check on the other, protecting the sovereignty and freedom of those governed by preventing the tyranny of any one branch of the government being supreme. State v. LaFrance, 124 N.H. 171, 471 A.2d 340 (1983).

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

This article was adopted to protect the executive and judicial branches of the state government from legislative encroachment. State v. LaFrance, 124 N.H. 171, 471 A.2d 340 (1983).

The concept of the separation of powers, contained in virtually every American constitution, was designed to protect the people from the tyranny of government which could result from the accumulation of unbridled power in any one branch of the government. Opinion of the Justices, 121 N.H. 552, 431 A.2d 783 (1981).

Principal purpose of separation of powers between the legislative, executive and judicial branches of the government as set forth in this article is to protect each of the three branches from encroachment by the other, and as applied to the executive, to protect it from legislative encroachment. Opinion of the Justices, 118 N.H. 582, 392 A.2d 125 (1978).

As applied to the judiciary, the primary purpose of this article is to protect the judiciary from legislative encroachments rather than to circumscribe its functions within strict limits. Opinion of the Justices, 102 N.H. 195, 152 A.2d 878 (1959).

3. Overlapping of powers.

Concept of complete separation of powers could interfere with efficient operation of government; therefore, some overlapping of power of each branch of government must exist. Opinion of the Justices, 121 N.H. 552, 431 A.2d 783 (1981).

This article recognizes that the separation of powers cannot be absolute in a workable government. Opinion of the Justices, 110 N.H. 359, 266 A.2d 823 (1970).

The three branches of government cannot be completely separate; there must be some overlapping. Opinion of the Justices, 110 N.H. 359, 266 A.2d 823 (1970); Monier v. Gallen, 120 N.H. 333, 414 A.2d 1297 (1980).

This article does not require the erection of impenetrable barriers between the branches since there are governmental powers of doubtful classification which may be held properly to belong to either of more than one department of the government. Opinion of the Justices, 110 N.H. 359, 266 A.2d 823 (1970).

The three branches of government cannot be completely separate, without overlapping. Opinion of the Justices, 102 N.H. 195, 152 A.2d 878 (1959).

This article contemplates some overlapping and duality as a matter of practical and essential expediency. Cloutier v. State Milk Control Board, 92 N.H. 199, 28 A.2d 554 (1942); Pomponio v. State, 106 N.H. 273, 209 A.2d 733 (1965).

The constitution contemplates no absolute fixation and rigidity of powers between the three departments of the government, and areas of concurrent authority are properly constituted when the fixing of exact boundary lines would give rise to undue interference with the reasonable exercise of valid governmental activities. Ferretti v. Jackson, 88 N.H. 296, 188 A. 474 (1936).

4. Encroachment.

Where a proposed legislative bill directly conflicts with New Hampshire Rules of Evidence 404(b), the separation of powers doctrine is violated; the legislature has no more right to break down the rules prescribed by the court to assure fundamental due process in criminal and civil trials than the court has to prescribe the mode and manner in which the legislature shall perform its legislative duties. Opinion of Justices (Prior Sexual Assault Evid.), 141 N.H. 562, 688 A.2d 1006 (1997).

Once the legislature has made appropriation for the executive branch of government, the requirement of the legislative fiscal committee approval of contracts made pursuant thereto by the executive branch is an unconstitutional intrusion into the executive branch. Opinion of Justices, 129 N.H. 714, 532 A.2d 195 (1987).

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

The legislature could not, by operating budget footnotes applicable to specific appropriations, require the approval of the legislative fiscal committee for contracts entered into by the executive obligating expenditure of funds from the footnoted appropriations, since the footnotes were an unconstitutional encroachment by the legislative branch upon the executive branch. Opinion of Justices, 129 N.H. 714, 532 A.2d 195 (1987).

Enactment of bill requiring supreme court to suspend salary and benefits of any judge who is suspended by supreme court for any misconduct for period of suspension would violate separation of powers provisions of part I, article 37 of the New Hampshire Constitution. Opinion of Justices (Judicial Salary Suspension), 140 N.H. 297, 666 A.2d 523 (1995).

Mandatory feature of bill, which requires that supreme court suspend the salary and benefits of every judge suspended for misconduct, intrudes unduly upon court's superintendence power under part II, article 73-a, which includes the authority to exercise discretion in determining whether to suspend a judge without pay; as such, it impermissibly encroaches upon an exclusive judicial function in violation of the separation of powers mandate of part I, article 37. Opinion of Justices (Judicial Salary Suspension), 140 N.H. 297, 666 A.2d 523 (1995).

The separation of powers doctrine set forth in this article compels limits to encroachments by one branch of government into the inherent and internal affairs of another branch. State v. LaFrance, 124 N.H. 171, 471 A.2d 340 (1983).

Improper imposition upon one branch of government of powers of another branch or an encroachment upon powers of one branch by another branch violates separation of powers requirement of this article. Opinion of the Justices, 121 N.H. 552, 431 A.2d 783 (1981).

Separation of powers requirement of this article is violated by an encroachment by one branch of government upon a constitutional function of another. Opinion of the Justices, 116 N.H. 406, 360 A.2d 116 (1976).

This article is violated by an improper imposition upon one branch of constitutional duties belonging to another or an encroachment by one branch upon a constitutional function of another. Opinion of the Justices, 110 N.H. 359, 266 A.2d 823 (1970); State v. LaFrance, 124 N.H. 171, 471 A.2d 340 (1983); State v. Shackford, 127 N.H. 695, 506 A.2d 315 (1986).

The legislature acts ultra vires when it attempts to impose upon the judicial department duties and powers which are inconsistent with or antagonistic to the exercise of judicial power. Attorney General ex rel. Boulanger v. Morin, 93 N.H. 40, 35 A.2d 513 (1943).

5. Delegation of powers.

In order to pass constitutional muster, delegation of authority to State Board of Education to approve amendment procedure in cooperative school district's articles of agreement must contain a declared policy and a prescribed standard laid down by legislature; if the policy and standard are adequately and sufficiently prescribed, discretionary authority may be delegated. In re Kearsarge Regional Sch. Dist., 138 N.H. 211, 636 A.2d 1033 (1994).

Trial court did not err in finding that statute designed to guide State Board of Education in approving amendment procedure in cooperative school district's articles of agreement set forth a declared policy and a prescribed standard, and that statute did not amount to unlawful delegation of legislative authority. In re Kearsarge Regional Sch. Dist., 138 N.H. 211, 636 A.2d 1033 (1994).

A statute granting the director of motor vehicles authority to suspend or revoke drivers' licenses for any cause which he may deem sufficient is an unconstitutional delegation of legislative authority. Guillou v. Division of Motor Vehicles, 127 N.H. 579, 503 A.2d 838 (1986).

Sweeping and general delegation of legislative power with uncontrolled discretion to executive branch agency even in a narrow field exceeds constitutional limits. Smith Ins., Inc. v. Grievance Comm., 120 N.H. 856, 424 A.2d 816 (1980).

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

Statute, establishing grievance committee empowered to review termination by insurance companies of agency agreements between the companies and their agents, was devoid of either a declared policy or a prescribed standard laid down by the legislature and as such represented an unconstitutional delegation of legislative power. Smith Ins., Inc. v. Grievance Comm., 120 N.H. 856, 424 A.2d 816 (1980).

6. Legislative powers.

RSA 77-A:6 did not violate part I, article 37 of the State Constitution by giving the commissioner unfettered discretion to implement the unitary method of taxation because the statute empowered the commissioner to compel a corporation, either owning more than fifty percent of the stock of another corporation or having another corporation own more than fifty percent of its stock, to provide information concerning the possible unitary nature of its business; there exists both a declared policy to effect an equitable apportionment of the business organization's gross business profits, RSA 77-A:3, II(c), and a prescribed standard - fifty percent "owned or owning" criteria - in the delegation of legislative authority at issue. Baxter Int'l, Inc. v. State, 140 N.H. 214, 665 A.2d 350 (1995).

The trial court's grant of a "builder's remedy" to plaintiff who successfully challenged zoning ordinance on the basis that it wrongfully excluded development of low and moderate income housing projects did not violate this article; the municipality retained control of zoning to the extent it exercised its power for the general welfare of the community. Britton v. Town of Chester, 134 N.H. 434, 595 A.2d 492 (1991).

The separation of powers doctrine requires that the supreme court defer to the state senate in its decisions concerning whom to seat in cases of election contests or disputes. State v. LaFrance, 124 N.H. 171, 471 A.2d 340 (1983).

House of representatives as a separate and coequal branch of government is constitutionally authorized to promulgate its own rules. Union Leader Corp. v. Chandler, 119 N.H. 442, 402 A.2d 914 (1979).

This article does not preclude legislature from requiring governor to make particular designation of an agency to include Office of Health Planning and Development pursuant to Federal Public Health Service Act. Opinion of the Justices, 118 N.H. 7, 381 A.2d 1204 (1978).

In appropriating or not appropriating money for a department or its subdivisions or for the carrying out of particular services, the legislature has fundamental control which must always be subject to a recognition of what funds and agencies are reasonably necessary for the exercise of powers inherent to the proper functioning of the three branches of government if they are to fulfill their constitutional duties. Opinion of the Justices, 118 N.H. 582, 392 A.2d 125 (1978).

However desirable comprehensive legislation in area of conflict of interest may be, enactment of such legislation is the prerogative and responsibility of the legislature and not of the executive. Opinion of the Justices, 116 N.H. 406, 360 A.2d 116 (1976).

Legislature has indicated a willingness and purpose to legislate in area of conflict of interest on part of elected state officials, partial though it may be, and executive policy which would vary statutory requirements and also have practical effect of regulating legislative power and authority in contravention of state constitution may not be permitted. Opinion of the Justices, 116 N.H. 406, 360 A.2d 116 (1976).

Legislature in the exercise of its plenary control over municipalities may modify or divide towns and create village districts and such action does not violate the separation of powers provision in this article even if the matter is pending in the courts. Lisbon v. Lisbon Village District, 104 N.H. 255, 183 A.2d 250 (1962).

7. Judicial powers.

Newly enacted law mandating that county sheriff departments be responsible for providing security in all State courts except supreme court, and that all judicial branch employee positions associated with security function in those courts be abolished, violated separation of powers clause of New Hampshire Constitution; since court security officers play an integral role in the most fundamental function of any

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

court, the adjudicatory function, it was an improper encroachment on the judiciary's power for the legislature to remove control of court security from the judiciary and place ultimate responsibility for it with the executive branch. Petition of Mone, 143 N.H. - , 719 A.2d 626 (1998).

It is not the function of the judicial branch of the government to pass upon the wisdom, desirability and expediency of statutes enacted by the legislature, and the supreme court has not been invested with the power to pass upon the wisdom of the legislative branch of the government in determining the qualifications of its members. State v. LaFrance, 124 N.H. 171, 471 A.2d 340 (1983).

Where a petition was brought by the president of the senate requesting that the supreme court either declare that the present senatorial districts were unconstitutional under both the federal and state constitutions and that the 1982 senatorial elections be conducted pursuant to a redistricting plan which had been adopted by both houses of the legislature but vetoed by the governor, or authorize the elections to be conducted pursuant to the existing districts, the supreme court had original jurisdiction to resolve the controversy since it is the role of the court to interpret the constitution and to resolve disputes arising under it, the case did not fall within the bar against confiding political questions to the courts, and the action was one where the parties desired and the public needed a speedy determination of the important issues in controversy. Monier v. Gallen, 122 N.H. 474, 446 A.2d 454 (1982).

If the duty of an executive board is primarily to decide questions of legal rights between parties that are unconnected to any regulatory function, such function belongs to the judiciary; courts of justice even of restricted jurisdiction may not be set up in the executive branch of government. Smith Ins., Inc. v. Grievance Comm., 120 N.H. 856, 424 A.2d 816 (1980).

Courts of New Hampshire have the exclusive authority to determine the reasonableness of compensation for court-appointed counsel; statutes attempting to impose a fee schedule for court-appointed counsel intrude upon this judicial function in violation of the constitutional separation of powers mandate. Smith v. State, 118 N.H. 764, 394 A.2d 834 (1978).

This article did not insulate a decision of the governor and council from judicial review, where the question considered was a judicial question. Attorney General v. Nadeau, 110 N.H. 264, 266 A.2d 118 (1970).

The duty of the judiciary to instruct the jury on the law applicable to a given case does not require that the jury be instructed as to the limitations imposed by RSA 556:13 upon the amount of recovery in wrongful death actions, and hence the provision of that statute forbidding such disclosure to the jury is not violative of the separation of powers provision of this article. Gibbs v. Prior, 107 N.H. 218, 220 A.2d 151 (1966).

An unconstitutional encroachment on the powers of the courts is involved in a proposed statute which would permit the income accumulation of a particular burial lot trust fund to be used, in the discretion of the trustee, under certain conditions, for the general care of the cemetery. Opinion of the Justices, 101 N.H. 531, 133 A.2d 792 (1957).

Questions of law belong to the judiciary for final determination, and legislation cannot bar or restrict this power of the judiciary; the right to apply to the courts for relief from illegality may not be unduly abridged. Cloutier v. State Milk Control Board, 92 N.H. 199, 28 A.2d 554 (1942).

The power to punish for contempt is an essential attribute of a court of general jurisdiction, and an act of the legislature which proposes to limit all punishment for indirect contempt to a specific fine of $ 100 and imprisonment not to exceed fifteen days is an unconstitutional attempt to infringe upon the powers of the court. Opinion of the Justices, 86 N.H. 597, 166 A. 640 (1933).

An act of the legislature awarding a new trial in an action which has been decided in a court of law is an exercise of judicial power contrary to the provisions of this article. Merrill v. Sherburne, 1 N.H. 199 (1818).

Legislation to give towns and cities authority to use unexpended surplus of cemetery trust funds for general cemetery care, under certain conditions, would not be within the power of the legislature to enact, as such would be an invasion of established equitable powers of the courts and hence in violation of this article. 1 N.H.Op.A.G. 185.

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

8. Executive powers.

The power to make contracts for the expenditure of State's funds is characteristically an executive function under the plain language of the New Hampshire Constitution. Opinion of Justices, 129 N.H. 714, 532 A.2d 195 (1987).

There was no merit to argument that tape recordings of conversations between informant and defendant suspected of arranging murder of husband violated separation of powers clause; because recordings were consensual, neither warrant nor neutrality and detachment of a judicial officer was required, and recordings were properly authorized by assistant attorney general. State v. Smart, 136 N.H. 639, 622 A.2d 1197 (1993).

Exercise by the governor of the right of his discretion to grant or refuse rendition of one serving a sentence imposed by a New Hampshire court does not violate the separation of powers provision of the state constitution. Koch v. O'Brien, 101 N.H. 11, 131 A.2d 63 (1957).

A system of pauper relief required to be administered by the probate courts, and which imposes upon the judges and registers of such courts by virtue of their official positions the duty of deciding applications, making investigations, issuing rules and regulations and making orders for payment of assistance, etc., is an unconstitutional attempt to impose upon the judicial department executive or administrative powers, duties, and functions belonging to the executive branch of the government. Opinion of the Justices, 85 N.H. 562, 154 A. 217 (1931).

9. Administrative agencies.

The growth of administrative boards with dual governmental functions had long been accepted as not inconsistent with the provisions of this article requiring separation of the legislative, executive, and judicial powers. Petition of Boston & Maine Corp., 109 N.H. 324, 251 A.2d 332 (1969).

Order of public utilities commission authorizing closing of railroad grade crossing was a judicial decision which vested certain rights in railroad of which it could not be subsequently deprived by a legislative act ordering reopening of the crossing as the act violated this article and hence was invalid. Petition of Boston & Maine Corp., 109 N.H. 324, 251 A.2d 332 (1969).

Issues of fact passed upon by an administrative body are not generally reviewable by the courts unless the legislature has provided therefor by expressly giving a right of review by appeal. Cloutier v. State Milk Control Board, 92 N.H. 199, 28 A.2d 554 (1942).

The judicial quality inherent in a finding or verdict by an administrative body does not necessarily signify a justiciable inquiry. Cloutier v. State Milk Control Board, 92 N.H. 199, 28 A.2d 554 (1942).

The vesting of essentially judicial authority in an administrative board is not validated by providing for judicial review of its decisions, and the willingness of litigants to submit their disputes to an administrative tribunal cannot operate to give the decision of such tribunal force as a judgment. Opinion of the Justices, 87 N.H. 492, 179 A. 344 (1935); 110 ALR 819.

10. Immunities.

Under this article, certain actions of the executive branch of government are clearly immune from liability. Opinion of the Justices, 126 N.H. 554, 493 A.2d 1182 (1985).

Whether an action taken by the executive branch of government may be immune from liability, depends on whether the particular governmental conduct which caused the injury is one characterized by the high degree of discretion and judgment involved in weighing alternatives and making choices with respect to public policy and planning. Opinion of the Justices, 126 N.H. 554, 493 A.2d 1182 (1985).

11. Compatible offices.

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

This article prohibits one department of the state government from interfering with another department or usurping its powers, but it has no reference to the exercise of legislative and judicial powers by an official, and hence does not prohibit one from holding at the same time the offices of supervisor of the check list, city councilman, and member of the legislature. Attorney General v. Meader, 80 N.H. 292, 116 A. 433 (1922).

Cited. In re School-Law Manual, 63 N.H. 574, 4 A. 878 (1885); Sherburne v. Portsmouth, 72 N.H. 539, 58 A. 38 (1904); Opinion of the Justices, 74 N.H. 606, 68 A. 873 (1908); Wyman v. De Gregory, 101 N.H. 171, 137 A.2d 512 (1957) appeal diismissed, 360 U.S. 717, 79 S.Ct. 1454, 3 L.Ed.2d 1540, rehearing denied, 361 U.S. 857, 80 S.Ct. 46, 4 L.Ed.2d 96 (1959); Opinion of the Justices, 102 N.H. 75, 150 A.2d 816 (1959); Robwood Advertising Associates, Inc. v. Nashua, 102 N.H. 215, 153 A.2d 787 (1959); Wyman v. Uphaus, 102 N.H. 461, 159 A.2d 160 (1960); Wyman v. De Gregory, 103 N.H. 214, 169 A.2d 1, aff'd, 368 U.S. 19, 82 S. Ct. 137, 7 L. Ed. 2d 86 (1961); Hampton v. Marvin, 105 N.H. 34, 193 A.2d 441 (1963); Petition of Harvey, 108 N.H. 196, 230 A.2d 757 (1967); Hartford Accident & Indemnity Co. v. Duvall, 113 N.H. 28, 300 A.2d 732 (1973); Opinion of the Justices, 113 N.H. 205, 304 A.2d 881 (1973); Opinion of the Justices, 113 N.H. 287, 306 A.2d 55 (1973); Clark v. New Hampshire Department of Health and Welfare, 114 N.H. 99, 315 A.2d 187 (1974); O'Neil v. Thomson, 114 N.H. 155, 316 A.2d 168 (1974); Opinion of the Justices, 117 N.H. 398, 374 A.2d 638 (1977); Melton v. Personnel Commission, 119 N.H. 272, 401 A.2d 1060 (1979); State v. Fennelly, 123 N.H. 378, 461 A.2d 1090 (1983); Soucy v. State, 127 N.H. 451, 506 A.2d 288 (1985); Opinion of the Justices, 128 N.H. 1, 509 A.2d 734 (1986); Opinion of the Justices, 128 N.H. 17, 509 A.2d 746 (1986); Rousseau v. Eshleman, 129 N.H. 306, 529 A.2d 862 (1987); Opinion of Justices, 129 N.H. 714, 532 A.2d 195 (1987); Newell v. New Hampshire Div. of Welfare, 131 N.H. 88, 550 A.2d 109 (1988); Petition of Strandell, 132 N.H. 110, 562 A.2d 173 (1989); Opinion of Justices (Marital Masters' Contempt Powers), 138 N.H. 425, 640 A.2d 784 (1994); Claremont Sch. Dist. v. Governor, 142 N.H. 462, 703 A.2d 1353 (1997); Opinion of Justices, 142 N.H. - , 712 A.2d 1080 (1998); Claremont Sch. Dist. v. Governor, 143 N.H. - , - A.2d - (1998).

Library References

NH Practice 1 N.H.P. Criminal Practice and Procedure § 2.

2 N.H.P. Criminal Practice and Procedure § 965.

2A N.H.P. Criminal Practice and Procedure § 2065.

Bar Journal Inherent Powers of the Courts to Effect Court Improvements, 14 N.H.B.J. 15 (Summer 1972).

Judicial review and the separation of powers under New Hampshire Constitution of 1776 and 1784, 18 N.H.B.J. 250 (June 1977).

The theory of the New Hampshire Constitution, like virtually every other American constitution, is derived from the concept of checks and balances. A Modern Constitution for New Hampshire, 6 N.H.B.J. 208 (209) (April 1964).

CJS Constitutional Law § 111 et seq.

ALR Inherent power of court to compel appropriation or expenditure of funds for judicial purposes. 59 ALR3d 569.

Inherent power of court to suspend for indefinite period execution of sentence in whole or in part. 73 ALR3d 474.

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

Attachment 2

FILE

Art. 46. Nomination and Appointment of Officers.

All judicial officers, the attorney general, and all officers of the navy, and general and field officers of the militia, shall be nominated and appointed by the governor and council; and every such nomination shall be made at least three days prior to such appointment; and no appointment shall take place, unless a majority of the council agree thereto.

Amendments--1976. Deleted "coroners" following "attorney-general".

--1877. Deleted "solicitors, all sheriffs" and "registers of probate".

Annotations

Analysis

1. Procedure.
2. Approval of council.
3. Judicial officers.
3a. Board of claims.
4. Masters.
5. Magistrates.

1. Procedure.

The method of selection of constitutional officers is provided by the constitution and may not be altered by the legislature. Opinion of the Justices, 115 N.H. 159, 335 A.2d 642 (1975); Opinion of the Justices, 117 N.H. 398, 374 A.2d 638 (1977).

2. Approval of council.

An appointment will be deemed to have received the approval of the council, or of the governor and council, if at a meeting at which a quorum is present, it receives a majority of the votes cast, even though some members present abstain from voting. Opinion of the Justices, 98 N.H. 530, 98 A.2d 635 (1953).

It is inferable from this article that a majority of the council constitutes a quorum. Opinion of the Justices, 98 N.H. 530, 98 A.2d 635 (1953).

3. Judicial officers.

Judicial authority may be exercised only by an officer appointed in accordance with the state constitution and invested with the constitutional incidents of judicial office. Opinion of the Justices, 128 N.H. 17, 509 A.2d 746 (1986).

A judicial officer, within the meaning of this article, must be nominated and appointed by the governor and council as provided in this article, and must be commissioned to hold office during good behavior as provided in article 73 of this part except where the constitution otherwise provides. Opinion of the Justices, 128 N.H. 17, 509 A.2d 746 (1986).

Power of nomination of judges is granted exclusively to governor, and power of appointment is granted exclusively to council. Opinion of the Justices, 117 N.H. 398, 374 A.2d 638 (1977).

3a. Board of claims.

This article does not require that members of administrative board of claims hearing personal injury claims against the state be appointed by the governor and council. Newell v. New Hampshire Div. of Welfare, 131 N.H. 88, 550 A.2d 109 (1988).

4. Masters.

Proposed bill granting marital masters power to impose penalties for civil contempt, including incarceration, would violate New Hampshire Constitution, since effect would be to grant marital masters

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

authority of judicial officers, and constitution requires that all judicial officers be nominated and appointed by governor and council. Opinion of Justices (Marital Masters' Contempt Powers), 138 N.H. 425, 640 A.2d 784 (1994).

Marital masters of the superior court are not judicial officers within the meaning of this article. Opinion of the Justices, 128 N.H. 17, 509 A.2d 746 (1986).

5. Magistrates.

Under proposed legislation investing the superior court with the same authority and discretion to appoint marital magistrates that the court exercises in appointing marital masters, such a marital magistrate by definition would not be a judicial officer within the meaning of this article. Opinion of the Justices, 128 N.H. 17, 509 A.2d 746 (1986).

Proposed legislation ostensibly granting marital magistrates the authority of judicial officers, even though the magistrates would not be appointed or tenured as such, would clearly violate this article, and the orders and decrees of such magistrates would have no legal effect, without approval and adoption by a superior court justice. Opinion of the Justices, 128 N.H. 17, 509 A.2d 746 (1986).

Cited. Golding's Petition, 57 N.H. 146 (1876); Opinion of the Justices, 74 N.H. 606, 68 A. 873 (1908); Opinion of the Justices, 102 N.H. 195, 152 A.2d 878 (1959); Attorney General v. Nadeau, 110 N.H. 264, 266 A.2d 118 (1970); Opinion of the Justices, 114 N.H. 88, 315 A.2d 858 (1974); Brouillard v. Governor and Council, 114 N.H. 541, 323 A.2d 901 (1974); Opinion of the Justices, 117 N.H. 390, 373 A.2d 642 (1977); State v. Fennelly, 123 N.H. 378, 461 A.2d 1090 (1983); Witte v. Justices of N.H. Superior Court, 831 F.2d 362 (1st Cir. 1987); Opinion of Justices (Furlough), 135 N.H. 625, 609 A.2d 1204 (1992); Claremont Sch. Dist. v. Governor, 142 N.H. - , 712 A.2d 612 (1998).

Library References

NH Practice 3A N.H.P. Family Law § 25.01.

CJS States §§ 84-87.

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

Attachment 3

FILE

Opinion of the Justices

No. 7151
SUPREME COURT OF NEW HAMPSHIRE
115 N.H. 159, 335 A.2d 642
March 31, 1975

HEADNOTE

1. The legislature has the power to name a commissioner of health and welfare or to delegate the appointing power to either the Governor and Council or advisory commission or to both under part II, article 5 of the State constitution , which authorizes the legislature to name or provide by fixed laws for the naming of all civil officers in the State except those whose naming and manner of appointment are provided for by the constitution.

2. The legislature has authority under part II, article 5 of the State constitution to place a time limit on the power of the Governor and Council to appoint a commissioner of health and welfare from a list of names of nominees submitted by the advisory commission on health and welfare and to transfer the power of appointment to the advisory commission upon expiration of that time limit.

3. The Governor and Council's authority under part II, article 47 of the State constitution to sign every nomination and appointment of State officers whose nomination and appointment they are authorized to make under part II , article 46 does not restrict the legislature's authority under part II , article 5.

OPINION

The following resolution was adopted by the house of representatives on March 5, 1975, and filed with the supreme court on March 6, 1975:

*{*160}* "Whereas there is pending in the House of Representatives House Bill No. 36, "An Act relative to the length of time in which the governor and council must approve a commissioner of health and welfare'; and

"Whereas doubt has been expressed as to the constitutionality of certain provisions of said bill;

"Now, therefore, Be It Resolved by the House of Representatives;

"That the Justices of the Supreme Court be respectfully requested to give their opinion upon the following important questions of law:

"1. Would any provision of the Constitution be violated by the provision in said bill establishing a sixty day time limit within which the governor and council must make an appointment to the office of Commissioner of Health and Welfare from the list of nominees furnished by the Advisory Commission?

"2. Would any provision of the Constitution be violated by the provision in said bill empowering the Advisory Commission to make an appointment to the office of Commissioner of Health and Welfare in the event that the governor and council shall fail to make an appointment within such sixty day period?

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

"Further resolved that the clerk of the house be instructed to transmit to the clerk of the Supreme Court six copies of this resolution and six copies of House Bill No. 36."

The following answers were returned:

To the House of Representatives:

The undersigned justices of the supreme court submit the following reply to the inquiries contained in your resolution adopted March 5, 1975, and filed with this court March 6, 1975.

Your questions relate to House bill 36 which authorizes the Governor and Council to appoint a commissioner of health and welfare from a list of nominees submitted by the advisory commission on health and welfare within a period of sixty days after such nominees are submitted. Upon a failure of the Governor and Council to make an appointment within the sixty days, the advisory commission is then authorized to appoint a commissioner of health and welfare within the next sixty days.

Question No. 1 asks whether any provision of the constitution would be violated by limiting the power of the Governor and Council to appoint to sixty days after the submission of nominees.

Question No. 2 asks whether any provisions of the constitution *{*161}* would be violated by transferring the power of appointment to the advisory commission for sixty days upon failure of the Governor and Council to appoint within the first sixty-day period.

The constitution provides for certain constitutional State officers and directs the manner in which they are to be appointed or elected. Thus the secretary of state and the State treasurer are chosen by joint ballot of the senate and house of representatives. N.H. Const.pt. II, art. 67. Judges, the attorney general, coroners and military officers are appointed by the Governor and Council. N.H. Const.pt. II, art. 46. The method of selection of constitutional officers is provided by the constitution and may not be altered by the legislature.

All other officers occupy positions established by the legislature and the method of their election or appointment is determined by the legislature. The constitution authorizes the legislature "to name and settle biennially, or provide by fixed laws for the naming and settling, all civil officers within this state." N.H. Const.pt. II, art. 5. Since the legislature has the power to name a commissioner of health and welfare, it has the power to delegate the appointing power to either the Governor and Council or the advisory commission or both. **Opinion of the Justices,** 102 N.H. 195, 197, 152 A.2d 878, 880 (1959).

In previous answers to questions arising from the impasse between the Governor and Council and the advisory commission in the appointment of a commissioner of health and welfare under the present law (RSA 126-A:4 (Supp. 1973)), we have stated that the legislature may properly prescribe how and by whom the appointment shall be made. **Opinion of the Justices ,** 113 N.H. 675, 312 A.2d 702 (1973); N.H. Const.pt. II, art. 41 ; **Opinion of the Justices,** 114 N.H. 165, 316 A.2d 174 (1974); **Brouillard v. Governor,** 114 N.H. 541, 323 A.2d 901 (1974).

The legislative power to determine the limitations upon the delegation of the power of appointment is not restricted to the present statutory provisions that the Governor and Council appoint from the nominees of the advisory commission. RSA 126-A:4 (Supp. 1973). House bill 36, placing a time limit on the power of the Governor and Council to appoint a commissioner and transferring the power of appointment to the advisory commission upon expiration of that time limit, is within the legislative authority. **See Opinion of the Justices,** 90 N.H. 568 , 8 A.2d

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

597 (1939).

Reliance is placed on part II , article 47 of the constitution for holding the present proposed legislation unconstitutional. Article *{*162}* 47 reads as follows: "The governor and council shall have a negative on each other, both in the nominations and appointments. **Every nomination and appointment shall be signed by the governor and council,** and every negative shall be also signed by the governor or council **who made the same.** " (Emphasis added.)

Article 47 does not restrict the authority of the legislature under part II , article 5 of the constitution but prescribes the procedure for appointment of officers authorized to be appointed by Governor and Council under part II , article 46 of the constitution.

We conclude that the proposed legislation is consistent with article 5 , part II of the constitution and is not in violation of other provisions of the constitution. Accordingly, the answer to both questions is "No".

Frank R. Kenison

Laurence I. Duncan

Edward J. Lampron

William A. Grimes

Robert F. Griffith

Governor Meldrim Thomson, Jr., by his legal counsel, **James J. Barry, Jr.,** filed a memorandum of law for affirmative answers to questions 1 and 2.

Miriam O. Page, by her attorneys, **McLane, Graf, Greene, Raulerson & Middleton** and **Charles A. DeGrandpre** and **Richard S. Snierson,** filed a memorandum of law in favor of negative answers to questions 1 and 2.

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

Attachment 4

FILE

Opinion of the Justices

No. 7778
SUPREME COURT OF NEW HAMPSHIRE
117 N.H. 398, 374 A.2d 638
May 24, 1977

HEADNOTE

1. Constitutional Law--Executive Power--Encroachments

Proposed legislation which provided for establishment of a judicial selection commission consisting of chief justice of supreme court, five members of New Hampshire Bar Association, and five members of public not members of bar, and which required Governor to inform chairman of commission when a vacancy occurred, and for commission to screen all candidates and select at least three candidates for consideration by Governor and Council, and further provided that Governor and Council might nominate and appoint one of commission's selections or might nominate and appoint some other person, but that if one of commission's selections was accepted, appointment should be made within sixty days, would be an unconstitutional encroachment upon powers of Governor and Council by altering or changing selection process for judges. N.H. Const. pt. I, art. 37 ; pt. II, art. 46.

2. Constitutional Law--Executive Power--Encroachments

Proposed legislation which provided for establishment of a judicial selection commission consisting of chief justice of the supreme court, five members of New Hampshire Bar Association, and five members of public not members of bar, and which directed commission's chairman to convene commission not only when a vacancy occurred but also when a vacancy might be anticipated or at any time, and that commission screen all candidates and select at least three candidates for consideration by Governor and Council, and further provided that Governor and Council might nominate and appoint one of commission's selections, or might nominate and appoint some other person, would be an unconstitutional encroachment upon the powers of Governor and Council by altering or changing selection process for judges. N.H. Const. pt. I, art. 37 ; pt. II, art. 46.

3. Judges--Appointment and Removal

Power of nomination of judges is granted exclusively to governor, and power of appointment is granted exclusively to council. N.H. Const. pt. II, art. 46.

4. Constitutional Law--Executive Power--Encroachments

Method of selection of constitutional officers is provided by constitution and may not be altered by legislature. N.H. Const.pt. I, art. 37 ; pt. II, art. 46.

OPINION

The following resolution was adopted by the senate on February 10, 1977, and filed with the supreme court on April 22, 1977:

*{*399}* "WHEREAS, Senate Bill 42, An Act establishing a judicial selection commission to recommend at least 3 candidates for all judicial appointments is pending before the New Hampshire Senate; and

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

"WHEREAS, said bill provides for the establishment of a commission consisting of the chief justice of the Supreme Court, 5 members of the New Hampshire Bar Association appointed by its Board of Governors and 5 members of the general public who are not members of the Bar appointed by the Governor and Council; and

"WHEREAS, said bill further provides that the Governor shall inform the chairman of the commission when a vacancy occurs in a judicial position and that the commission shall screen all candidates for a judicial office and select at least 3 candidates for consideration by the Governor and Council; and

"WHEREAS, said bill further provides that the Governor and Council may nominate and appoint one of the commission's selections to the judicial position or may nominate and appoint some other person to said position pursuant to Part II, Article 46 of the Constitution of New Hampshire, but if one of the commission's selections are [sic] accepted, the appointment shall be made within 60 days; and

"WHEREAS, an amendment to said Senate Bill 42 has been proposed which would remove the requirement that the Governor inform the chairman of the commission when a vacancy occurs and the requirement that the appointment of one of the commission's selections, if accepted, be made within 60 days; and

"WHEREAS, the Constitution of New Hampshire, Part II, Article 46 provides that all judicial officers shall be nominated and appointed by the Governor and Council; and

"WHEREAS, the constitutionality of Senate Bill 42 has been questioned, now therefore be it

"RESOLVED, that the Justices of the Supreme Court be respectfully requested to give their opinion upon the following questions of the law:

*{*400}* "1. Do the provisions of Senate Bill 42 conflict with the provisions of Part II, Article 46 of the Constitution of New Hampshire?

"2. Would the provisions of said bill, as amended by the proposed amendments, conflict with the provisions of Part II, Article 46 of the Constitution of New Hampshire?

"3. Do the provisions of said bill, as presently drafted or with the proposed amendments, conflict with any other provisions of the Constitution of New Hampshire?

"BE IT FURTHER RESOLVED, that the President of the Senate transmit 7 copies each of this resolution, Senate Bill 42, and the proposed amendment to Senate Bill 42 to the Clerk of the Supreme Court for consideration by said court."

The following answers were returned:

To The Honorable Senate:

The undersigned, justices of the supreme court, return the following reply to the questions presented in your resolution adopted February 10, 1977, but not filed in this court until April 22, 1977.

Senate bill 42 would establish an eleven-member judicial selection committee consisting of five appointees from the New Hampshire Bar Association, one person from each of the five councilor districts appointed by Governor and Council, and the chief justice of the state supreme

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

court.

Whenever a vacancy occurs in a judicial position, the Governor is required to inform the commission, which then convenes, accepts suggestions for candidates, carefully screens all candidates and, within thirty days after the vacancy occurs, selects at least three candidates for consideration by the Governor and Council. The names of candidates (but nothing else) are to be kept in strict confidentiality by the commission, but presumably the Governor or any Councilor could disclose the names, and the findings and recommendations without names could apparently be disclosed by anyone.

The Governor is free at any time to nominate whomever he chooses but would be required to do so within sixty days of the submission if the nominee is one of the persons recommended by the commission.

*{*401}* An amendment to this bill would remove the two requirements to be imposed on the Governor, namely, notice of a vacancy and appointment of a recommended person within sixty days. The proposed amendment also would direct the chairman to convene the commission not only when a vacancy occurs but also when a vacancy may be anticipated or at any other time.

The issue before this court is whether Senate bill 42 as it is or may be amended conflicts with the Constitution of the State of New Hampshire and particularly part II , article 46 and part I , article 37.

[1, 2] We hold that the judicial selection commission proposed to be established by the legislature is an unconstitutional encroachment upon the powers of the Governor and the Council.

Our state constitution provides that state government shall consist of three separate branches:

In the government of this state, the three essential powers thereof, to wit, the legislative, executive, and judicial, ought to be kept as separate from, and independent of, each other, as the nature of a free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of union and amity. N.H. Const. pt. I, art. 37.

[3] When it comes to judges, the power of nomination is granted exclusively to the Governor, and the power of appointment is granted exclusively to the Council:

All judicial officers... shall be nominated and appointed by the governor and council... N.H. Const. pt. II, art. 46.

Two years ago this court had before it a bill relating to appointments to the statutorily created post of health and welfare commissioner. In upholding the legislature's power under pt. II, art. 5 to "fix laws" for the naming of nonconstitutional officers this court distinguished such a post by saying:

[4] "The constitution provides for certain constitutional State officers and directs the manner in which they are to be appointed.... The method of selection of constitutional officers is *{*402}* provided by the constitution and **may not be altered by the legislature.**" **Opinion of the Justices,** 115 N.H. 159, 161, 335 A.2d 642, 643 (1975) (emphasis added).

This decision merely reaffirmed this court's earlier decision in **Brouillard v. Governor and Council,** 114 N.H. 541, 547, 323 A.2d 901, 905 (1974), that said judicial officers "must be

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

appointed by the Governor and Council and **no change** can be made in that method of selection" (emphasis added).

In striking down an executive branch attempt to regulate conflicts of interests among executive branch appointees this court last year said that "(T)he separation of powers requirement of the constitution (N.H. Const. pt. I, art. 37) is violated by an encroachment by one branch of government upon a constitutional function of another... However desirable comprehensive legislation... may be, [such] is the prerogative and responsibility of the legislature and not of the executive." **Opinion of the Justices,** 116 N.H. 406, 413, 360 A.2d 116, 122 (1976). Should the Governor, as he has done, wish to set up a screening or selection mechanism on his own he is naturally free to do so.

By executive order the Governor of Massachusetts established a Judicial Nominating Commission in 1975. In upholding his purely voluntary action the Supreme Judicial Court of Massachusetts held "the Governor has the constitutional right to establish" such a commission because, like the legislature, "the Governor has broad discretion to select the means he will use in executing a constitutional duty." **Opinion of the Justices,** 334 N.E.2d 604, 609 (Mass. 1975). That court did not indicate such a board could have been imposed on the Governor by the legislature.

In the 1974 Constitutional Convention, Resolution 102 was offered along lines similar to the bill before us. It was not adopted by the convention and doubt has been expressed that a statute, rather than a constitutional amendment, would be constitutional. **See Report of Governor's Commission on Court System Improvement,** 16 N.H.B.J. 1, 69 (1974). Those states with such agencies have done so by constitutional amendment. **See , e.g. ,** Cal. Const. art. VI, § § 16 ; Mo. Const. art. 5 ; Alas. Const. art. IV, § § 5-9 ; Iowa Const. art. V., § § 15-18.

*{*403}* Regardless of the merits of the bill, it nevertheless encroaches on a constitutional power of the Governor by "altering" or "changing " the selection process for judges.

The first two questions are answered in the affirmative and, because of pt. I, art. 37 , so is the third.

William A. Grimes

Maurice P. Bois

Charles G. Douglas, III

To The Honorable Senate:

The undersigned justices of the supreme court return the following reply to the questions presented in your resolution adopted February 10, 1977, and filed in this court on April 22, 1977.

Senate bill 42, in both its original and amended form, proposes the creation of a judicial selection commission which would accept from various sources, including the Governor, the names of candidates recommended to fill vacant judicial offices. The commission would screen all candidates and recommend at least three individuals for each vacancy. The findings concerning each candidate would be submitted to the Governor and Council. All commission proceedings and recommendations would be kept strictly confidential. The Governor and Council would thereafter nominate and appoint to each vacant position either someone whom the commission recommended or anyone else, whether or not such person was considered by the commission.

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

The bill in its original form contains three additional requirements that are deleted under the proposed amendment. First , the Governor shall inform the commission when a vacancy occurs, and the chairman shall then convene the commission. Second, the commission shall make its recommendation within thirty days after a vacancy has occurred. Third, if the Governor and Council accept one of the commission's recommended candidates, the appointment shall be made within sixty days of the receipt of the recommendations.

Questions No. 1 and 2 ask respectively whether the bill in its original and amended forms would violate part II , article 46 of the New Hampshire Constitution. This provision states that all judicial officers "shall be nominated and appointed by the Governor and *{*404}* Council; and every such nomination shall be made at least three days prior to such appointment; and no appointment shall take place, unless a majority of the council agree thereto."

In support of its conclusion that the bill is unconstitutional, the majority refers to several states that have amended their constitutions in order to effectuate changes in their judicial selection processes. For a more comprehensive list of such states, see Note, **Judicial Selection in the States: A Critical Study with Proposals for Reform,** 4 Hofstra L. Rev. 267, Table I at 284 (1976). What happened in these states is not relevant for two reasons. First, these states have adopted the so-called merit selection plan, **see id.** at 280-84; Note, **Judicial Selection and Tenure--The Merit Plan in Ohio,** 42 U. Cinn. L. Rev. 255, 262-63 (1973), which differs from the proposals before us in several significant respects. Although both the merit selection plan and the two versions of Senate bill 42 provide for a judicial selection commission which recommends candidates to the Governor, under the merit selection plan the Governor must appoint a candidate from the commission's list. Runkle, **The Judicial Nominating Commission,** 54 Jud. 114 (1970); Note, **Analysis of Methods of Judicial Selection and Tenure,** 6 U. Suffolk L. Rev. 955, 963 (1972). Furthermore, under the plan adopted in many states, if the Governor fails to appoint within a certain number of days, the Chief Justice of the Supreme Court becomes vested with the appointment authority. G. Winters, Selected Readings: Judicial Selection and Tenure 182, 188-89 (1967). In contrast to the merit selection plan, both proposals before us allow the Governor and Council to disregard entirely the commission's recommendations and nominate and appoint anyone they desire. Additionally, neither version provides for any transfer of authority from the Governor and Council to any other state official or group under any circumstances.

Second, the states that have amended their constitutions to implement the merit selection plan had previously chosen judges through constitutionally mandated popular elections--Note, **supra,** 4 Hofstra L. Rev. at 280--84--a selection method that is not only very different from our own but also fundamentally at odds with the merit selection system. Adoption of the merit selection plan in these "election states" could be achieved, of course, only through *{*405}* a constitutional amendment. **See id.** at 316; Note, **Judicial Selection in North Dakota--Is Constitutional Revision Necessary** ? 48 N.D.L. Rev. 326, 328-29 (1971-72).

If any state's situation with respect to judicial selection reform is similar to our own it is that of Massachusetts. The Constitution of Massachusetts, like the New Hampshire Constitution, provides that "[a]ll judicial officers... shall be nominated and appointed by the governor...." Mass. Const. pt. II, ch. 2, § 1 , art. 9. Recently, the Supreme Judicial Court of Massachusetts held that the creation of a judicial nomination commission to advise the Governor on judicial appointments did not violate the constitutional provision quoted above. **Opinion of the Justices to the Council,** 334 N.E.2d 604 (Mass. 1975).

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

Contrary to the impression that may have been created by the majority opinion, the Massachusetts court did not sustain the plan on the ground it was voluntarily undertaken by the Governor, as opposed to being undertaken by the legislature. The court did not even mention, let alone rely upon, the fact the commission was created by executive order rather than by statute. The court's statement, quoted by the majority, concerning the Governor's "broad discretion" was made in response to a question whether the Governor had the power to create such a commission. It was only after answering that question in the affirmative that the court went on to discuss the issue relevant to our inquiry today. The court stated that the Governor could delegate to others the power to investigate the qualifications of judicial candidates "as long as he does not surrender to them his responsibility to select a candidate and to make the nomination and appointment." **Opinion of the Justices to the Council,** 334 N.E.2d at 609. The court reasoned that, because the commission's recommendations were not binding on the Governor, his right and duty to select any qualified person he wishes were not "delegated, surrendered, abandoned or unduly restricted." **Id.** at 610. Thus, it was the nonbinding aspect of the commission's recommendations--not the fact that the Governor voluntarily instituted the program--that saved the constitutionality of the scheme.

Turning now to our own cases, in **Opinion of the Justices,** 115 N.H. 159, 335 A.2d 642 (1975), we sustained the constitutionality *{*406}* of a legislative proposal that (1) required the Governor and Council to appoint a health and welfare commissioner from a list of nominees submitted by an advisory commission, (2) fixed a time limit for such appointment, and (3) transferred the power of appointment to the advisory commission upon expiration of that deadline. In the context of that proposal, which bears no resemblance to the present ones, we stated parenthetically that "[t]he method of selection of constitutional officers is provided by the constitution and may not be altered by the legislature." **Id.** at 161, 335 A.2d at 643; **see Brouillard v. Governor and Council,** 114 N.H. 541, 547 , 323 A.2d 901, 905 (1974). We affirm this principle today and inquire only whether Senate bill 42 in either form alters the method of judicial selection in a manner inconsistent with the constitution. **We** conclude it does not.

The essence of the power to nominate and appoint is the unfettered power to choose any person for judicial office that the Governor and Council wish. Under both versions of Senate bill 42, this authority remains intact: The fact that the Governor and Council would be free to disregard the commission's recommendations and appoint someone who was rejected or not even considered by the commission means that they will continue to exercise complete control over the nomination and appointment process. The proposed commission would have no veto power over the final selection. If Senate bill 42 attempted to give the legislature veto power over the Governor's choice, a constitutional amendment would be necessary. Me. Const. art. 5 , pt. 1, § 8. Or if the bill proposed a transfer of appointment power to another officer, or department of government, the measure would be unconstitutional. **Curtis v. Cornish ,** 109 Me. 384, 84 A. 799 (1912). Also, if the bill called for binding recommendations, we would not sustain its constitutionality. But the proposed legislation would cause no such fundamental changes.

The amended bill does nothing more than create a citizens' committee to do what any citizen may do--namely, recommend to the Governor and Council persons deemed to be qualified for judicial office. The only purpose of creating such a system is to aid the Governor and the Council in fulfilling their constitutional duties. At present, the New Hampshire Bar Association screens candidates *{*407}* for appointments to state judicial positions. 3 N.H.L. Weekly, 103 & 279 (1976-77). The creation of a judicial selection commission would simply formalize the advisory efforts presently and previously undertaken by the bar association.

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

The majority more than casually mentions that the bill may not guarantee complete confidentiality. One of the memos we received suggests that the bill's confidentiality provision might conflict with RSA ch. 91-A (Supp. 1975). Whether the bill provides too much or too little confidentiality is, of course, irrelevant to the constitutionality of the scheme.

The majority's reference to the **Report of Governor's Commission on Court System Improvement,** 16 N.H.B.J. 1 (1974), is both inaccurate and misleading. Even a casual reading of the **Report** reveals that the "doubts" expressed were with respect to the constitutionality of an adoption by statute of the merit selection plan as discussed in paragraph 5 of this opinion. In reference to that plan the **Report** states: "The imposition by statute of any limitation upon [the Governor and Council's right to nominate and appoint], such as by requiring that the appointment be made from two or more nominees by a statutory panel or committee, would have dubious validity." **Id.** at 69.

More importantly, the **Report** goes on to recommend the "statutory enactment of a merit selection plan which would contain all the elements of the statutory selection plans used elsewhere except the requirement that the Governor **must** appoint from the list of nominees recommended by the selection panel or committee." **Id.** (Emphasis in original.) It is obvious that the Governor's Commission regarded the statutory creation of a judicial selection commission as constitutional as long as the commission's recommendations did not bind the Governor and Council. Thus, the **Report's** conclusions, based upon careful and thorough research and study, are directly at odds with the majority opinion.

We are unable to find in the amended bill any substantive restriction or encroachment upon the power of the Governor and Council, and the majority has articulated none. The inescapable conclusion is that the bill in its amended form is constitutional. The answer to Question No. 2 is "No."

*{*408}* The additional requirements contained in the original version of Senate bill 42 do not violate part 2, article 46 and so the answer to Question No. 1 is also "No." The Governor's task of informing the commission that a vacancy exists does not diminish or interfere with his power to nominate and appoint the candidate of his choice. The requirement is merely a means of triggering the operation of the commission. That the commission must convene and make its recommendations within thirty days, is, of course, a command addressed to the commission and does not involve the Governor in any way. The bill contains no implicit requirement that the Governor postpone his decision for thirty days to give the commission an opportunity to make its decisions. Finally, the sixty-day period (within which the appointment must be made if the Governor and Council choose one of the commission's recommended candidates) is valid, subject only to the constitutional mandate that three days lapse between nomination and appointment. N.H. Const. pt. II, art. 46.

With respect to the separation of powers issue the majority relies upon our statement in **Opinion of the Justices,** 116 N.H. 406, 413, 360 A.2d 116, 122 (1976), to the effect that the constitution is violated when one branch of government encroaches upon a constitutional function of another. Without identifying any impermissible encroachment, the majority declares the proposed legislation to be contrary to the separation of powers provision. N.H. Const. pt. I, art. 37. It is difficult for us to comprehend how the nonbinding suggestions of an eleven-member commission, none of whom are legislators or appointed by legislators, five of whom are appointed by the Governor and only one of whom comes from the judiciary can possibly amount to an unconstitutional encroachment upon the authority of the Governor and Council. The answer

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

to Question No. 3 is "No."

Frank R. Kenison

Edward J. Lampron

T. William Bigelow, legal counsel, filed memorandum in behalf of Governor Meldrim Thomson, Jr.

Charles H. Toll, Jr., and **William B. Roberts** filed memorandum.

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

Attachment 5

FILE

§ 4:44. Hearing Prior to Confirmation of Judicial Appointment.

Prior to making any judicial appointment with the governor under the provisions of the constitution, the executive council shall hold a public hearing to allow any member of the public who so desires to offer testimony on the prospective judicial appointee. Notice of the hearing shall be provided at least 7 days prior to the date of the hearing in at least 2 newspapers of statewide circulation. Prior to making the judicial appointment, the executive council shall consider the testimony made at the public hearing.

History

Source. 1997, 159:2, eff. Aug. 8, 1997.

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

Attachment 6

Art. 40. Chief Justice to Preside on Impeachment of Governor.

Whenever the governor shall be impeached, the chief justice of the supreme judicial court, shall, during the trial, preside in the senate, but have no vote therein.

Annotations

1. Nature of proceeding.

That the chief justice of the supreme court presides when a governor is impeached does not change the proceeding from a legislative to a judicial one. In re Mussman, 112 N.H. 99, 289 A.2d 403 (1972).

Cited. Opinion of the Justices, 66 N.H. 629, 33 A. 1076 (1891); Opinion of the Justices, 110 N.H. 359, 266 A.2d 823 (1970); Opinion of the Justices, 118 N.H. 582, 392 A.2d 125 (1978).

Library References

CJS States § 101.

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

Attachment 2

Art. 73-a. Supreme Court, Administration.

The chief justice of the supreme court shall be the administrative head of all the courts. He shall, with the concurrence of a majority of the supreme court justices, make rules governing the administration of all courts in the state and the practice and procedure to be followed in all such courts. The rules so promulgated shall have the force and effect of law.

Amendments--1978. Added this article.

Annotations

Analysis

1. Construction.
2. Disciplinary proceedings.

1. Construction.

This article makes clear that the judiciary has the authority to promulgate and administer rules concerning practice and procedure in the courtroom. State v. LaFrance, 124 N.H. 171, 471 A.2d 340 (1983).

2. Disciplinary proceedings.

Mandatory feature of bill, which requires that supreme court suspend the salary and benefits of every judge suspended for misconduct, intrudes unduly upon court's superintendence power under part II, article 73-a, which includes the authority to exercise discretion in determining whether to suspend a judge without pay; as such, it impermissibly encroaches upon an exclusive judicial function in violation of the separation of powers mandate of part I, article 37. Opinion of Justices (Judicial Salary Suspension), 140 N.H. 297, 666 A.2d 523 (1995).

Since New Hampshire Constitution vests discipline of legal profession in supreme court and legislative branch regulates psychologists, and there are marked differences between the substantive practice of each profession and the manner in which they deal with the public, insofar as majority of psychologist's time is spent with individuals patient in a private office, and the only records created are the notes of the psychologist, a less stringent burden of proof in proceedings involving psychologist certificates is rational when assessing the difficulty of proof in disciplinary proceedings. Petition of Grimm, 138 N.H. 42, 635 A.2d 456 (1993).

Cited. State v. Wentworth, 118 N.H. 832, 395 A.2d 858 (1978); Nelson v. Public Service Company of New Hampshire, 119 N.H. 327, 402 A.2d 623 (1979); State v. Hastings, 120 N.H. 454, 417 A.2d 7 (1980); State v. Wheeler, 120 N.H. 496, 416 A.2d 1384 (1980); State v. Elbert, 121 N.H. 43, 424 A.2d 1147 (1981); State v. Preston, 124 N.H. 118, 467 A.2d 243 (1983); State v. Brown, 125 N.H. 346, 480 A.2d 901 (1984); State v. Cere, 125 N.H. 421, 480 A.2d 195 (1984); State v. Meister, 125 N.H. 435, 480 A.2d 200 (1984); State v. Cooper, 127 N.H. 119, 498 A.2d 1209 (1985); Rousseau v. Eshleman, 128 N.H. 564, 519 A.2d 243 (1986); State v. Hughes, 135 N.H. 413, 605 A.2d 1062 (1992); In re Tocci, 137 N.H. 131, 624 A.2d 548 (1993); In re Proposed N.H. Rules of Civil Procedure, 139 N.H. 512, 659 A.2d 420 (1995).

Library References

NH Practice 1 N.H.P. Criminal Practice and Procedure § 568.

2 N.H.P. Criminal Practice and Procedure §§ 734, 905.

CJS Courts § 170 et seq.

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

Attachment 8

§ 490:1. Justices.

The supreme court shall consist of a chief justice and 4 associate justices, appointed and commissioned as prescribed by the constitution.

History

Source. RS 171:1. CS 181:1. 1855, 1659:1. 1859, 2211:4. 1874, 97:1. 1876, 25:1. GS 189:1. 1877, 25:1. GL 208:1. PS 204:1. 1901, 78:1. PL 315:1. RL 369:1. 1945, 174:3. RSA 490:1. 1978, 33:1, eff. June 23, 1978.

Amendments--1978. Deleted "and such justices as may be retired from regular active service because of permanent disability" following "constitution".

CROSS REFERENCES

Appointment and term of justices, see New Hampshire Constitution, Part 2, Article 73.

Annotations

Cited. Claremont Sch. Dist. v. Governor, 142 N.H. - , 712 A.2d 612 (1998).

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

Attachment 9

§ 491:1. Justices.

For fiscal year 1992 and succeeding years, the superior court shall consist of a chief justice and 28 associate justices. Said justices shall be appointed and commissioned as prescribed by the constitution and shall exercise the powers of the court unless otherwise provided.

History

Source. 1901, 78:1. PL 316:1. 1927, 51:1. RL 370:1. 1945, 174:1. 1951, 221:1. 1953, 168:1. RSA 491:1. 1963, 260:1. 1969, 453:1. 1971, 456:7. 1977, 600:45. 1983, 381:1, 10; 383:20. 1991, 202:1, eff. July 1, 1991.

Amendments--1991. Deleted the former first sentence and substituted "1992" for "1986" and "28" for "24" and deleted "if affirmed by specific appropriation after January 1, 1985" following "justices" in the new first sentence.

--1983. Chapter 381:1 rewrote the first sentence.

Chapter 381:10 rewrote the first sentence.

Chapter 383 rewrote the first sentence and deleted the third sentence.

--1977. Rewrote the former first sentence as the first and second sentences.

--1971. Rewrote the first sentence.

--1969. Amended section generally.

--1963. Substituted "seven" for "six" preceding "associate justices".

Revision note. At the beginning of the section, deleted the former first sentence, which provided that "for fiscal year 1978 the superior court shall consist of a chief justice and 13 associate justices", and deleted "for fiscal year 1979 and succeeding years" at the beginning of the second sentence as no longer necessary.

CROSS REFERENCES

Appointment and term of justices, see New Hampshire Constitution, Part 2, Article 73.

Designation of retired justices as judicial referees, see RSA 493-A.

Retirement of justices for disability, see RSA 491:2.

Library References

CJS Judges §§ 8, 12.

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

Attachment 10

Art. 73. Tenure of Office To Be Expressed in Commissions; Judges to Hold Office During Good Behavior, Etc.; Removal.

The tenure that all commissioned officers shall have by law in their offices shall be expressed in their respective commissions, and all judicial officers duly appointed, commissioned and sworn, shall hold their offices during good behavior except those for whom a different provision is made in this constitution. The governor with consent of the council may remove any commissioned officer for reasonable cause upon the address of both houses of the legislature, provided nevertheless that the cause for removal shall be stated fully and substantially in the address and shall not be a cause which is a sufficient ground for impeachment, and provided further that no officer shall be so removed unless he shall have had an opportunity to be heard in his defense by a joint committee of both houses of the legislature.

Amendments--1966. Amended article generally.

--1793. Substituted "governor" for "president" preceding "with consent".

Annotations

Analysis

1. Tenure.
2. Removal.
3. Disciplinary action.

1. Tenure.

Where plaintiff's commission of office failed to accurately express the tenure of office provided by statute, plaintiff was entitled to protection commensurate with the extent of his reliance on the express terms of his commission. Blake v. State, 115 N.H. 431, 343 A.2d 223 (1975).

2. Removal.

The power to remove a state officer for cause involves an executive and legislative proceeding. In re Mussman, 112 N.H. 99, 289 A.2d 403 (1972).

3. Disciplinary action.

Suspending pay of a judge does not violate those provisions of state constitution providing for tenure and permanent salaries for judges. Opinion of Justices (Judicial Salary Suspension), 140 N.H. 297, 666 A.2d 523 (1995).

The powers of impeachment and removal for reasonable cause are not the exclusive remedies for judicial abuse, and the supreme court, under its general superintendence power over the courts of the state, has authority to take disciplinary action short of removal. In re Mussman, 112 N.H. 99, 289 A.2d 403 (1972).

Cited. Piper v. Supreme Court, 723 F.2d 110 (1st Cir. 1983), aff'd, 470 U.S. 274, 105 S. Ct. 1272, 84 L. Ed. 2d 205 (1985); Opinion of the Justices, 128 N.H. 17, 509 A.2d 746 (1986); Bastian v. Kennedy, 829 F.2d 1 (1st Cir. 1987); Witte v. Justices of N.H. Superior Court, 831 F.2d 362 (1st Cir. 1987); Opinion of Justices (Furlough), 135 N.H. 625, 609 A.2d 1204 (1992); Claremont Sch. Dist. v. Governor, 142 N.H. - , 712 A.2d 612 (1998).

Library References

Bar Journal The "people's right to reconstruct" the judiciary is provided by this article and article 4 of

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

this part of the New Hampshire Constitution. The Independence of the Judiciary, 1 N.H.B.J. 28 (July 1959).

CJS Judges § 21 et seq.

States §§ 92, 98-101.

ALR Power of court to remove or suspend judge. 53 ALR3d 882.

Sexual misconduct as ground for disciplining attorney or judge. 43 ALR4th 1062.

(c) 1999 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Inc. All Rights Reserved.

EILEEN FOX
COUNSEL TO THE COURT

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

FRANK ROWE KENISON
SUPREME COURT BUILDING
ONE NOBLE DRIVE
CONCORD, N.H. 03301-6160
(603) 271-2646

FILE COPY

February 12, 1999

Hon. Henry P. Mock, Chairman
House Committee on Judiciary
Room 208, Legislative Office Building
Concord, New Hampshire 03301

Re: House Bill 53

Dear Chairman Mock:

At the recent hearing on House Bill 53, a number of committee members expressed an interest in reviewing the forms used in the evaluation process for judges. Accordingly, I am enclosing copies of the evaluation forms currently used by the superior, district and probate courts.

If you have any questions about this, do not hesitate to contact me.

Very truly yours,

Eileen Fox

Eileen Fox

EF\klb

enclosures

corres\1999

FILE COPY

DOCUMENTS USED IN EVALUATING PERFORMANCE OF DISTRICT AND MUNICIPAL COURT JUDGES

DATE

PERSONAL AND CONFIDENTIAL

Name & Address~

Dear Judge Salutation~:

As you know, the State Supreme Court has instituted a program of judicial performance evaluation, which is to be implemented in all of the State's trial courts. I have asked the District Court Policy Committee to assist me in coordinating the program for the District and Municipal Courts.

Enclosed you will find a copy of the evaluation form and a list of people/agencies to whom your judicial performance form will be mailed. The list is meant to include a representative sampling of the people who regularly appear in your court. If there are people not listed whom you believe should be asked to participate in this process, please forward their names and addresses to my office within the next 10 days.

After all the performance evaluation forms have been returned to us, we will be in contact with you to arrange for a meeting, at your convenience, where the responses to the evaluation questionnaires can be reviewed. This will provide you with an opportunity to address any or all of the responses submitted via the questionnaire.

I am also enclosing a self-assessment questionnaire, which you should fill out completely and return to me no later than **date~**. We hope this questionnaire will assist you in focusing your own thoughts on judicial performance and will serve as a good place to begin our discussion.

Many of our judges in the District, Superior, and Probate Courts have already completed this program of judicial performance evaluation and are quite enthused about their experience. We do

not want anyone to feel threatened by the program, and it is our hope that it will be received as an outstanding opportunity for all of us to review the opinions of some of those with whom we regularly work while performing our judicial duties.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Edwin W. Kelly
Administrative Judge

EWK:dbh

Enclosures

JUDICIAL PERFORMANCE EVALUATION QUESTIONNAIRE

INSTRUCTIONS: The judicial performance of the judge named below is currently being evaluated. As a means of assessing the judge's performance for the purpose of judicial improvement, this questionnaire has been developed. Please answer the following questions by checking the response that best fits the judge's performance. There is room for comments on page 4. Your cooperation is appreciated. To preserve the confidentiality of your answers, please **DO NOT SIGN THIS QUESTIONNAIRE.**

NAME OF COURT	NAME OF JUDGE

TYPES OF CASES ON WHICH YOU GENERALLY APPEAR BEFORE THIS JUDGE

1. [ ] Civil
2. [ ] Criminal (Specify type below)
   a. [ ] Felony Probable Cause
   b. [ ] Misdemeanor
   c. [ ] Violation
3. [ ] Small Claims
4. [ ] Landlord/Tenant
5. [ ] Domestic Violence
6. [ ] Juvenile

SECTION I: LEGAL ABILITY

This section deals with legal competence, learning and understanding, and the judicial application of such knowledge in the conduct of court proceeding. Check only one response for each question.

Please assess the judge's performance with respect to:	Excellent	More Than Adequate	Adequate	Less Than Adequate	Poor	No Opinion or Not Applicable
1. Knowledge of relevant substantive law						
2. Knowledge of rules of procedure						
3. Knowledge of rules of evidence						
4. Ability to identify and analyze relevant issues						
5. Judgment in application of relevant laws and rules (Whether or not you agreed with judge's rulings)						
6. Giving reasons for rulings when needed						
7. Clarity of explanation of rulings						
8. Adequacy of findings of facts						
9. Clarity of judge's decision (either oral or written)						
10. Completeness of judge's decision (either oral or written)						

SECTION 2: JUDICIAL MANAGEMENT SKILLS

This section deals with judicial ability and skill in the organization, management and handling of court proceedings. Check only one response for each question.

Please assess the judge's performance with respect to:	Excellent	More Than Adequate	Adequate	Less Than Adequate	Poor	No Opinion or Not Applicable
11. Effectiveness in narrowing the issues in dispute - when appropriate						
12. Moving the Proceeding in an appropriately expeditious manner						
13. Maintaining appropriate control over the proceeding						
14. Punctuality						
15. Doing the necessary "homework" on the case						
16. Rendering rulings & decisions without unnecessary delay						
17. Allowing adequate time for presentation of the case in light of existing time constraints						
18. Resourcefulness and common sense in resolving problems arising during the proceeding						
Please assess the judge's settlement activities:						
19. Appropriateness of the judge's settlement initiatives (If less than adequate or poor, please explain in the Comments section)						
20. Thoughtfully exploring the strengths and weaknesses of each party's case in settlement discussions with the attorneys						
21. Credibility of the judge's settlement appraisals						
22. Skills in effecting compromise						
23. Absence of coercion, threat or the like in settlement efforts (If less than adequate or poor, please explain in Comments section)						

SECTION 3: COMPORTMENT

This section deals with various aspects of judicial personality and behavior in the conduct of court proceedings, such as temperament, attitude and manner. Check only one response for each question.

Please assess the judge's performance with respect to:	Excellent	More Than Adequate	Adequate	Less Than Adequate	Poor	No Opinion or Not Applicable
24. Attentiveness						
25. Courtesy to participants						
26. Openmindedness						
27. Patience						
28. Absence of arrogance						
29. Absence of bias and prejudice based on race, sex, ethnicity, religion, social class or other factor (If less than adequate or poor, please explain in the Comments section)						
30. Ability to really listen						
31. Even-handed treatment of the litigants (If less than adequate or poor, please explain in the Comments section)						
32. Even-handed treatment of attorneys (If less than adequate or poor, please explain in the Comments section)						
33. Decisiveness						
34. Fostering a general sense of fairness						

SECTION 4: BACKGROUND CHARACTERISTICS

(This information will be used for statistical analysis only.)

35. Please indicate approximately how many times you have appeared before this judge in the last three years. _____

36. How long have you practiced law? _____ years

37. Is your principal law office located in the county in which this judge sits? [ ] Yes [ ] No

38. What percentage of your time in practice is litigation? _____%

39. Is your litigation principally conducted in the county in which this judge sits? [ ] Yes [ ] No

40. Which of the following describes your primary law practice? (Please check one.)

[ ] solo (including office sharing)

[ ] public defender/defense attorney

[ ] prosecutor

[ ] law firm with 2 - 15 attorneys

[ ] law firm with more than 15 attorneys

[ ] corporate or house counsel

[ ] public agency counsel

[ ] other (please specify)

_____

SECTION 5: COMMENTS

If you wish to elaborate on any of your responses or comment further on aspects of the judge's performance, please use this space.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Please return your completed questionnaire in the enclosed stamped addressed envelope (marked CONFIDENTIAL) to:

Judicial Performance Evaluation Committee of the District Court
c/o Edwin W. Kelly, Administrative Judge
PO Box 389
Concord, NH 03302-0389

JUDGES SELF-ASSESSMENT QUESTIONNAIRE

1. How often have you been able to review case files prior to hearings or trials?

( ) Rarely
( ) Sometimes
( ) About half the time
( ) Most of the time
( ) Always

2. How many findings have you generally had outstanding over 30 days?

3. How would you describe your treatment of parties and attorneys in regard to their scheduling needs and difficulties?

( ) Very strict
( ) Firm
( ) Somewhat accommodating
( ) Very accommodating
( ) Other:

4. Do you generally involve attorneys, litigants and court staff when making scheduling decisions about special situations, such as working late or through the lunch hour?

( ) Rarely
( ) Sometimes
( ) About half the time
( ) Most of the time
( ) Always

5. A judge should be evaluated on his/her ability to cope with judicial stress.

Psychologists tell us that stress is a normal accompaniment of life and while it is ever present it must be kept within tolerable limits. Most judges would agree that stress is inherent in their judicial career. When stress begins to mount, a judge may exhibit signs of what colloquially has been called "burnout". Please indicate how often you have experienced "burnout" symptoms recently such as having difficulty keeping your temper or becoming

easily irritated, keeping inappropriate comments out of the courtroom, making decisions similar to others you have made previously or often feeling physically or mentally exhausted?

( ) Rarely
( ) Sometimes
( ) About half the time
( ) Most of the time
( ) Always

What efforts have you taken or contemplated in controlling or overcoming stress?

6. Have you felt pushed by the caseload and others' (or your own) expectations to the point where "moving cases" takes precedence over quality of justice concerns?

( ) Rarely
( ) Sometimes
( ) About half the time
( ) Most of the time
( ) Always

7. Over the past two years, how many times were you reversed on appeal because of an oversight, where the appropriate case law was available?

8. How would you rate the amount and quality of continuing education you have received over the past two years?

( ) Poor/inadequate
( ) Less than sufficient
( ) Sufficient
( ) More than sufficient
( ) Excellent

9. How often are you able to make findings the same day as a hearing (including orally)?

( ) Rarely
( ) Sometimes
( ) About half the time
( ) Most of the time
( ) Always

10. How often have meritorious motions to reconsider been filed pointing out errors or inappropriate law in findings you have issued over the past two years?

( ) Never
( ) Once
( ) Less than 5% of the time
( ) 5% - 10% of the time
( ) More than 10% of the time

11. How often do you think that you are sufficiently familiar with the law and the facts that apply to the cases you are hearing?

( ) Rarely
( ) Sometimes
( ) About half the time
( ) Most of the time
( ) Always

12. Do you review all slip opinions of the N.H. Supreme Court?

( ) As they are received
( ) Within 30 days of receipt
( ) Within 60 days of receipt
( ) Rarely
( ) Never

13. How often do you think that you issue sufficient findings in cases you have heard?

( ) Rarely
( ) Sometimes
( ) About half the time
( ) Most of the time
( ) Always

14. How often during the past two years do you think that you have shown partiality, or that there has been a appearance of partiality when you have been presiding,

(a) toward a particular party or attorney?

( ) Never
( ) Rarely
( ) Occasionally
( ) Sometimes

(b) toward the prosecution or the defense in criminal cases?

( ) Never
( ) Rarely
( ) Occasionally
( ) Sometimes

(c) toward the husband or wife in domestic cases?

( ) Never
( ) Rarely
( ) Occasionally
( ) Sometimes

(d) toward the plaintiff or defense in civil cases?

( ) Never
( ) Rarely
( ) Occasionally
( ) Sometimes

15. How would you describe your style of courtroom control?

( ) Generally let attorneys set the pace
( ) Somewhat controlling
( ) Very controlling
( ) Other:

16. How would you describe your settlement style?

( ) Never intervene
( ) Rarely intervene
( ) Discuss settlement in most cases
( ) Discuss settlement in all cases
( ) Will continue cases if settlement seems imminent

17. In addition to presiding on cases, what other assignments as a judge do you undertake, such as standing or special court committees or bar committees or continuing judicial education programs?

(a) How many hours a year do you estimate that you spent in such matters?

COMMENTS

If you wish to elaborate on any of your responses or comment further on aspects of your performance, please use this space.

LIST OF PEOPLE/AGENCIES TO WHOM QUESTIONNAIRES WERE SENT

Police Chiefs in each town served by your court

DCYF district office supervisor for CPSW serving your court

DCYF district office supervisor for JSO serving your court

County Department of Corrections Chief

Managing Attorney for the New Hampshire Public Defender's Office

Troop Commander of the State Police Barracks serving your court

Lawyer/prosecutors serving your court

DOCUMENTS USED IN

EVALUATING PERFORMANCE

OF

SUPERIOR COURT JUDGES

Superior Court of New Hampshire

NOV 16 1998

Joseph P. Nadeau
Chief Justice

99 North State Street
Concord, N.H. 03301-4315
Tel. (603) 271-2030

November 12, 1998

Wilfred Sanders, Esq.
Sanders & McDermott
PO Box 5070
Hampton, NH 03843

Dear Jack,

On a regular basis, I conduct a performance evaluation of the judges and masters at Superior Court. That process includes input from our staff, court reporters, monitors, bailiffs, attorneys and others who appear regularly at Superior Court.

I am enclosing a two sided questionnaire which asks that particular judges or masters be rated on certain characteristics. The form also provides the opportunity for additional written comments on the back. I would appreciate it very much if you would disseminate this form to any person in your office who appears at Superior Court with sufficient frequency to provide meaningful information.

It is my intent that the information be provided anonymously and no record will be kept of the individuals to whom the forms were sent or from whom they were received unless someone voluntarily provides their name on the form.

Obviously, it is difficult to place all of the important characteristics in a form that requires only ranking without any comment, so I hope that you will provide constructive information about each of the judges and masters evaluated.

Thank you very much for your help in the process.

Very truly yours,

Joseph P. Nadeau

JPN/id

Enclosures

11\1\98 SUPERIOR COURT PERFORMANCE EVALUATION - ATTORNEY

Please rank performance in the areas with which you are familiar. 1 (low) -> 10 (high)

	RANK
1. Accessibility to staff	
2. Conscientiousness and diligence	
3. Patience and tolerance	
4. Effectiveness of communication	
5. Shows respect for staff	
6. Has earned your respect	
7. Allows me to perform my job	
8. Attentiveness to court business	
9. Promptness in rendering decisions	
10. Efficiency in use of court time	
11. Familiarity with and use of court forms	
12. Familiarity with office procedures	
13. Accessibility to counsel	
14. Handling of complex cases and issues	
15. Control in courtroom	
16. Decisiveness of decisions and rulings	
17. Attentiveness to witnesses and counsel	
18. Knowledge of law	
19. Knowledge of evidence	
20. Knowledge of procedure	
21. Understanding & compassion	
22. Fairness and equality of treatment	
23. Freedom from racial, religious or gender bias	
24. Level of professionalism	
COMPARE TO OTHER SUPERIOR CT JUDGES\MASTERS A-(top third), B-(middle), C-(lower third)	

Number of years in practice._____
Number of hearings before this judge or master.___
Number of appearances before other judges or masters.___
Civil #Criminal #Marital

(Please make any additional comments on the back of this page

ADDITIONAL COMMENTS:

It is not necessary to sign this form but you may do so if you wish.
Please return to:

New Hampshire Superior Court Center
Judicial Evaluation - Confidential
99 North State Street
Concord N.H. 03301

DOCUMENTS USED IN

EVALUATING PERFORMANCE

OF

PROBATE COURT JUDGES

STATE OF NEW HAMPSHIRE
PROBATE COURT

JOHN R. MAHER
ADMINISTRATIVE JUSTICE

ROCKINGHAM COUNTY COURTHOUSE
P.O. BOX 789
KINGSTON, NEW HAMPSHIRE 03848-0789
TELEPHONE: (603) 642-5437
FACSIMILE: (603) 642-7374

MEMORANDUM

June 26, 1998

TO: ROCKINGHAM COUNTY PROBATE COURT PRACTITIONERS

FROM: JOHN R. MAHER, ADMINISTRATIVE JUDGE

RE: JUDICIAL EVALUATIONS

NRM 6/24/98

A judicial performance evaluation is being conducted for probate judges. An evaluation completed by practitioners regularly appearing before a particular judge is helpful in giving the judge an assessment of his or her performance.

The judicial performance of is being evaluated. Accordingly, enclosed is a Judicial Performance Evaluation Questionnaire for completion. It is respectfully requested that you complete the questionnaire and return it to me at the above address by **July 24th.**

It is important, in order to preserve the confidentiality of your answers, that you do not sign or otherwise identify yourself when answering the questionnaire. It is also important that you be as candid as you can when completing the questionnaire. If you do not know the answers to any question, please mark it "not applicable".

Thank you for your cooperation and assistance in this matter.

N. H. JUDICIAL BRANCH
JUDICIAL PERFORMANCE EVALUATION QUESTIONNAIRE

The performance of the judge named below is currently being evaluated. This questionnaire has been developed as a means of assessing the judge's performance for the purpose of performance improvement. Please answer the following questions by checking the response that best fits the judge's performance. Comments may be made on the last page of the document. To preserve the confidentiality of your answers, please do not sign this questionnaire.

Judge Name _ Court Rockingham Probate KEY: EXCELLENT - Consistently exceeds standard VERY GOOD - Frequently exceeds standard SATISFACTORY - Consistently meets standard FAIR - Does not always meet standard UNSATISFACTORY - Performs consistently below standard NOT APPLICABLE - Does not apply to this judge	EXCELLENT	VERY GOOD	SATISFACT	FAIR	UNSATIS	NOT APP
LEGAL ABILITY This section deals with legal competence, learning and understanding, and the judicial application of such knowledge in the conduct of court proceedings.						
1. Knowledge of relevant substantive law						
2. Knowledge of rules of procedure						
3. Knowledge of rules of evidence						
4. Ability to identify and analyze relevant issues						
5. Judgment in application of relevant laws and rules						
6. Giving reasons for rulings when needed						
7. Clarity of explanation of rulings						
8. Adequacy of findings of fact						
9. Clarity of judge's decision (either oral or written)						
10. Completeness of judge's decision						

JUDICIAL MANAGEMENT SKILLS This section deals with judicial ability and skill in the organization, management and handling of court proceedings.	EXCELLENT	VERY GOOD	SATISFACT	FAIR	UNSATIS	NOT APP
11. Effectiveness in narrowing the issues in dispute - when appropriate						
12. Moving the proceeding in an appropriately expeditious manner						
13. Maintaining appropriate control over the proceeding						
14. Punctuality						
15. Doing the necessary "homework" on the case						
16. Rendering rulings and decisions without necessary delay						
17. Allowing adequate time for presentation of the case in light of existing time constraints						
18. Resourcefulness and common sense in resolving problems arising during the proceeding.						
19. Appropriateness of the judge's settlement initiatives (if less than adequate or poor, please explain in the Comments section)						
20. Thoughtfully exploring the strengths and weaknesses of each party's case in settlement discussions with the attorneys						
21. Credibility of the judge's settlement appraisals						
22. Skill in effecting compromise						
23. Absence of coercion, threat or the like in settlement efforts (if less than adequate or poor, please explain in Comments section).						

COMPORTMENT This section deals with various aspects of judicial personality and behavior in the conduct of court proceedings, such as temperament, attitude and manner.	EXCELLENT	VERY GOOD	SATISFACT	FAIR	UNSATIS	NOT APP
24. Attentiveness						
25. Courtesy to participants						
26. Openmindedness						
27. Patience						
28. Absence of arrogance						
29. Absence of bias and prejudice based on race, sex, ethnicity, religion, social class, or other factor (if less than adequate or poor, please explain in the Comments section)						
30. Ability to really listen						
31. Even-handed treatment of the litigants (if less than adequate or poor, please explain in the Comments section).						
32. Even-handed treatment of attorneys (if less than adequate or poor, please explain in the Comments section)						
33. Decisiveness						
34. Fostering a general sense of fairness						

BACKGROUND CHARACTERISTICS

This information will be used for statistical analysis only.

35. Please indicate approximately how many times you have appeared before this judge in the last three years. _____

36. How long have you practiced law? _____

37. Is your principal law office located in the county in which this judge sits? _____

38. What percentage of your time in practice is probate? _____

39. Is your probate practice principally conducted in the county in which this judge sits? _____

40. Which of the following describes your primary law practice? (please check one)

[ ] solo (including office sharing)
[ ] law firm with more than 15 attorneys
[ ] public defender/defense attorney
[ ] corporate or house counsel
[ ] prosecutor
[ ] public agency
[ ] law firm with 2 -15 attorneys
[ ] other (please specify)

41. Types of cases on which you generally appear before this judge:

[ ] Administration of Estates
[ ] Adoptions
[ ] Guardianship/Conservatorship
[ ] Termination of Parental Rights
[ ] Other

COMMENTS

If you wish to elaborate on any of your responses or comment further on aspects of the judge's performance, please use the following space or attach a separate sheet.

☐ Check here if you would like this page of the questionnaire to remain confidential and be reviewed only by the Administrative Judge of the Probate Court.

THANK YOU FOR YOUR ASSISTANCE.

PLEASE RETURN THIS FORM DIRECTLY TO:

ADMINISTRATIVE JUDGE, P.O. BOX 789, KINGSTON, NH 03848.

To: The House Judiciary Committee, 208 LO.B.

FILE COPY

RE: HB #53 7-year review of judges

Date: Tuesday, February 9th, 1999 @ 10:15- :45 o'clock a.m.

This is to follow up my testimony of about two minutes as speaker #2 of 2 for this continued hearing from Wed., Jan. 13th, 1999 @ 11:00 a.m.

My comments being four (4) in number:

1. that this Committee make sure that the finalized version of this bill include language so that any subsequent review panel will NOT be ruled tyrant-style as is happening over in Vermont wherein the Chairman there has dictated that: "inquiry may not be made into intellectual processes or how the judge got to a particular decision." (photocopy of The EAGLE TIMES, for Wednesday, February 3rd, 1999 @ page B9, Vol. 85, NO. 28 AP article by David Gram enclosed);

2. that speaker #1 Jack Sanders mention of the word: "democracy" was replied to by me that we are supposed to live in an Article IV, Section 4 Constitutional "Republic"an form of government (United States Constitution), because the former is: what three wolves and two sheep vote what they'll have for dinner (first told to me by Barbara (Mrs. Frank) A. Anderson, deceased over at their Sherwood Inn, Epsom, NH with the Trojan Horse on Route 4 + 9 who held Constitutional meetings back in the late 1970s thru the 1980's;

3. that I will try to obtain printed evaluation forms with the writ ings thereon by the ones who either mailed them in or put them into the suggestion boxes at BOTH: (a) the Superior Court Center for all ten County Courts (Attn: Joseph P. Nadeau, 99 State Street, North, Concord, NH) AND (b) the District Courts (Attn: Edwin W. Kelly, office at Concord District Court); __, __

4. that in reply to Jack Sanders mention of the tree on the NH Constitutional booklets available for free from the Office of Secretary of State, 2nd fl. SH wherein he mentioned the length of each limb being equal, maybe in thickness too as compared to the three seperate and co-equal branches of government: I quoted from one of the Founding Fathers that: The Tree of Liberty must be refreshed from time to time with the blood of patriots and tyrants; it is its natural manure. To which I added to thank you all for being the "check and balance" in the system.

Sincerely Yours,

Joseph S. Haas, Jr.
P. O. Box 218
Ashland, N.H. 03217

P.S. In addition to what I said, I write that maybe such a review could also have the requirement that each judge also go thru a complete physical, and that like the state elevator certificates, his/her health registered as both physically and mentally fit as PROOF of his/her Honor" (to all rise from your seats for the honorable court without question). I write this after listening in a past Presidential Election here in the Granite State of this criteria in the platform of the Natural Law Party; and after reading one editorial recently about some judges staying on the bench past their interest just to be able to collect their retirement, perhaps being dealt with in HB #___ about their pension.

pc: The NH Supreme Court.

For:
HB #53
of 1999

Vol. 85, No. 28

Vermont

Sports, page 10

B

Wednesday, February 3, 1999

Eagle Times

Page 9

Legislators 'instructed' on questioning judges

By DAVID GRAM
The Associated Press

MONTPELIER, Vt. — The Legislature's Judicial Retention Committee on Tuesday was told that it should tread lightly when questioning judges about the thought processes that lead to their decisions.

Douglas Richards, chairman of Vermont's Judicial Ethics Committee, cited the state rules governing judges' conduct when he told the lawmakers that "inquiry may not be made into intellectual processes or how the judge got to a particular decision."

Some of the four House members and four senators who serve on the retention committee bristled at being told what to ask judges who must appear before the panel every six years to keep their jobs.

"I'm wondering how this committee is supposed to make recommendations to the General Assembly without full information from some of the judges and justices," said Sen. Richard Sears, D-Bennington.

Rep. William Lippert, D-Hinesburg, said questions to be asked of judges by the committee are "our process. We need to stay in charge of that."

The exchange came during the first formal hearings of the committee, which is under pressure from a campaign by opponents to the Act 60 school funding reform law to dismiss three Supreme Court justices who joined the opinion that spawned the 1997 law.

The Legislature will review the performance of 13 judges and justices this year.

Former Rep. Robert Paolini, executive director of the Vermont Bar Association, urged committee members to fend off attempts to inject politics and ideology into the judicial retention process.

"What the bar is concerned about is that this review process might be focused on particular cases," he said, urging the committee to take a broader view of a judge's tenure on the bench.

He asked committee members to act within the Legislature as "the leaders in protecting the independence of the judiciary in this state."

After an orientation session of nearly two hours, the panel heard Chief Justice Jeffrey Amestoy, who did not participate in the Brigham decision that prompted Act 60, and District Judge Brian Burgess ask for six more years on the bench.

In both cases, questions from the committee focused on the retention applicants' temperament, administrative abilities and general view of the judiciary in society; none concerned individual judicial decisions.

Amestoy praised Vermont's process of retaining judges. In many states, judges are elected, which critics say hampers their independence, or are appointed for life, which critics say hampers their accountability.

Vermont's practice of giving judges career-long appointments subject to legislative review every six years strikes a good balance, the chief justice said. It produces a "judiciary that is both accountable to and independent from the citizens it judges."

Amestoy's retention hearing comes just two years after he was appointed to fill out the term of Chief Justice Frederic Allen, who retired. He said his first 18 months amounted to intensive on-the-job training in areas of the law in which he hadn't been steeped during his previous 12 years as attorney general.

He said he sees the chief justice's job as threefold: judicial in the application of the law, administrative in the management of the court system and one of leadership in being the primary face of the judiciary before the public.

Amestoy drew a laugh when he asked for forbearance that he might change his judicial thinking as he matures in the job. He quoted Justice Robert Jackson, who served on the U.S. Supreme Court earlier in this century, and who explained one judicial flip-flop by saying, "The matter does not appear to me now as it appears to have appeared to me then."

Burgess said he finds the job of judge very rewarding, but grows frustrated at some aspects of it. He complained that furloughed prisoners often are not punished severely when they violate the conditions of their release.

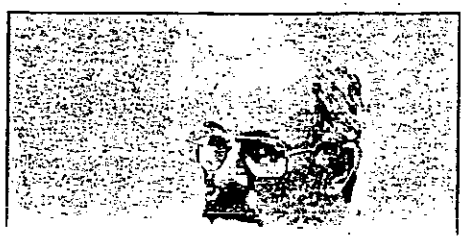
He echoed Amestoy's concerns that mounting work loads could harm the quality of judicial work. A new law cracking down on alcohol use by teenagers would bring 400 to 600 new offenders before the Vermont District Court for Chittenden County this year, Burgess predicted.

Access for recreation, logging negotiated

State's share of Champion land deal at issue

By ROSS SNEYD
The Associated Press

MONTPELIER, Vt. — As debate on a midyear adjustment of state spending opened on the floor of the House, a committee sat upstairs drafting compromise language to address concerns over a massive land deal in the Northeast Kingdom.



Judge Fisher to retire

By CHRISTOPHER GRAFF
The Associated Press

MONTPELIER, Vt. — District Court Judge Shireen Avis Fisher, citing the unrelenting pressures of presiding in Family Court, plans to retire.

"I think I am coming up on burnout," she said Tuesday in an interview. "It is not a good idea for a judge to continue past that point. It is better for me and the litigants that I step down now."

Fisher's retirement, effective March 1, brings to four the number of judges who have recently stepped down or announced their retirements.

The others are Superior process of reviewing a number of justices and judges to determine whether they get to serve another six-year term. She said the fact she was up for retention played a part in her decision.

"The process calls for you to go under oath and tell a committee why you want to do the job for six more years," she said. "I don't want to do the job for six more years."

Fisher also said the retention process has "become very politicized and unpleasant. It is worth doing if you really want to do the job. I don't."

In a resignation letter to

Citing the downside

The Associated Press

Judge Shireen Avis Fisher announced Tuesday her retirement, citing the pressures of presiding in Family Court. In a 1997 Vermont Bar Association report, Fisher described those pressures:

"The family judge is called upon to make decisions almost constantly during the course of the day, ranging from decisions about whether a person's life

HOUSE BILL 53

Establishing a "Process for Reviewing" Judges

FILE COPY

House Judiciary Committee

Resumed Hearing
February 9, 1999

The nature of our system of government is such that there are significant tensions created by the interplay of the co-equal branches of government. These tensions are important and are an integral part of our "checks and balances" system. To tamper with this system by subjecting one branch to the review of another for its continued existence will alter the finely tuned balance that protects the blind administration of justice from the vagaries of the political domain.

To that end, our founding fathers sought to avoid the tyranny they had experienced under British law, where judges employed at the whim of King acted not according to law, but to avoid the King's displeasure. New Hampshire signers of the Declaration of Independence Josiah Bartlett, William Whipple and Matthew Thornton listed abuses of the administration of justice among their chief grievances against the King of England.[1] New Hampshire's 1784 Constitution reflects those same concerns, stating that "[i]t is essential to the preservation of the rights of every individual . . . that there be an impartial interpretation of the laws, and administration of justice."[2] Clearly, impartiality and independence from the whim of the executive were major concerns to those establishing both the state and federal judicial systems.

New Hampshire has always prided itself on its independence, considering that to be its greatest strength. Independence is a bedrock principle underlying New

[1] "He has obstructed the Administration of Justice . . . He has made judges dependent on his Will alone, for the Tenure of their Office . . . ." THE DECLARATION OF INDEPENDENCE, paras. 10, 11 (U.S. 1776).
[2] N.H. Const., Part I, Art. 35.

Hampshire's system of government. "In the government of this state, the three essential powers thereof, to wit, the legislative, executive and judicial, ought to be kept as separate from, and independent, of each other, as the nature of free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the constitution in one insoluble bond of unity and amity."[3] Independence between the branches of government is therefore required by the Constitution and should be honored by the legislature.

Because our system is one of majority rule, the judiciary is an essential element in protecting the individual rights of those in the minority. To uphold these rights, the Constitution requires that there be impartial interpretation of the laws and administration of justice by granting "every citizen [the right] to be tried by judge as impartial as the lot of humanity will admit."[4] The Constitution further denotes the policy of judicial independence, noting that it is for the security of the *people*, not the judiciary.[5] The principle of a judiciary free from oversight by those branches controlled by the majority is critical to the continued preservation of those explicitly enumerated individual rights granted to the citizens of this state.

While institutional independence of the judiciary allows for administration of justice without interference from other branches of government, the freedom to decide cases without fear of retaliation is equally important. To reach the Constitutional mandate of impartiality, a judge must be insulated from all forms of political pressure to make a fair decision. Impartiality requires that the judge be free to decide the issues in each case according to his or her best judgment based on the facts and the

---

[2] N.H. Const., Part I, Art. 35.
[3] N.H. Const., Part I, Art. 37.
[4] N.H. Const., Part I, Art. 35.

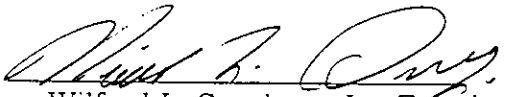
law without fear of retribution.[6] This does not mean that the Court should be free from principled and productive criticism. It does, however, mean that a judge should not have to consider the political ramifications of a certain decision over the rule of law upon his continued livelihood when he is reviewed by the governor and executive council. Such considerations stifle rather than promote the ideals of justice, fairness and individual rights.

The balance of power between the branches of government without tyranny of one over another is the essence of the strength of the New Hampshire government. To constrain the judiciary of the State of New Hampshire by subjecting it to the whim of the executive branch of government disturbs the balance of power that has made our system work for over two hundred years.

House Bill 53 is designed to cure an ill which does not exist in New Hampshire. Accordingly, I urge that it be voted Inexpedient to legislate.

Respectfully submitted,

Sanders and McDermott, P.L.L.C.

By: 

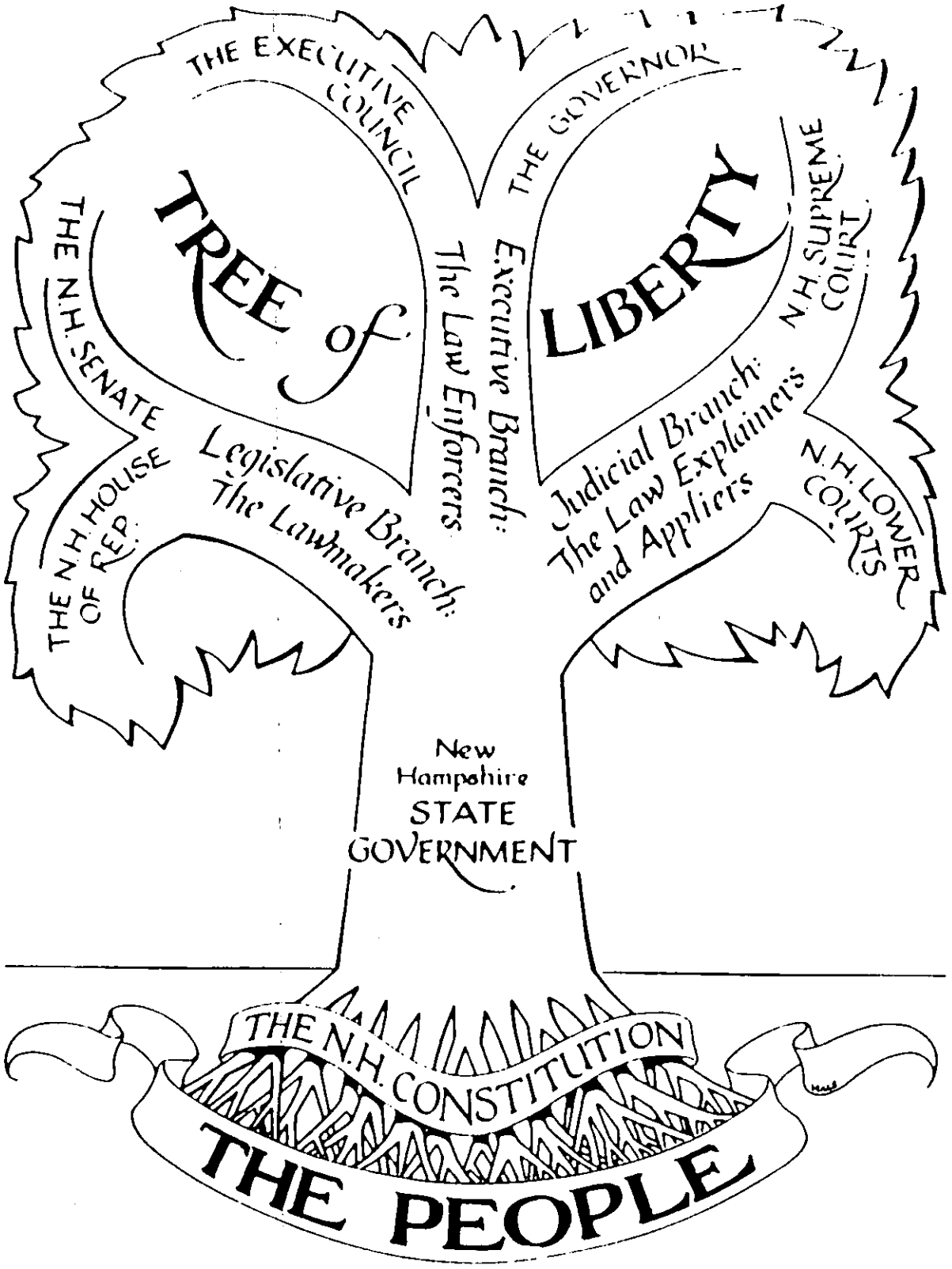
Wilfred L. Sanders, Jr., Esquire
234 Lafayette Road
P.O. Box 5070
Hampton, NH 03842-5070
(603)926-8926

---

[5] "It is therefore not only the best policy, but for the security of the rights of the people, that the judges of the supreme judicial court should hold their offices as long as they behave well. . . ." N.H. Const., Part I, Art. 35.

[6] Hon. William H. Batchelder, *The Independence of the Judiciary in New Hampshire Revisited*, N.H.B.J. 62, 66 (June 1998).

FILE COPY


THE EXECUTIVE COUNCIL
THE GOVERNOR
TREE of LIBERTY
THE N.H. SENATE
Executive Branch: The Law Enforcers
N.H. SUPREME COURT
Legislative Branch: The Lawmakers
Judicial Branch: The Law Explainers and Appliers
THE N.H. HOUSE OF REP.
N.H. LOWER COURTS
New Hampshire STATE GOVERNMENT
THE N.H. CONSTITUTION
THE PEOPLE

RATH, YOUNG AND PIGNATELLI
Professional Association

ONE CAPITAL PLAZA · P.O. BOX 1500 · CONCORD, NEW HAMPSHIRE 03302-1500
TELEPHONE (603) 226-2600 · FACSIMILE (603) 226-2700

THOMAS D. RATH
Attorney at Law

FILE COPY

February 5, 1999

Honorable Henry Mock, Chairman
House Judiciary Committee
Legislative Office Building
Room 208
Concord, New Hampshire 03301

Re: HB 53, establishing a process for reviewing judges

Dear Representative Mock:

I am writing regarding ***HB 53, establishing a process for reviewing judge***. I was planning on attending the hearing and testifying in opposition to this bill in my personal capacity, but prior professional commitments require me to be out of state, and I am unable to attend the hearing. With your concurrence, I have asked Mr. Sanders to read my testimony into the record on my behalf.

Please feel free to contact me if you have any questions or comments.

Very truly yours,

Thomas D. Rath

TDR/djv
Enclosure

HOUSE JUDICIARY COMMITTEE
FEBRUARY 9, 1999
10:15 A.M.

TESTIMONY OF THOMAS D. RATH ON HB 53

Chairman Mock and Members of the Committee, thank you for the opportunity to testify today on HB 53 relating to review of judges. My name is Thomas D. Rath, and I am an attorney with the Concord firm of Rath, Young, and Pignatelli, Professional Association. I was privileged and honored to serve as New Hampshire's Attorney General from 1978 to 1980.

I appear today in my personal capacity to oppose HB 53. In part, HB 53 would require the Governor and Executive Council to conduct a review of New Hampshire judges every 7 years after appointment. I would like to outline two reasons why a bill providing for political review and removal of judges would be detrimental to the citizens of New Hampshire.

First, I believe HB 53 would damage one of the United States and New Hampshire's most cherished constitutional principles, an independent judiciary. Part 2, Article 73 of the New Hampshire Constitution provides that all judicial officers shall serve during good behavior.

Part 1, Article 35 of the New Hampshire Constitution provides not only the policy but also the rationale:

"It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, that the judges of the supreme judicial court should hold their offices so long as they behave well. . ."

Respect for popular will and opinion is vital to our democracy and serves well two of our three co-equal governmental branches--the Executive and the Legislative. Yet a measured independence from popular will was very important to the founders of New Hampshire and the United States to safeguard every citizen's rights. Those principles of independence have permitted the judiciary time and time again to stand up for the rights of individuals to "Live Free or Die" even when the popular will was decidedly against those individual's viewpoints, beliefs, or rights. Political review and removal of judges potentially harms the judiciary's ability to safeguard those rights. Let me give you an example.

Imagine that you appear before a New Hampshire judge sometime in the distant future. You possess a cherished constitutional right as a civil litigant or a criminal defendant to an impartial administration of justice. The judge has served faithfully for 6 ½ years but is soon coming up for review.

Your legal case is strong but the facts of your case are extremely unpopular. Do you want to be that civil litigant or criminal defendant in that courtroom with your rights on the line? I am confident that the judge would make the correct legal decision and uphold a sworn constitutional duty. But does the judge's upcoming review by political officials advance or inhibit the ability for that judge to make the correct but unpopular decision? Would the subsequent removal of that judge advance or inhibit our collective rights?

I would like to share a second reason why I think HB 53, if enacted, would be a poor policy choice. Political review and removal of judges would hurt New Hampshire's ability to recruit the highest quality persons to the bench. Why would a prospective judge walk away from a successful legal career for an uncertain period on the bench, subject to constant political scrutiny measuring the judge's decisions according to popular viewpoints instead of the commands of the law and the constitution?

In conclusion, I believe that a rigorous debate on the actions and accountability of all governmental officials is an important part of our democracy. I commend you for holding these public hearings and considering various points of view. Yet I urge you to defeat HB 53 and protect an independent judiciary.

Testimony of Representative Bruce F. Hunter, Hillsborough 7
House Bill 53

FILE COPY

Good morning, House Bill 53 creates a mechanism for the review and reappointment of our judges. This process will follow by seven years the appointment of any judge and will be conducted by the appointing authority in the persons of the governor and executive council.

Section Roman ll, of the bill describes the review process which is the same as for the initial appointment, with a report to be made for public inspection. You will see in the material passed to you from our research office on the fourth floor, that New Hampshire is the only state without periodic reviews of our judges. Twenty other states have their judges reviewed and re-appointed by their governmental bodies and the terms of appointment vary from 4 to 6, 8, and 12 years. No other state has a lifetime appointment, as does New Hampshire.

Except for states that elect judges there appears to be no state where there are no basic or intial qualifications except for New Hampshire. This coupled with no review process does not seem to be in the best interests of the citizenry of our state.

In New Hampshire, there is no way to know the past performance of any judge on a particular issue. Those judges that cross over the line, so to speak, and have complaints filed against them are as immune from public criticism as if there had been no complaint or infraction at all. The secrecy that surrounds the process does not enhance the public perception of justice in our courts and the parade of people that have come to Concord over the past two years is likely the tip of the iceberg. There needs to be a process whereby a good judge is recognized as well as a judge that may be incompetent. Today the only way to determine the qualifications of most judges is by the back room stories that ultimately make the rounds and may or may not be accurate. This process will be good for all concerned.

Thank you Mr. Chairman,

Bruce F. Hunter, State Representative

Table 4.4
SELECTION AND RETENTION OF JUDGES

State or other jurisdiction	How selected and retained
Alabama	Appellate, circuit, district and probate judges elected on partisan ballots. Municipal court judges appointed by the governing body of the municipality (majority vote of its members).
Alaska	Supreme Court, court of appeals, superior court and district court judges appointed by governor from nominations submitted by Judicial Council. Supreme Court, court of appeals and superior court judges approved or rejected at first general election held more than three years after appointment. Reconfirmation every 10, eight and six years, respectively. District court judges approved or rejected at first general election held more than one year after appointment. Reconfirmation every four years. District court magistrates appointed by and serve at pleasure of presiding judge of superior court in each judicial district.
Arizona	Supreme Court justices and court of appeals judges appointed by governor from a list of not less than three nominees submitted by a nine-member Commission on Appellate Court Appointments. Superior court judges (in counties with population of at least 150,000) appointed by governor from a list of not less than three nominees submitted by a nine-member commission on trial court appointments. Judges initially hold office for term ending 60 days following next regular general election after expiration of two-year term. Judges who file declaration of intention to be retained in office run at next regular general election on non-partisan retention ballot. Superior court judges in counties having population less than 250,000 elected on non-partisan ballot; justices of the peace elected on partisan ballot; police judges and magistrates selected as provided by charter or ordinance; Tucson city magistrates appointed by mayor and council from nominees submitted by non-partisan Merit Selection Commission on magistrate appointments.
Arkansas	All elected on partisan ballot.
California	Supreme Court and courts of appeal judges appointed by governor, confirmed by Commission on Judicial Appointments. Judges run unopposed on non-partisan retention ballot at next general election after appointment. Superior court judges elected on non-partisan ballot or selected by method described above; judges elected to full term at next general election on non-partisan ballot. Municipal court and justice court judges initially appointed by governor and county board of supervisors, respectively, retain office by election on non-partisan ballot.
Colorado	Supreme Court and court of appeals judges appointed by governor from nominees submitted by Supreme Court Nominating Commission. Other judges appointed by governor from nominees submitted by Judicial District Nominating Commission. After initial appointive term of two years, judges run on record for retention. Municipal judges appointed by municipal governing body. Denver County judges appointed by mayor from list submitted by nominating commission; judges run on record for retention
Connecticut	All nonelected judges appointed by legislature from nominations submitted by governor exclusively from candidates submitted by the Judicial Selection Commission. Judicial Review Council makes recommendations on nominations for reappointment. Probate judges elected on partisan ballots.
Delaware	All appointed by governor from list submitted by a judicial nominating commission (which is established by executive order) with consent of majority of Senate.
Florida	Supreme court and district courts of appeal judges appointed by governor from nominees submitted by appropriate judicial nominating commission. Judges run for retention at next general election preceding expiration of term. Circuit and county court judges elected on non-partisan ballots.
Georgia	Supreme Court, court of appeals and superior court judges elected on non-partisan ballots. Probate judges and justices of peace elected on partisan ballots. Other county and city court judges appointed.
Hawaii	Supreme Court and intermediate court of appeals justices and circuit court judges nominated by Judicial Selection Commission (on list of at least six names) and appointed by governor with consent of Senate. Judges reappointed to subsequent terms by the Judicial Selection Commission. District court judges nominated by Commission (on list of at least six names) and appointed by chief justice.
Idaho	Supreme Court and court of appeals justices and district court judges elected on non-partisan ballot. Magistrates appointed on non-partisan merit basis by District Magistrates Commission and run for retention in first general election next succeeding the 18-month period following initial appointment; thereafter, run every four years.
Illinois	Supreme Court, appellate court and circuit court judges nominated at primary elections or by petition and elected at general or judicial elections on partisan ballot. Judges run in uncontested retention elections for subsequent terms. Circuit court associate judges, once appointed by circuit judges for four-year terms, are being converted to full circuit judges.
Indiana	Supreme Court justices, court of appeals judges and tax court judges are appointed by governor from list of three nominees submitted by seven-member Judicial Nominating Commission. Judges serve until next general election after two years from appointment date; thereafter, run for retention on record. Circuit, superior and county judges in most counties run on partisan ballot. Marion County municipal judges appointed by governor from nominees submitted by county nominating commission.
Iowa	Supreme Court, court of appeals and district court judges appointed by governor from lists submitted by nominating commissions. Judges serve until initial one-year term until January 1 following next general election, then run on records for retention. Full-time judicial magistrates appointed by district judges in judicial election district from nominations submitted by county judicial magistrate appointing commission. Part-time magistrates appointed by county judicial magistrate appointing commission.
Kansas	Supreme Court and court of appeals judges appointed by governor from nominations submitted by Supreme Court Nominating Commission. Judges serve until second Monday in January following first general election after one year in office; thereafter run on record for retention every six (Supreme Court) and four (court of appeals) years. District judges in most judicial districts selected by non-partisan commission plan.
Kentucky	All judges elected on non-partisan ballot.
Louisiana	All justices and judges elected on non-partisan basis, but state has open primary which requires all candidates to appear on a single ballot.
Maine	All appointed by governor with confirmation of the senate, except probate judges who are elected on partisan ballot.

See footnotes at end of table.

SELECTION AND RETENTION OF JUDGES — Continued

State or other jurisdiction	How selected and retained
Maryland J.N.C. E	Court of Appeals and Court of Special Appeals judges nominated by Judicial Nominating Commission, and appointed by governor with advice and consent of Senate. Judges run on record for retention after one year of service. Judges of circuit courts and Supreme Bench of Baltimore City nominated by Commission and appointed by governor. Judges run in first general election after year of service (may be challenged by other candidates). District court judges nominated by Commission and appointed by governor, subject to Senate confirmation.
Massachusetts G	All nominated and appointed by governor with advice and consent of Governor's Council. Judicial Nominating Commission, established by executive order, submits names on non-partisan basis to governor.
Michigan E	Nominated in party conventions, all are elected on non-partisan ballot, except remaining municipal judges who are selected in accordance with local procedures for selecting public officials.
Minnesota E	All elected on non-partisan ballot.
Mississippi E	All elected on partisan ballot, except municipal court judges who are appointed by governing authority of each municipality.
Missouri G	Judges of Supreme Cou.., court of appeals and several circuit courts appointed initially by governor f nominations submitted by judicial selection commissions. Judges run for retention after one year in office. All other judges ted on partisan ballot.
Montana E	All elected on non-partisan ballot. Judges unopposed in reelection effort, run for retention. Water cou judges are appointed by chief justice; Workers' compensation judges are appointed by the governor.
Nebraska G	All judges appointed initially by governor from nominees submitted by judicial nominating commissions. Judges run for retention on non-partisan ballot in general election following initial three-year term; subsequent terms are six years.
Nevada E	All elected on non-partisan ballot.
New Hampshire G	All appointed by governor and confirmed by majority vote of elected five-member executive council. NO RETENTION
New Jersey G	All appointed by governor with advice and consent of Senate, except judges of municipal courts serving a single municipality who are appointed by the governing body. Judges are reappointed by the governor (to age 70) with the advice and consent of Senate.
New Mexico G	Supreme Court, Court of Appeals, district and metropolitan judges appointed by governor from list submitted by a judicial nominating commission. At next general election, after appointment, judges run for full terms in partisan, contested election. The elected judge runs for subsequent terms in uncontested retention elections.
New York E	All elected on partisan ballot, except judges of Court of Appeals who are appointed by governor with advice and consent of Senate. Governor also appoints judges of court of claims and designates members of appellate division of supreme court. Mayor of New York City appoints judges of criminal and family courts in the city from list submitted by a judicial nominating commission, established by mayor's executive order.
North Carolina E	All elected on partisan ballot, except special judges of superior court who are appointed by governor.
North Dakota E	All elected on non-partisan ballot.
Ohio E	All elected on non-partisan ballot, except court of claims judges who may be appointed by chief justice of Supreme Court from ranks of Supreme Court, court of appeals, court of common pleas or retired judges.
Oklahoma G	Supreme Court justices and Court of Criminal Appeals judges appointed by governor from lists of three submitted by Judicial Nominating Commission. Judges run for retention on non-partisan ballot at first general election following completion of one year's service. Judges of court of appeals, and district and associate district judges elected on non-partisan ballot. Special judges appointed by district judges within judicial administrative districts. Municipal judges appointed by governing body of municipality.
Oregon E	All judges elected on non-partisan ballot for six-year terms, except municipal judges who are generally appointed and serve as prescribed by city council.
Pennsylvania E	All initially elected on partisan ballot and thereafter on non-partisan retention ballot, except magistrates (Pittsburgh) who are appointed by mayor.
Rhode Island G	Supreme Court justices elected by legislature. Superior, district and family court judges appointed by governor with advice and consent of Senate. Probate and municipal court judges appointed by city or town councils.
South Carolina E	Supreme Court, court of appeals, circuit court and family court judges elected by legislature from names submitted on a non-partisan basis by judiciary committee of legislature. Probate judges elected on partisan ballot. Magistrates appointed by governor with advice and consent of Senate. Municipal judges appointed by mayor and alderman of city.
South Dakota G	Supreme Court justices appointed by governor from nominees submitted by Judicial Qualifications Commission. Justices run for retention at first general election after three years in office. Circuit court judges elected on non-partisan ballot. Magistrates appointed by presiding judge of judicial court with approval of Supreme Court.
Tennessee G + E	Judges of intermediate appellate courts appointed initially by governor from list of three nominees submitted by Appellate Court Nominating Commission. Judges run for election to full term at biennial general election held more than 30 days after occurrence of vacancy. Supreme Court judges and all other judges elected on partisan ballot, except some municipal judges who are appointed by governing body of city.
Texas E	All elected on partisan ballot (method of selection for municipal judges determined by city charter or local ordinance).
Utah G	Supreme Court, district court, circuit court and juvenile court judges appointed by governor from list of at least three nominees submitted by Judicial Nominating Commission. Judges run unopposed for retention in general election following initial three-year term; thereafter run on record for retention every 10 (Supreme Court) and six (other courts of record) years.
Vermont G	Supreme Court justices, superior court and district and family court judges nominated by Judicial Nominating Board and appointed by governor with advice and consent of Senate. Judges retained in office unless legislature votes for removal.

SELECTION AND RETENTION OF JUDGES — Continued

State or other jurisdiction	*How selected and retained*
Virginia	All full-time judges elected by majority vote of legislature.
Washington	All elected on non-partisan ballot (municipal judges are appointed by mayor).
West Virginia	Supreme Court of Appeals judges, circuit court judges and magistrates elected on partisan ballot.
Wisconsin	Supreme Court, court of appeals and circuit court judges elected on non-partisan ballot.
Wyoming	Supreme Court justices, district and county court judges appointed by governor from list of three nominees submitted by judicial nominating commission. Judges run for retention on non-partisan ballot at first general election occurring more than one year after appointment. Justices of the peace elected on non-partisan ballot. Municipal (police) judges appointed by mayor with consent of Council.
Dist. of Columbia	Court of appeals and superior court judges nominated by president of the United States from a list of persons recommended by District of Columbia Judicial Nominating Commission; appointed upon advice and consent of U.S. Senate.
American Samoa	Chief justice and associate justice(s) appointed by the U.S. Secretary of the Interior pursuant to presidential delegation of authority. Associate judges appointed by governor of American Samoa on recommendation of the chief justice, and subsequently confirmed by the Senate of American Samoa.
Guam	All appointed by governor with consent of legislature from list of nominees submitted by Judicial Council; thereafter, run on record for retention every seven years.
No. Mariana Islands	All appointed by governor with advice and consent of Senate.
Puerto Rico	All appointed by governor with advice and consent of Senate.
U.S. Virgin Islands	All appointed by governor with advice and consent of legislature.

Sources: Warrick, *Judicial Selection in the United States: A Compendium of Provisions*, 2nd Edition (Chicago: American Judicature Society), 1993; "Judicial Selection in the States: Appellate and General Jurisdiction Courts," American Judicature Society, 1996; National Center for State Courts, *State Court Organization 1993, 1995*; and state constitutions and statutes.

Note: Unless otherwise specified, judges included in this table are in the state courts of last resort and intermediate appellate and general trial courts.

Delaware (2)

intends to appoint. (47 Del. Laws, c. 177; 48 Del. Laws, c. 109; 51 Del. Laws, c. 97; 53 Del. Laws, c. 302.)

Revisor's note. — The Orphans' Court was abolished and the jurisdiction and powers exercised by it were transferred to the Superior Court and the Court of Chancery by 57 Del. Laws, c. 402, §§ 1 to 4, effective July 1, 1970.

Incumbent judges do not hold over at end of 12-year term. — The terms of the constitutional judges named in this section expire at the end of the 12-year term, and the incumbents do not hold over until their successors are appointed and qualified. Opinion of the Justices, 56 Del. 75, 189 A.2d 777 (Sup. Ct. 1963).

Governor may not make interim appointment but must convene Senate. — If the office of a constitutional judge becomes vacant, "by expiration of term or otherwise," the Governor may not make an interim appointment, but must convene the Senate. Opinion of the Justices, 56 Del. 75, 189 A.2d 777 (Sup. Ct. 1963).

Expiration of term is fixed so cases may be scheduled to conclude before expiration. — With regard to vacancies, the distinction respecting the offices of constitutional judges has a reasonable basis in the problems of administering justice. If the expiration of the term or terms of the judges is definitely known, cases for trial or argument may ordinarily be scheduled so as to be concluded before such expiration. On the other hand, if the judges hold over, the dates of expiration of term may be uncertain, because of delay in the making of appointments or in the confirming of them. Opinion of the Justices, 56 Del. 75, 189 A.2d 777 (Sup. Ct. 1963).

If Senate is in session Governor has duty to submit appointment. — If the Senate is in session, at time of vacancy, it is Governor's duty to submit an appointment for confirmation. Opinion of the Justices, 56 Del. 75, 189 A.2d 777 (Sup. Ct. 1963).

Temporary succession may be statutorily provided. — Temporary "succession" to judicial offices, not contemplated by this article, may constitutionally be provided for by the General Assembly in 10 Del. C. §§ 1801-1808. Opinion of the Justices, 56 Del. 121, 190 A.2d 521 (Sup. Ct. 1963).

§ 4. Compensation of judges; method of payment; receipt of other fees or holding other office.

Section 4. The Justices of the Supreme Court, the Chancellor and the Vice-Chancellor or Vice-Chancellors, and the President Judge and Associate Judges of the Superior Court and of the Orphans' Court shall respectively receive from the State for their services compensations which shall be fixed by law and paid monthly and they shall not receive any fees or perquisites in addition to their salaries for business done by them except as provided by law. They shall hold no other office of profit. (47 Del. Laws, c. 177; 48 Del. Laws, c. 109.)

Revisor's note. — The Orphans' Court was abolished and the jurisdiction and powers exercised by it were transferred to the Superior Court and the Court of Chancery by 57 Del. Laws, c. 402, §§ 1 to 4, effective July 1, 1970.

§ 5. Composition of Superior Court and Orphans' Court; presiding judge; quorum.

Section 5. The President Judge of the Superior Court and the Orphans' Court and the Associate Judges thereof shall compose the Superior Court and the

§ 3. Appointment of judges; terms of office; vacancies; political representation; confirmation of appointment.

Section 3. The Justices of the Supreme Court, the Chancellor and the Vice-Chancellor or Vice-Chancellors, and the President Judge and Associate Judges of the Superior Court and of the Orphans' Court shall be appointed by the Governor, by and with the consent of a majority of all the Members elected to the Senate, for the term of twelve years each, and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon taking the oath of office prescribed by this Constitution. If a vacancy shall occur, by expiration of term or otherwise, at a time when the Senate shall not be in session, the Governor shall within thirty (30) days after the happening of any such vacancy convene the Senate for the purpose of confirming his appointment to fill said vacancy and the transaction of such other executive business as may come before it. Such vacancy shall be filled as aforesaid for the full term.

Appointments to the offices of the State Judiciary shall at all times be subject to all of the following limitations:

First, no more than two of the three Justices of the Supreme Court in office at the same time, shall be of the same major political party, at least one of said Justices shall be of the other major political party.

Second, at any time when the total number of Judges of the Superior Court and Orphans' Court shall be an even number not more than one-half of the members of all such offices shall be of the same political party; and at any time when the number of such offices shall be an odd number, then not more than a bare majority of the members of all such offices shall be of the same major political party, the remaining members of such offices shall be of the other major political party.

Third, at any time when the total number of the offices of the three Justices of the Supreme Court, the Judges of the Superior Court and Orphans' Court, the Chancellor and all the Vice-Chancellors shall be an even number, not more than one-half of the members of all such offices shall be of the same major political party; and at any time when the total number of such offices shall be an odd number, then not more than a bare majority of the members of all such offices shall be of the same major political party; the remaining members of the Courts above enumerated shall be of the other major political party.

Fourth, before sending the name of any person to the Senate for confirmation as the appointment of the Governor to a vacancy in any Judicial Office as aforesaid, the Governor shall, not less than ten (10) days before sending the name of such person to the Senate for confirmation, address a public letter to the President of the Senate informing him that he intends to submit to the Senate for confirmation as an appointment to such vacancy the name of the person he

Revisor's note. — The proposed amendment to the Constitution set out above was initially approved as Sections 2 and 16 of Chapter 563 of 70 Del. Laws on July 25, 1996.

§ 3. Appointment of judges; terms of office; vacancies; political representation; confirmation of appointment.

Section 3. The Justices of the Supreme Court, the Chancellor and the Vice-Chancellor or Vice-Chancellors, and the President Judge and Associate Judges of the Superior Court shall be appointed by the Governor, by and with the consent of a majority of all the members elected to the Senate, for the term of 12 years each, and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon taking the oath of office prescribed by this Constitution. The Governor shall submit his appointment within 60 days after the occurrence of a vacancy howsoever caused. If a vacancy shall occur, by expiration of term or otherwise, at a time when the Senate shall not be in session, the Governor shall within 60 days after the happening of any such vacancy convene the Senate for the purpose of confirming his appointment to fill said vacancy and the transaction of such other executive business as may come before it. Such vacancy shall be filled as aforesaid for the full term. Notwithstanding a vacancy, whether occurring when the Senate is or is not in session, an incumbent whose term has expired shall hold over in office until the incumbent, or a new appointee, is confirmed and takes the oath of office for the next term, but in no event shall an incumbent whose term has expired hold over in office for more than 60 days after the expiration of the term. In all instances the term of a new or reappointed Justice of the Supreme Court, Chancellor or Vice-Chancellor, President Judge or Associate Judge of the Superior Court shall begin on the date the oath of office is taken, thus qualifying the individual to serve, but the appointment shall be forfeit if such oath is not taken within 30 days of confirmation.

Appointments to the office of the State Judiciary shall at all times be subject to all of the following limitations:

First, three of the five Justices of the Supreme Court in office at the same time, shall be of one major political party, and two of said Justices shall be of the other major political party.

Second, at any time when the total number of Judges of the Superior Court and Orphans' Court shall be an even number not more than one-half of the members of all such offices shall be of the same political party; and at any time when the number of such offices shall be an odd number, then not more than a bare majority of the members of all such offices shall be of the same major political party, the remaining members of such offices shall be of the other major political party.

Third, at any time when the total number of the offices of the Justices of the Supreme Court, the Judges of the Superior Court and Orphans' Court, the Chancellor and all the Vice-Chancellors shall be an even number, not more than one-half of the members of all such offices shall be of the same major political party; and at any time when the total number of such offices shall be an odd number, then not more than a bare majority of the members of all such offices shall be of the same major political party; the remaining members of the Courts above enumerated shall be of the other major political party.

Fourth, before sending the name of any person to the Senate for confirmation as the appointment of the Governor to a vacancy in any Judicial Office as

initially approved as Sections 2 and 16 of Chapter 563 of 70 Del. Laws on July 25, 1996.

; terms of office; vacancies; sentation; confirmation of ap-

preme Court, the Chancellor and the
and the President Judge and Associate
appointed by the Governor, by and with
abers elected to the Senate, for the term
ppointed shall enter upon the discharge
upon taking the oath of office prescribed
hall submit his appointment within 60
r howsoever caused. If a vacancy shall
se, at a time when the Senate shall not
in 60 days after the happening of any
the purpose of confirming his appoint-
action of such other executive business
shall be filled as aforesaid for the full
ther occurring when the Senate is or is
rm has expired shall hold over in office
ee, is confirmed and takes the oath of
at shall an incumbent whose term has
an 60 days after the expiration of the
or reappointed Justice of the Supreme
President Judge or Associate Judge of
date the oath of office is taken, thus
the appointment shall be forfeit if such
nfirmation.
e Judiciary shall at all times be subject

e Supreme Court in office at the same
ty, and two of said Justices shall be of

umber of Judges of the Superior Court
number not more than one-half of the
ie same political party; and at any time
be an odd number, then not more than
such offices shall be of the same major
s of such offices shall be of the other

nber of the offices of the Justices of the
perior Court and Orphans' Court, the
's shall be an even number, not more
ich offices shall be of the same major
ie total number of such offices shall be
ure majority of the members of all such
al party; the remaining members of the
ie other major political party.
y person to the Senate for confirmation
a vacancy in any Judicial Office as

5

aforesaid, the Governor shall, not less than ten (10) days before sending the name of such person to the Senate for confirmation, address a public letter to the President of the Senate informing him that he intends to submit to the Senate for confirmation as an appointment to such vacancy the name of the person he intends to appoint.

Revisor's note.

The amendment to the Constitution set out above was initially approved as Chapter 377 of 63 Del. Laws on June 30, 1982, and finally approved as Chapter 179 of 64 Del. Laws on June 28, 1983. A previous amendment of the section was initially approved as Chapter 540 of 60 Del. Laws on June 24, 1976, and finally approved as Chapter 533 of 61 Del. Laws on Aug. 8, 1978.

Purpose of the 30-day requirement was to bar long interim appointments and, alternatively, to avoid the existence of a vacancy in a constitutional judgeship during a long interregnum, i.e., during a long period of time between the expiration of one term and the beginning of another. In re Opinion of Justices, Del. Supr., 320 A.2d 735 (1974).

Confidentiality of records. — The confidential records of the Judicial Nominating Commission which are submitted to the Governor to aid in selection of judges are protected by the constitutional and common law doctrine of executive privilege, are not "public records" as defined by 29 Del. C. § 10002(d), and, therefore, are exempt from disclosure by the terms of the Freedom of Information Act (Chapter 100 of Title 29). Guy v. Judicial Nominating Comm'n, Del. Super., 659 A.2d 777 (1995).

If Senate is in session, Governor should act to fill vacancy within reasonable time. — If judgeship vacancy occurs when the Senate is in session, it seems to follow, in the absence of any controlling constitutional limitation, that the Governor should act to fill the vacancy within a reasonable time so that the administration of justice may be continued with as little interruption as possible. In re Opinion of Justices, Del. Supr., 320 A.2d 735 (1974).

When a constitutional judgeship becomes vacant while the Senate is in session, the timing of the Governor's submission to the Senate of the name of the appointee-successor is unlimited by any express provision of the Constitution, except for the 10-day public notice of intent provision of this section; but the spirit and intent of the general provisions of the Constitution, relative to the continuity of public business in the event of vacancy in other public office, furnish a guideline for the exercise of the Governor's power of appointment of constitutional judges as promptly as may be reasonable and practicable in fulfillment of the urgencies of the judicial system of the State. In re Opinion of Justices, Del. Supr., 320 A.2d 735 (1974).

(Proposed amendment.)

§ 3. Appointment of judges; terms of office; vacancies; political representation; confirmation of appointment.

Section 3. The Justices of the Supreme Court, the Chancellor and the Vice-Chancellor or Vice-Chancellors, the President Judge and Associate Judges of the Superior Court, the Chief Judge and Associate Judges of the Family Court and the Chief Judge and Judges of the Court of Common Pleas shall be appointed by the Governor, by and with the consent of a majority of all the members elected to the Senate, for the term of 12 years each, and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon taking the oath of office prescribed by this Constitution. The Governor shall submit his appointment within 60 days after the occurrence of a vacancy howsoever caused. If a vacancy shall occur, by expiration of term or otherwise, at a time when the Senate shall not be in session, the Governor shall within 60 days after the happening of any such vacancy convene the Senate for the purpose of confirming his appointment to fill said vacancy and the transaction of such other executive business as may come before it. Such vacancy shall be filled as aforesaid for the full term. Notwith-

standing a vacancy, whether occurring when the Senate is or is not in session, an incumbent whose term has expired shall hold over in office until the incumbent, or a new appointee, is confirmed and takes the oath of office for the next term, but in no event shall an incumbent whose term has expired hold over in office for more than 60 days after the expiration of the term. In all instances the term of a new or reappointed Justice of the Supreme Court, Chancellor or Vice-Chancellor, President Judge or Associate Judge of the Superior Court, Chief Judge or Associate Judge of the Family Court or Chief Judge or Judge of the Court of Common Pleas shall begin on the date the oath of office is taken, thus qualifying the individual to serve, but the appointment shall be forfeit if such oath is not taken within 30 days of confirmation.

Appointments to the office of the State Judiciary shall at all times be subject to all of the following limitations:

First, three of the five Justices of the Supreme Court in office at the same time, shall be of one major political party, and two of said Justices shall be of the other major political party.

Second, at any time when the total number of Judges of the Superior Court and Orphans' Court shall be an even number not more than one-half of the members of all such offices shall be of the same political party; and at any time when the number of such offices shall be an odd number, then not more than a bare majority of the members of all such offices shall be of the same major political party, the remaining members of such offices shall be of the other major political party.

Third, at any time when the total number of the offices of the Justices of the Supreme Court, the Judges of the Superior Court and Orphans' Court, the Chancellor and all the Vice-Chancellors shall be an even number, not more than one-half of the members of all such offices shall be of the same major political party; and at any time when the total number of such offices shall be an odd number, then not more than a bare majority of the members of all such offices shall be of the same major political party; the remaining members of the Courts above enumerated shall be of the other major political party.

Fourth, at any time when the total number of Judges of the Family Court shall be an even number, not more than one-half of the Judges shall be of the same political party; and at any time when the total number of Judges shall be an odd number, then not more than a majority of one Judge shall be of the same political party.

Fifth, at any time when the total number of Judges of the Court of Common Pleas, (including the Chief Judge) shall be an even number, not more than one-half of the Judges shall be of the same political party; and at any time when the total number of Judges shall be an odd number, then not more than a majority of one Judge shall be the same political party.

Sixth, before sending the name of any person to the Senate for confirmation as the appointment of the Governor to a vacancy in any Judicial Office as aforesaid, the Governor shall, not less than ten (10) days before sending the name of such person to the Senate for confirmation, address a public letter to the President of the Senate informing him that he intends to submit to the Senate for confirmation as an appointment to such vacancy the name of the person he intends to appoint.

Revisor's note. — The proposed amendment to the Constitution set out above was initially approved as Chapter 432 of 69 Del. Laws on July 1, 1994.

ring when the Senate is or is not in session, xpired shall hold over in office until the onfirmed and takes the oath of office for the n incumbent whose term has expired hold ys after the expiration of the term. In all eappointed Justice of the Supreme Court, esident Judge or Associate Judge of the sociate Judge of the Family Court or Chief mon Pleas shall begin on the date the oath ie individual to serve, but the appointment aken within 30 days of confirmation.
State Judiciary shall at all times be subject

f the Supreme Court in office at the same party, and two of said Justices shall be of

al number of Judges of the Superior Court en number not more than one-half of the of the same political party; and at any time all be an odd number, then not more than all such offices shall be of the same major bers of such offices shall be of the other

number of the offices of the Justices of the Superior Court and Orphans' Court, the llors shall be an even number, not more l such offices shall be of the same major n the total number of such offices shall be a bare majority of the members of all such tical party; the remaining members of the f the other major political party.
al number of Judges of the Family Court han one-half of the Judges shall be of the when the total number of Judges shall be a majority of one Judge shall be of the

umber of Judges of the Court of Common hall be an even number, not more than e same political party; and at any time ll be an odd number, then not more than same political party.
ny person to the Senate for confirmation to a vacancy in any Judicial Office as s than ten (10) days before sending the r confirmation, address a public letter to g him that he intends to submit to the tment to such vacancy the name of the

initially approved as Chapter 432 of 69 Del. Laws on July 1, 1994.

(Proposed amendment.)

§ 3. Appointment of judges; terms of office; vacancies; political representation; confirmation of appointment.

Section 3. The Justices of the Supreme Court, the Chancellor and the Vice-Chancellor or Vice-Chancellors, the President Judge and Associate Judges of the Superior Court, the Chief Judge and Associate Judges of the Family Court and the Chief Judge and Judges of the Court of Common Pleas shall be appointed by the Governor, by and with the consent of a majority of all the members elected to the Senate, for the term of 12 years each, and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon taking the oath of office prescribed by this Constitution. The Governor shall submit his appointment within 60 days after the occurrence of a vacancy howsoever caused. If a vacancy shall occur, by expiration of term or otherwise, at a time when the Senate shall not be in session, the Governor shall within 60 days after the happening of any such vacancy convene the Senate for the purpose of confirming his appointment to fill said vacancy and the transaction of such other executive business as may come before it. Such vacancy shall be filled as aforesaid for the full term. Notwithstanding a vacancy, whether occurring when the Senate is or is not in session, an incumbent whose term has expired shall hold over in office until the incumbent, or a new appointee, is confirmed and takes the oath of office for the next term, but in no event shall an incumbent whose term has expired hold over in office for more than 60 days after the expiration of the term. In all instances the term of a new or reappointed Justice of the Supreme Court, Chancellor or Vice-Chancellor, President Judge or Associate Judge of the Superior Court, Chief Judge or Associate Judge of the Family Court or Chief Judge or Judge of the Court of Common Pleas shall begin on the date the oath of office is taken, thus qualifying the individual to serve, but the appointment shall be forfeit if such oath is not taken within 30 days of confirmation.

Appointments to the office of the State Judiciary shall at all times be subject to all of the following limitations:

First, three of the five Justices of the Supreme Court in office at the same time, shall be of one major political party, and two of said Justices shall be of the other major political party.

Second, at any time when the total number of Judges of the Superior Court shall be an even number not more than one-half of the members of all such offices shall be of the same political party; and at any time when the number of such offices shall be an odd number, then not more than a bare majority of the members of all such offices shall be of the same major political party, the remaining members of such offices shall be of the other major political party.

Third, at any time when the total number of the offices of the Justices of the Supreme Court, the Judges of the Superior Court, the Chancellor and all the Vice-Chancellors shall be an even number, not more than one-half of the members of all such offices shall be of the same major political party; and at any time when the total number of such offices shall be an odd number, then not more than a bare majority of the members of all such offices shall be of the same major political party; the remaining members of the Courts above enumerated shall be of the other major political party.

Fourth, at any time when the total number of Judges of the Family Court shall be an even number, not more than one-half of the Judges shall be of the same political party; and at any time when the total number of Judges shall be an odd number, then not more than a majority of one Judge shall be of the same political party.

Fifth, at any time when the total number of Judges of the Court of Common Pleas (including the Chief Judge) shall be an even number, not more than one-half of the Judges shall be of the same political party; and at any time when the total number of Judges shall be an odd number, then not more than a majority of one Judge shall be of the same political party.

Sixth, before sending the name of any person to the Senate for confirmation as the appointment of the Governor to a vacancy in any Judicial Office as aforesaid, the Governor shall, not less than ten (10) days before sending the name of such person to the Senate for confirmation, address a public letter to the President of the Senate informing him that he intends to submit to the Senate for confirmation as an appointment to such vacancy the name of the person he intends to appoint.

Revisor's note. — The proposed amendment to the Constitution set out above was initially approved as Sections 3 and 17 of Chapter 563 of 70 Del. Laws on July 25, 1996.

(Proposed amendment.)

§ 4. Compensation of judges; method of payment; receipt of other fees or holding other office.

Section 4. The Justices of the Supreme Court, the Chancellor and the Vice-Chancellor or Vice-Chancellors, the President Judge and Associate Judges of the Superior Court and of the Orphans' Court, the Chief Judge and Associate Judges of the Family Court and the Chief Judge and Judges of the Court of Common Pleas shall respectively receive from the State for their services compensations which shall be fixed by law and paid monthly and they shall not receive any fees or perquisites in addition to their salaries for business done by them except as provided by law. They shall hold no other office of profit.

Revisor's note. — The proposed amendment to the Constitution set out above was initially approved as Chapter 432 of 69 Del. Laws on July 1, 1994.

(Proposed amendment.)

§ 4. Compensation of judges; method of payment; receipt of other fees or holding other office.

Section 4. The Justices of the Supreme Court, the Chancellor and the Vice-Chancellor or Vice-Chancellors, the President Judge and Associate Judges of the Superior Court the Chief Judge and Associate Judges of the Family Court and the Chief Judge and Judges of the Court of Common Pleas shall respectively receive from the State for their services compensations which shall be fixed by law and paid monthly and they shall not receive any fees or perquisites in addition to their salaries fur business done by them except as provided by law. They shall hold no other office of profit.

Police court jurisdiction, see § 1742 of Title 23.
Powers of chancellor, see § 219 of Title 4.
Probate court jurisdiction, see § 311 et seq. of Title 4.
Probate districts, see § 271 et seq. of Title 4.
Superior court geographical divisions, see Administrative Order No. 12, Administrative Orders of the Supreme Court.
Superior court jurisdiction, see §§ 111a, 113 and 114 of Title 4.
Superior court sessions, see § 111 of Title 4.

ANNOTATIONS

1. Judicial assignments. The power of the governor to appoint district judges is to appoint to the district court as a single court, irrespective of assignment; the power of assignment, regular or special, is in the judicial branch. Ketcham v. Lehner (1988) 149 Vt. 314, 542 A.2d 290.

Cited. Cited in State v. Saari (1989) 152 Vt. 510, 568 A.2d 344; Village of Morrisville Water & Light Department v. United States Fidelity & Guaranty Co. 775 F. Supp. 718 (D. Vt. 1991).

§ 32. [Filling judicial vacancies]

The Governor, with the advice and consent of the Senate, shall fill a vacancy in the office of the Chief justice of the State, associate justice of the Supreme Court or judge of any other court, except the office of Assistant Judge and of Judge of Probate, from a list of nominees presented by a judicial nominating body established by the General Assembly having authority to apply reasonable standards of selection.

HISTORY

Source. Art. Amend. 46, 1974.

Revision of chapter. See note following chapter heading.

Judicial nominating body. 1973, No. 193 (Adj. Sess.), § 8, eff. April 9, 1974, provided: "The judicial selection board [redesignated as judicial nominating board by 1975, No. 204 (Adj. Sess.), § 5], constituted under the provisions of chapter 15 of Title 4, shall be the judicial nominating body required by [proposed] section 28c [this section and sections 33-36] of chapter II of the constitution."

CROSS REFERENCES

Judicial nominations and appointments, see § 601 et seq. of Title 4.

ANNOTATIONS

1. Judicial assignments. The power of the governor to appoint district judges is to appoint to the district court as a single court, irrespective of assignment; the power of assignment, regular or special, is in the judicial branch. Ketcham v. Lehner (1988) 149 Vt. 314, 542 A.2d 290.

Cited. Cited in Peck v. Douglas (1987) 148 Vt. 128, 530 A.2d 551.

§ 33. [Interim judicial appointments]

When the Senate is not in session, the Governor may make an interim appointment to fill a vacancy in the office of chief justice, associate justice

(3)

of the Supreme Court or judge of any other court, except the office of Assistant Judge and of Judge of Probate, from a list of nominees presented by the judicial nominating body. A justice or judge so appointed shall hold office, with all the powers incident to the office, until the Senate convenes and acts upon the appointment submitted by the Governor. Thereafter, the appointee shall continue in office if the Senate consents to the appointment. If the appointment is not confirmed upon vote of the Senate, the appointment shall be terminated and a vacancy in the office will be created.

HISTORY

Source. Art. Amend. 46, 1974.

Revision of chapter. See note following chapter heading.

Judicial nominating body. No. 193 (Adj. Sess.), § 8, eff. April 9, 1974, provided: "The judicial selection board [redesignated as judicial nominating board by 1975, No. 204 (Adj. Sess.), § 5], constituted under the provisions of chapter 15 of Title 4, shall be the judicial nominating body required by [proposed] section 28c [this section and sections 32, 34-36] of chapter II of the constitution."

CROSS REFERENCES

Judicial nominations and appointments, see § 601 et seq. of Title 4.

ANNOTATIONS

1. Judicial assignments. The power of the governor to appoint district judges is to appoint to the district court as a single court, irrespective of assignment; the power of assignment, regular or special, is in the judicial branch. Ketcham v. Lehner (1988) 149 Vt. 314, 542 A.2d 290.

2. Authority of justice after resignation or retirement. Authority of a supreme court justice who has sat at the hearing of a case to complete work on that matter is fixed by the status of the justice on the hearing date; subsequent resignation or retirement does not change this authority. Wolfe v. Yudichak (1989) 153 Vt. 235, 571 A.2d 592.

Practice of the supreme court, that a justice who resigns or retires from the court after hearing a matter may participate fully in consideration of the case thereafter, is grounded in the court's inherent judicial and administrative powers as found in this section, conflicts neither with the governor's power to appoint nor with the senate's power to confirm, and relates strictly and narrowly to the court's inherent power to complete in succeeding terms what was begun in earlier ones. Wolfe v. Yudichak (1989) 153 Vt. 235, 571 A.2d 592.

Cited. Cited in Peck v. Douglas (1987) 148 Vt. 128, 530 A.2d 551.

§ 34. [Judicial term of office]

The justices of the Supreme Court and judges of all subordinate courts, except Assistant Judges and Judges of Probate, shall hold office for terms of six years except when holding office under an interim appointment. At the end of the initial six year term and at the end of each six year term thereafter, such justice or judge may give notice in the manner provided by

other court, except the office of
, from a list of nominees presented
e or judge so appointed shall hold
e office, until the Senate convenes
d by the Governor. Thereafter, the
nate consents to the appointment.
n vote of the Senate, the appoint-
in the office will be created.

heading.

.), § 8, eff. April 9, 1974, provided: "The
nominating board by 1975, No. 204 (Adj.
hapter 15 of Title 4, shall be the judicial
8c [this section and sections 32, 34-36] of

ENCES

)1 et seq. of Title 4.

NS

nor to appoint district judges is to appoint
of assignment; the power of assignment,
v. Lehner (1988) 149 Vt. 314, 542 A.2d 290.

etirement. Authority of a supreme court
plete work on that matter is fixed by the
uent resignation or retirement does not
Vt. 235, 571 A.2d 592.
o resigns or retires from the court after
tion of the case thereafter, is grounded in
owers as found in this section, conflicts
with the senate's power to confirm, and
t power to complete in succeeding terms
(1989) 153 Vt. 235, 571 A.2d 592.

8, 530 A.2d 551.

judges of all subordinate courts,
robate, shall hold office for terms
nder an interim appointment. At
at the end of each six year term
notice in the manner provided by

law of a desire to continue in office. When such justice or judge gives the required notice, the question of continuance in office shall be submitted to the General Assembly and the justice or judge shall continue in office for another term of six years unless a majority of the members of the General Assembly voting on the question vote against continuation in office.

HISTORY

Source. Art. Amend. 26, 1870. Art. Amend. 46, 1974.

Revision of chapter. See note following chapter heading.

CROSS REFERENCES

Election of judicial officers, see § 10 of Title 2.
Filing of declaration of candidacy for retention of office by justices and judges, see §§ 4(c), 71(b) and 604(a) of Title 4.
Joint committee on judicial retention, see §§ 607 and 608 of Title 4.
Voting upon retention of justices and judges, see §§ 4(c), 71(b) and 604(a) of Title 4.

ANNOTATIONS

Cited. Cited in Peck v. Douglas (1987) 148 Vt. 128, 530 A.2d 551.

§ 35. [Mandatory retirement]

All justices of the Supreme Court and judges of all subordinate courts shall be retired at the end of the calendar year in which they attain seventy years of age or at the end of the term of election during which they attain seventy years of age, as the case may be, and shall be pensioned as provided by law. The chief justice may from time to time appoint retired justices and judges to special assignments as permitted under the rules of the Supreme Court.

HISTORY

Source. Art. Amend. 46, 1974.

Revision of chapter. See note following chapter heading.

CROSS REFERENCES

Retirement allowance for justices and judges, see § 459 of Title 3.
Special assignment of retired judicial officers, see § 22 of Title 4.

ANNOTATIONS

1. **Constitutionality.** This section's mandate that all judges retire at age 70, not shown to violate any recognized fundamental personal right, furthered legitimate state interest in requiring the highest possible standards of members of the judiciary by minimizing the threat of an obviously disabled judge continuing to preside in full view of the public and would not be held unconstitutional. Aronstam v. Cashman (1974) 132 Vt. 538, 325 A.2d 361.

This section's provision mandating retirement of judges at age 70 is not invalid for interfering with a person's right to run for office, as plaintiff assistant judges over 70 wished

to do, and of the voters to vote for the candidate of their choice, and is a proper exercise of a constitutional limitation to hold the judiciary to the highest possible standards, as desired by the people. Aronstam v. Cashman (1974) 132 Vt. 538, 325 A.2d 361.

2. Special assignment. The mandatory retirement age prescribed in this section does not disqualify retired justices and judges from appointment to special assignments by the Chief Justice. Condosta v. Condosta (1981) 139 Vt. 545, 431 A.2d 494.

Cited. Cited in Ketcham v. Lehner (1988) 149 Vt. 314, 542 A.2d 290; Equal Employment Opportunity Commission v. Vermont Office of Court Administrator, 717 F. Supp. 261 (D. Vt. 1989), aff'd, 904 F.2d 794 (2d Cir. 1990).

§ 36. [Suspension and removal; implementation procedures for sections 32 through 36]

The justices of the Supreme Court and the judges of all subordinate courts shall hold office during good behavior for the terms for which they are appointed. The Supreme Court in the exercise of its disciplinary power over the judiciary of the state may suspend justices of the Supreme Court and judges of all subordinate courts from the judicial function for such cause and in such manner as may be provided by law. The General Assembly may establish procedures for the implementation of the provisions of sections thirty-two through thirty-six.

HISTORY

Source. Art. Amend. 46, 1974.

Revision of chapter. See note following chapter heading.

CROSS REFERENCES

Code of judicial conduct, see Administrative Order No. 10, Administrative Orders of the Supreme Court.

Judicial conduct generally, see Rules of the Supreme Court for Disciplinary Control of Judges.

ANNOTATIONS

Cited. Cited in Peck v. Douglas (1987) 148 Vt. 128, 530 A.2d 551; Herald Ass'n v. Judicial Conduct Board (1988) 149 Vt. 233, 544 A.2d 596; In re Hill (1988) 149 Vt. 431, 545 A.2d 1019; In re Crushed Rock, Inc. (1988) 150 Vt. 613, 557 A.2d 84; In re Hill (1989) 152 Vt. 548, 568 A.2d 361; In re O'Dea (1993) 159 Vt. 590, 622 A.2d 507.

§ 37. [Rule-making power]

The Supreme Court shall make and promulgate rules governing the administration of all courts, and shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. Any rule adopted by the Supreme Court may be revised by the General Assembly.

plaintiff not only failed to appeal
te Division from the Department
on's denial of his application for
failed to institute the prerogative
til more than one and one-half
department's decision and more
s after the department's reaffir-
decision. Joseph L. Muscarelle,
Dept. of Transp., 175 N.J.Super.
1310 (A.D.1980), certification
484, 427 A.2d 576, appeal dis-
21, 434 A.2d 73.

ive decisions

Act did not restrict or extinguish
ional right to challenge municipal
ons by instituting action in lieu of
s; thus, landowners challenging
g ordinance that implemented
fication by Council on Afforda-
DAH) of fair-share housing plan
ich an action in Law Division of
Alexander's Dept. Stores of
v. Borough of Paramus, 125 N.J.
68 (1991).

t, Chancery Division, had juris-
action or inaction of commis-
ions in proceedings ancillary to
that county jail conditions were
although such review was limit-
g whether commissioner's exer-
n was arbitrary, capricious or
violated legislative policies.
ty of Hudson, 236 N.J.Super.
(A.D.1989).

of prerogative writs were not
om agencies established by Su-
suant to its constitutional power
ar. Application of LiVolsi, 85
1268 (1981).

investment trust acted improp-
raise by means of action for
nent its contention that New
Taxation violated Administra-
ct by seeking to enforce tax
against such trust without fol-
le-making procedures; trust's
x assessment was procedurally
have been asserted in action
ate Division by way of review in
writs. Equitable Life Mortg.
ors v. New Jersey Division of
Super. 232, 376 A.2d 966 (A.D.
denied 75 N.J. 535, 384 A.2d

gulations

on an administrative regula-
fense to a criminal or quasi-
g is not, either conceptually or
same as a direct attack by
s initiating affirmative action
he regulation; the latter is an
erogative writs and the former
rcheski, 181 N.J.Super. 34, 436
1).

9.5. Municipal decisions

Municipal decisions, including purported veto of request for extension of water service, may be reviewed by courts in action in lieu of prerogative writs in event decision is product of fraud, arbitrary action, or palpable abuse of discretion. Petition of South Lakewood Water Co., 115 N.J.Super. 352, 279 A.2d 874 (A.D.1971), certification granted 59 N.J. 291, 281 A.2d 804, reversed on other grounds 61 N.J. 230, 294 A.2d 13.

Superior Court, Law Division, had jurisdiction to hear action in lieu of prerogative writs seeking to reverse denial of tax abatement applications and set aside property tax assessments. Corbacho v. Mayor and Council of the City of Newark, 16 N.J.Tax 240 (A.D.1997).

10. Criminal causes

Since Parole Act of 1979 prohibits judicial review except to extent mandated by state or federal constitutions, such judicial review would be confined to exercise of appellate review in lieu of prerogative writ provided by state Constitution; test for appellate review would be whether parole board's refusal to advance parole eligibility date results in sentence that is manifestly excessive under particular circumstances of case. New Jersey Parole Bd. v. Byrne, 93 N.J. 192, 460 A.2d 103 (1983).

Collateral attack on validity of an administrative regulation in context of a criminal or quasi-criminal proceeding does not convert the proceeding into an action in lieu of prerogative writs entertainable only by Superior Court, Appellate Division. State v. Barcheski, 181 N.J.Super. 34, 436 A.2d 550 (A.D.1981).

12. Public officers and employees

Municipal employee who had no administrative procedure he could follow to protest three-day suspension was entitled to de novo review of action in trial court. Cermele v. Township of Lawrence, 260 N.J.Super. 45, 615 A.2d 264 (A.D. 1992).

12.5. —— Removal, public officers and employees

It was not intention of framers of State Constitution to allow for removal of constitutional officers by actions in lieu of prerogative writs or otherwise; constitutional provision providing for impeachment of constitutional officers provides sole remedy for termination of office and term of such officers, and none other shall stand in its stead save for resignation or death of incumbent; however, despite fact it is sole remedy to effect removal from office, remedy of impeachment is not deemed exclusive of any other public remedy for same misbehavior. Shusted v. Coyle, 139 N.J.Super. 314, 353 A.2d 562 (L.1976).

14. Parties

Majority rule is that a subordinate official or agency does not have standing to challenge the decision of a superior administrative board; however, when a public officer or authority proceeds by an action in lieu of prerogative writ the situation is distinguishable. Essex County Welfare Bd. v. Department of Institutions and Agencies, 147 N.J.Super. 546, 371 A.2d 771 (A.D.1977), certification granted 74 N.J. 256, 377 A.2d 662, reversed on other grounds 75 N.J. 232, 381 A.2d 349, certiorari denied 98 S.Ct. 3103, 437 U.S. 910, 57 L.Ed.2d 1141.

New Jersey (4)

SECTION VI

1. Justices of the Supreme Court and judges of other courts; appointment

The Governor shall nominate and appoint, with the advice and consent of the Senate, the Chief Justice and associate justices of the Supreme Court, the Judges of the Superior Court, and the judges of the inferior courts with jurisdiction extending to more than one municipality; except that upon the abolition of the juvenile and domestic relations courts or family court and county district courts as provided by law, the judges of those former courts shall become the Judges of the Superior Court without nomination by the Governor or confirmation by the Senate. No nomination to such an office shall be sent to the Senate for confirmation until after 7 days' public notice by the Governor.

Amended general election November 7, 1978; November 8, 1983.

Historical and Statutory Notes

1978 Amendment. Deleted "the judges of the county courts" following "the superior court" in the first sentence.

The 1978 amendment proposed by Assembly Concurrent Resolution No. 38, 1978. Filed July 25, 1978.

1983 Amendment

The 1983 amendment proposed by Assembly Concurrent Resolution No. 84, 1983, filed Feb. 10, 1983, inserted exception relating to former judges of juvenile and domestic relations courts, family courts, and county district courts becoming Superior Court judges.

Cross References

Term of office of supreme court justices, see N.J.S.A. Const. Art. 6, § 6, par. 3, N.J.S.A. Const. Art. 11, § 4, par. 1.

Law Review and Journal Commentaries

Judicial appointments in New Jersey—A merit plan. Charles E. Reid (1973) 96 N.J.L.J. 127.

Judicial selection. (1971) 94 N.J.L.J. 632, 657.

Judicial selection in New Jersey. Margaret Gordon Seiler (1974) 5 Seton Hall L.Rev. 721.

Role of advice and consent as Senatorial discourtesy. (1979) 10 Seton Hall L.Rev. 117.

Senatorial courtesy. Stephen B. Wiley (1974) 97 N.J.L.J. 65.

Notes of Decisions

In general 1

---

1. In general

Matter of appointment of judges and other public officers by Governor and their confirmation by Senate is political question, committed to exclusive discretion of executive and legislative branches. Clark v. Byrne, 165 N.J.Super. 98, 397 A.2d 719 (L.1978), affirmed 165 N.J.Super. 16, 397 A.2d 685.

2. Justices of the Supreme Court and judges of the Superior Courts; eligibility for office

2. The justices of the supreme court, and the judges of the superior court ~~and the judges of the county courts~~ shall each prior to his appointment have been admitted to the practice of law in this State for at least 10 years.

Amended general election November 7, 1978.

Historical and Statutory Notes

1978 Amendment

The 1978 amendment proposed by Assembly Concurrent Resolution No. 38, 1978, filed July 25, 1978, omitted reference to judges of county courts.

Notes of Decisions

Review 2

2. Review

Suit to prevent governor from soliciting information about potential judicial nominees from State Bar Association pursuant to formal agreement between governor's office and Association presented a nonjusticiable political question; lack of any such restraint and constitutional provision [Const. Art. 6, § 6, ¶ 2] providing for judicial appointments, and courts' lack of authority to so restrain governor precluded such an attempt. Loigman v. Trombadore, 228 N.J.Super. 437, 550 A.2d 154 (A.D.1988).

3. Justices of the Supreme Court and judges of the Superior Court; term; retirement; pensions

The Justices of the Supreme Court and the Judges of the Superior Court shall hold their offices for initial terms of 7 years and upon reappointment shall hold their offices during good behavior; provided however, that, upon the abolition of the juvenile and domestic relations courts or family court and county district courts as provided by law, the judges in office in those former courts who have acquired tenure and the Judges of the Superior Court who have acquired tenure as a judge in those former courts prior to appointment to the Superior Court, shall have tenure as Judges of the Superior Court. Judges of the juvenile and domestic relations courts or family court and county district courts who have not acquired tenure as a judge of those former courts shall hold their offices for the period of their respective terms which remain unexpired and shall acquire tenure upon reappointment to the Superior Court. Such justices and judges shall be retired upon attaining the age of 70 years. Provisions for the pensioning of the Justices of the Supreme Court and the Judges of the Superior Court shall be made by law.

Amended general election Nov. 8, 1983.

Historical and Statutory Notes

1983 Amendment

The 1983 amendment proposed by Assembly Concurrent Resolution No. 84, 1983, filed Feb. 10, 1983, inserted provisions relating to judges of abolished juvenile and domestic relations, family, and county district courts and Superior Court judges who served in those courts.

Cross References

Retirement of justices and judges, see § 43:6A–1 et seq.

Law Review and Journal Commentaries

Judicial selection in New Jersey. Margaret Gordon Seiler (1974) 5 Seton Hall L.Rev. 721.

Senior judges. (1974) 97 N.J.L.J. 68, 188.

4. Justices of the Supreme Court and judges of the Superior Courts; impeachment; removal

4. The justices of the supreme court, and the judges of the superior court ~~and the judges of the county courts~~ shall be subject to impeachment, and any judicial officer impeached shall not exercise his office until acquitted. The judges of the superior court ~~and the judges of the county courts~~ shall also be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

Amended general election November 7, 1978.

Connecticut (5)

ond Ecclesiastical Soc. of Hartford v. Atty. Gen. (1946) 48 A.2d 266, 133 Conn. 89.

In view of limited nature of administrative duties imposed on judge of Superior Court as probate court administrator, and fact that they are entirely confined within the judicial department, the act imposing such duties is not unconstitutional per se. Id.

§ 2. Selection, nomination, appointment and removal of judges. Judicial selection commission

Sec. 2. [As amended] Judges of all courts, except those courts to which judges are elected, shall be nominated by the governor exclusively from candidates submitted by the judicial selection commission. The commission shall seek and recommend qualified candidates in such numbers as shall by law be prescribed. Judges so nominated shall be appointed by the general assembly in such manner as shall by law be prescribed. They shall hold their offices for the term of eight years, but may be removed by impeachment. The governor shall also remove them on the address of two-thirds of each house of the general assembly and the supreme court may also remove them as is provided by law.

Historical Note

Amendment Art. XX, § 2, inserted ", of the appellate court".

Amendment Art. XX was proposed by Laws 1979, H.J.R. No. 143 and Laws 1981, H.J.R. No. 95, and was adopted on November 24, 1982.

Amendment Art. XXV, substituted "Judges of all courts, except those courts to which judges are elected, shall be nominated by the governor exclusively from candidates submitted by the judicial selection commission. The commission shall seek and recommend qualified candidates in such numbers as shall by law be prescribed. Judges so nominated shall" for "The judges of the supreme court, of the appellate court and of the superior court shall, upon nomination by the governor,", and added "and the supreme court may also remove them as is provided by law."

Amendment Art. XXV was proposed by 1985, S.J.R. No. 65, and was adopted on November 19, 1986.

Substantially similar provisions were contained in the 1818 Constitution in Articles XII and XXVI of the Amendments, as well as in the 1955 Constitution in Article 5, § 3.

Cross References

Superior court judges,
- Appointment, see C.G.S.A. § 2-42.
- Nomination, see C.G.S.A. § 2-40.
- Number, see C.G.S.A. § 51-165.

Supreme court,
- Appointment of judges, see C.G.S.A. § 2-42.
- Nomination of judges, see C.G.S.A. § 2-40.
- Number of judges, see C.G.S.A. § 51-198.

Law Review Commentaries

A layman looks at the courts. Charles L. Pendleton (1970) 44 Conn. Bar J. 551.

Arbitral authority to judge the constitutionality of laws: *Caldor, Inc. v. Thornton.* (1984) 16 Conn.L.Rev. 1043.

How much longer can a custom survive that bars blacks and women from Connecticut Supreme Court? Peter Adomeit (1977) 51 Conn. Bar J. 295.

1970's: Will we respond to the need to modernize Connecticut's judicial system? Peter L. Costas (1970) 44 Conn. Bar J. 565.

Personality of the judge. David H. Jacobs (1984) 58 Conn.Bar J. 379.

Power of Connecticut legislature over courts. John A. Cornell (April 1943) 17 Conn.B.J. 123.

Probate reform in Connecticut. John B. Tyler (1970) 44 Conn. Bar J. 575.

became Article VIII, section 1, of the Amendments to the Constitution of 1965.

Prior to repeal, this section read as follows:

"§ 5. Justices of the peace

"Justices of the peace for the several towns in the state shall be elected by the electors in such towns; and the time and manner of their election, the number for each town, the period for which they shall hold their offices and their jurisdiction shall be prescribed by law."

Substantially similar provisions were contained in the 1818 Constitution in Article Fifth, § 2 and in Article X of the Amendments, and in the 1955 Constitution in Article 5, § 2.

§ 6. Age limitation, exception

Sec. 6. [As amended] No judge shall be eligible to hold his office after he shall arrive at the age of seventy years, except that a chief justice or judge of the supreme court, a judge of the superior court, or a judge of the court of common pleas, who has attained the age of seventy years and has become a state referee may exercise, as shall be prescribed by law, the powers of the superior court or court of common pleas on matters referred to him as a state referee.

Historical Note

Amendment Art. VIII, § 2, deleted "or justice of the peace" following "No judge".

This amendment was proposed by 1973, S.J. R. No. 22, § 2, and was adopted at the general election on November 5, 1974, and validated on November 27, 1974 by canvass of votes.

The following provision was contained in the 1818 Constitution in the last sentence of Article Fifth, § 3, and in the 1955 Constitution in Article 5, § 8: "No judge or justice of the peace shall be capable of holding his office, after he shall arrive at the age of seventy years."

Cross References

Senior judge becoming referee, powers, see § 51-50*l*.

Law Review Commentaries

Probate reform in Connecticut. John B. Tyler (1970) 44 Conn. Bar J. 575.

The Supreme Court of Connecticut—1965–1966. Elliott B. Pollack (Dec. 1966) 40 Conn.Bar J. 608.

Library References

Judges ⇐4.
C.J.S. Judges § 15 et seq.

§ [7.] Judicial censure, removal or suspension. Judicial Review Council

[Sec. 7. As added] In addition to removal by impeachment and removal by the governor on the address of two-thirds of each house of the general assembly, judges of all courts, except those courts to which judges are elected, may, in such manner as shall by law be prescribed, be removed or suspended by the supreme court. The general assembly may establish a judicial review council which may also, in such manner as shall by law be prescribed, censure any such judge or suspend any such judge for a definite period not longer than one year.

Notes of Decisions

7. Superior court

Superior Court is constitutional court of general jurisdiction. State v. Luzietti (1994) 646 A.2d 85, 230 Conn. 427.

9. Referees

Monroe v. Monroe (1979) 413 A.2d 819, 177 Conn. 173, [main volume] appeal dismissed, certiorari denied 100 S.Ct. 20, 444 U.S. 801, 62 L.Ed.2d 14.

12. —— Federal statutes, jurisdiction

Lapinski v. Copacino (1943) 12 Conn.Supp. 84, [main volume] affirmed 38 A.2d 592, 131 Conn. 119.

14. Crimes and criminal procedure

State v. Stallings (1966) 224 A.2d 718, [main volume] 154 Conn. 272.

Redway v. Walker (1945) 13 Conn.Supp. 164, [main volume] affirmed 43 A.2d 748, 132 Conn. 300.

17. Constitutionality of legislation

Carroll v. Schwartz (1940) 8 Conn.Supp. 70, [main volume] affirmed 14 A.2d 754, 127 Conn. 126.

18. Construction of statutes—In general

Supreme Court has authority to construe state's own statutes. State v. Gerardi (1996) 677 A.2d 937, 237 Conn. 348.

21. Precedent

Court, when once convinced that it is in error, is not compelled to follow precedent. Jolly, Inc. v. Zoning Bd. of Appeals of City of Bridgeport (1996) 676 A.2d 831, 237 Conn. 184.

Court should not overrule its earlier decisions unless the most cogent reasons and inescapable logic require it; this is especially true when precedent involved concerns interpretation or construction of statute. Jolly, Inc. v. Zoning Bd. of Appeals of City of Bridgeport (1996) 676 A.2d 831, 237 Conn. 184.

In determining whether to overrule precedent, particularly precedent that is product of statutory interpretation, such as automatic aggrievement rule, subsequent legislative action or inaction is a key consideration. Jolly, Inc. v. Zoning Bd. of Appeals of City of Bridgeport (1996) 676 A.2d 831, 237 Conn. 184.

§ 2. Selection, nomination, appointment and removal of judges. Judicial selection commission

Notes of Decisions

Nomination by governor ½

½. Nomination by governor

The governor may not nominate a sitting associate justice of the Supreme Court to succeed the Chief Justice if the associate justice in question's name is not on the list of eligible candidates for the position provided by the Judicial Selection Commission; the governor's nominee for office of Chief Justice of the Connecticut Supreme Court must come from the list of qualified candidates compiled and provided to you by the Commission under Const. Art. 5, § 2. Op.Atty.Gen. No. 95-028.

§ 6. Age limitation, exception

United States Supreme Court

Judges, mandatory retirement provision, see Gregory v. Ashcroft, U.S.Mo.1991, 111 S.Ct. 2395, 501 U.S. 452, 115 L.Ed.2d 410.

ARTICLE SIXTH

OF THE QUALIFICATIONS OF ELECTORS

Section

8. Absentee admission of electors.

§ 1. Qualifications of electors

United States Supreme Court

Limitation of right to vote to persons who had "rendered" property for taxation, see Hill v. Stone, U.S.Tex.1975, 95 S.Ct. 1637, 421 U.S. 289, 44

(6)

Table 4.5
METHODS FOR REMOVAL OF JUDGES AND FILLING OF VACANCIES

State or other jurisdiction	*How removed*	*Vacancies: how filled*
Alabama	Judicial Inquiry Commission investigates, receives or initiates complaints concerning any judge. Complaints are filed with the Court of the Judiciary, which is empowered to remove, suspend, censure or otherwise discipline judges in the state. Judges are subject to impeachment.	By gubernatorial appointment. At next general election held after appointee has been in office one year, office is filled for a full term. In some counties, vacancies in circuit and district courts are filled by gubernatorial appointment on nominations made by judicial commission.
Alaska	Justices and judges subject to impeachment for malfeasance or misfeasance in performance of official duties. On recommendation of Judicial Qualifications Commission or on its own motion, Supreme Court may suspend judge without salary when judge pleads guilty or no contest or is found guilty of a crime punishable as felony under state or federal law or of any other crime involving moral turpitude under that law. If conviction is reversed, suspension terminates and judge is paid salary for period of suspension. If conviction becomes final, judge is removed from office by Supreme Court. On recommendation of Judicial Qualifications Commission, Supreme Court may censure or remove a judge for action (occurring not more than six years before commencement of current term) which constitutes willful misconduct in office, willful and persistent failure to perform duties, habitual intemperance or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The court may also retire a judge for disability that seriously interferes with the performance of duties and is (or is likely to become) permanent.	By gubernatorial appointment, from nominations submitted by Judicial Council.
Arizona	Judges subject to recall election. Electors, equal in number to 25 percent of votes cast in last election for judge, may petition for judge's recall. All Supreme Court, court of appeals, and superior court judges (judges of courts of record) are subject to impeachment. On recommendation of Commission on Judicial Qualifications or on its own motion, Supreme Court may suspend without salary, a judge who pleads guilty or no contest or is found guilty of a crime punishable as felony or involving moral turpitude under state or federal law. If conviction is reversed, suspension terminates and judge is paid salary for period of suspension. If conviction becomes final, judge is removed from office by Supreme Court. Upon recommendation of Commission on Judicial Qualifications, Supreme Court may remove a judge for willful misconduct in office, willful and persistent failure to perform duties, habitual intemperance or conduct prejudicial to the administration of of justice that brings the office into disrepute. The Court may also retire a judge for a disability that seriously interferes with performance of duties and is (or is likely to become) permanent.	Vacancies on Supreme Court, court of appeals, and superior courts (in counties with population over 250,000) are filled by the governor from judicial appointment commission lists. Vacancies on superior courts in counties of less than 250,000 may be filled by by gubernatorial appointment until next general election when judge is elected to fill remainder of unexpired term. Vacancies on justice courts are filled by appointment by county board of supervisors.
Arkansas	Supreme, appellate, circuit and chancery court judges are subject to removal by impeachment or by the governor upon the joint address of two-thirds of the members elected to each house of the General Assembly. On recommendation of Judicial Discipline & Disability Commission, the Supreme Court may suspend, with or without pay, or remove a judge for conviction of any offense punishable as a felony under the laws of Arkansas or the United States; for conviction of a criminal act that reflects adversely on the judge's honesty, trustworthiness or fitness as a judge in other respects; for conduct involving dishonesty, fraud, deceit or misrepresentation; for conduct that is prejudicial to the administration of justice; for a willful violation of the Code of Judicial Conduct or the Rules of Professional Responsibility; for willful and persistent failure to perform the duties of office; or for habitual intemperance in the use of alcohol or other drugs.	By gubernatorial appointment. Appointee serves remainder of unexpired term if it expires at next general election.
California	All judges subject to impeachment for misconduct. All judges subject to recall election. On recommendation of the Commission on Judicial Performance or on its own motion, the Supreme Court may suspend a judge without salary when the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony or any other crime that involves moral turpitude under that law. If conviction is reversed, suspension terminates and judge is paid salary for period of suspension. If conviction becomes final, judge is removed from office by Supreme Court. Commission on Judicial Performance, may remove judge for willful misconduct in office, persistent failure or inability to perform duties, habitual intemperence or conduct prejudicial to the administration of justice that brings the office into disrepute, subject to petition to Supreme Court. The commission may also retire a judge for disability that seriously interferes with performance of duties and is (or is likely to become) permanent.	Vacancies on appellate courts are filled by gubernatorial appointment with approval of Commission on Judicial Appointments until next general election at which time appointee has the right to become a candidate. Vacancies on superior courts are filled by gubernatorial appointment for remainder of unexpired term; on justice courts by appointment of county board of supervisors or by nonpartisan special election.

METHODS FOR REMOVAL OF JUDGES AND FILLING OF VACANCIES — Continued

State or other jurisdiction	How removed	Vacancies: how filled
Colorado	Supreme, appeals and district court judges are subject to impeachment for high crimes and misdemeanors or malfeasance in office by two-thirds vote of Senate. Supreme Court, on its own motion or upon petition, may remove a judge from office upon final conviction for a crime punishable as a felony under state or federal law or of any other crime involving moral turpitude under that law. Upon recommendation of Commission on Judicial Discipline, Supreme Court may remove or discipline a judge for willful misconduct in office, willful or persistent failure to perform the duties of office, intemperance or violation of judicial conduct, or for disability that seriously interferes with performance and is (or is likely to become) permanent. Denver county judges are removed in accordance with charter and ordinance provisions.	By gubernatorial appointment (or mayoral appointment in case of Denver county court) from names submitted by appropriate judicial nominating commission.
Connecticut	Supreme and superior court judges are subject to removal by impeachment or by the governor on the address of two-thirds of each house of the General Assembly. On recommendation of Judicial Review Council or on its own motion, the Supreme Court may remove or suspend a judge of the Supreme or superior court after an investigation and hearing. If the investigation involves a Supreme Court justice, such judge is disqualified from participating in the proceedings. If a judge becomes permanently incapacitated and cannot adequately fulfill the duties of office, the judge may be retired for disability by the Judicial Review Council on its own motion or on application of the judge.	If General Assembly is in session, vacancies are filled by governor exclusively from candidates submitted by the Judicial Selection Commission and appointed by the General Assembly. Otherwise vacancies are filled temporarily by gubernatorial appointment.
Delaware	Judges are subject to impeachment for treason, bribery or any high crime or misdemeanor. The Court on the Judiciary may (after investigation and hearing) censure or remove a judge for willful misconduct in office, willful and persistent failure to perform the duties of office or an offense involving moral turpitude or other persistent misconduct in violation of judicial ethics. The Court may also retire a judge for permanent mental or physical disability interfering with the performance of duties.	Vacancies are filled by governor, with consent of majority of all members of senate, from nominees whose names are submitted by judicial nominating commission.
Florida	Supreme Court, district courts of appeal and circuit court judges are subject to impeachment for misdemeanors in office. On recommendation of Judicial Qualifications Commission, Supreme Court may discipline or remove a judge for willful or persistent failure to perform duties or for conduct unbecoming to a member of the judiciary, or retire a judge for a disability that seriously interferes with the performance of duties and is (or is likely to become) permanent.	By gubernatorial appointment, from nominees recommended by appropriate judicial nominating commission.
Georgia	Judges are subject to impeachment for cause. Upon recommendation of the Judicial Qualifications Commission (after investigation of alleged misconduct), the Supreme Court may retire, remove or censure any judge.	By gubernatorial appointment (by executive order) on nonpartisan basis from names submitted by Judicial Nominating Commission.
Hawaii	Upon recommendation of the Commission on Judicial Discipline (after investigation and hearings), the Supreme Court may reprimand, discipline, suspend (with or without salary), retire or remove any judge as a result of misconduct or disability.	Vacancies on Supreme, intermediate court of appeals and circuit courts are filled by gubernatorial appointment (subject to consent of Senate) from names submitted by Judicial Selection Committee. Vacancies on district courts are filled by appointment by chief justice from names submitted by Committee.
Idaho	Judges are subject to impeachment for cause. Upon recommendation by Judicial Council, Supreme Court (after investigation) may remove judges of Supreme Court, court of appeals and district court judges. District court judges (or judicial district sitting *en banc*), by majority vote in accordance with Supreme Court rules, may remove magistrates for cause. District Magistrate's Commission may remove magistrates without cause during first 18 months of service.	Vacancies on Supreme Court, court of appeals and district courts are filled by gubernatorial appointment from names submitted by Judicial Council for unexpired term. Vacancies in magistrates' division of district court are filled by District Magistrate's Commission for remainder of unexpired term.
Illinois	Judges are subject to impeachment for cause. The Judicial Inquiry Board files complaints with the Courts Commission which may remove, suspend without pay, censure or reprimand a judge for willful misconduct in office, persistent failure to perform duties or other conduct prejudicial to the administration of justice or that brings the judicial office into disrepute. The Commission may also suspend (with or without pay) or retire a judge for mental or physical disability.	Vacancies on Supreme, appellate and circuit courts are filled by appointment by supreme court until general election.
Indiana	Upon recommendation of the Judicial Qualifications Commission or on its own motion, the Supreme Court may suspend or remove an appellate judge for pleading guilty or no contest to a felony crime involving moral turpitude. The Supreme Court may also retire, censure or remove a judge for other matters. The Supreme Court may also discipline or suspend without pay a non-appellate judge.	Vacancies on Supreme Court and court of appeals are filled by governor from list of three nominees presented by judicial nominating commission. Vacancies on circuit courts are filled by gubernatorial appointment until general election. Vacancies on most superior courts are filled by gubernatorial appointment.

Vacancies: how filled

By gubernatorial appointment. At next general election held after appointee has been in office one year, office is filled for a full term. In some counties, vacancies in circuit and district courts are filled by gubernatorial appointment on nominations made by judicial commission.

By gubernatorial appointment, from nominations submitted by Judicial Council.

Vacancies on Supreme Court, court of appeals, and superior courts (in counties with population over 250,000) are filled by the governor from judicial appointment commission lists. Vacancies on superior courts in counties of less than 250,000 may be filled by by gubernatorial appointment until next general election when judge is elected to fill remainder of unexpired term. Vacancies on justice courts are filled by appointment by county board of supervisors.

By gubernatorial appointment. Appointee serves remainder of unexpired term if it expires at next general election.

Vacancies on appellate courts are filled by gubernatorial appointment with approval of Commission on Judicial Appointments until next general election at which time appointee has the right to become a candidate. Vacancies on superior courts are filled by gubernatorial appointment for remainder of unexpired term; on justice courts by appointment of county board of supervisors or by nonpartisan special election.

METHODS FOR REMOVAL OF JUDGES AND FILLING OF VACANCIES — Continued

State or other jurisdiction	How removed	Vacancies: how filled
Iowa	Supreme and district court judges are subject to impeachment for misdemeanor or malfeasance in office. Upon recommendation of Commission on Judicial Qualifications, the Supreme Court may retire a Supreme, district or associate district judge for permanent disability, or remove such judge for failure to perform duties, habitual intemperance, willful misconduct, conduct which brings the office into disrepute or substantial violations of the canons of judicial ethics. Judicial magistrates may be removed by a tribunal in the judicial election district of the magistrate's residence.	Governor fills vacancies from lists submitted by judicial nominating commission.
Kansas	All judges are subject to impeachment for treason, bribery or other high crimes and misdemeanors. Supreme Court justices are subject to retirement upon certification to the governor (after a hearing by the Supreme Court nominating Commission) that such justice is so incapacitated as to be unable to perform adequately the duties of office. Upon recommendation of the Judicial Qualifications Commission, the Supreme Court may retire for incapacity, discipline, suspend or remove for cause any judge below the Supreme Court level.	Vacancies on Supreme Court and court of appeals are filled on nonpartisan basis by governor from nominations submitted by Supreme Court nominating commission. Vacancies on district courts (in areas where commission plan has not been adopted) are filled by gubernatorial appointment until next general election, when vacancy is filled for remainder of unexpired term; in areas where commission plan has been adopted, vacancies are filled by gubernatorial appointment from names submitted by judicial nominating commission.
Kentucky	Judges are subject to impeachment for misdemeanors in office. Retirement and Removal Commission, subject to rules of procedure established by Supreme Court, may retire for disability, suspend without pay or remove for good cause any judge. The Commission's actions are subject to review by Supreme Court.	By gubernatorial appointment (from names submitted by appropriate judicial nominating commission) or by chief justice if governor fails to act within 60 days. Appointees serve until next general election after their appointment at which time vacancy is filled.
Louisiana	Judges are subject to impeachment for commission or conviction of felony or malfeasance or gross misconduct. Upon investigation and recommendation by Judiciary Commission, Supreme Court may censure, suspend (with or without salary), remove from office or retire involuntarily a judge for misconduct relating to official duties, willful and persistent failure to perform duties, persistent and public conduct prejudicial to the administration of justice that brings the office into disrepute, or conduct while in office which would constitute a felony or conviction of felony. The Court may also retire a judge for disability which is (or is likely to become) permanent.	Vacancies are filled by Supreme Court appointment if remainder of unexpired term is six months or less; if longer than six months, vacancies are filled in special election.
Maine	Judges are subject to removal by impeachment or by governor upon the joint address of the legislature. Upon recommendation of the Committee on Judicial Responsibility and Disability, the Supreme Judicial Court may remove, retire or discipline any judge.	Vacancies are filled by governor, subject to review by joint standing committee on the judiciary and to Senate confirmation.
Maryland	Judges are subject to impeachment. Judges of Court of Appeals, court of special appeals, trial courts of general jurisdiction and district courts are subject to removal by governor on judge's conviction in court of law, impeachment, or physical or mental disability. Judges are also subject to removal upon joint address of the legislature. Upon recommendation of the Commission on Judicial Disabilities (after hearing), the Court of Appeals may remove or retire a judge for misconduct in office, persistent failure to perform duties, conduct prejudicial to the proper administration of justice, or disability that seriously interferes with the performance of duties and is (or is likely to become) permanent. Elected judges convicted of felony or misdemeanor relating to public duties and involving moral turpitude may be removed from office by operation of law when conviction becomes final.	Vacancies are filled by governor with advice and consent of senate, from names submitted by judicial nominating commission.
Massachusetts	Judges are subject to impeachment. The governor, with the consent of the Executive Council, may remove judges upon joint address of the legislature, and may also (after a hearing and with consent of the Council) retire a judge because of advanced age or mental or physical disability. The Commission on Judicial Conduct, using rules of procedure approved by the Supreme Judicial Court, may investigate the action of any judge that may, by consequence of willful misconduct in office, willful or persistent failure to perform his duties, habitual intemperance or other conduct prejudicial to the administration of justice, bring the office into disrepute.	Vacancies are filled by governor, with advice and consent of Executive Council, from names submitted by judicial nominating commission.

METHODS FOR REMOVAL OF JUDGES AND FILLING OF VACANCIES — Continued

State or other jurisdiction	How removed	Vacancies: how filled
Michigan	Judges are subject to impeachment. With the concurrence of two-thirds of the members of the legislature, the governor may remove a judge for reasonable cause insufficient for impeachment. Upon recommendation of Judicial Tenure Commission, Supreme Court may censure, suspend (with or without salary), retire or remove a judge for conviction of a felony, a physical or mental disability or a persistent failure to perform duties, misconduct in office, habitual intemperance or conduct clearly prejudicial to the administration of justice.	Vacancies in all courts of record are filled by gubernatorial appointment from nominees recommended by a bar committee. Appointee serves until next general election at which successor is selected for remainder of unexpired term. Vacancies on municipal courts are filled by appointment by city councils.
Minnesota	Supreme and district court judges are subject to impeachment. Upon recommendation of Board of Judicial Standards, Supreme Court may censure, suspend (with or without salary), retire or remove a judge for conviction of a felony, physical or mental disability or persistent failure to perform duties, misconduct in office, habitual intemperance or conduct prejudicial to the administration of justice.	Statutory plan to fill vacancies on district courts requires governor to appoint from nominees recommended by a judicial nominating commission. Vacancies on other levels of court filled by gubernatorial appointment (no nominating commission). Appointee serves until general election occurring more than one year after appointment at which time a successor is elected to serve a full term.
Mississippi	Judges are subject to impeachment. For reasonable cause which is not sufficient for impeachment, the governor may, on joint address of legislature, remove judges of Supreme and inferior courts. Upon recommendation of Commission on Judicial Performance, Supreme Court may remove, suspend, fine, publicly censure or reprimand a judge for conviction of a felony (in a court outside the state), willful misconduct, willful and persistent failure to perform duties, habitual intemperance or conduct prejudicial to the administration of justice which brings the office into disrepute. The Commission may also retire any judge for physical or mental disability that seriously interferes with performance of duties and is (or is likely to become) permanent.	By gubernatorial appointment, from names submitted by a nominating commission. The office is filled for remainder of unexpected term at next state or congressional election held more than seven months after vacancy.
Missouri	Upon recommendation of Commission on Retirement, Removal and Discipline, Supreme Court may retire, remove or discipline any judge. Judges subject to impeachment for crime, misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency, or any offense involving moral turpitude or oppression in office.	Vacancies on Supreme Court, court of appeals, and circuit courts that have adopted commission plan are filled by governor from list of nominees submitted by judicial nominating commission. Vacancies on other circuit courts and municipal court are filled, respectively, by special election and mayoral appointment.
Montana	All judges are subject to impeachment. Upon recommendation of Judicial Standards Commission, Supreme Court may suspend a judge and remove same upon conviction of a felony or other crime involving moral turpitude. The Supreme Court may retire any judge for a disability that seriously interferes with the performance of duties, and that is (or may become) permanent. The Court may also censure, suspend or remove any judge for willful misconduct in office, willful and persistent failure to perform duties, violation of canons of judicial ethics adopted by the Supreme Court or habitual intemperance.	Vacancies on Supreme and district courts are filled by gubernatorial appointment (with confirmation by Senate) from names submitted by judicial nominating commission. Vacancies on municipal and city courts are filled by appointment by city council for remainder of unexpired term.
Nebraska	Judges are subject to impeachment. In case of impeachment of Supreme Court justice, judges of district court sit as court of impeachment with two-thirds concurrence required for conviction. In case of other judicial impeachments, Supreme Court sits as court of impeachment. Upon recommendation of the Commission on Judicial Qualifications, the Supreme Court may reprimand, discipline, censure, suspend or remove a judge for willful misconduct in office, willful failure to perform duties, habitual intemperance, conviction of crime involving moral turpitude, disbarment or conduct prejudicial to the administration of justice that brings the office into disrepute. The Supreme Court also may retire a judge for physical or mental disability that seriously interferes with performance of duties and is (or is likely to become) permanent.	Vacancies are filled by governor from list of at least two nominees submitted by judicial nominating commission.

METHODS FOR REMOVAL OF JUDGES AND FILLING OF VACANCIES — Continued

State or other jurisdiction	How removed	Vacancies: how filled
Nevada	All judges, except justices of peace, are subject to impeachment. Judges are also subject to removal by legislative resolution and by recall election. The Commission on Judicial Discipline may censure, retire or remove a Supreme Court justice or district judge for willful misconduct, willful or persistent failure to perform duties or habitual intemperance, or retire a judge for advanced age which interferes with performance of duties for mental or physical disability that is (or is likely to become) permanent, subject to appeal to the Supreme Court.	Vacancies on Supreme or district courts are filled by gubernatorial appointment from among three nominees submitted by Commission on Judicial Selection. Vacancies on justice courts are filled by appointment by board of county commissioners or by special election.
New Hampshire	Judges are subject to impeachment. Governor, with consent of Executive Council, may remove judges upon address of both houses of legislature.	Vacancies are filled by governor and approved by majority vote of five-member Executive Council.
New Jersey	Supreme and superior court judges are subject to impeachment by the legislature. Except for Supreme Court justices, judges are subject to a statutory removal proceeding that is initiated by the filing of a complaint by the Supreme Court on its own motion or the governor or either house of the legislature acting by a majority of its total membership. Prior to institution of the formal proceedings, complaints are usually referred to the Supreme Court's Advisory Committee on Judicial Conduct, which conducts a preliminary investigation, makes findings of fact and either dismisses the charges or recommends that formal proceedings be instituted. The Supreme Court's determination is based on a plenary hearing procedure, although the Court is supplied with a record created by the Committee. The formal statutory removal hearing may be either before the Supreme Court sitting *en banc* or before three justices or judges (or combination thereof) specifically designated by chief justice. If Supreme Court certifies to governor that it appears a Supreme Court or superior court judge is so incapacitated as to substantially prevent the judge from performing the duties of office, the governor appoints a commission of three persons to inquire into the circumstances. On their recommendation, the governor may retire the justice or judge from office, on pension, as may be provided by law.	Vacancies on Supreme Court and superior court, county, district, tax, and municipal courts are filled by governor with advice and consent of Senate.
New Mexico	Judges are subject to impeachment. Upon recommendation of the Judicial Standards Commission, the Supreme Court may discipline or remove a judge for willful misconduct in office, willful and persistent failure or inability to perform duties or habitual intemperance, or retire a judge for disability that seriously interferes with performance of duties and is (or is likely to become) permanent.	Vacancies on Supreme Court, Court of Appeals and district courts are filled by gubernatorial appointment from names submitted by judicial nominating commission.
New York	All judges are subject to impeachment. Court of Appeals and Supreme Court judges may be removed by two-thirds concurrence of both houses of legislature. Court of claims, county court, surrogate's court, family court, civil and criminal court (NYC) and district court judges may be removed by two-thirds vote of the Senate on recommendation of governor. Commission on Judicial Conduct may determine that a judge be admonished, censured or removed from office for cause, or retired for disability, subject to appeal to the Court of Appeals.	Vacancies on Court of Appeals and appellate division of Supreme Court are filled by governor with advice and consent of Senate, from among nominees recommended by judicial nominating commission. Vacancies in elective judgeships (outside NYC) are filled at next general election for full term; until election, governor makes appointment (with consent of senate if in session).
North Carolina	Upon recommendation of Judicial Standards Commission, Supreme Court may censure or remove a court of appeals or trial court judge for willful misconductin office, willful and persistent failure to perform duties, habitual intemperance, conviction of a crime involving moral turpitude, conduct prejudicial to the administration of justice that brings the office into disrepute, or mental or physical incapacity that interferes with the performance of duties and is (or is likely to become) permanent. Upon recommendation of Judicial Standards Commission, a seven-member panel of the court of appeals may censure or remove (for the above reasons) any Supreme Court judge.	Vacancies on Supreme, appeals and superior courts are filled by gubernatorial appointment until next general election.
North Dakota	Supreme and district court judges are subject to impeachment for habitual intemperance, crimes, corrupt conduct, malfeasance or misdemeanor in office. Governor may remove county judges after hearing. All judges are subject to recall election. On recommendation of Commission on Judicial Qualifications or on its own motion, Supreme Court may suspend a judge without salary when judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under state or federal law or any other crime involving moral turpitude under that law. If conviction is reversed, suspension terminates and judge is paid salary for period of suspension. If conviction becomes final, judge is removed by Supreme Court. Upon recommendation of Commission on Judicial Qualifications, Supreme Court may censure or remove a judge for willful misconduct, willful failure to perform duties, willful violation of the code of judicial conduct or habitual intemperance. The Court may also retire a judge for disability that seriously interferes with the performance of duties and is (or is likely to become) permanent.	Vacancies on Supreme and district courts are filled by gubernatorial appointment from nominees submitted by Judicial Nominating Committee until next general election, unless governor calls for a special election to fill vacancy for remainder of term. Vacancies on county courts are filled by appointment by board of county commissioners from names submitted by nominating commission.

METHODS FOR REMO

State or other jurisdiction
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee

METHODS FOR REMOVAL OF JUDGES AND FILLING OF VACANCIES — Continued

State or other jurisdiction	How removed	Vacancies: how filled
Ohio	Judges are subject to impeachment. Judges may be removed by concurrent resolution of two-thirds members of both houses of legislature or removed for cause upon filing of a petition signed by 15 percent of electors in preceding gubernatorial election. The Board of Commissioners on Grievances and Discipline of the Judiciary may disqualify a judge from office when judge has been indicted for a crime punishable as a felony under state or federal law. Board may also remove or suspend a judge for willful and persistent failure to perform duties, habitual intemperance, conduct prejudicial to the administration of justice or which would bring the office into disrepute, or suspension from practice of law, or retire a judge for physical or mental disability that prevents discharge of duties. Judge may appeal action to Supreme Court.	Vacancies are filled by gubernatorial appointment until next general election when successor is elected to fill unexpired term. If unexpired term ends within one year following such election, appointment is made for unexpired term.
Oklahoma	Judges are subject to impeachment for willful neglect of duty, corruption in office, habitual intemperence, incompetency or any offense involving moral turpitude. Upon recommendation of Council on Judicial Complaints, chief justice of Supreme Court may bring charges against any judge in the Court on the Judiciary. Court on the Judiciary may order removal of judge for gross neglect of duty, corruption in office, habitual drunkenness, an offense involving moral turpitude, gross partiality in office, or oppression in office. Judge may also be retired (with or without salary) for mental or physical disability that prevents performance of duties, or for incompetence to perform duties.	Vacancies on Supreme Court, Court of Appeals, and Court of Criminal Appeals are filled by governor form list of candidates submitted by judicial nominating commission. For Court of Appeals vacancies, judge is elected to fill unexpired term at next general election.
Oregon	On recommendation of Commission on Judicial Fitness, Supreme Court may remove a judge for conviction of a felony or crime involving moral turpitude, willful misconduct in office, willful or persistent failure to perform judicial duties, habitual intemperance, illegal use of narcotic drugs or willful violation of rules of conduct prescribed by Supreme Court of general incompetence. A judge may also be retired for mental or physical disability after certification by Commission. Judge may appeal to Supreme Court.	Vacancies on Supreme Court, court of appeals and circuit courts are filled by gubernatorial appointment, until next general election when judge is selected to fill unexpired term.
Pennsylvania	All judges are subject to impeachment for misdemeanor in office. Upon complaint by Judicial Conduct Board, Court of Judiciary Discipline may remove a judge subject to appeal to Supreme Court.	By gubernatorial appointment (with advice and consent of Senate), from names submitted by appropriate nominating commission. Appointee serves until next election if the election is more than 10 months after vacancy occurred.
Rhode Island	All judges are subject to impeachment. The Supreme Court on its own motion may suspend a judge who pleaded guilty or no contest or was found guilty of a crime punishable as a felony under state or federal law or any other crime involving moral turpitude. Upon recommendation of the Commission on Judicial Tenure and Discipline, the Supreme Court may censure, suspend, reprimand or remove from office a judge guilty of a serious violation of the canons of judicial ethics or for willful or persistent failure to perform duties, a disabling addiction to alcohol, drugs or narcotics, or conduct that brings the office into disrepute. The Supreme Court may also retire a judge for physical or mental disability that seriously interferes with the performance of duties and is (or is likely to become) permanent. Whenever the Commission recommends removal of a Supreme Court justice, the Supreme Court transmits the findings to the Speaker of the House of Representatives, recommending the initiation of proceedings for the removal of the justice by resolution of the legislature.	Vacancies on Supreme Court are filled by the two houses of the legislature in grand committee until the next election. In case of a judge's temporary inability, governor may appoint a person to fill vacancy. Vacancies on superior, family and district courts are filled by gubernatorial appointment (with advice and consent of Senate).
South Carolina	Judges are subject to removal by impeachment or by governor on address of two-thirds of each house of the legislature. Upon review of findings of fact, conclusions of law, and recommendation of the Board of Commissioners on Judicial Standards, the Supreme Court can discipline, suspend, remove, retire or hold in contempt a judge who has been convicted of a crime of moral turpitude, has violated the Code of Judicial Conduct or the Rules of Professional Conduct, persistently failed to perform his judicial duties, or is persistently incompetent or neglectful in the performance of his judicial duties or is habitually intemperate, consistently fails to timely issue his official orders, decrees, or opinions or otherwise perform his official duties without just cause or excuse, or for disability.	Vacancies on the Supreme Court, court of appeals, and circuit court are filled by joint public vote of general assembly, from list of nominees supplied by judicial screening committee.
South Dakota	Supreme Court justices and circuit court judges are subject to removal by impeachment. Upon recommendation of Judicial Qualifications Commission, Supreme Court may remove a judge from office.	Vacancies on Supreme and circuit courts are filled by gubernatorial appointment from names submitted by Judicial Qualifications Commission for balance of unexpired term.
Tennessee	Judges are subject to impeachment for misfeasance or malfeasance in office. Upon recommendation of the Court on the Judiciary, the legislature (by concurrent resolution) may remove a judge for willful misconduct in office or physical or mental disability.	Vacancies on Supreme, circuit, criminal, and chancery courts are filled by gubernatorial appointment until next biennial election.

Vacancies: how filled

Vacancies on Supreme or district courts are filled by gubernatorial appointment from among three nominees submitted by Commission on Judicial Selection. Vacancies on justice courts are filled by appointment by board of county commissioners or by special election.

Vacancies are filled by governor and approved by majority vote of five-member Executive Council.

Vacancies on Supreme Court and superior court, county, district, tax, and municipal courts are filled by governor with advice and consent of Senate.

Vacancies on Supreme Court, Court of Appeals and district courts are filled by gubernatorial appointment from names submitted by judicial nominating commission.

Vacancies on Court of Appeals and appellate division of Supreme Court are filled by governor with advice and consent of Senate, from among nominees recommended by judicial nominating commission. Vacancies in elective judgeships (outside NYC) are filled at next general election for full term; until election, governor makes appointment (with consent of senate if in session).

Vacancies on Supreme, appeals and superior courts are filled by gubernatorial appointment until next general election.

Vacancies on Supreme and district courts are filled by gubernatorial appointment from nominees submitted by Judicial Nominating Committee until next general election, unless governor calls for a special election to fill vacancy for remainder of term.
Vacancies on county courts are filled by appointment by board of county commissioners from names submitted by nominating commission.

METHODS FOR REMOVAL OF JUDGES AND FILLING OF VACANCIES — Continued

State or other jurisdiction	How removed	Vacancies: how filled
Texas	Supreme Court, court of appeals and district court judges are subject to removal by impeachment or by joint address of both houses. Supreme Court may remove district judges from office. District judges may remove county judges and justices of the peace. Upon recommendation of removal by State Commission on Judicial Conduct, Supreme Court selects review tribunal. Decision of review tribunal may be appealed to the Supreme Court.	Vacancies on appellate and district courts are filled by gubernatorial appointment until next general election, at which time a successor is chosen. Vacancies on county courts are filled by appointment by county commissioner's court until next election when successor is chosen. Vacancies on municipal courts are filled by governing body of municipality for remainder of unexpired term.
Utah	All judges, except justices of the peace, are subject to impeachment. Following investigations and hearings, the Judicial Conduct Commission may order the reprimand, censure, suspension, removal or involuntary retirement of any judge for willful misconduct, final conviction of a crime punishable as a felony under state or federal law, willful or persistent failure to perform judicial duties, disability that seriously interferes with performance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Prior to implementation, the Supreme Court reviews the order. Lay justices of the peace may be removed for willful failure to participate in judicial education program.	Vacancies on Supreme, district and circuit courts are filled by gubernatorial appointment from candidates submitted by appropriate nominating commission.
Vermont	Upon review of the findings of the Judicial Conduct Board, all judges are subject to impeachment. Supreme Court may discipline, impose sanctions on, or suspend from duties any judge in the state.	If Senate is in session, vacancies on Supreme, superior, and district courts are filled by governor, with advice and consent of Senate, from list of nominees submitted by judicial nominating board. Otherwise, by governor's appointment from nominees list.
Virginia	All judges are subject to impeachment. Upon certification of charges against judge by Judicial Inquiry and Review Commission, Supreme Court may remove a judge.	If General Assembly is in session, vacancies are filled by majority vote of both houses. Otherwise by gubernatorial appointment, with appointee serving until 30 days after commencement of next legislative session.
Washington	A judge of any court of record is subject to impeachment. After notice, hearing and recommendation by Judicial Qualifications Commission, Supreme Court may censure, suspend or remove a judge for violating a rule of judicial conduct. The Supreme Court may also retire a judge for disability that seriously interferes with the performance of duties and is (or is likely to become) permanent.	Vacancies on appellate and general trial courts are filled by gubernatorial appointment until next general election when successor is elected to fill remainder of term.
West Virginia	Judges are subject to impeachment for maladministration, corruption, incompetency, gross immorality, neglect of duty or any crime or misdemeanor. Upon review of recommendations of the Judicial Hearing Board, the Supreme Court of Appeals may censure or suspend a judge for any violation of the judicial code of ethics or retire a judge who is incapable of performing duties because of advancing age, disease or physical or mental infirmity.	Vacancies on appellate and general trial courts are filled by gubernatorial appointment. If unexpired term is less than two years (or such additional period not exceeding three years), appointee serves for remainder of term. If unexpired term is more than three years, appointee serves until next general election, at which time successor is chosen to fill remainder of term.
Wisconsin	All judges are subject to impeachment. Supreme Court, court of appeals and circuit court judges are subject to removal by address of both houses of legislature with two-thirds of members concurring, and by recall election. As judges of courts of record must be licensed to practice law in state, removal of judge may also be by disbarment. Upon review of the findings of fact, conclusions of law and recommendation of the Judicial Commission, the Supreme Court may reprimand, censure, suspend or remove for cause or disability any judge or justice for a willful violation of a rule of the Code of Judicial Ethics, willful or persistent failure to perform official duties, habitual intemperance, due to consumption of intoxicating beverages or use of dangerous drugs, which interferes with the proper performance of judicial duties, or conviction of a felony.	Vacancies on Supreme Court, court of appeals and circuit courts are filled by gubernatorial appointment from nominees submitted by nominating commission.

METHODS FOR REMOVAL OF JUDGES AND FILLING OF VACANCIES — Continued

State or other jurisdiction	*How removed*	*Vacancies: how filled*
Wyoming	All judges, except justices of peace, are subject to impeachment. Upon recommendation of Judicial Supervisory Commission, the Supreme Court may retire or remove a judge. After a hearing before the panel of three district judges, the Supreme Court may remove justices of the peace.	Vacancies are filled by governor from list of three nominees submitted by judicial nominating commission. Vacancies on justice of peace courts are filled by appointment by county commissioners until next general election.
Dist. of Columbia	Commission on Judicial Disabilities and Tenure may remove a judge upon conviction of felony (including a federal crime), for willful misconduct in office, willful and persistent failure to perform judicial duties or for other conduct prejudicial to the administration of justice which brings the office into disrepute.	Vacancies are filled by president of United States, with consent of U.S. Senate, from list of persons recommended by Judicial Nominating Commission.
Puerto Rico	Supreme Court justices are subject to impeachment for treason, bribery or other felonies and misdemeanors involving moral turpitude. Supreme Court may remove other judges for cause (as provided by judiciary act) after a hearing on charges brought by order of chief justice, who disqualifies self from final proceedings.	Vacancies are filled as in initial selection.

Source: American Judicature Society (Summer 1997). Used with permission.

Table 4.5
METHODS FOR REMOVAL OF JUDGES AND FILLING OF VACANCIES

State or other jurisdiction	How removed	Vacancies: how filled
Alabama	Judicial Inquiry Commission investigates, receives or initiates complaints concerning any judge. Complaints are filed with the Court of the Judiciary, which is empowered to remove, suspend, censure or otherwise discipline judges in the state. Judges are subject to impeachment.	By gubernatorial appointment. At next general election held after appointee has been in office one year, office is filled for a full term. In some counties, vacancies in circuit and district courts are filled by gubernatorial appointment on nominations made by judicial commission.
Alaska	Justices and judges subject to impeachment for malfeasance or misfeasance in performance of official duties. On recommendation of Judicial Qualifications Commission or on its own motion, Supreme Court may suspend judge without salary when judge pleads guilty or no contest or is found guilty of a crime punishable as felony under state or federal law or of any other crime involving moral turpitude under that law. If conviction is reversed, suspension terminates and judge is paid salary for period of suspension. If conviction becomes final, judge is removed from office by Supreme Court. On recommendation of Judicial Qualifications Commission, Supreme Court may censure or remove a judge for action (occurring not more than six years before commencement of current term) which constitutes willful misconduct in office, willful and persistent failure to perform duties, habitual intemperance or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The court may also retire a judge for disability that seriously interferes with the performance of duties and is (or is likely to become) permanent.	By gubernatorial appointment, from nominations submitted by Judicial Council.
Arizona	Judges subject to recall election. Electors, equal in number to 25 percent of votes cast in last election for judge, may petition for judge's recall. All Supreme Court, court of appeals, and superior court judges (judges of courts of record) are subject to impeachment. On recommendation of Commission on Judicial Qualifications or on its own motion, Supreme Court may suspend without salary, a judge who pleads guilty or no contest or is found guilty of a crime punishable as felony or involving moral turpitude under state or federal law. If conviction is reversed, suspension terminates and judge is paid salary for period of suspension. If conviction becomes final, judge is removed from office by Supreme Court. Upon recommendation of Commission on Judicial Qualifications, Supreme Court may remove a judge for willful misconduct in office, willful and persistent failure to perform duties, habitual intemperance or conduct prejudicial to the administration of of justice that brings the office into disrepute. The Court may also retire a judge for a disability that seriously interferes with performance of duties and is (or is likely to become) permanent.	Vacancies on Supreme Court, court of appeals, and superior courts (in counties with population over 250,000) are filled by the governor from judicial appointment commission lists. Vacancies on superior courts in counties of less than 250,000 may be filled by by gubernatorial appointment until next general election when judge is elected to fill remainder of unexpired term. Vacancies on justice courts are filled by appointment by county board of supervisors.
Arkansas	Supreme, appellate, circuit and chancery court judges are subject to removal by impeachment or by the governor upon the joint address of two-thirds of the members elected to each house of the General Assembly. On recommendation of Judicial Discipline & Disability Commission, the Supreme Court may suspend, with or without pay, or remove a judge for conviction of any offense punishable as a felony under the laws of Arkansas or the United States; for conviction of a criminal act that reflects adversely on the judge's honesty, trustworthiness or fitness as a judge in other respects; for conduct involving dishonesty, fraud, deceit or misrepresentation; for conduct that is prejudicial to the administration of justice; for a willful violation of the Code of Judicial Conduct or the Rules of Professional Responsibility; for willful and persistent failure to perform the duties of office; or for habitual intemperance in the use of alcohol or other drugs.	By gubernatorial appointment. Appointee serves remainder of unexpired term if it expires at next general election.
California	All judges subject to impeachment for misconduct. All judges subject to recall election. On recommendation of the Commission on Judicial Performance or on its own motion, the Supreme Court may suspend a judge without salary when the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony or any other crime that involves moral turpitude under that law. If conviction is reversed, suspension terminates and judge is paid salary for period of suspension. If conviction becomes final, judge is removed from office by Supreme Court. Commission on Judicial Performance, may remove judge for willful misconduct in office, persistent failure or inability to perform duties, habitual intemperence or conduct prejudicial to the administration of justice that brings the office into disrepute, subject to petition to Supreme Court. The commission may also retire a judge for disability that seriously interferes with performance of duties and is (or is likely to become) permanent.	Vacancies on appellate courts are filled by gubernatorial appointment with approval of Commission on Judicial Appointments until next general election at which time appointee has the right to become a candidate. Vacancies on superior courts are filled by gubernatorial appointment for remainder of unexpired term; on justice courts by appointment of county board of supervisors or by nonpartisan special election.

METHODS FOR REM

State or other jurisdiction
Colorado
Connecticut
Delaware
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana

METHODS FOR REMOVAL OF JUDGES AND FILLING OF VACANCIES — Continued

State or other jurisdiction	*How removed*	*Vacancies: how filled*
Colorado	Supreme, appeals and district court judges are subject to impeachment for high crimes and misdemeanors or malfeasance in office by two-thirds vote of Senate. Supreme Court, on its own motion or upon petition, may remove a judge from office upon final conviction for a crime punishable as a felony under state or federal law or of any other crime involving moral turpitude under that law. Upon recommendation of Commission on Judicial Discipline, Supreme Court may remove or discipline a judge for willful misconduct in office, willful or persistent failure to perform the duties of office, intemperance or violation of judicial conduct, or for disability that seriously interferes with performance and is (or is likely to become) permanent. Denver county judges are removed in accordance with charter and ordinance provisions.	By gubernatorial appointment (or mayoral appointment in case of Denver county court) from names submitted by appropriate judicial nominating commission.
Connecticut	Supreme and superior court judges are subject to removal by impeachment or by the governor on the address of two-thirds of each house of the General Assembly. On recommendation of Judicial Review Council or on its own motion, the Supreme Court may remove or suspend a judge of the Supreme or superior court after an investigation and hearing. If the investigation involves a Supreme Court justice, such judge is disqualified from participating in the proceedings. If a judge becomes permanently incapacitated and cannot adequately fulfill the duties of office, the judge may be retired for disability by the Judicial Review Council on its own motion or on application of the judge.	If General Assembly is in session, vacancies are filled by governor exclusively from candidates submitted by the Judicial Selection Commission and appointed by the General Assembly. Otherwise vacancies are filled temporarily by gubernatorial appointment.
Delaware	Judges are subject to impeachment for treason, bribery or any high crime or misdemeanor. The Court on the Judiciary may (after investigation and hearing) censure or remove a judge for willful misconduct in office, willful and persistent failure to perform the duties of office or an offense involving moral turpitude or other persistent misconduct in violation of judicial ethics. The Court may also retire a judge for permanent mental or physical disability interfering with the performance of duties.	Vacancies are filled by governor, with consent of majority of all members of senate, from nominees whose names are submitted by judicial nominating commission.
Florida	Supreme Court, district courts of appeal and circuit court judges are subject to impeachment for misdemeanors in office. On recommendation of Judicial Qualifications Commission, Supreme Court may discipline or remove a judge for willful or persistent failure to perform duties or for conduct unbecoming to a member of the judiciary, or retire a judge for a disability that seriously interferes with the performance of duties and is (or is likely to become) permanent.	By gubernatorial appointment, from nominees recommended by appropriate judicial nominating commission.
Georgia	Judges are subject to impeachment for cause. Upon recommendation of the Judicial Qualifications Commission (after investigation of alleged misconduct), the Supreme Court may retire, remove or censure any judge.	By gubernatorial appointment (by executive order) on nonpartisan basis from names submitted by Judicial Nominating Commission.
Hawaii	Upon recommendation of the Commission on Judicial Discipline (after investigation and hearings), the Supreme Court may reprimand, discipline, suspend (with or without salary), retire or remove any judge as a result of misconduct or disability.	Vacancies on Supreme, intermediate court of appeals and circuit courts are filled by gubernatorial appointment (subject to consent of Senate) from names submitted by Judicial Selection Committee. Vacancies on district courts are filled by appointment by chief justice from names submitted by Committee.
Idaho	Judges are subject to impeachment for cause. Upon recommendation by Judicial Council, Supreme Court (after investigation) may remove judges of Supreme Court, court of appeals and district court judges. District court judges (or judicial district sitting *en banc*), by majority vote in accordance with Supreme Court rules, may remove magistrates for cause. District Magistrate's Commission may remove magistrates without cause during first 18 months of service.	Vacancies on Supreme Court, court of appeals and district courts are filled by gubernatorial appointment from names submitted by Judicial Council for unexpired term. Vacancies in magistrates' division of district court are filled by District Magistrate's Commission for remainder of unexpired term.
Illinois	Judges are subject to impeachment for cause. The Judicial Inquiry Board files complaints with the Courts Commission which may remove, suspend without pay, censure or reprimand a judge for willful misconduct in office, persistent failure to perform duties or other conduct prejudicial to the administration of justice or that brings the judicial office into disrepute. The Commission may also suspend (with or without pay) or retire a judge for mental or physical disability.	Vacancies on Supreme, appellate and circuit courts are filled by appointment by supreme court until general election.
Indiana	Upon recommendation of the Judicial Qualifications Commission or on its own motion, the Supreme Court may suspend or remove an appellate judge for pleading guilty or no contest to a felony crime involving moral turpitude. The Supreme Court may also retire, censure or remove a judge for other matters. The Supreme Court may also discipline or suspend without pay a non-appellate judge.	Vacancies on Supreme Court and court of appeals are filled by governor from list of three nominees presented by judicial nominating commission. Vacancies on circuit courts are filled by gubernatorial appointment until general election. Vacancies on most superior courts are filled by gubernatorial appointment.

METHODS FOR REMOVAL OF JUDGES AND FILLING OF VACANCIES — Continued

State or other jurisdiction	How removed	Vacancies: how filled
Nevada	All judges, except justices of peace, are subject to impeachment. Judges are also subject to removal by legislative resolution and by recall election. The Commission on Judicial Discipline may censure, retire or remove a Supreme Court justice or district judge for willful misconduct, willful or persistent failure to perform duties or habitual intemperance, or retire a judge for advanced age which interferes with performance of duties for mental or physical disability that is (or is likely to become) permanent, subject to appeal to the Supreme Court.	Vacancies on Supreme or district courts are filled by gubernatorial appointment from among three nominees submitted by Commission on Judicial Selection. Vacancies on justice courts are filled by appointment by board of county commissioners or by special election.
New Hampshire	Judges are subject to impeachment. Governor, with consent of Executive Council, may remove judges upon address of both houses of legislature.	Vacancies are filled by governor and approved by majority vote of five-member Executive Council.
New Jersey	Supreme and superior court judges are subject to impeachment by the legislature. Except for Supreme Court justices, judges are subject to a statutory removal proceeding that is initiated by the filing of a complaint by the Supreme Court on its own motion or the governor or either house of the legislature acting by a majority of its total membership. Prior to institution of the formal proceedings, complaints are usually referred to the Supreme Court's Advisory Committee on Judicial Conduct, which conducts a preliminary investigation, makes findings of fact and either dismisses the charges or recommends that formal proceedings be instituted. The Supreme Court's determination is based on a plenary hearing procedure, although the Court is supplied with a record created by the Committee. The formal statutory removal hearing may be either before the Supreme Court sitting *en banc* or before three justices or judges (or combination thereof) specifically designated by chief justice. If Supreme Court certifies to governor that it appears a Supreme Court or superior court judge is so incapacitated as to substantially prevent the judge from performing the duties of office, the governor appoints a commission of three persons to inquire into the circumstances. On their recommendation, the governor may retire the justice or judge from office, on pension, as may be provided by law.	Vacancies on Supreme Court and superior court, county, district, tax, and municipal courts are filled by governor with advice and consent of Senate.
New Mexico	Judges are subject to impeachment. Upon recommendation of the Judicial Standards Commission, the Supreme Court may discipline or remove a judge for willful misconduct in office, willful and persistent failure or inability to perform duties or habitual intemperance, or retire a judge for disability that seriously interferes with performance of duties and is (or is likely to become) permanent.	Vacancies on Supreme Court, Court of Appeals and district courts are filled by gubernatorial appointment from names submitted by judicial nominating commission.
New York	All judges are subject to impeachment. Court of Appeals and Supreme Court judges may be removed by two-thirds concurrence of both houses of legislature. Court of claims, county court, surrogate's court, family court, civil and criminal court (NYC) and district court judges may be removed by two-thirds vote of the Senate on recommendation of governor. Commission on Judicial Conduct may determine that a judge be admonished, censured or removed from office for cause, or retired for disability, subject to appeal to the Court of Appeals.	Vacancies on Court of Appeals and appellate division of Supreme Court are filled by governor with advice and consent of Senate, from among nominees recommended by judicial nominating commission. Vacancies in elective judgeships (outside NYC) are filled at next general election for full term; until election, governor makes appointment (with consent of senate if in session).
North Carolina	Upon recommendation of Judicial Standards Commission, Supreme Court may censure or remove a court of appeals or trial court judge for willful misconductin office, willful and persistent failure to perform duties, habitual intemperance, conviction of a crime involving moral turpitude, conduct prejudicial to the administration of justice that brings the office into disrepute, or mental or physical incapacity that interferes with the performance of duties and is (or is likely to become) permanent. Upon recommendation of Judicial Standards Commission, a seven-member panel of the court of appeals may censure or remove (for the above reasons) any Supreme Court judge.	Vacancies on Supreme, appeals and superior courts are filled by gubernatorial appointment until next general election.
North Dakota	Supreme and district court judges are subject to impeachment for habitual intemperance, crimes, corrupt conduct, malfeasance or misdemeanor in office. Governor may remove county judges after hearing. All judges are subject to recall election. On recommendation of Commission on Judicial Qualifications or on its own motion, Supreme Court may suspend a judge without salary when judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under state or federal law or any other crime involving moral turpitude under that law. If conviction is reversed, suspension terminates and judge is paid salary for period of suspension. If conviction becomes final, judge is removed by Supreme Court. Upon recommendation of Commission on Judicial Qualifications, Supreme Court may censure or remove a judge for willful misconduct, willful failure to perform duties, willful violation of the code of judicial conduct or habitual intemperance. The Court may also retire a judge for disability that seriously interferes with the performance of duties and is (or is likely to become) permanent.	Vacancies on Supreme and district courts are filled by gubernatorial appointment from nominees submitted by Judicial Nominating Committee until next general election, unless governor calls for a special election to fill vacancy for remainder of term. Vacancies on county courts are filled by appointment by board of county commissioners from names submitted by nominating commission.

METHODS FOR REMOVAL OF JUDGES AND FILLING OF VACANCIES — Continued

State or other jurisdiction	*How removed*	*Vacancies: how filled*
Ohio	Judges are subject to impeachment. Judges may be removed by concurrent resolution of two-thirds members of both houses of legislature or removed for cause upon filing of a petition signed by 15 percent of electors in preceding gubernatorial election. The Board of Commissioners on Grievances and Discipline of the Judiciary may disqualify a judge from office when judge has been indicted for a crime punishable as a felony under state or federal law. Board may also remove or suspend a judge for willful and persistent failure to perform duties, habitual intemperance, conduct prejudicial to the administration of justice or which would bring the office into disrepute, or suspension from practice of law, or retire a judge for physical or mental disability that prevents discharge of duties. Judge may appeal action to Supreme Court.	Vacancies are filled by gubernatorial appointment until next general election when successor is elected to fill unexpired term. If unexpired term ends within one year following such election, appointment is made for unexpired term.
Oklahoma	Judges are subject to impeachment for willful neglect of duty, corruption in office, habitual intemperence, incompetency or any offense involving moral turpitude. Upon recommendation of Council on Judicial Complaints, chief justice of Supreme Court may bring charges against any judge in the Court on the Judiciary. Court on the Judiciary may order removal of judge for gross neglect of duty, corruption in office, habitual drunkenness, an offense involving moral turpitude, gross partiality in office, or oppression in office. Judge may also be retired (with or without salary) for mental or physical disability that prevents performance of duties, or for incompetence to perform duties.	Vacancies on Supreme Court, Court of Appeals, and Court of Criminal Appeals are filled by governor form list of candidates submitted by judicial nominating commission. For Court of Appeals vacancies, judge is elected to fill unexpired term at next general election.
Oregon	On recommendation of Commission on Judicial Fitness, Supreme Court may remove a judge for conviction of a felony or crime involving moral turpitude, willful misconduct in office, willful or persistent failure to perform judicial duties, habitual intemperance, illegal use of narcotic drugs or willful violation of rules of conduct prescribed by Supreme Court of general incompetence. A judge may also be retired for mental or physical disability after certification by Commission. Judge may appeal to Supreme Court.	Vacancies on Supreme Court, court of appeals and circuit courts are filled by gubernatorial appointment, until next general election when judge is selected to fill unexpired term.
Pennsylvania	All judges are subject to impeachment for misdemeanor in office. Upon complaint by Judicial Conduct Board, Court of Judiciary Discipline may remove a judge subject to appeal to Supreme Court.	By gubernatorial appointment (with advice and consent of Senate), from names submitted by appropriate nominating commission. Appointee serves until next election if the election is more than 10 months after vacancy occurred.
Rhode Island	All judges are subject to impeachment. The Supreme Court on its own motion may suspend a judge who pleaded guilty or no contest or was found guilty of a crime punishable as a felony under state or federal law or any other crime involving moral turpitude. Upon recommendation of the Commission on Judicial Tenure and Discipline, the Supreme Court may censure, suspend, reprimand or remove from office a judge guilty of a serious violation of the canons of judicial ethics or for willful or persistent failure to perform duties, a disabling addiction to alcohol, drugs or narcotics, or conduct that brings the office into disrepute. The Supreme Court may also retire a judge for physical or mental disability that seriously interferes with the performance of duties and is (or is likely to become) permanent. Whenever the Commission recommends removal of a Supreme Court justice, the Supreme Court transmits the findings to the Speaker of the House of Representatives, recommending the initiation of proceedings for the removal of the justice by resolution of the legislature.	Vacancies on Supreme Court are filled by the two houses of the legislature in grand committee until the next election. In case of a judge's temporary inability, governor may appoint a person to fill vacancy. Vacancies on superior, family and district courts are filled by gubernatorial appointment (with advice and consent of Senate).
South Carolina	Judges are subject to removal by impeachment or by governor on address of two-thirds of each house of the legislature. Upon review of findings of fact, conclusions of law, and recommendation of the Board of Commissioners on Judicial Standards, the Supreme Court can discipline, suspend, remove, retire or hold in contempt a judge who has been convicted of a crime of moral turpitude, has violated the Code of Judicial Conduct or the Rules of Professional Conduct, persistently failed to perform his judicial duties, or is persistently incompetent or neglectful in the performance of his judicial duties or is habitually intemperate, consistently fails to timely issue his official orders, decrees, or opinions or otherwise perform his official duties without just cause or excuse, or for disability.	Vacancies on the Supreme Court, court of appeals, and circuit court are filled by joint public vote of general assembly, from list of nominees supplied by judicial screening committee.
South Dakota	Supreme Court justices and circuit court judges are subject to removal by impeachment. Upon recommendation of Judicial Qualifications Commission, Supreme Court may remove a judge from office.	Vacancies on Supreme and circuit courts are filled by gubernatorial appointment from names submitted by Judicial Qualifications Commission for balance of unexpired term.
Tennessee	Judges are subject to impeachment for misfeasance or malfeasance in office. Upon recommendation of the Court on the Judiciary, the legislature (by concurrent resolution) may remove a judge for willful misconduct in office or physical or mental disability.	Vacancies on Supreme, circuit, criminal, and chancery courts are filled by gubernatorial appointment until next biennial election.

METHODS FOR REMOVAL OF JUDGES AND FILLING OF VACANCIES — Continued

State or other jurisdiction	How removed	Vacancies: how filled
Texas	Supreme Court, court of appeals and district court judges are subject to removal by impeachment or by joint address of both houses. Supreme Court may remove district judges from office. District judges may remove county judges and justices of the peace. Upon recommendation of removal by State Commission on Judicial Conduct, Supreme Court selects review tribunal. Decision of review tribunal may be appealed to the Supreme Court.	Vacancies on appellate and district courts are filled by gubernatorial appointment until next general election, at which time a successor is chosen. Vacancies on county courts are filled by appointment by county commissioner's court until next election when successor is chosen. Vacancies on municipal courts are filled by governing body of municipality for remainder of unexpired term.
Utah	All judges, except justices of the peace, are subject to impeachment. Following investigations and hearings, the Judicial Conduct Commission may order the reprimand, censure, suspension, removal or involuntary retirement of any judge for willful misconduct, final conviction of a crime punishable as a felony under state or federal law, willful or persistent failure to perform judicial duties, disability that seriously interferes with performance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Prior to implementation, the Supreme Court reviews the order. Lay justices of the peace may be removed for willful failure to participate in judicial education program.	Vacancies on Supreme, district and circuit courts are filled by gubernatorial appointment from candidates submitted by appropriate nominating commission.
Vermont	Upon review of the findings of the Judicial Conduct Board, all judges are subject to impeachment. Supreme Court may discipline, impose sanctions on, or suspend from duties any judge in the state.	If Senate is in session, vacancies on Supreme, superior, and district courts are filled by governor, with advice and consent of Senate, from list of nominees submitted by judicial nominating board. Otherwise, by governor's appointment from nominees list.
Virginia	All judges are subject to impeachment. Upon certification of charges against judge by Judicial Inquiry and Review Commission, Supreme Court may remove a judge.	If General Assembly is in session, vacancies are filled by majority vote of both houses. Otherwise by gubernatorial appointment, with appointee serving until 30 days after commencement of next legislative session.
Washington	A judge of any court of record is subject to impeachment. After notice, hearing and recommendation by Judicial Qualifications Commission, Supreme Court may censure, suspend or remove a judge for violating a rule of judicial conduct. The Supreme Court may also retire a judge for disability that seriously interferes with the performance of duties and is (or is likely to become) permanent.	Vacancies on appellate and general trial courts are filled by gubernatorial appointment until next general election when successor is elected to fill remainder of term.
West Virginia	Judges are subject to impeachment for maladministration, corruption, incompetency, gross immorality, neglect of duty or any crime or misdemeanor. Upon review of recommendations of the Judicial Hearing Board, the Supreme Court of Appeals may censure or suspend a judge for any violation of the judicial code of ethics or retire a judge who is incapable of performing duties because of advancing age, disease or physical or mental infirmity.	Vacancies on appellate and general trial courts are filled by gubernatorial appointment. If unexpired term is less than two years (or such additional period not exceeding three years), appointee serves for remainder of term. If unexpired term is more than three years, appointee serves until next general election, at which time successor is chosen to fill remainder of term.
Wisconsin	All judges are subject to impeachment. Supreme Court, court of appeals and circuit court judges are subject to removal by address of both houses of legislature with two-thirds of members concurring, and by recall election. As judges of courts of record must be licensed to practice law in state, removal of judge may also be by disbarment. Upon review of the findings of fact, conclusions of law and recommendation of the Judicial Commission, the Supreme Court may reprimand, censure, suspend or remove for cause or disability any judge or justice for a willful violation of a rule of the Code of Judicial Ethics, willful or persistent failure to perform official duties, habitual intemperance, due to consumption of intoxicating beverages or use of dangerous drugs, which interferes with the proper performance of judicial duties, or conviction of a felony.	Vacancies on Supreme Court, court of appeals and circuit courts are filled by gubernatorial appointment from nominees submitted by nominating commission.

METHOV

State or other jurisdiction	
Wyoming	re re
Dist. of Columbia	of pe ac
Puerto Rico	fe a p

Source: American Judicature
sion.

METHODS FOR REMOVAL OF JUDGES AND FILLING OF VACANCIES — Continued

State or other jurisdiction	*How removed*	*Vacancies: how filled*
Wyoming	All judges, except justices of peace, are subject to impeachment. Upon recommendation of Judicial Supervisory Commission, the Supreme Court may retire or remove a judge. After a hearing before the panel of three district judges, the Supreme Court may remove justices of the peace.	Vacancies are filled by governor from list of three nominees submitted by judicial nominating commission. Vacancies on justice of peace courts are filled by appointment by county commissioners until next general election.
Dist. of Columbia	Commission on Judicial Disabilities and Tenure may remove a judge upon conviction of felony (including a federal crime), for willful misconduct in office, willful and persistent failure to perform judicial duties or for other conduct prejudicial to the administration of justice which brings the office into disrepute.	Vacancies are filled by president of United States, with consent of U.S. Senate, from list of persons recommended by Judicial Nominating Commission.
Puerto Rico	Supreme Court justices are subject to impeachment for treason, bribery or other felonies and misdemeanors involving moral turpitude. Supreme Court may remove other judges for cause (as provided by judiciary act) after a hearing on charges brought by order of chief justice, who disqualifies self from final proceedings.	Vacancies are filled as in initial selection.

Source: American Judicature Society (Summer 1997). Used with permission.

FILE COPY

TESTIMONY ON HB 0053
An act establishing a process for reviewing judges.

JUDICIARY COMMITTEE
Wednesday, January 13, 1999 – 9:30 a.m.
Room 208, LOB

By Representative Leo P. Pepino
Hillsborough County, District 40

First of all, let me say, this bill is not an attack on the Judiciary. Having worked in our court system for twelve (12) years, I can say I'm proud of our criminal judicial system.

Currently, there is no review process within our judicial system. This bill is an enhancement, not an impediment to the judicial system in our state. It is a true management tool.

As in every walk of life, a few people don't do anymore than they have to. In the private sector this is done periodically, usually in-house by in-house staff.

While the Governor and legislators are held accountable at their elections, there is no effective way to hold a judge accountable. There should be a process for accountability and I believe this is the vehicle to accomplish this.

The strength of this bill is that it is not complicated – it is a simple solution as amended.

FILE COPY

To: The House Judiciary Committee, 208 L.O.B.

RE: HB #53 7-year review of judges

Date: Wednesday, January 13th, 1999 @ 11:00 a.m.

As indicated on my pink card, I appear in support of this bill only if it is amended down to 1½ years (testimony of 4, 6, 8 + 12 year reviews in other states, but if a Governor is elected on a clean-up campaign of the crooked judges, he should be allowed to review all of them during his term).

Speaker #5 Randall Cooper testified that lawbreaking judges can be dealt with by the J.C.C. (Judicial Conduct Committee), but that I have evidence that proves otherwise. In my case the rule was broken by the Superior court judge in NOT requiring the plaintiff in a petition to quiet title to get an injunction bond; also: by case law cited, when the court changes the position of the parties in a preliminar injunction, it makes the court a party to extortion. For the Supreme Court to decline to accept my case makes them a bunch of thieves, one of whom Sherman Horton sits as the chair of the Rules Committee who I spoke with on Dec. 15th at his hearing., where another case of the Emanuel Brothers was talked about by Stan Emanuel who had appeared WITH HIS brother on HB 1338 chaired by Rep. Alf Jacobson. The Supreme Court agreed to set "policy", Emanuel recommended that it be a rule more strong for others; BUT when a rule is broken by the players you don't go to the players you go to the referee. (similar non-referee status exists in the federal district court here in Concord, N.H. re: the latest bombing case last month).

Speaker #3 Frederick Upton, Attorney spoke of "internal" self policing, I speak and write of a "check and balance" by another branch!! Also for the "moral" turpitude he mentioned, please see my letter of Wed.Jan12'99 to State Senator Frederick King about LSR 480-R SB and more particularily, LSR 485-R, copy of letter here ~~and documents to forward later~~.

In regards to LRS 480-R SB above about to include the judiciary as a public employer under labor relations, I say YES to vote for this so as Speaker #6 Walter Peterson, former Governor said will result in "no reprecussions".

Best wishes,

Joe Haas

Joseph S. Haas, Jr.
P. O. Box 218
Ashland, N.H. 03217

& of Concord, N.H.

To: State Senator Frederick W. King, Sr.
District 01
1 Cross Street (P.O. Box 146)
Colebrook, N.H. 03576
Coos County
603: 237-8716 (office= 246-3321);
Colebrook Selectman for:
"protection of property rights"

RE: 1. LSR 480-R SB to include the judiciary as a public employer under labor relations;

2. LSR 485-R SB to compenstate _____ for injuries received in the line of duty for the Aug.19,1997/ Carl Drega incident.

Dear Senator King:

From my inspection of the book of LSR's over at the State Library here in Concord, New Hampshire to #859 of 12/23/98 so far lists two interesting ideas of yours involving the judiciary.

In regards to the former, may I suggest that you go "One Step Beyond" to include locators of lost heirs (such as myself, who was at one time a licensed Private Detective #1199 of 1975 with the NH State Police, Paul A. Doyan, Commander for the $10.00 fee plus $25 insurance bond, and now a "Bounty Hunter" or unlicensed and unbonded Private Investigator) working out of either the State Treasury (was: Robert W. Flanders, State Treasurer, 1st floor State House) +/or any or all of the ten (10) county Probate or Superior Courts (for bank accounts; and escheated estates, plus lost land* respectfully) by adding an RSA Ch. 275-E:8 to the "Whistleblowers' Protection Act under the LABOR Title XXIII (23) so as to also take advantage of an R.S.A. Chapter 275-E:4 hearing before the Commissioner of Labor in addition to being able to sue the State thru the State Board of Claims[1] (RSA Ch. 541-B:1-23), myself having been denied a forum in the federal Labor Relations Board (L.R.B.) for arguing my "equal protection" rights as supposed to be guaranteed by the U.S. Constitution, 14th Amendment, Section 1, said rights to buy land for $1.00 and "other valuable consideration" meaning my "finder's fees" from the missing heirs, that has resulted in a Superior Court Rule 95-b criminal contempt of court sentence served, to be sued for in the Board of Claims using Articles 22 + 23 of Part 2 in the N.H. Constitution against this so-called "co-equal" branch of government that thinks federal.

In reference to the latter, please see my cover letter to the NH Supreme Court Rules Committee dated 14Dec98 and in particular 2(b) as detailed on pages 5,6,7+8. Instead of to change Superior Court Rule 57; to add a section to RSA Ch. 509:__ involving Writs so that "when a violation of a general, natural, ultimate and/or divine law be written onto the Writ of Summons as having been broken that there shall NOT be any granting of a Motion to Dismiss. The State should NOT pay for any injuries here in this Senate Bill, BUT that those injured have already put a claim into Drega's estate**, and if not sufficient, then for the estate to sue Harold W. Perkins, the Presiding Justice who did NOT do his job as outlined, whose decision to dismiss resulted in the chain of events that he must be held accountable to the victims.

Yours truly,

Joseph S. Haas, Jr.
P. O. Box 218
Ashland, N.H. 03217
Grafton County
mailing address

& of: Concord, N.H.

Wednesday, January 12th, 1999

...charged with the "common law" offense of: "Champerty"*, see also RSA Ch. 275-E:5 for the common law.

---

1 photocopy to: Loren J. Jean, r
Representative
District 17 (1)
25 Charles Bancroft Highway
Litchfield, NH 03052-2600
re: LSR #322-R HB ___ granting the right to trial by jury in any controversary between a person and the State Board of Claims (to appeal) when the value is of $5,000.00 or a greater amount.

2 ** Carl Drega Estate #1998-0088 @ the Merrimack County Probate Court

Bow property sold for: $82,000 (L&B on 2.41 acres)
Coos County land sold: 22,000 7.8 acres
104,000

pc: Harold E. Ekstrom, Full Administrator
36 Warrent St.
Concord, N.H. 03301
603: 224-7449 (FAX = -7440)

Robert A. Stein, Esq.
Stein, Volinsky & Callaghan, P.A. ... attorney for Petitioner/Plaintiff,
One Barberry Lane (P.O. Box 2159) Jeffrey and Stacy Caulder
Concord, N.H. 03302-2159 Box 106A, RR 1
603: 228-1109 No.Woodstock, NH 03262
603: 745-3482 ...

...who sued the Estate in Case #98C137 + 170 at the Merrimack County Superior Court, in Concord, N.H. for: (1) Aggravated Assault & Battery with a Deadly Weapon, and (2) Loss of Consortium = $500,000 try, but for 17.) DOCKET MARKINGS: 2. damages "to be determined by the probate court" (to see Public Law 97-280, 96 Statute 1211 of October 4, 1982 = the Year of the Bible for 1983 & beyond referring to Exodus 21: 18-19 to pay for loss of time and medical bills.) Pltf's summary statement of: intentional/purposeful willful, wanton and malicious act(ion, rather than a reaction to a crooked judge Harold W. Perkins! who DIS-allowed Drega his trial by jury!!) Also to note the Judgment "in favor" rather than by rigor jurus of 15Oct98 approved by McGuire,J. stamped in at 7:24 a.m.

Drega family representatives:

(1) Mary Ann Starr
24 Crosby Circle
S. Dennis, MAss. 02660

(2) Francis H. Drega
318 Quinnipiac Avenue
New Haven, Conn.ecticut 06513

David S. Osman, Esq. ...attorney for:
One Mill Plaza Wayne T. Saunders
Laconia, NH 03246

William G. Scott, Jr., Esquire ...attorney for:
82 Court St. (P.O. Box 418) John + Brenda Pfeifer
Portsmouth, N.H. 03802-0418

Deborah R. Reynolds ...attorney for:
CONKLIN & REYNOLDS, PA Trooper Robert Haase's wife Mary Haase
607 Tenney Mountain Highway, Suite 127
Plymouth, N.H. 03264
603: 536-8980 (FAX = -3467)

& Merrimack County Probate Court (please notify me of all hearings) _____

FILE COPY

Test.
Tom Stawasz

Since reading the Claremont decission and a subsequent column by Kevin Landrigan noting Justice Batchelder sitting for Justice Thayer I noted a constitutional breach of a specific prohibition in the N.H.Constitution Part II article 78 (attached)

Upon further research at the Supreme Court I believe the Chief Justice has erred in citing RSA 490:3 (attached). In choosing to name Batchelder under section II of the statute, rather than the alternative method of a superior court judge he forces the article 78 question- does 73a give him the right to disregard 78??? I further believe that there is an additional error in that III of the statute specifically states a justice appointed under sec II "can not hear a case he has previously heard and also the fact that no justice shall be assigned to sit on the supreme court .... for which he is other wise disqualified." that would be article 78 again.

The courts own rules (created under 73a) rule 38 part c of the section titled (attached) Compliance With The Code of Judicial Conduct raises the question of article 78 twice, "eligble for recall", I believe in support of my position that even the Court itself must function under the constitution.

To complicate the matter of not catching this error the A G doesn't request reconsideration on Claremont and even publicly states (as reported by the Union Leader) That he knew of the constitutional issue but it would have made it 3to 1 instaed of 4 to 1 so he made no challange.

I have asked my executive councilor to call for the A G's resignation for his willful disregard for his oath of office to support the constitution. I am amazed that (short of marching orders) the A G would do this.

Next Tuesday Justice Batchelder is substituting again in a matter involving the state. I urge the A G to act and question the blatent disregard for the constitutions art 78 by the Supreme Court. The decissions made in violation of the constitution should be vacated and reheard by a properly constituted panel.

Hon. Thomas P. Stawasz
Hollis, New Hampshire

Thomas P. Stawasz

465-7907

FILE COPY

March 19, 1998

United States Supreme Court
Justice David Souter
One First Street NE
Washington, DC 20543

Dear Justice Souter:

I write to you for relief as an aggrieved citizen of New Hampshire. The recent decision of the New Hampshire Supreme Court, know as the Claremont case, has in essence ordered the legislative branch to; provide a solution to the funding issue, under a short time frame (before any campaign cycle that would allow for public discussion), with the caveat that they may implement their own plan on the citizens of this unique state if the legislative plan is not to their liking. In searching the New Hampshire Constitution for the source of this incredible power over the two elected branches I came to note Justice Batchelder sitting for Justice Thayer in clear violation of part II article 78 of our state constitution.

Although I realize the various political ramifications and embarrassment vacating this decision would have, for the court, the current course of events of this self governing body lead me to believe they will not admit to this fundamental error. The debate has been labeled as conservative discontent over the decision rather than the constitutional question on the age issue. The relationship to the judicial retirement system of the state has entered the background discussion and the state's only television station has failed to report on the issue at all. This leaves, at the very least; the suspicion Justice Broderick's former status (at that station) as a political pundit has denied many of any information at all about the constitutional issue.

Given the time frame involved I fear that without your intervention the magnitude of change wrought on the citizens and character of New Hampshire will be irreparable. As a self governing body I fear the New Hampshire Supreme Court will, at the very least, delay addressing this issue until it is rendered moot by the changes their ruling causes in this legislative session. This lack of respect for our fundamental basis of government by the very body charged with its protection is the basis for this appeal for your immediate intervention in the matter. I have enclosed for your review what pertinent documents and what limited coverage there have been on this fundamental constitutional question. Can the court, under its own rules or a Statute for judicial substitution countermand one of the only specific prohibitions contained in the New Hampshire Constitution?

As a long time eighth grade social studies teacher my favorite teaching tool on the constitution and the difference an individual could make was the film on Clarence Earl Gideon, it always had their total attention. As a former state senator who chaired both the Senate and Joint Rules Committees, among other duties, during the 1995 – 1996 session I am aghast at the action of the court in this matter. I hope this citizen's plea will make a difference for my native state and the balance of power between the branches that constitute our representative government. I thank you for your consideration of this request and may be reached at 603 465-7907 by voice or fax.

Very truly yours,

Thomas P. Stawasz
60 Ridge Road - BOX 452
Hollis, New Hampshire 03049-0452

Enclosures

Joint Rules ch. on teaching

to hobble com of coup
hostage taking to
hold for ransom
what was already failed
in the person — it worked

FILE COPY
Supreme Court Rules

travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

C. **Public Reports.** A judge should report on or before April 15 of each year, with respect to the preceding calendar year, whether or not the judge has received any compensation other than judicial salary, and, if so, the nature of the activity for which the compensation was received, the name of the payor and the amount of compensation so received. The report should be filed as a public document in the office of the clerk of the court on which the judge serves. A justice of the superior court should file in the office of the clerk in the county in which the justice resides.

CANON 7. A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY INAPPROPRIATE TO HIS JUDICIAL OFFICE

A. **Political Conduct in General.**

(1) A judge should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions.

(2) A judge should resign his office when he becomes a candidate either in a party primary or in a general election, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or a moderator of any governmental unit, if he is otherwise permitted by law to do so.

(3) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

A. **Part-Time Judge.** A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is not required to comply with Canon 5C(2), D, E, F, and G, and Canon 6C;

(2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto;

(3) may serve as counsel to the town wherein his court is located or a town within the judicial district of his court, provided that:

(a) he may give no advice to the police of such town and may give no advice to any other officer or employee of the town that could reasonably be expected to influence the exercise of discretion by the police in the performance of their duties;

(b) he may give no advice to any officer or employee of the town on a matter that could reasonably be expected to be the subject of any action or suit before his court; and

(c) he must recuse himself from sitting as judge on any case in which his advice to the town is directly called into question or in which a ruling could directly affect the interests of the town.

B. **Judge Pro Tempore.** A judge pro tempore is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge pro tempore is not required to comply with Canon 5C(2), (3), D, E, F, and G, and Canon 6C.

(2) A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. **Retired Judge.** A retired judge who receives the same compensation as a full-time judge on the court from which he retired and is eligible to recall to judicial service should comply with all the provisions of this Code except Canon 5G, but he should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. All other retired judges eligible for recall to judicial service should comply with the provisions of this Code governing part-time judges.

RULE 39. COMMITTEE ON JUDICIAL CONDUCT

(1) Pursuant to RSA 490:4 (Supp.1977) and to provide for the orderly and efficient administration of the Code of Judicial Conduct, Rule 38 of the Rules of the Supreme Court, there is hereby established a committee on judicial conduct.

(2) **Appointment of Committee.**

(a) The committee on judicial conduct shall consist of nine members appointed by the supreme court.

271 2149 David Brock Howard Zibel
Supreme Ct. Clerk.

FILE COPY

490:2 I

490:2 II attaining the age of 70

LIBRARY REFERENCES

ALR
Power of court to remove or suspend judge.
53 ALR3d 882.

490:3 Disqualification; Temporary Justices.

I. The provisions as to the disqualification of justices of the superior court apply to justices of the supreme court. Whenever a justice of the supreme court shall be disqualified or otherwise unable to sit in any cause or matter pending before such court, the chief or senior associate justice of the supreme court may assign another justice to sit according to the provisions of paragraph II of this section.

II. Upon the retirement, disqualification, or inability to sit of any justice of the supreme court, the chief justice or senior associate justice of the supreme court may assign a justice of the supreme court who has retired from regular active service to sit during supreme court sessions while the vacancy continues, or he may notify the chief justice or senior associate justice of the superior court of such vacancy. Upon such notification, the chief justice or senior associate justice of the superior court shall provide the supreme court for each day of sitting during a session while the vacancy shall continue with the names of 2 or more superior court justices in regular active service or who are retired and are not otherwise disqualified. The chief justice or senior associate justice of the supreme court may then assign a justice to sit temporarily on the court from among those superior court justices whose names have been provided.

III. A justice assigned to sit temporarily on the supreme court pursuant to paragraph II of this section shall have all the authority of a supreme court justice to hear arguments, render decisions, and file opinions. No justice shall be assigned to sit on the supreme court in the determination of any cause or matter upon which he has previously sat or for which he is otherwise disqualified nor without his consent.

HISTORY

Source. PL 315:19. RL 369:17. 1947, 110:1. RSA 490:3. 1978, 33:2, eff. June 23, 1978.

Amendments—1978. Amended section generally.

CROSS REFERENCES

Disqualification of justice from hearing case in which justice presided or acted in superior court, see RSA 491:4.
Disqualification of justices generally, see RSA 492.
Judicial referees, see RSA 493-A.

ANNOTATIONS

Cited
Cited in Ibey v. Ibey (1947) 94 N.H. 425, 55 A.2d 872; Prive v. M. W. Goodell Construction Co. (1979) 119 N.H. 914, 409 A.2d 1149;

Member Associated Press, Metro-S
— Estab

FILE COPY

THE EDITORIA

MANCHESTER, N.H. — MONDAY, JANUARY 12, 1

Constitutional Niceties

NH Supreme Court, AG Snub Inconvenient Law

"No person shall hold the office of judge of any court, or judge of probate, or sheriff of any county, after he has attained the age of seventy years" — Constitution of New Hampshire, Part II, Article 78.

What is it about the simple language of this constitutional article that Attorney General Phil McLaughlin and the esteemed justices of the New Hampshire Supreme Court find so hard to understand?

Yet these officers of the court, lawyers all, who swore solemn oaths to uphold the state Constitution, appear utterly befuddled by the straightforward, plain English of Part I, Article 78. Perhaps this suggests the contempt in which some justices hold the actual language of the Constitution, as evidence in the tortured reasoning of the court's Claremont decision.

The Constitution clearly — even a grade schooler would have no difficulty understanding this — bars anyone over the age of 70 from holding the office of judge. Yet when Justice Thayer excused himself from sitting in the Claremont case, the court replaced him with retired Justice Batchelder, even though this gentleman has passed the constitutionally permissible age to sit on any bench in New Hampshire.

Typically in such cases a superior court judge is tapped to sit temporarily on the high bench. This was not done here and it is fair to ask, Why not?

The court defends its blatant disregard for the Constitution's age limit by citing its own rules devised under Article 73a that permit retired judges who "are not otherwise disqualified" from serving as temporary justices. Yet retired Justice Batchelder, though in every other regard qualified, clearly is disqualified under Part II, Article 78 by reason of his age. Although the court has assumed the power to write rules that have the force of law, even the Supreme Court must comply with the basic law, the state Constitution.

Attorney General McLaughlin admits that he was aware of this constitutional irregularity, but did not bother to protest it or even to file a motion for the court to reconsider its Claremont ruling because, he says, removing Justice Batchelder still would have left a 3-1 majority against the state. Yet who is to say that another judge sitting in Justice Batchelder's place could not have influenced the court to reach a different decision?

Even so, this is not the point. The attorney general took an oath to uphold the Constitution. As a matter of law and principle he should have objected to an unqualified judge sitting on so important a case — or on any case, for that matter. It was Mr. McLaughlin's constitutional *duty* to raise an objection. Moreover, it is reported that Justice Batchelder continues to sit on selected cases despite the fact that the court has been made aware of his constitutional impairment.

In commenting on the Claremont decision we have suggested more than once that a tendentious court ran roughshod over both the history and language of the Constitution in reaching a predetermined, politically inspired decision. If the court cannot understand, or simply refuses to honor, the Constitution's plain requirements, then what confidence can the citizens have in the integrity of the judicial system?

—Richard Lessner

Editor's Notes

How Many Are

By JOE McQUAID

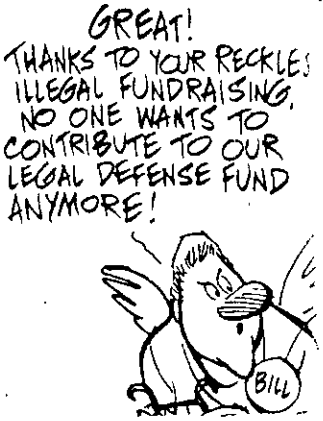
I AM SHOCKED, shocked! Publishers' Clearinghouse Sw have apparently selected mor winning number for their $10 Sunday award and therefore I person in New Hampshire wh are not the only people eligible to wi

In fact, judging from all the phone ters I have received since writing las week about my likely good fortune, there are apparently MANY people in New Hampshire who have been included in the Final Name Selection and have received Final Winner Docu ments telling each of them that they (and one other person in New Hampshire) hold the potential winning number. Gosh, if this is true and all those people send in their potential winning entries, my own chances of winning the big prize may drop.

And here I thought I had at least a 50-50 chance of being visited by Dave Sayer and his Prize Patrol van come S 25.

Even worse, the Publishers' Clearin to have mailed potential winning num too. Luckily for me, New York Times Safire was among them. He writes in h "just chucked a document assuring m of $10 million."

But if there are even more of these t and they don't all throw them away lik is going to really hurt my odds of getti Dave. It could also explain why he has call.



NORTH COUNTRY
ıg Projects Before Congress, A6

Get Out!
INSIDE TODAY

HERE'S DAILY NEWSPAPER

ıion Leader

NOTHING SO POWERFUL AS TRUTH" — DANIEL WEBSTER

ICHESTER, N.H. — FRIDAY, MARCH 6, 1998

©1998, UNION LEADER CORP.

50¢ - NEWSSTAND

f U.S. were access to senior decision makers, er of according to a summary of the majority

CLINTON, Page A20

DEX
.....A18
.....B7-B10
.....C3-C19
.....C3-C8
.....C9-C16
.....C16-C19
.....D8
.....D7
.....C1
.....A18-A19
.....B1-B6
.....A2
.....C2,D7
.....A16
.....B2
.....B4
.....D1-D6
.....D9

03)668-4321

Supreme Court School Fund Ruling Challenged Because of Judge's Age

By JOHN DiSTASO
Senior Political Reporter

CONCORD — The state Supreme Court's landmark decision in the Claremont school funding lawsuit should be thrown out because a special justice was too old to sit on the panel, according to a motion filed with the high court yesterday.

State Board of Education member John Root of Bristol, who is also a Republican state representative, contends the decision should be declared null and void because, he says, Special Justice William Batchelder was appointed in violation of Part 2, Article 78 of the New Hampshire Constitution, which says:

"No person shall hold the office of judge of any court . . . after he has attained the age of 70."

The motion also points out that Part I, Article 35 of the Constitution says that judges may be limited in their service "on account of age."

The issue was originally raised shortly after the court last Dec. 17 ruled the state's near-total reliance on property taxes to fund education was unconstitutional. A group of conservatives who opposed the ruling raised the complaint in interviews with The Union Leader.

EDUCATION, Page A20

Hudson, chairman of Dartmouth College's physics and astronomy department. "Water is what you need for an extended stay."

Hudson said the discovery could lead to astronauts rethinking the idea of bypassing the moon on their way to space colonization.

MOON, Page A17

A Little Prayer

Dear Lord, help us remember to speak softly and gently without assuming authority. Thank you reminding us to listen to hear those more than we. Amen.

over

"Spaulding told the council he would like to see a public hearing before the body if and when lease proposals came to them.

His comments that the process needed to be as public as possible were incorrectly attributed to Streeter in yesterday's Union Leader.

But Streeter said yesterday he shares Spaulding's views and would never vote for a lease at the length of time that is being contemplated in the requests for proposals, due to a legislative committee on April 1.

The lease for each resort would be for 20 years, with two 10-year renewals.

Streeter said he considers one of his biggest mistakes was supporting a 20-year lease of the Port Au-

He said there were public hearings two years ago on the future of the ski areas, but "no one was paying attention." Now, he said, they are.

Former State Rep. Robert Scott, who served Newport as a Republican in the legislature, is an advocate of retaining the ski areas under state control. He said the efforts should be focusing now on what the state can do to capitalize and invest in the ski areas.

Scott disputed a $60 million figure used by State Rep. Gene Chandler, chairman of the House Public Works Committee, as what would be needed to upgrade the ski areas.

For Mount Sunapee, he said, about $6 million would be needed over five years.

FILE COPY

over

EDUCATION

(Continued From Page A1)

They have since researched the issue and, with Root — a defendant in the case — as the moving party, filed the motion to vacate with the court yesterday. Filing the motion on Root's behalf was Manchester attorney Paul J. Alfano. The Granite State Legal Foundation is "helping this effort with the financing," according to group chairman Roy Stewart.

In the motion, Alfano says, "In clear and unambiguous language, the New Hampshire Constitution commands that no judge may hold office after having reached the age of 70." He also points out that the state law under which Batchelder was appointed to hear the Claremont case allowed the temporary appointment of retired judges, but only if they are not "otherwise disqualified."

"Because retired Justice William Batchelder was over 70 years of age at the time of his temporary appointment in this case, he was 'otherwise disqualified,' " Alfano and Root contend. "His participation, therefore, violated both the constitution and (state law), and thus rendered the court's December 17, 1997 opinion void. The court has a duty to vacate that opinion and direct that the appeal be heard before another panel."

Alfano said the other panel could be the same high court but with another special justice sitting in place of Batchelder.

Batchelder, who retired from the Supreme Court in 1995 at the age of 68, was born on Oct. 15, 1926 and had already attained the age of 70 when he was named a special justice in the Claremont case on Aug. 18, 1997.

He was named by Chief Justice David Brock to replace Associate Justice W. Stephen Thayer III. Thayer had recused himself from the case in 1993, when an initial appeal was brought to the court, because his wife, Judith, chaired the state board of education at the time and was a defendant in the case.

When the second appeal was heard in 1997, Thayer continued his recusal. Although Judith Thayer no longer chaired the board, she was a member of the board's professional standards panel.

Batchelder joined with Brock and Associate Justices William Johnson and John Broderick in ruling that the state's way of funding education, mostly through locally-raised property taxes, is unconstitutional. Associate Justice Sherman Horton was the lone dissenter.

When the issue was first raised two months ago, Supreme Court Clerk Howard Zibel defended the Batchelder appointment in an interview with The Union Leader.

Zibel said a state law gives the Chief Justice specific authority to assign a retired justice when an active justice steps aside.

Zibel said the court's interpretation is that the constitution's age limit applies only to those who hold "the office of judge," and that once Batchelder retired, he no longer held the office.

"The statute is consistent with the constitution," Zibel said in January. "The constitution says no person shall hold the office of a judge after the age of 70. But Justice Batchelder did not hold the office of judge on this case. The constitution does not say you can't sit after the age of 70. It only says you can't hold the office of judge."

But attorney Alfano, in the Root motion, says, "Because a retired justice is authorized to 'render decisions,' he holds 'the office of judge.' " The language of the constitution, he says, is "unambiguous and imperative," and was installed as "an essential element of the founders' overall framework to guard against abuse of power."

Alfano also argues that Batchelder's participation voids the entire decision, not just Batchelder's vote. He pointed to the court's own ruling in 1997 that a "judicial action by a tribunal one of whose members is disqualified to act is voidable if the disqualified member participates therein, without reference to the fact whether the result is produced by his vote." And he noted that in another, earlier, ruling, the court said the participation of a disqualified member is sufficient to invalidate a decision because it is "impossible to estimate the influence one member might have on his associates."

Root, in a prepared statement yesterday, said, "This is not merely a 'technical' legal argument. Some have said that designating a judge other than Batchelder merely would have changed the vote from 4-1 to 3-2. Not so. In its own decisions, the Supreme Court has ruled that when an improper party sits on a panel, it is difficult, if not impossible, to determine the influence of the improper party on his associates."

"The court must find that Justice Batchelder was unconstitutionally designated to sit on the Claremont II case. Therefore, the decision must be vacated," Root said.

He added that his challenge was "not in any way an attack on the Justices who sat on the Claremont II case."

But, Root's statement continued, "Given the public policy significance of the Claremont II decision, and the Constitutional implications of Justice Batchelder's designation, Root felt it was his duty as an elected legislator who has sworn to uphold and defend the constitution to provide the court with an opportunity to address the issue."

Who Will Step Up?

Wanted: Someone To Defend NH Constitution

Who will step up to defend the Constitution of New Hampshire? So far precious little has happened, at least publicly, in the matter of Justice Batchelder's disqualification in the Claremont school tax ruling.

Some weeks ago it came to light that retired Justice Batchelder, called upon to replace Justice Thayer who had recused himself from sitting in the Claremont lawsuit, was unqualified to hear the case under Part II, Article 78. The esteemed retired justice "has attained the age of seventy years," which constitutionally disqualified him.

What is needed here is someone with standing in the Claremont lawsuit to file a motion with the court. Attorney General Phil McLaughlin, representing the state in the case, was the logical petitioner, but he dropped the ball, even though he subsequently admitted he was aware of Justice Batchelder's constitutional impairment.

There is ample case law indicating that the presence of an unqualified justice on a judicial panel renders a court's decision null and void. It is not simply a matter, as Attorney General McLaughlin imagines, of changing the decision from a 4 to 1 majority to a 3 to 1 ruling.

Since Mr. McLaughlin fumbled his responsibility, someone else has to step in and hold the court accountable for observing both the letter and intent of the Constitution. Such a petition could arise from the Legislature or the Governor's Office — though we doubt that Jeanne Shaheen is overly interested in having the Claremont decision set aside — or from one of the parties to the original lawsuit.

Preferably such a motion should originate in the Legislature as legislators, no less than judges and the governor, swore solemn oaths to uphold the Constitution. Who will champion the Constitution? Will no one take up this case? Or will a blatant breach of the Constitution's manifest intent be allowed to stand unchallenged?

—Richard Lessner

—Richard Lessner

Monday, February 2, 1998

THE SUNDAY TELEGRAPH

1/11/98

Stawasz on guard for legal system loophole

Former State Sen. Tom Stawasz of Hollis and backers haven't given up the fight in their renegade plan to render the Claremont decision null and void because the majority side included former Associate Justice **William Batchelder,** who is past the mandatory retirement age of 70.

A former social studies teacher and Constitution buff, Stawasz was the first to question whether the Constitution didn't restrict anyone over 70 from serving on the court.

Both Attorney General Phil McLaughlin and Gov. Shaheen have said even if Stawasz is right, that wouldn't make a difference because Batchelder was the fourth justice on the winning side and only three judges make up a majority.

While he's retired, Batchelder has returned many times and sat on cases to replace justices who stepped aside due to potential, conflict of interest.

What has Stawasz and allies like the Granite State Taxpayers now got up their sleeve?

Well, they are watching the court docket closely and looking for an opportunity to challenge Batchelder's sitting on an appeal, hoping to bring the constitutional question back before the court.

Stay tuned.

Baking in the dough

Good Morning

FILE COPY

[Art.] 73-a. [Supreme Court, Administration.] The chief justice of the supreme court shall be the administrative head of all the courts. He shall, with the concurrence of a majority of the supreme court justices, make rules governing the administration of all courts in the state and the practice and procedure to be followed in all such courts. The rules so promulgated shall have the force and effect of law.
November 22, 1978

[Art.] 74. [Judges to Give Opinions, When.] Each branch of the legislature as well as the governor and council shall have authority to require the opinions of the justices of the supreme court upon important questions of law and upon solemn occasions.
June 2, 1784
Amended 1792 changing president to governor.
Amended 1958 substituting supreme court for superior court.

[Art.] 75. [Justices of Peace Commissioned for Five Years.] In order that the people may not suffer from the long continuance in place of any justice of the peace who shall fail in discharging the important duties of his office with ability and fidelity, all commissions of justice of the peace shall become void at the expiration of five years from their respective dates, and upon the expiration of any commission, the same may if necessary be renewed or another person appointed as shall most conduce to the well being of the state.
June 2, 1784

[Art.] 76. [Divorce and Probate Apeals, Where Tried.] All causes of marriage, divorce and alimony; and all appeals from the respective judges of probate shall be heard and tried by the superior court until the legislature shall by law make other provision.
June 2, 1784

[Art.] 77. [Jurisdiction of Justices in Civil Causes.] The general court are empowered to give to justices of the peace jurisdiction in civil causes, when the damages demanded shall not exceed one hundred dollars and title of real estate is not concerned; but with right of appeal, to either party, to some other court. And the general court are further empowered to give to police courts original jurisdiction to try and determine, subject to right of appeal and trial by jury, all criminal causes wherein the punishment is less than imprisonment in the state prison.
September 5, 1792
Amended 1877 substituting $100 for 4 pounds
Amended 1912 giving jurisdiction to police courts.

[Art.] 78. [Judges and Sheriffs, When Disqualified by Age.] No person shall hold the office of judge of any court, or judge of probate, or sheriff of any county, after he has attained the age of seventy years.
September 5, 1792

FILE COPY

TESTIMONY OF RANDALL F. COOPER
PRESIDENT OF THE NEW HAMPSHIRE BAR ASSOCIATION

MY NAME IS RANDY COOPER OF EATON, NEW HAMPSHIRE. I AM AN ATTORNEY IN NORTH CONWAY, AND I AM THE PRESIDENT OF THE NEW HAMPSHIRE BAR ASSOCIATION. I APPEAR TO PROVIDE INFORMATION TO THIS COMMITTEE REGARDING CERTAIN CONCERNS OUR ASSOCIATION HAS WITH HOUSE BILL 53, WHICH IS THE FIRST OF MUCH LEGISLATION WE UNDERSTAND THAT HAS BEEN FILED CONCERNING JUDICIAL ACCOUNTABILITY. I WOULD RESPECTFULLY SUGGEST THAT IN THE FUTURE IF IT IS POSSIBLE TO SCHEDULE MANY OF THESE BILLS ON THE SAME DAY, PERSONS INTERESTED IN THIS SUBJECT COULD APPEAR BUT ONCE.

ALMOST FOUR YEARS AGO, I ATTENDED THE ANNUAL LINCOLN DAY DINNER FOR CARROLL COUNTY REPUBLICANS HELD IN NORTH CONWAY. AS YOU MAY RECALL, IT WAS THE YEAR BEFORE THE PRIMARY, AND ALMOST EVERY POTENTIAL REPUBLICAN CANDIDATE FOR PRESIDENT WAS IN ATTENDANCE TO MAKE A FEW REMARKS TO THE REPUBLICANS OF THE MOST REPUBLICAN COUNTY OF THE MOST REPUBLICAN STATE OF THE UNION. TOWARDS THE END OF THOSE REMARKS, SENATOR ARLEN SPECTOR OF PENNSYLVANIA COMMENTED THAT UNLIKE THE OTHER CANDIDATES PRESENT, HE BELIEVED IN A WOMAN'S RIGHT TO CHOOSE, AND THAT GOVERNMENT HAD NO RIGHT TO PRY INTO THE BEDROOMS OF THEIR CITIZENS. AT THAT POINT HE RECEIVE A SPONTANEOUS STANDING OVATION, MUCH TO THE SHOCK OF THE OTHER CANDIDATES SITTING AT THAT HEAD TABLE.

FOR YOU SEE, SENATOR SPECTOR HAD TOUCHED UPON ONE OF THOSE ATTRIBUTES, ONE OF THOSE CORE VALUES OF THE PEOPLE OF NEW HAMPSHIRE. WE HAVE A DEEP AND ABIDING RESPECT FOR BOTH INDIVIDUAL AND PROPERTY RIGHTS. WE HAVE NEVER TRUSTED A GOVERNMENT CONTROLLED BY A SIMPLE MAJORITY NOT TO INTERFERE WITH THOSE RIGHTS. FOR EXAMPLE, WE ADOPTED OUR BILL OF RIGHTS FOUND IN PART I OF OUR NEW HAMPSHIRE CONSTITUTION YEARS BEFORE THE BILL OF RIGHTS WAS EVERY ADOPTED AS A PART OF THE U.S. CONSTITUTION. AND JUST AS IN THE FEDERAL SYSTEM, WE KNEW AND RECOGNIZED THAT THE INSTITUTION THAT PROTECTED EACH OF THOSE RIGHTS FROM THE ABUSES OF THE MAJORITY WAS AN INDEPENDENT JUDICIARY, NOT SUBJECT TO THE WHIM OF POLITICS.

THROUGH OUT THE HISTORY OF THIS STATE, OUR INDEPENDENT JUDICIARY HAS PROTECTED THE RIGHTS OF THE INDIVIDUAL FROM THE ABUSES OF THE MAJORITY, NO MATTER HOW GOOD INTENDED. WHETHER IT WAS PROTECTING THE RIGHTS OF A FREE PRESS, PROTECTING ALL OF US IN OUR HOMES FROM UNREASONABLE SEARCHES AND SEIZURES, PROTECTING THE GRANDFATHERED RIGHTS OF A BUSINESS FROM A TOWN'S ZONING REGULATION, AND YES PROTECTING THE RIGHTS OF CHILD TO AN ADEQUATE EDUCATION, AN INDEPENDENT JUDICIARY HAS SERVED THE CITIZENS OF OUR STATE BY FULFILLING ITS CONSTITUTIONAL DUTY WITHOUT FEAR OF RETRIBUTION OR DECISIONAL ACCOUNTABILITY.

AN INDEPENDENT JUDICIARY ASSURES ALL CITIZENS OF NEW HAMPSHIRE THAT THEIR CASE WILL BE DECIDED ACCORDING TO THE LAW, AND NOT THE VAGARIES OF SHIFTING POLITICAL CURRENTS OR THE CLAMOR OF PARTISAN POLITICS.

DECISIONS NEED TO BE DECIDED ON WHAT IS RIGHT AND JUST, NOT ON WHAT IS POPULAR AT THE MOMENT.

SHOULD THE JUDGES OF OUR STATE BE ACCOUNTABLE? ABSOLUTELY. THEY SHOULD BE AND ARE HELD ACCOUNTABLE, NOT FOR THEIR DECISIONS, BUT FOR THEIR PROFESSIONALISM, FOR FULFILLING THEIR DUTIES AS A JUDGE. THE PUBLIC HAS A RIGHT TO EXPECT THAT JUDGES BE ANSWERABLE, ONE WAY OR ANOTHER, FOR BROAD CATEGORIES OF MISCONDUCT, THAT INCLUDE, MISUSE OF OFFICE, BIAS OR PREJUDGMENT, HARMFUL OR OFFENSIVE CONDUCT, DERELICTION OF DUTY, AND DISRESPECT FOR THE LAW, WHICH INCLUDES LAWBREAKING. OUR JUDGES ARE CURRENTLY HELD TO ACCOUNT BY THE JUDICIAL CONDUCT COMMITTEE. SHOULD THE CURRENT SYSTEM MERIT A MORE OPEN PROCEDURE SO THAT YOU AS REPRESENTATIVES OF THE PUBLIC MAY REST ASSURED THAT THE GRIEVANCES OF YOUR CONSTITUENTS RECEIVE A FULL AND COMPLETE REVIEW? MAYBE SO.

DOES THIS BILL PROVIDE SUCH A PROCEDURE? WE BELIEVE NOT. FIRST THERE IS NO CRITERIA FOR WHAT WILL BE ENTAILED IN SUCH A REVIEW? WILL THE DECISIONAL INDEPENDENCE OF THE THIRD BRANCH OF GOVERNMENT BE THE SUBJECT OF THAT REVIEW? WILL THE PARTICULAR DECISIONS OF ANY GIVEN JUDGE BE REHASHED AND CHALLENGED? I CAN ASSURE YOU HAVING LITIGATED MY SHARE OF CASES, THAT FOR EVERY WINNER, THERE IS A LOSER WHO THOUGHT HE OR SHE SHOULD HAVE WON, AND BELIEVES THE JUDGE WAS JUST WRONG.

THE NEW HAMPSHIRE BAR ASSOCIATION IS PREPARED TO PARTICIPATE, MODERATE, FACILITATE DISCUSSIONS BETWEEN ALL THREE BRANCHES OF GOVERNMENT TO ADDRESS CLEARLY AND FAIRLY THE PROFESSIONAL ACCOUNTABILITY OF JUDGES WITHIN THIS STATE. IT IS MY BELIEF THAT IF FAIR MINDED PEOPLE GET TOGETHER WHETHER UNDER A STUDY COMMITTEE OR THE AUSPICES OF THE JUDICIAL COUNCIL, AN APPROPRIATE SOLUTION CAN BE DISCOVERED WITHIN A SHORT PERIOD OF TIME.

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 53

BILL TITLE: **establishing a process for reviewing judges.**

DATE: 3/8/99

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Rowe

Seconded by Rep. Craig

Vote: 14 – 1 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Loren J. Jean, Clerk

JUDICIARY 1999 SESSION

House Bill #53

Public Hearings _____ Executive Session ✓

COMMITTEE REPORT: _____

	YEAS	NAYS
Mock, Henry P, Chairman	✓	
Peterson, Andrew R, V Chairman	✓	
Jacobson, Alf E		
Keans, Sandra B		✓
Bergin, Peter F		
Dokmo, Cynthia J		
Jean, Loren J, Clerk	✓	
Rowe, Robert H	✓	
Ford, Nancy M	✓	
Withee, Dennis J	✓	
Dudley, Terri C	✓	
Picconi, Al J	✓	
Soltani, Tony F		
Woods, Phyllis L	✓	
Wall, Janet G	✓	
DePecol, Benjamin J		
Pratt, John M	✓	
Craig, James W	✓	
Lasky, Bette R		
Mitchell, McKim W	✓	
Solow, Martha S	✓	
Wood, Jane		
TOTAL VOTE		

Appeared in Favor	Appeared in Opposition
14	1

Committee Report

COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **HB 53**

TITLE: establishing a process for reviewing judges.

DATE: March 10, 1999 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☒ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

The committee has several bills before it that relate to major matters of judical reform. Because of ccomplexity of the bills and subject matter, including constitutional issues, the committee felt that referral justified a comprehensive study recommendation.

Vote 14-1.

Rep. Robert H. Rowe
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Judiciary

HB 53, establishing a process for reviewing judges. RE-REFER

Rep. Robert H. Rowe for **Judiciary:** The committee has several bills before it that relate to major matters of judicial reform. Because of complexity of the bills and subject matter, including constitutional issues, the committee felt that referral justified a comprehensive study recommendation. Vote 14-1.

Blues HB 53

relative to the review of the conduct of judges every seven ~~years~~ years. QR Rule. Vote 14 - 1

~~The committee feels that there are several bill that relate to judicial reform that because of the major implications, including constitutional, and other complications, this bill be tabled~~

~~Several~~
The Committee has several bills before it that relate to major matters of judicial reform. Because of complexity of the bills and subject matter, including constitutional issues, the committee felt that referral ~~would~~ ~~result in a~~, justified a comprehensive study & recommendation.

JR Hall

COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **HB 53**

TITLE: establishing a process for reviewing judges.

DATE: October 20, 1999 CONSENT CALENDAR YES ☐ NO ☒

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill originally proposed a "process for reviewing judges," a subject matter thoroughly studied and ultimately addressed in HB 568. During the evaluation review consideration and as a part of the broad judicial reform study, the evaluation and selection of marital masters was an ever-present subject; a subject thoroughly discussed at public hearings. Consequently, a decision was made to attach this subject matter to HB 53, with the knowledge and permission of the bill's sponsors. The committee felt that because of the tremendous impact which marital masters can have on the family, including the children thereof, that their selection should be equally scrutinized and subject to the same procedures as the selection of judges. This issue passed in the 1999 session as a component of the Family Court bill (HB 707-FN) and at this time is in limbo in the state Senate.

Vote 14-1.

Rep. Henry P. Mock
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

Judiciary

HB 53, establishing a process for reviewing judges. OUGHT TO PASS WITH AMENDMENT

Rep. Henry P. Mock for **Judiciary:** This bill originally proposed a "process for reviewing judges," a subject matter thoroughly studied and ultimately addressed in HB 568. During the evaluation review consideration and as a part of the broad judicial reform study, the evaluation and selection of marital masters was an ever-present subject; a subject thoroughly discussed at public hearings. Consequently, a decision was made to attach this subject matter to HB 53, with the knowledge and permission of the bill's sponsors. The committee felt that because of the tremendous impact which marital masters can have on the family, including the children thereof, that their selection should be equally scrutinized and subject to the same procedures as the selection of judges. This issue passed in the 1999 session as a component of the Family Court bill (HB 707-FN) and at this time is in limbo in the state Senate. Vote 14-1.

COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **HB 53**

TITLE: establishing a process for reviewing judges.

DATE: October 20, 1999 CONSENT CALENDAR YES ☐ NO ☒

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill originally proposed a "process for reviewing judges," a subject matter thoroughly studied and ultimately addressed in HB 568. During the evaluation review consideration and as a part of the broad judicial reform study, the evaluation and selection of marital masters was an ever-present subject; a subject thoroughly discussed at public hearings. Consequently, a decision was made to attach this subject matter to HB 53, with the knowledge and permission of the bill's sponsors. The committee felt that because of the tremendous impact which marital masters can have on the family, including the children thereof, that their selection should be equally scrutinized and subject to the same procedures as the selection of judges. This issue passed in the 1999 session as a component of the Family Court bill (HB 707-FN) and at this time is in limbo in the state Senate.

Vote 14-1.

Rep. Henry P. Mock
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

HB 53 OTP w/a

This bill originally proposed a "process for reviewing judges" - a subject matter thoroughly studied and ultimately addressed in HB 568. During the evaluation review ~~consideration~~, and as a part of the broad judicial reform" study, the evaluation and selection of marital masters was an ever present subject - a subject thoroughly discussed at public hearings. Consequently, a decision was made to attach this subject-matter to HB 53, with the knowledge and permission of the bill's sponsors. The committee felt that because of the tremendous impact which marital masters can have on the family, including the children thereof, that their selection should be equally scrutinized and subject to the same procedures as the selection of judges. This issue passed in the 1999 session as a component of the Family Court Bill (HB 707-FN) ~~passed~~ and at this time is in limbo in the state Senate.

Henry D. Marsh

COMMITTEE REPORT

COMMITTEE: JUDICIARY

BILL NUMBER: HB-53

TITLE:

DATE: 10/20/99 10/20/99 CONSENT CALENDAR: YES ☐ NO ☑

- ☐ OUGHT TO PASS
- ☑ OUGHT TO PASS W/ AMENDMENT
- ☐ INEXPEDIENT TO LEGISLATE
- ☐ RE-REFER
- ☐ INTERIM STUDY (Available only 2nd year of biennium)

Amendment No. 2121-H

STATEMENT OF INTENT:

Pratt

Kean

COMMITTEE VOTE: 14 - 1

- **Copy to Committee Bill File**
- **Use Another Report for Minority Report**

RESPECTFULLY SUBMITTED,

Rep. Pratt
For the Committee

Rev. 07/30/99

JUDICIARY

1999 SESSION

HB-57 Bill #

Public Hearings _____ Executive Session ✓

COMMITTEE REPORT: OTP W Amend

	YEAS	NAYS
Mock, Henry P, Chairman	✓	
Peterson, Andrew R, V Chairman	✓	
Jacobson, Alf E		✓
Keans, Sandra B	✓	
Bergin, Peter F		
Dokmo, Cynthia J		
Jean, Loren J, Clerk	✓	
Rowe, Robert H		
Ford, Nancy M		
Withee, Dennis J	✓	
Dudley, Terri C		
Picconi, Al J	✓	
Soltani, Tony F	✓	
Woods, Phyllis L	✓	
Wall, Janet G		
DePecol, Benjamin J		
Pratt, John M	✓	
Craig, James W	✓	
Lasky, Bette R	✓	
Mitchell, McKim W	✓	
Solow, Martha S	✓	
Wood, Jane	✓	
TOTAL VOTE	14	1

Appeared in Favor | Appeared in Opposition