

**STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH ADMINISTRATION**

**PERFORMANCE AUDIT REPORT  
NOVEMBER 2003**



*To The Fiscal Committee Of The General Court:*

We have conducted an audit of Judicial Branch administration to address the recommendation made to you by the Legislative Performance Audit and Oversight Committee. We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to provide a reasonable basis for our findings and conclusions. Accordingly, we have performed such procedures as we considered necessary in the circumstances.

The purpose of the audit was to evaluate certain administrative operations of New Hampshire's Judicial Branch and make recommendations to improve efficiency and effectiveness. The audit period encompassed the six-year period from State Fiscal Year (SFY) 1997 through SFY 2002.

This report is the result of our evaluation of the information noted above and is intended solely for the information of the Judicial Branch and the Fiscal Committee of the General Court. This restriction is not intended to limit the distribution of this report, which upon acceptance by the Fiscal Committee is a matter of public record.

*Office Of Legislative Budget Assistant*  
Office Of Legislative Budget Assistant

November 2003

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**STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH ADMINISTRATION**

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## ABBREVIATIONS

3JX	Three Justices Expedited
ABA	American Bar Association
AOC	Administrative Office Of The Courts
DAS	Department Of Administrative Services
DCM	Differentiated Case Management
DCYF	Division For Children, Youth, and Families
FTE	Full-Time Equivalent
GAO	U.S. General Accounting Office
IRS	Internal Revenue Service
IT	Information Technology
LAN	Local Area Network
LBA	Office Of Legislative Budget Assistant
LPAOC	Legislative Performance Audit And Oversight Committee
NCIC	National Crime Information Center
NCSC	National Center For State Courts
RFP	Request For Proposal
RSA	Revised Statutes Annotated
SFY	State Fiscal Year
SITP	Strategic Information Technology Plan
SPOTS	State Police Online Telecommunications System
WAN	Wide Area Network

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**STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH ADMINISTRATION**

**SUMMARY**

**Purpose And Scope Of Audit**

This audit was performed at the request of the Fiscal Committee of the General Court consistent with the recommendation of the joint Legislative Performance Audit and Oversight Committee. It was conducted in accordance with generally accepted government auditing standards. The purpose was to evaluate certain administrative operations of New Hampshire's Judicial Branch and make recommendations to improve efficiency and effectiveness. We examined five issue areas: 1) information technology planning; 2) administrative functions; 3) weighted caseload systems; 4) case processing; and 5) court reporting.

**Background**

New Hampshire's Judicial Branch consists of the Supreme Court, Superior Court, District Courts, Probate Courts, and the Family Division Pilot Project. The Chief Justice of the Supreme Court is the administrative head of the Judicial Branch and is responsible for supervising the operations of the court system.

The Supreme Court, as the sole appellate court in the State, is the court of last resort. It hears appeals from all court levels and State administrative agencies. It has discretionary power to select which appeals it will accept. The Administrative Office of the Courts (AOC) is the administrative arm of the Supreme Court and provides general support services to all levels of court.

There are 11 Superior Court locations in the State, two in Hillsborough County and one in each of the other nine counties. The Chief Justice of the Superior Court, with the help of staff at the Superior Court Administrative Center located in Concord, is responsible for supervising and administering the Superior Court. The Superior Court is the only court of general jurisdiction in the State, handling all matters not covered by other courts. It handles felony cases, civil lawsuits, equity matters, domestic relations cases, and appeals of some misdemeanor convictions from the District Court. Superior Court justices can address any case type in the Superior Court, while marital masters are limited to handling only family law cases.

There are 36 District Court locations in the State administered by the administrative judge with the help of the Office of the Administrative Judge located in Concord. The District Courts have exclusive jurisdiction in civil cases where damages do not exceed \$1,500 and do not involve title to real estate. The District Courts also enforce local regulations and have concurrent jurisdiction with the Superior Court in domestic violence cases, civil cases involving damage claims up to \$25,000, all landlord and tenant disputes, violation and misdemeanor criminal cases, child abuse and neglect cases, and juvenile cases. Statute also allows the Supreme Court to expand concurrent jurisdiction in civil cases where damages do not exceed \$50,000. The District Courts also issue domestic violence petitions, search and arrest warrants, and hold criminal arraignments and probable cause hearings in felony cases.

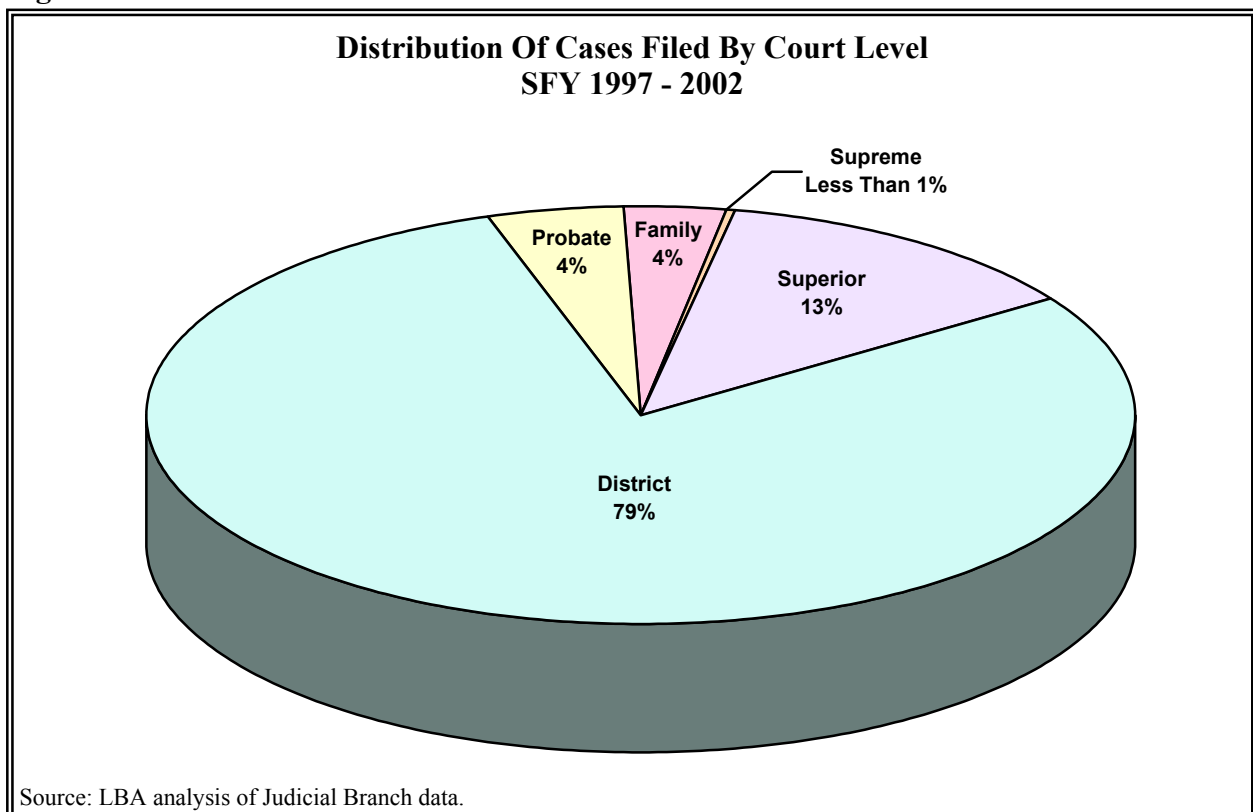
There are ten Probate Court locations, one in each of the State's ten counties. The administrative judge administers the Probate Court system with the help of the Office of the Administrative

Judge in Brentwood. The Probate Courts have exclusive jurisdiction in adoption, termination of parental rights, guardianships, certain trusts, wills, estates, involuntary commitments, and name change cases. Probate Courts have concurrent jurisdiction with the Superior Court in certain trust matters, durable powers of attorney, and marriage waivers for minors.

The Family Division Pilot Project operates in eight locations in Grafton and Rockingham Counties. It consolidates a host of family issues into one forum. The division has taken over new domestic relations, child protection, juvenile delinquency, domestic violence, adoption, termination of parental rights, and guardianship of minors cases previously handled by the other trial courts in Grafton and Rockingham Counties.

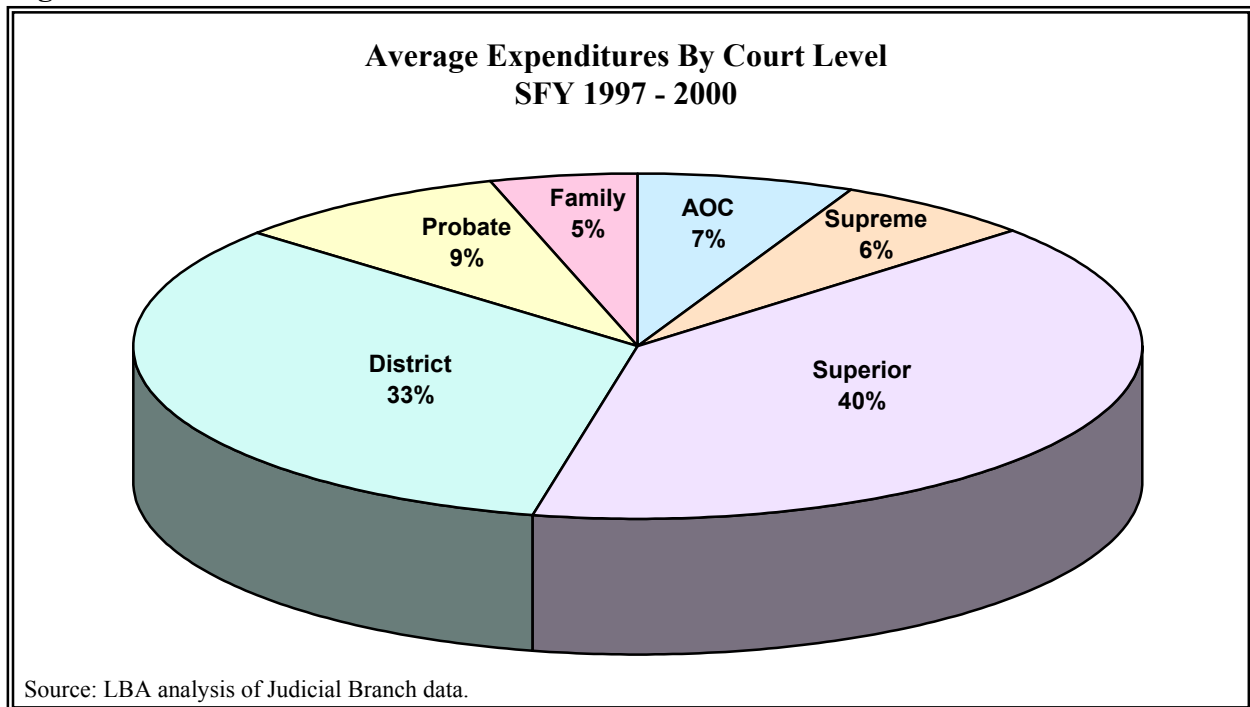
During the six-year audit period, approximately 1.3 million cases were filed in the Judicial Branch. Figure 1 shows the distribution of cases filed in the courts during the six-year audit period. During the audit period 5,036 cases were filed in the Supreme Court, 164,033 cases in the Superior Court, 1,044,049 cases in the District Courts, 56,586 cases in the Probate Courts, and 45,593 cases in the Family Division Pilot Project.

**Figure 1**



The Judicial Branch expended a total of \$305 million on operations from State Fiscal Year (SFY) 1997 through 2002. Personnel costs accounted for approximately three-quarters of the Judicial Branch's expenditures. Figure 2 graphically presents the allocation of the \$305 million expended by court level.

Figure 2



When court costs are examined in relation to caseloads, there are vast differences among the courts. Supreme Court cases cost the most to process, averaging \$3,893 per case during the audit period (Figure 3). For the trial courts, the District Courts had the lowest cost per case averaging \$97 while the Superior Court had the highest cost averaging \$750 per case during the audit period (Figure 4). These per case costs vary widely due to the different nature of the different courts. For example, Supreme Court cases involve five judges and extensive legal research. Trials in Superior Court are generally longer than in the other trial courts, with some of those longer trials involving the expense of a jury.

The Supreme Court's cost per case increased 71 percent from \$3,099 per case in SFY 1997 to \$5,295 in SFY 2002. Among the trial courts, the Superior Court's cost per case dropped by six percent between SFY 1997 and SFY 2002. The Family Division Pilot Project's cost per case increased 90 percent from \$211 in SFY 1997 to \$401 in SFY 2002. The cost per case for the District and Probate Courts increased 36 percent and 13 percent respectively during the audit period.

As of March 2003, the Judicial Branch had 620.2 authorized full-time equivalent (FTE) non-judicial positions with a vacancy rate of eight percent or 46.3 FTEs. The Branch also had 70 full-time and 66 part-time judicial positions. The Family Division Pilot Project and the AOC have the largest vacancy rates at over ten percent each.

Figure 3

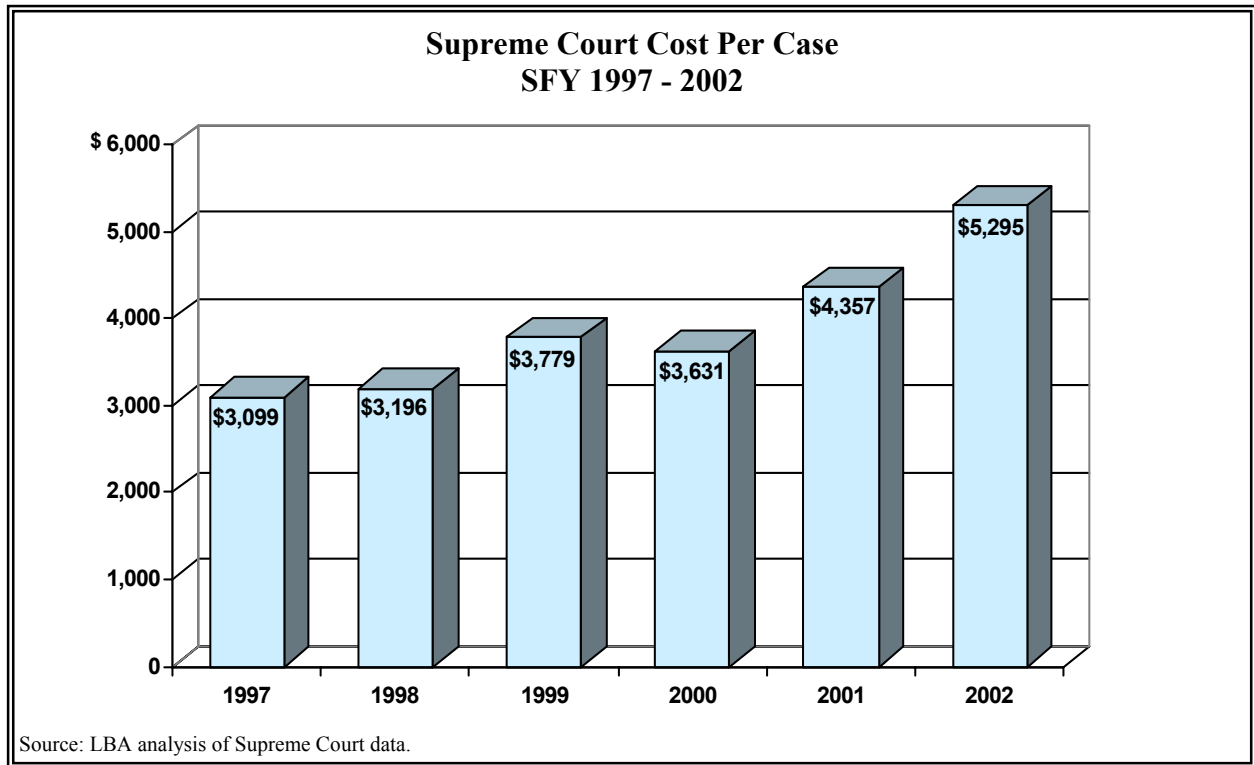
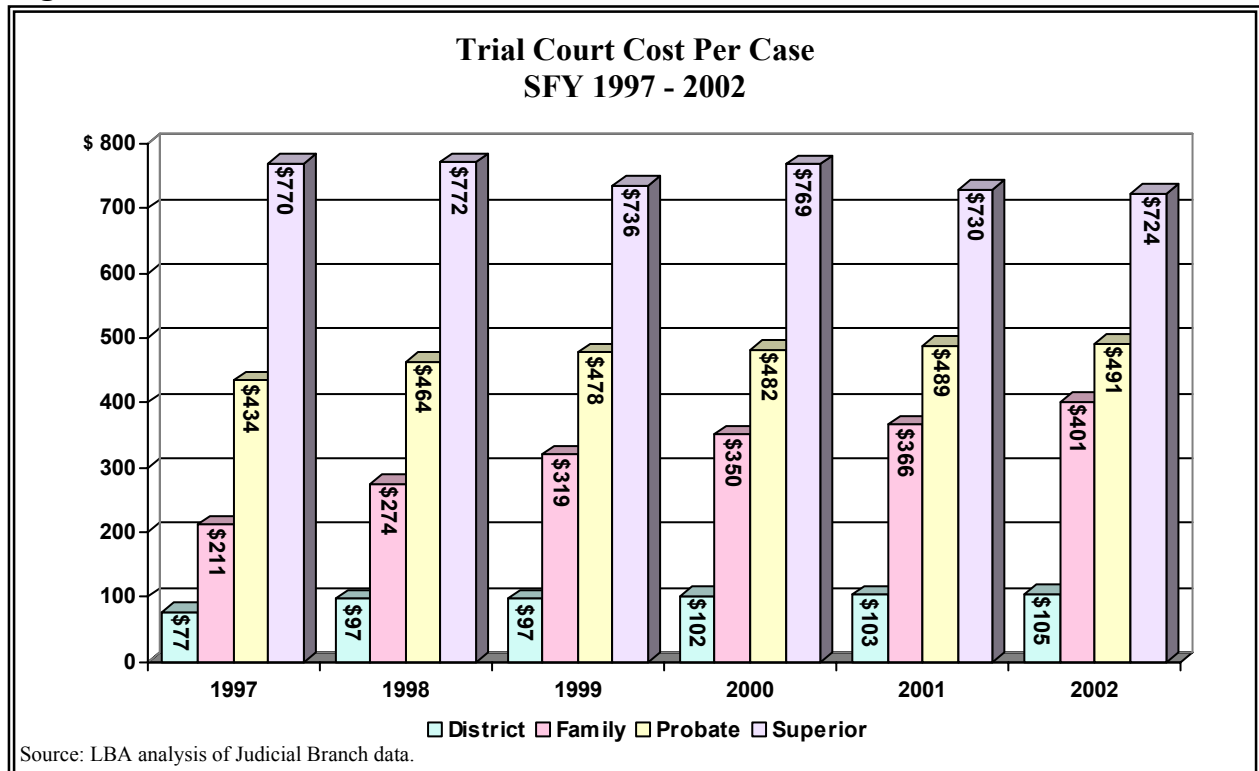


Figure 4



## **Results In Brief**

Our audit presents 48 observations with recommendations. Ten observations address information technology issues, eight observations address administrative issues related to the AOC and trial court administrative offices, eight observations concern weighted caseload systems in the trial courts, 14 observations concern case processing, and eight observations address court reporting issues. Nine recommendations require Legislative action.

In commenting on this report, the Judicial Branch agreed in whole or in part with 43 observations and recommendations. The Branch agreed in whole or in part with four additional observations, but felt they were beyond the scope of the audit. The Branch did not take a position on one observation. The Branch's overall response to the report is found in Appendix A, while detailed responses to individual observations and recommendations follow each observation.

### **Improve Information Technology Planning**

We found the Judicial Branch does not have a strategic plan, an up-to-date and comprehensive information technology (IT) plan, an information technology disaster recovery plan, or a continuity and contingency plan. Additionally, the Branch has not established a systems development methodology to guide IT projects.

*Branch Response: Recommendations will be made for an updated Information Technology (IT) plan and systems development methodology. A formal IT disaster recovery plan will be included in the Branch disaster recovery plan. Regarding a strategic plan, contacts have been made outside the Branch for a follow up project to the 1990 Long Range Planning Task Force.*

### **Develop And Review Policies And Procedures**

We found the Judicial Branch does not have policies and procedures governing use, access, and security of its computer systems, nor does it have policies and procedures governing access to and proper uses of the Internet. Additionally, we found deficiencies in the Branch's management of its network design and operation.

We also found the Judicial Branch does not have adequate policies regarding use of its revolving and operating accounts. Judicial Branch expenditures do not receive independent review because the Department of Administrative Services discontinued its review of Judicial Branch expenditures many years ago. Additionally, we question the continued appropriateness of statutes allowing Supreme and Superior Court justices, and court reporters to receive payments for commuting between home and work. We also question the policy allowing marital masters to receive such payments.

*Branch Response: As resources permit, and as not otherwise already described in existing Judicial Branch personnel rules, the AOC will recommend policies for acceptable IT practices, including Internet use. Centralized network design and operation are required in the new case management system.*

*The Judicial Branch will review the revolving fund and operating account policies and will consider having the state treasurer make more payments. The Branch supports resumption of independent review of its expenditures by Administrative Services. State law entitles Supreme Court justices, Superior Court judges and court reporters to reimbursement for travel expenses. Marital masters are no longer reimbursed.*

### **Ensure The New Case Management System Includes All Necessary Functions**

We found SUSTAIN, the Judicial Branch's trial court case management system, does not capture some information necessary for monitoring caseloads. Our file review revealed some filing and disposition dates in SUSTAIN were either incorrect or could not be verified. Additionally, the Supreme Court did not have a completed case management system during the audit period.

*Branch Response: The new trial court case management system will verify reasonableness of dates entered and collect information to monitor time standard compliance. Some anomalies in current data reflect efforts to best use an obsolete case management system. During the audit period, the Supreme Court used word-processing for case management.*

### **Clearly Define Roles Of The AOC**

We found the AOC's administrative authority and responsibilities have not been formally established, while each trial court administrative office has broad and clearly defined administrative authority.

*Branch Response: The Supreme Court, which created the AOC in 1984, will promulgate a rule more clearly defining the AOC's authority and responsibilities.*

### **Revise Weighted Caseload Systems**

We found the Judicial Branch does not have policies and procedures for using, developing, or updating its weighted caseload systems. As a result, the weighted caseload systems are outdated and updates to the clerical weighted caseload systems were not conducted using best practices.

*Branch Response: District and Probate Court weighted caseload formulae were revised, but mandatory budget reductions prevented implementation. At least two full-time employees would be needed to monitor and update a weighted caseload system in the trial courts. With existing staff shortages, personnel cannot be reassigned to those duties instead of processing cases.*

### **Establish Definitions For Data Elements**

We found definitions of data elements used in the trial courts are not consistent and sometimes not uniformly reported. Additionally, the Judicial Branch's method of counting criminal cases differs from the method used in the majority of states. We also found the Judicial Branch lacks statistical support staff to ensure docketing information is accurate; to produce management



reports for trial court judges and staff; and to develop, revise, and monitor the weighted caseload systems.

*Branch Response: The Judicial Branch will define core data elements. Court managers in New Hampshire believe the current method of counting each charge against a defendant as an individual case facilitates record keeping of pleadings, deadlines and disposition of each charge. The Judicial Branch supports hiring a statistician, as the auditors recommend, but no funds have been available.*

### **Ensure Case Processing Guidelines Are Consistent With National Standards**

We found some steps in the Probate Court's guardianship caseflow management guideline do not meet statutory requirements and the Supreme, Superior, and District Courts and the Family Division Pilot Project use less rigorous case processing time guidelines than national standards. Additionally, the District and Probate Courts have not established case processing standards for certain cases in their jurisdictions. Finally, we found the case processing guidelines used in the trial courts are not monitored for compliance.

*Branch Response: Case processing guidelines have been adopted at all court levels but not for all types of cases. The Judicial Branch will review all time standards. National standards, which few states have adopted, will be consulted, but any time standards considered must reflect the realities facing not only the court system in New Hampshire but its many constituents.*

### **Employ Delay Reduction And Prevention Programs**

We found the Supreme, Superior, and District Courts and the Family Division Pilot Project do not meet American Bar Association case processing time guidelines for some cases, and the Probate Courts do not have the ability to measure compliance with caseflow management guidelines.

*Branch Response: With numerous clerical vacancies in the trial courts, delay reduction is not a reality. Delays are increasing. The system cannot be expected to endure a shrinking workforce and to reduce delay at the same time. In the past three years, additional staff resources were committed to the Supreme Court and, as a result, the case backlog was significantly reduced.*

### **Reduce The Number Of Court Reporter And Transcriptionist Positions**

We found the Judicial Branch should reduce the number of court reporters it employs and hire additional court monitors to increase its record-taking capabilities in the trial courts. We also found the Superior Court Transcript Center is operating at a loss and should be closed. Additionally, we found the Branch should improve its management of record-taking personnel and transcription services.

*Branch Response: The Superior Court Transcription Center was closed in July 2003 and three transcriptionist positions were abolished. The Judicial Branch has in place a plan to eliminate court reporter positions, as reporters resign or retire, and replace them with court monitors, using digital audio recording equipment. In light of the audit recommendation, the Judicial Branch will reassess the timetable for reducing court reporter positions.*

### **Improve Oversight Of The Record-Taking Function**

We found the Judicial Branch should improve its policies, procedures, and rules concerning court reporters, court monitors, and private sector transcriptionists.

*Branch Response: The AOC plans to take several steps to improve management of the record-taking process including electronic payroll records of reporters' time; adoption of a policy regarding possession and storage of stenographic notes; performance evaluations of reporters; and centralization of transcription services at the AOC.*

**STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH ADMINISTRATION  
RECOMMENDATION SUMMARY**

<b>Observation Number</b>	<b>Page</b>	<b>Legislative Action Required</b>	<b>Recommendation</b>	<b>Branch Response</b>
1	46	No	Develop information technology (IT) plans supporting organizational strategic plans and update plans at least every two years.	Concur
2	47	No	Begin strategic planning, IT planning, and business process re-engineering immediately.	Concur In Part
3	49	No	Adopt a formal systems development methodology to guide IT projects.	Concur In Part
4	50	No	Develop and implement comprehensive IT policies and procedures.	Concur
5	51	No	Develop, implement, and test a comprehensive IT disaster recovery plan.	Concur
6	52	No	Map the Branch's current network, assess the trial court's network structure, monitor the network for unauthorized users and attempted access, and appoint a security officer.	Concur In Part
7	54	No	Establish a Branch-wide policy to date-stamp all case filings including complaints from police departments, ensure the new case management system has the ability to test data entered for reasonableness, and periodically audit docketing information to ensure its accuracy and reliability for management purposes.	Concur In Part
8	57	No	Ensure all relevant dates are captured and entered into the Supreme Court's new case management system and periodically audit docketing information to ensure it is accurate, reliable, and serves management purposes.	Concur
9	59	No	Ensure the new case management system has the ability to capture intermediate case events for the Probate Courts and the Family Division Pilot Project to monitor compliance with case management and statutory timelines.	Concur

<b>Observation Number</b>	<b>Page</b>	<b>Legislative Action Required</b>	<b>Recommendation</b>	<b>Branch Response</b>
10	61	No	Determine whether Internet access is necessary for employees to carry out their assigned duties and provide access to those needing it.	Concur
11	65	Yes	Establish the Administrative Office of the Courts and define its responsibilities in statute.	Concur In Part
12	65	No	Implement a strategic planning process resulting in comprehensive long- and short-term plans.	Concur
13	67	No	Complete and implement a continuity and contingency plan.	Concur In Part
14	69	Yes	Repeal RSAs 490:18, 491:6-a, and 519:29. Review all travel reimbursement policies and court rules for reasonableness and based on that review, reimburse personnel appropriately.	Outside Scope
15	72	No	Establish, implement, and monitor effective internal controls over all revolving and operating fund checking accounts.	Outside Scope
16	74	No	Request the Department of Administrative Services, Bureau of Accounts resume pre-auditing expenditures.	Concur
17	75	Yes	Complete and implement comprehensive standards for court facilities and determine whether the New Hampshire Court Accreditation Commission provides value to the Branch as currently established by statute.	Outside Scope
18	77	Yes	Discontinue the Legislative practice of requiring the Judicial Branch to independently identify reductions to its General Fund appropriation and work with Judicial Branch management to identify priorities and areas for potential appropriation reductions through the State's biennial budget process.	Outside Scope
19	81	Yes	There should be a judicial weighted caseload system in all trial courts.	Concur In Part

Observation Number	Page	Legislative Action Required	Recommendation	Branch Response
20	82	No	Update the case weights used in weighted caseload systems and determine what personnel resources are needed to continuously monitor and update the various weighted caseload systems used by the courts. Also, adopt a policy defining the process and methodology for updating the weighted caseload systems.	Concur In Part
21	84	No	Establish procedures for conducting clerical weighted caseload systems consistent with best practices, establish a steering committee representative of all trial court staff to coordinate and oversee the clerical weighted caseload system, and determine whether dedicated personnel are needed to continuously monitor and update the weighted caseload systems.	Concur In Part
22	87	No	Continue conducting updates to each trial court <i>judicial</i> weighted caseload system using time studies consistent with best practice and migrate towards conducting time studies for updating the <i>clerical</i> weighted caseload systems.	Concur
23	88	No	Count all charges against one defendant involved in a single incident as one case.	Concur In Part
24	90	No	Define brought forward cases only as those requiring judicial attention and establish a separate case weight for brought forward cases.	Concur
25	91	No	Establish a monitoring case weight for the Probate Courts to reflect the amount of time spent monitoring guardianship cases each year.	Concur
26	92	No	Establish a full-time statistician position at the AOC responsible for compilation, analysis, and dissemination of data Branch-wide and implement Branch-wide policies promoting uniform statistical reporting.	Concur
27	96	Yes	Revise Probate Court guidelines for guardianships to be in compliance with timeframes established in RSAs 464-A:5, III and 464-A:11-a.	Concur In Part

<b>Observation Number</b>	<b>Page</b>	<b>Legislative Action Required</b>	<b>Recommendation</b>	<b>Branch Response</b>
28	97	No	Adopt performance standards for the Supreme Court consistent with the American Bar Association's (ABA) standards.	Concur In Part
29	99	No	Change Supreme Court Rule 15 to require transcripts be produced within 30 days of screening and include this time standard in the Supreme Court's <i>Court Performance Standards</i> .	Concur In Part
30	100	Yes	Adopt performance standards consistent with the ABA's standards for all District Court case types. The Legislature should consider amending RSA 169-B:14, II and RSA 169-B:16, V to reflect these standards.	Concur In Part
31	102	No	Establish case processing standards for civil writs, small claims, and landlord and tenant cases consistent with case processing standards established by the ABA.	Concur In Part
32	103	No	Adopt performance standards consistent with the ABA for all Superior Court case types.	Concur In Part
33	106	Yes	Adopt performance standards consistent with the ABA for all Family Division Pilot Project case types. The Legislature should consider amending RSA 169-B:14, II and RSA 169-B:16, V to reflect these standards.	Concur In Part
34	107	No	Establish case processing timelines for adoption, trust, involuntary admission, and equity cases.	Concur
35	109	No	Each level of trial court should monitor compliance with case processing standards.	Concur
36	112	No	The Supreme Court should establish a delay reduction program and establish and strictly enforce a formal continuance policy.	Concur
37	115	No	The trial courts should establish a delay reduction program including elements of differentiated case management, monitoring case processing guidelines, and establishing firm trial dates and continuance policies.	Concur In Part

<b>Observation Number</b>	<b>Page</b>	<b>Legislative Action Required</b>	<b>Recommendation</b>	<b>Branch Response</b>
38	117	No	Establish Branch-wide definitions of data elements and case processing events in court rules and ensure they are consistently applied.	Concur In Part
39	119	No	Ensure all defendants receive a written copy of their sentence at sentencing and examine the feasibility of generating the judge's sentence from the bench using the new case management system.	Concur
40	119	Yes	Amend RSA 594:20-a to eliminate requiring District Courts to hold arraignments on Saturdays.	No Position
41	121	No	Eliminate nearly all court reporter positions and determine the number of additional court monitors necessary Branch-wide.	Concur In Part
42	125	No	Centralize management and coordination of record-taking services at the AOC, develop policies and procedures for both court reporters and court monitors, and discontinue the practice of allowing court reporters to leave the courthouse early with the permission of a supervisory judge.	Concur In Part
43	127	No	Require court reporters to submit bi-weekly payroll reports documenting all time worked and approved time away from work.	Concur
44	128	No	Ensure all court reporters receive a copy of Superior Court Administrative Rule 3-8 regarding the court's ownership of stenographic notes, tapes, and disks; develop and implement a policy regarding proper custody, storage, and inventorying of stenographic notes.	Concur
45	129	No	Performance evaluations of court reporters, court monitors, and transcriptionists should consider the quality, accuracy, or timeliness of their respective work products.	Concur
46	130	No	Centralize the coordination of transcription services at the AOC and establish Branch-wide policies and procedures relative to transcription.	Concur

<b>Observation Number</b>	<b>Page</b>	<b>Legislative Action Required</b>	<b>Recommendation</b>	<b>Branch Response</b>
47	132	No	Discontinue operating the Superior Court Transcript Center and reassign Transcript Center staff to court monitoring duties.	Concur
48	134	No	Implement a system-wide transcriptionist certification program and address standards related to confidential recordings and transcripts.	Concur



**STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH ADMINISTRATION  
INTRODUCTORY SECTION**

**1.1 Overview**

In November 1998, the Fiscal Committee approved a recommendation made by the joint Legislative Performance Audit and Oversight Committee (LPAOC) to conduct a performance audit of the Judicial Branch administrative structure. Due to other audit engagements, work did not begin until November 1999.

We held an entrance conference with the Chief Justice of the Supreme Court and the director of the Administrative Office of the Courts (AOC) in November 1999 and initial planning lasted until April 2000 when work was suspended pending resolution of impeachment proceedings against members of the Supreme Court.

In September 2001 we met with the director of the AOC to discuss resuming the audit. Following discussions between the Legislative and Judicial Branches regarding separation of powers issues and the scope of the audit, a scope statement was approved by the LPAOC in January 2002 and audit work resumed at that time.

**1.2 Scope, Objectives, And Methodology**

This performance audit was conducted in accordance with generally accepted government auditing standards applicable to performance audits and accordingly included such procedures as we considered necessary in the circumstances.

*Scope And Objectives*

This performance audit focuses on the following question: ***Do current AOC and court procedures promote efficient and effective management of Judicial Branch resources?*** The results are intended to provide the Legislature with information needed to adequately carry out its constitutional obligation to oversee expenditures, while recognizing the importance of the separation of powers principle. We did not, therefore, review areas within the exclusive jurisdiction of the Judicial Branch, including the methodology and thought processes used in deciding and adjudicating cases.

Personnel costs (including benefits) consumed roughly 75 percent of the approximately \$56 million expended for the administration of the Judicial Branch (the Branch) in State Fiscal Year (SFY) 2002. In assessing AOC and court procedures related to resource management it was necessary to examine the mechanisms used by the Branch in determining needed levels of judicial and clerical staffing, the Branch's use of automation, as well as its administrative and case processing practices. For our evaluation of the efficiency and effectiveness of AOC and court procedures we examined five inter-related issues within Branch operations. These are:

- 1) The current state-of-the-art in court automation, along with national trends and how closely the Judicial Branch's technology planning resembles national standards.

- 2) Administrative functions performed by the AOC and by the administrative offices of the trial courts.
- 3) The adequacy of the weighted caseload system in determining judicial and clerical staffing.
- 4) Case processing practices to determine whether such practices are consistent with applicable standards.
- 5) The availability of court reporting at all court levels and a comparison of costs and efficiencies of the various methods of reporting.

### *Methodology*

We reviewed pertinent State laws, administrative and Court rules, Branch policies and procedures, State court decisions, annual reports, management reports, reports on other states' judicial functions, contracts, and news articles. We interviewed current staff at the AOC and courts, as well as knowledgeable individuals external to the Branch, such as the Judicial Council, the Public Defender's Office, the New Hampshire Bar Association, the New Hampshire Trial Lawyers Association, and the New Hampshire Department of Justice. We sought information from the American Bar Association (ABA), the National Center for State Courts (NCSC), and court systems in other states. We also surveyed most trial court employees, and conducted data analysis of case and financial information.

### **1.3 Background**

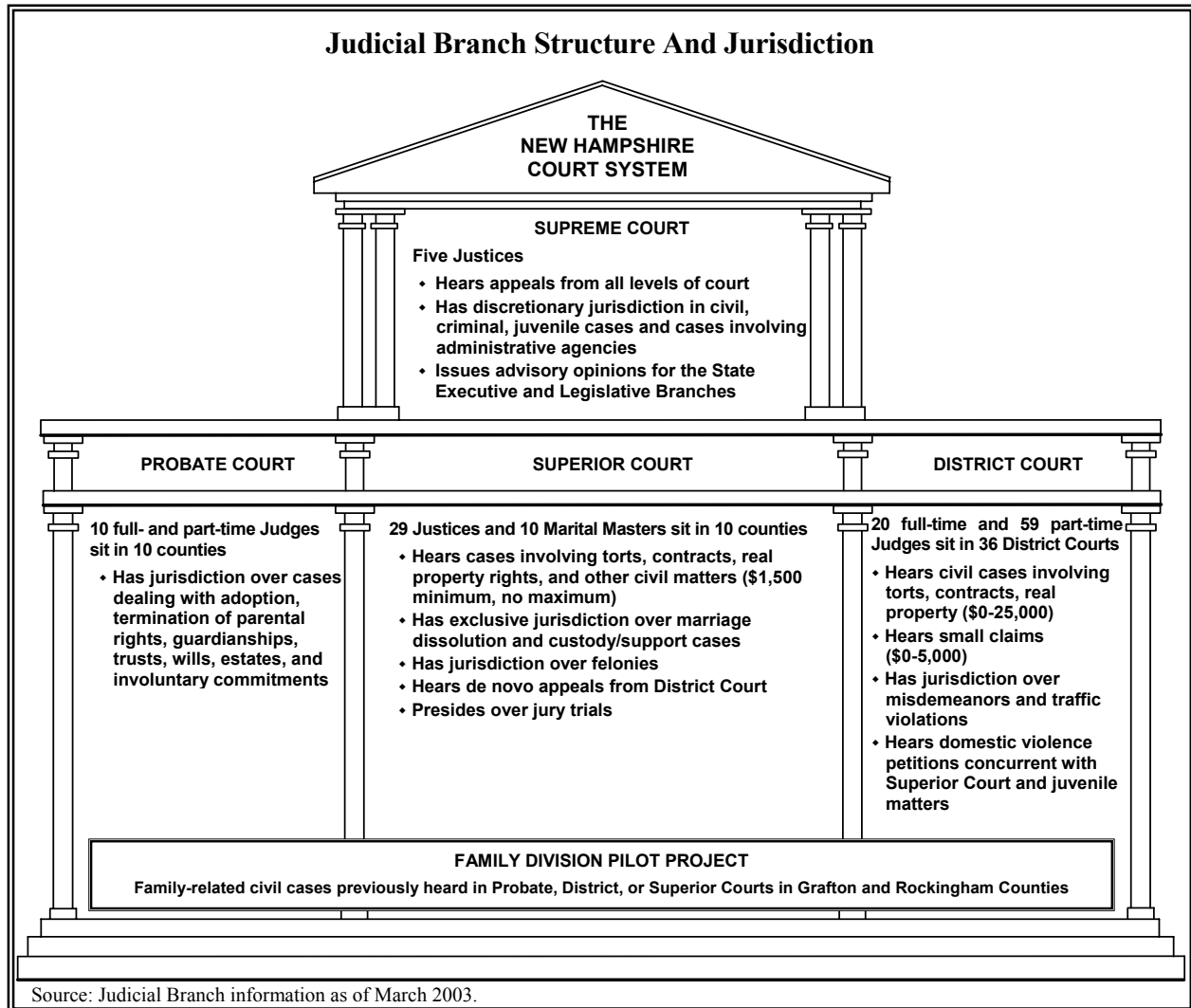
New Hampshire's Constitution establishes the Supreme, Superior, and Probate Courts, while the District Courts and the Family Division Pilot Project are statutorily established. With Chapter 383, Laws of 1983, all State courts within New Hampshire were consolidated under the unified State system. Figure 5 shows the structure and jurisdiction of each of these courts.

The Supreme Court has broad power over all trial courts to prevent and correct errors and abuses and according to RSA 490:4, "shall do and perform all the duties reasonably requisite and necessary to be done by a court of final jurisdiction of questions of law and general superintendence of inferior courts." The Supreme Court is the court of last resort in the State. It hears appeals from all court levels and State administrative agencies and is also responsible for supervising the entire court system. The Superior, District, and Probate Courts, and the Family Division Pilot Project are the trial courts, each responsible for hearing and determining the facts of cases and applying the law to those facts.

The Constitution of New Hampshire authorizes the nomination of judges by the Governor and appointment by a majority of the Executive Council and also designates the Supreme Court Chief Justice as the administrative head of the Judicial Branch. Pursuant to Part 2, Article 73-a of New Hampshire's Constitution, all rules promulgated by the Chief Justice with the concurrence of the majority of the Supreme Court justices governing the administration of the courts have the force and effect of law. RSA 490-A:2 states the Supreme Court Chief Justice is responsible for supervising the efficient operation of all courts in New Hampshire, with the exception of the Superior Court where the advice and consent of the Superior Court's Chief Justice is needed. The District and Probate Courts are each managed by an administrative judge while the Family

Division Pilot Project is co-managed by two Supreme Court-designated trial judges, one from each of the two program counties.

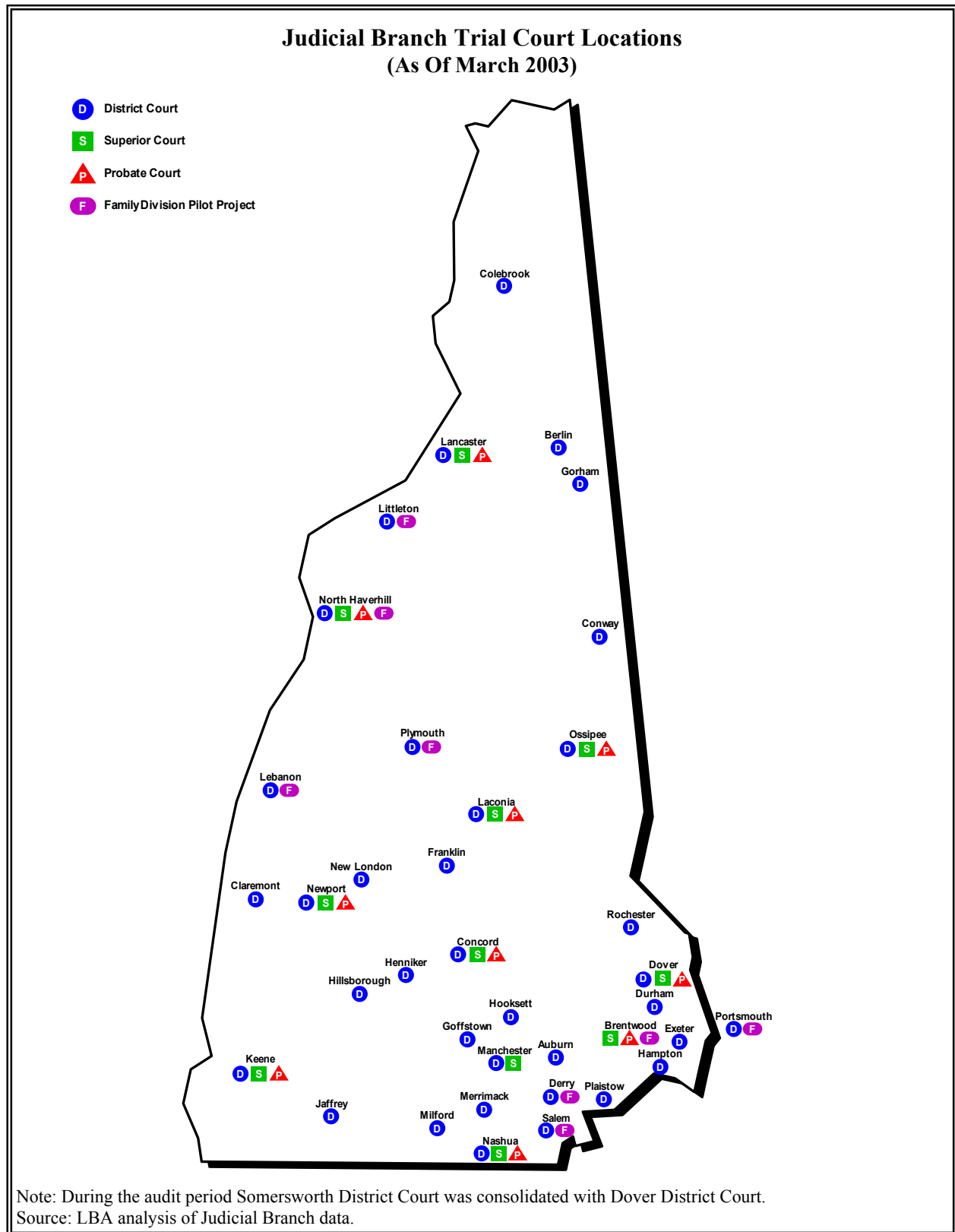
Figure 5



An Administrative Council recommends policies to the Supreme Court for adoption and coordinates operations of the various court levels. Membership of the Council consists of a Supreme Court justice; the administrative judges of the Superior, District, and Probate Courts; and the director of the AOC.

The AOC provides specialized and centralized support services such as accounting, auditing, personnel administration, and technology management to all levels of court. The director of the AOC serves at the pleasure of the Supreme Court Chief Justice and a majority of the Supreme Court.

Figure 6



During SFY 2002, the Judicial Branch operated 65 trial court sites around the State (Figure 6), and the Supreme Court. It expended \$55.8 million on operations, of which \$4.4 million was offset by restricted revenues including \$2 million in transfers from the Highway Fund. In addition, the Branch collected \$14.4 million in unrestricted court fines and fees revenue [Note: The Department of Safety collected an additional \$8.8 million that was budgeted as unrestricted ‘court fines and fees’]. Table 1 presents expenditures incurred by court level during the six-year audit period SFY 1997 through SFY 2002. During this time period expenditures increased by 20 percent. We note during the same period total State expenditures exclusive of Educational Adequacy payments and certain Medicaid program costs (Disproportionate Share and Proshare) increased by 29 percent.

**Table 1**

<b>Judicial Branch Operating Expenditures For SFY 1997 - 2002</b>							
	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>Total</b>
Supreme	\$ 2,760,909	\$ 2,758,443	\$ 3,072,708	\$ 3,067,876	\$ 3,603,129	\$ 4,220,366	\$ 19,483,431
AOC	3,782,200	3,762,071	3,446,459	3,337,835	3,228,851	3,349,938	20,907,354
Superior	19,838,137	19,610,201	19,690,892	21,079,559	20,779,170	21,879,731	122,877,690
District	14,486,009	15,837,450	16,293,059	17,745,467	17,858,618	18,528,423	100,749,026
Probate	3,912,998	4,184,596	4,409,133	4,646,651	4,750,759	4,895,520	26,799,657
Family Division	1,633,218	2,142,510	2,434,638	2,667,626	2,768,021	2,892,372	14,538,385
<b>TOTAL</b>	<b>\$ 46,413,471</b>	<b>\$ 48,295,271</b>	<b>\$ 49,346,889</b>	<b>\$ 52,545,014</b>	<b>\$ 52,988,548</b>	<b>\$ 55,766,350</b>	<b>\$ 305,355,543</b>

Source: LBA analysis for Judicial Branch data.

As of March 2003, the Judicial Branch had 620.2 authorized FTE non-judicial positions of which 46.3 FTEs (seven percent) were vacant. The Branch also had 70 full-time and 66 part-time judicial positions.

The remainder of this section discusses the responsibilities, jurisdiction, organization, management, and expenditures of each court level.

#### **1.4 Supreme Court**

The Supreme Court is New Hampshire’s highest court. It decides appeals in civil, criminal, and juvenile cases as well as decisions made by State administrative agencies. It issues advisory opinions at the request of the Legislature or Governor and Council, has jurisdiction over admission to the New Hampshire Bar, and administers the State’s Law Library.

To assist in managing the Judicial Branch, the Chief Justice, with concurrence of the majority of the Supreme Court, appoints one judge each from the Superior, District, and Probate Courts as an administrative judge pursuant to Supreme Court Rule 54. Administrative judges have general supervisory responsibility for administration, operation, and improvement of their respective courts, and serve on the Administrative Council. The Administrative Council meets monthly to facilitate communication among the courts and the AOC, as well as provide an opportunity to exchange views, measure progress, resolve conflicts, receive recommendations from the policy formulation committees, and make recommendations to the Supreme Court.

Figure 7 shows the organization of the Supreme Court comprised of the Chief Justice, four associate justices, and 40 support staff. These positions include the clerk, information officer, general counsel, reporter of decisions, law clerks, and other support staff. The Supreme Court also administers the Law Library, which had four staff. As of March 2003, three positions were vacant within the Supreme Court's organization.

**Figure 7**

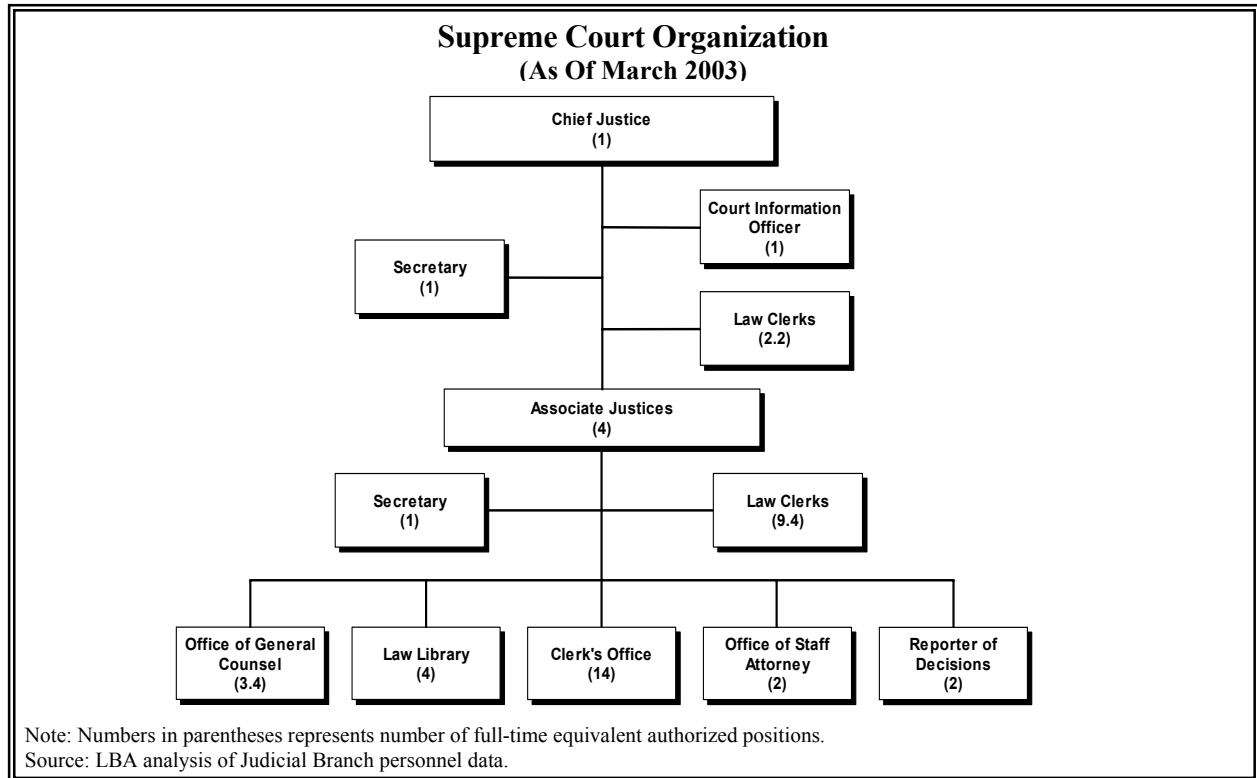


Table 2 shows the Supreme Court spent approximately \$19.5 million during the audit period on operating expenditures of which \$15.8 million (81 percent) was for personnel. The Supreme Court experienced growth of 53 percent in operating expenditures from SFY 1997 to SFY 2002. Much of that increase resulted from non-judicial salaries which increased from \$951,534 in SFY 1997 to \$1,664,191 in SFY 2002, or by 75 percent.

Table 2

<b>Supreme Court Expenditures For SFY 1997 - 2002</b>							
	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>Total</u>
<b>Personnel</b>							
Non-Judicial Salaries	\$ 951,534	\$ 967,457	\$ 1,077,874	\$ 1,102,370	\$ 1,268,363	\$ 1,664,191	\$ 7,031,789
Justices	482,503	488,653	506,760	565,974	535,305	548,232	3,127,427
Retired Justices & Widows	419,340	389,561	379,184	405,253	498,315	548,579	2,640,232
Library Personnel	81,678	114,533	117,123	100,910	94,883	137,432	646,559
Benefits	<u>296,882</u>	<u>311,451</u>	<u>322,081</u>	<u>366,505</u>	<u>448,586</u>	<u>589,231</u>	<u>2,334,736</u>
<b>Subtotal Personnel</b>	<b>\$ 2,231,937</b>	<b>\$ 2,271,655</b>	<b>\$ 2,403,022</b>	<b>\$ 2,541,012</b>	<b>\$ 2,845,452</b>	<b>\$ 3,487,665</b>	<b>\$ 15,780,743</b>
Library	\$ 157,554	\$ 179,698	\$ 213,761	\$ 207,427	\$ 216,536	\$ 233,812	\$ 1,208,788
Current Expenses	88,433	83,515	66,628	78,727	171,084	146,638	635,025
Continuing Education	106,397	92,497	99,586	56,656	56,627	98,576	510,339
Judicial & Professional Conduct	10,000	10,420	11,635	72,582	76,465	120,022	301,124
Computerization	35,630	16,147	162,413	10,632	59,067	3,965	287,854
Other	41,000	39,191	39,544	33,964	53,151	52,160	259,010
Travel	25,008	26,138	27,100	18,404	16,168	15,559	128,377
Maintenance	30,463	8,817	24,710	32,354	8,213	5,156	109,713
Grant Expenditures	61	2,183	1,050	0	74,692	28,593	106,579
Rents & Leases	14,592	16,276	15,232	13,164	10,788	9,862	79,914
Equipment	19,834	11,906	8,027	2,458	14,886	6,028	63,139
Organizational Dues	0	0	0	0	0	7,365	7,365
Facilities Escrow Account – Court Improvements	<u>0</u>	<u>0</u>	<u>0</u>	<u>496</u>	<u>0</u>	<u>4,965</u>	<u>5,461</u>
<b>Total Operating Expense</b>	<b><u>\$ 2,760,909</u></b>	<b><u>\$ 2,758,443</u></b>	<b><u>\$ 3,072,708</u></b>	<b><u>\$ 3,067,876</u></b>	<b><u>\$ 3,603,129</u></b>	<b><u>\$ 4,220,366</u></b>	<b><u>\$ 19,483,431</u></b>
<b>Capital Expenditures</b>							
Supreme Court Admin.	\$ 0	\$ 1,337,647	\$ 162,134	\$ 219	\$ 0	\$ 0	\$ 1,500,000
Information Technology Project	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>233,728</u>	<u>233,728</u>
<b>Total Capital Expenditures</b>	<b><u>\$ 0</u></b>	<b><u>\$ 1,337,647</u></b>	<b><u>\$ 162,134</u></b>	<b><u>\$ 219</u></b>	<b><u>\$ 0</u></b>	<b><u>\$ 233,728</u></b>	<b><u>\$ 1,733,728</u></b>
<b>TOTAL EXPENDITURES</b>	<b><u>\$ 2,760,909</u></b>	<b><u>\$ 4,096,090</u></b>	<b><u>\$ 3,234,842</u></b>	<b><u>\$ 3,068,095</u></b>	<b><u>\$ 3,603,129</u></b>	<b><u>\$ 4,454,094</u></b>	<b><u>\$ 21,217,159</u></b>

Source: LBA analysis of Judicial Branch financial data.

As a technique to manage its caseload, the Court does not hear all cases filed. A litigant has the right to an appeal in New Hampshire but there is no guarantee there will be full appellate consideration (i.e., briefing, oral argument, and formal written opinion). The Court uses its discretion to choose which cases will receive full appellate consideration. A clearance rate is a statistic showing the relationship between the number of cases accepted and the number of accepted cases disposed. A clearance rate of 100 percent or more shows the Court disposed more cases than it accepted during the SFY. Clearance rate data presented in Table 3 shows SFY 2002 was the most productive year for the Court. According to Court filing and disposition data shown in Table 3, there were 797 cases filed during SFY 2002. Of these 797 cases, 289 were accepted for review. Also during SFY 2002, 478 cases were disposed, some of which were filed in previous years, for a clearance rate of 165 percent.

Table 3

Supreme Court Filings And Dispositions For SFY 1997 - 2002								
	1997				1998			
	Filed	Accepted	Disposed <sup>1</sup>	Clearance Rate <sup>2</sup>	Filed	Accepted	Disposed <sup>1</sup>	Clearance Rate <sup>2</sup>
<b>Administrative</b>	175	88	74	84%	117	63	80	127%
<b>Civil</b>	374	105	86	82	413	118	96	81
<b>Domestic</b>	79	18	24	133	89	19	13	68
<b>Insurance</b>	23	10	14	140	23	10	9	90
<b>Criminal</b>	240	118	95	81	216	104	114	110
<b>Other<sup>3</sup></b>	0	0	1	0	5	3	0	0
<b>TOTAL</b>	<b>891</b>	<b>339</b>	<b>294</b>	<b>87%</b>	<b>863</b>	<b>317</b>	<b>312</b>	<b>98%</b>
	1999				2000			
	Filed	Accepted	Disposed <sup>1</sup>	Clearance Rate <sup>2</sup>	Filed	Accepted	Disposed <sup>1</sup>	Clearance Rate <sup>2</sup>
<b>Administrative</b>	114	64	66	103%	130	62	49	79%
<b>Civil</b>	351	96	87	91	373	83	84	101
<b>Domestic</b>	114	26	16	62	117	31	25	81
<b>Insurance</b>	27	17	13	77	17	7	12	171
<b>Criminal</b>	198	92	82	89	207	105	70	67
<b>Other<sup>3</sup></b>	9	0	0	0	1	0	0	0
<b>TOTAL</b>	<b>813</b>	<b>295</b>	<b>264</b>	<b>90%</b>	<b>845</b>	<b>288</b>	<b>240</b>	<b>83%</b>
	2001				2002			
	Filed	Accepted	Disposed <sup>1</sup>	Clearance Rate <sup>2</sup>	Filed	Accepted	Disposed <sup>1</sup>	Clearance Rate <sup>2</sup>
<b>Administrative</b>	108	52	54	104%	65	36	48	133%
<b>Civil</b>	389	94	225	239	401	112	273	244
<b>Domestic</b>	117	26	68	262	99	29	52	179
<b>Insurance</b>	13	8	7	88	12	6	10	167
<b>Criminal</b>	199	110	92	84	220	106	95	90
<b>Other<sup>3</sup></b>	1	0	1	0	0	0	0	0
<b>TOTAL</b>	<b>827</b>	<b>290</b>	<b>447</b>	<b>154%</b>	<b>797</b>	<b>289</b>	<b>478</b>	<b>165%</b>

<sup>1</sup>Disposed refers only to cases accepted by the Court rather than all filings.  
<sup>2</sup>Clearance rate is the ratio between cases disposed and cases accepted.  
<sup>3</sup>Other refers to cases that had no case type information in the database.  
Source: LBA analysis of Supreme Court data.

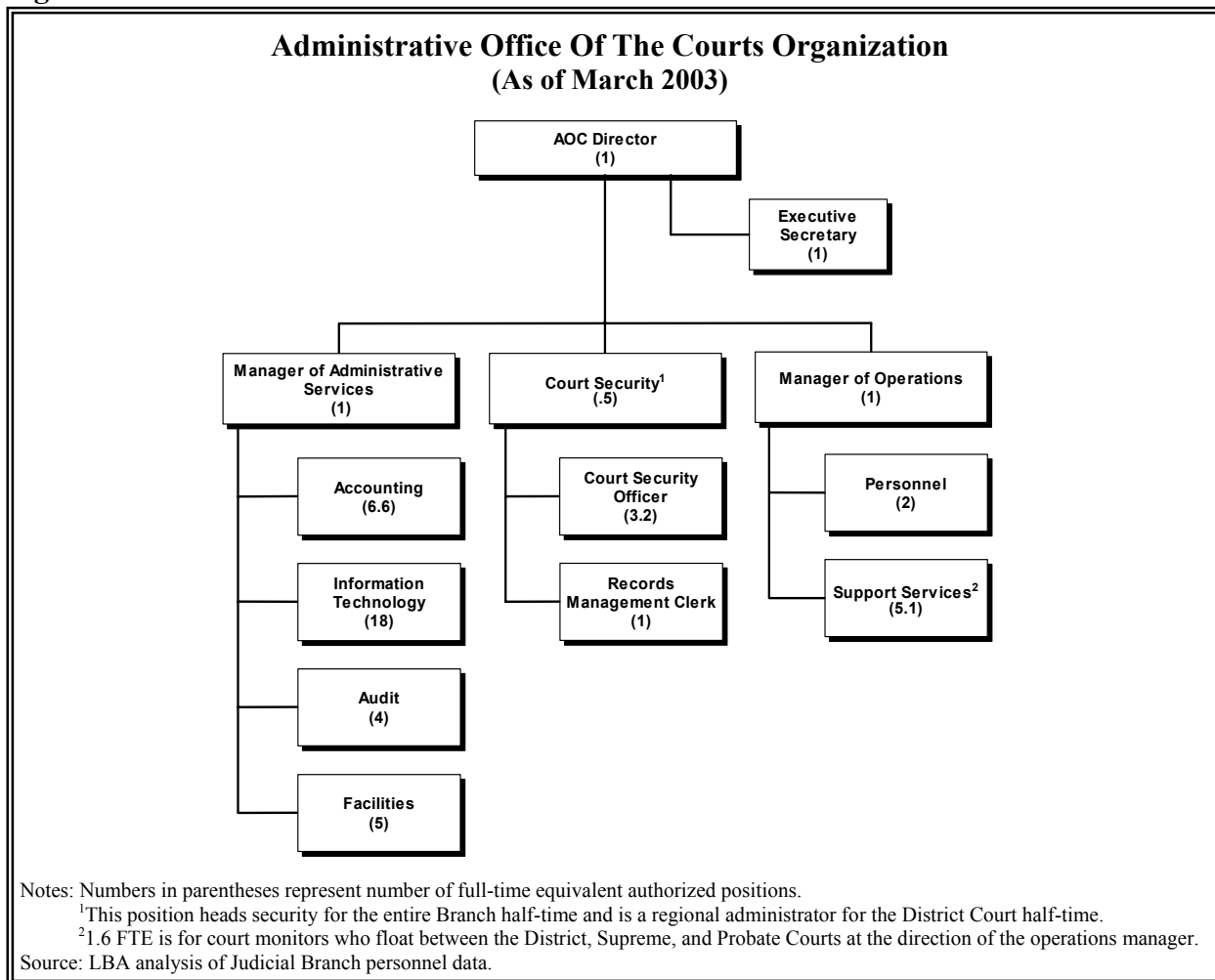
The Supreme Court introduced the Three Justices Expedited docket, or 3JX, in December 2000 in an effort to better manage its caseload. This alternative to the traditional hearing before the full Court was created to shorten the waiting time between the filing of an appeal and the disposition of the case. Cases may be assigned to the 3JX docket at the request of the parties or, if after an initial screening, the justices believe a full written opinion in the case may not be needed. Three justices hear abbreviated oral arguments in these cases and if they reach a unanimous decision, issue an order stating reasons for their decision. If there is a disagreement among the three justices, the case is reheard at a later date by the full Court.



*Administrative Office Of The Courts*

The AOC was created in 1984 by the Supreme Court to improve the administration of justice and the efficient operation of all State courts pursuant to RSA 490-A, which established a unified court system. The AOC is responsible for centralized Judicial Branch functions such as: accounting and auditing, administration of the uniform personnel system for non-judicial employees, computerization, fiscal management, security coordination for all levels of court, and other duties requiring specialized knowledge or expertise. The AOC also handles facilities management to the extent of the Branch’s responsibilities. The AOC is headed by a director, who serves at the pleasure of the Chief Justice and a majority of the Supreme Court.

**Figure 8**



The AOC had 49.4 authorized FTE positions as of March 2003, including five vacant FTE positions. As shown in Figure 8, the AOC is divided into three sections: administrative services, operations, and security.

The administrative services section had 33.6 authorized FTE positions and is supervised by the manager of administrative services. It is further divided into four units: accounting, information

technology, audit, and facilities. The accounting unit handles the court system's accounting, payroll, and leave accounting. Audit conducts internal audits of the individual courts, while information technology handles all technology-related matters. The facilities unit includes the building and grounds workers for the Supreme Court and AOC buildings as well as those responsible for court construction.

Security for the Judicial Branch is managed by a court services representative who also serves as a regional administrator for the District Court. The court security officers provide security at the Supreme Court and coordinate Branch-wide security from the AOC. Security is handled differently in various courts. Security is provided by court employees in the Supreme Court, all District Courts, Family Division Pilot Project sites except Haverhill and Brentwood, and the Merrimack and Strafford Probate Courts.

Operations is divided into two units: personnel and support services. The personnel unit manages the Branch's human resource needs such as recruitment, benefits, salary administration, and personnel rules. The support services unit provides reception and secretarial services for the AOC.

### *Facilities*

With the exception of the AOC and Supreme Court buildings located on Noble Drive in Concord, the State's Department of Administrative Services (DAS) is responsible for providing and maintaining suitable court facilities throughout the State. By July 1 of each year, the Supreme Court must submit a report to the Commissioner of Administrative Services setting forth the space and facility operating requirements for each court location. The Bureau of Court Facilities within DAS manages 14 State-owned court facilities. On-site maintenance personnel perform custodial services at these facilities. In addition to the State-owned court facilities, there are 34 leased court facilities. Depending on lease agreement provisions, either DAS personnel or the landlord performs custodial services for these facilities. The DAS pays utilities unless specifically included in lease agreements. Funding for facilities is accomplished through transfers for facilities from the Judicial Branch budget to the DAS.

RSA 490:5-a established the New Hampshire Court Accreditation Commission. The commission is composed of nine members: one member appointed by the Governor, one House member appointed by the House Speaker, one Senate member appointed by the Senate President, and six members appointed by the Supreme Court. Composition of the Supreme Court's appointees includes a justice or designee of the Supreme Court, a justice of the Superior Court, a Probate Court judge and a District Court judge, a lay person, and an attorney with experience in the trial of cases at all court levels. According to statute, the commission's responsibilities include prescribing minimum standards for all courts with respect to size, adequacy of facilities, decor and design, and other attributes; and regularly visiting and inspecting every Superior, District, and Probate Court. The commission periodically reports its findings, conclusions, and recommendations for improvements to the Supreme Court, as well as, reviews the adequacy of court facilities and reports its findings and recommendations to the Supreme Court for consideration in June of each year.

## Expenditures

As shown in Table 4, the AOC expended a total of \$21 million during the six-year audit period. Personnel costs averaged 64 percent of total operating costs. Annual expenditures incurred for AOC operations decreased 11 percent from SFY 1997 to SFY 2002.

Table 4

<b>AOC Expenditures For SFY 1997 - 2002</b>							
	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>Total</u>
<b>Personnel</b>							
Non-Judicial Salaries	\$ 1,534,749	\$ 1,646,496	\$ 1,709,590	\$ 1,802,240	\$ 1,768,132	\$ 2,129,265	\$ 10,590,472
Benefits	<u>406,355</u>	<u>429,127</u>	<u>432,068</u>	<u>462,694</u>	<u>512,149</u>	<u>581,199</u>	<u>2,823,592</u>
<b>Subtotal Personnel</b>	<b>\$ 1,941,104</b>	<b>\$ 2,075,623</b>	<b>\$ 2,141,658</b>	<b>\$ 2,264,934</b>	<b>\$ 2,280,281</b>	<b>\$ 2,710,464</b>	<b>\$ 13,414,064</b>
Grants Expenditures	\$ 504,005	\$ 248,465	\$ 474,280	\$ 345,867	\$ 297,026	\$ 156,198	\$ 2,025,841
Computerization	186,397	348,982	185,600	187,883	114,675	58,714	1,082,251
Court Modernization (Bond payments)	522,127	500,654	0	0	0	0	1,022,781
Workers Compensation	246,163	191,032	114,957	126,809	185,993	119,179	984,133
Current Expenses	118,536	127,761	126,667	150,112	142,051	140,355	805,482
Maintenance	33,985	92,529	79,626	64,167	66,410	46,716	383,433
Organizational Dues	54,850	54,850	54,850	59,885	44,914	66,835	336,184
Equipment	74,122	11,100	167,067	62,919	18,117	1,094	334,419
Other	63,876	60,000	48,420	39,229	30,355	0	241,880
Travel	19,879	18,780	28,669	16,610	16,183	21,740	121,861
Facilities Escrow Account - Court Improvements	0	22,548	0	0	28,551	3,480	54,579
Continuing Education	8,657	8,925	7,534	5,957	3,079	14,406	48,558
Library	8,000	0	15,785	10,117	0	8,987	42,889
Rents & Leases	499	822	1,346	1,346	1,216	1,770	6,999
Sheriff Reimbursements (Security)	<u>0</u>	<u>0</u>	<u>0</u>	<u>\$ 2,000</u>	<u>0</u>	<u>0</u>	<u>\$ 2,000</u>
<b>Total Operating Expense</b>	<b><u>\$ 3,782,200</u></b>	<b><u>\$ 3,762,071</u></b>	<b><u>\$ 3,446,459</u></b>	<b><u>\$ 3,337,835</u></b>	<b><u>\$ 3,228,851</u></b>	<b><u>\$ 3,349,938</u></b>	<b><u>\$ 20,907,354</u></b>
<b>Capital Expenditures</b>							
Admin. Office Building	\$ 33,142	\$ 23,949	\$ 4,866	\$ 0	\$ 0	\$ 0	\$ 61,957
Information Technology Project	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>152,525</u>	<u>152,525</u>
<b>Total Capital Expenditures</b>	<b><u>\$ 33,142</u></b>	<b><u>\$ 23,949</u></b>	<b><u>\$ 4,866</u></b>	<b><u>\$ 0</u></b>	<b><u>\$ 0</u></b>	<b><u>\$ 152,525</u></b>	<b><u>\$ 214,482</u></b>
<b>TOTAL EXPENDITURES</b>	<b><u>\$ 3,815,342</u></b>	<b><u>\$ 3,786,020</u></b>	<b><u>\$ 3,451,325</u></b>	<b><u>\$ 3,337,835</u></b>	<b><u>\$ 3,228,851</u></b>	<b><u>\$ 3,502,463</u></b>	<b><u>\$ 21,121,836</u></b>

Source: LBA analysis of Judicial Branch financial data.

## 1.5 Superior Court

The Superior Court is the only court of general jurisdiction in the State, handling all matters not covered by other courts. It is the only court in which jury trials are held. The Superior Court has jurisdiction over felony trials, civil lawsuits, equity (civil proceedings generally not involving money), and marital matters. In addition, the Superior Court hears de novo appeals of certain misdemeanor convictions from the District Courts and certain juvenile matters. There is no

limitation on the amount of damages a Superior Court may award. Marital masters handle the majority of family law cases in Superior Court.

As shown in Table 5, the Superior Court had 30,231 filings and 28,186 dispositions during SFY 2002. Criminal cases accounted for 44 percent of the filings; while marital, civil, and equity cases accounted for 30 percent, 15 percent, and 11 percent, respectively. Juvenile cases accounted for less than one percent of the entire caseload.

**Table 5**

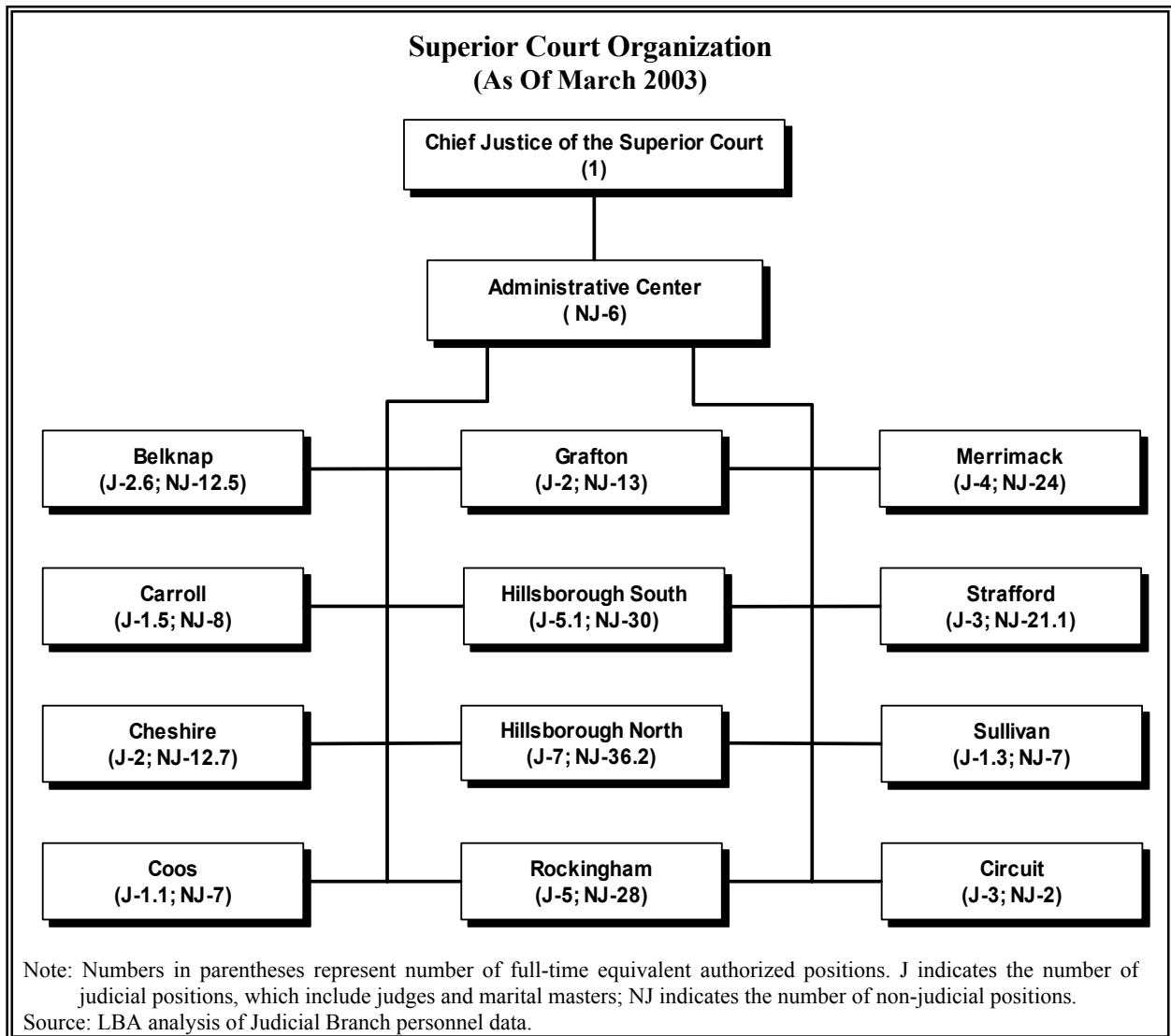
<b>Superior Court Filings And Dispositions For SFY 1997 - 2002</b>									
	<b>1997</b>			<b>1998</b>			<b>1999</b>		
	<b>Filed</b>	<b>Disposed</b>	<b>Clearance Rate</b>	<b>Filed</b>	<b>Disposed</b>	<b>Clearance Rate</b>	<b>Filed</b>	<b>Disposed</b>	<b>Clearance Rate</b>
<b>Civil</b>	4,830	5,319	110%	4,477	5,096	114%	4,510	4,680	104%
<b>Marital</b>	8,420	9,898	118	8,453	9,521	113	8,544	9,271	109
<b>Equity</b>	2,933	2,981	102	3,064	3,185	104	3,483	3,646	105
<b>Juvenile</b>	69	69	100	68	54	79	64	71	111
<b>Criminal</b>	9,509	9,287	98	9,329	9,887	106	10,161	9,832	97
<b>TOTAL</b>	<b>25,761</b>	<b>27,554</b>	<b>107%</b>	<b>25,391</b>	<b>27,743</b>	<b>109%</b>	<b>26,762</b>	<b>27,500</b>	<b>103%</b>
	<b>2000</b>			<b>2001</b>			<b>2002</b>		
	<b>Filed</b>	<b>Disposed</b>	<b>Clearance Rate</b>	<b>Filed</b>	<b>Disposed</b>	<b>Clearance Rate</b>	<b>Filed</b>	<b>Disposed</b>	<b>Clearance Rate</b>
<b>Civil</b>	4,255	4,294	101%	4,278	4,214	99%	4,630	4,309	93%
<b>Marital</b>	9,222	9,286	101	8,776	8,934	102	8,945	8,528	95
<b>Equity</b>	3,408	3,374	99	3,672	3,535	96	3,399	3,296	97
<b>Juvenile</b>	89	64	72	48	53	110	102	76	75
<b>Criminal</b>	10,442	9,805	94	11,698	11,176	96	13,155	11,977	91
<b>TOTAL</b>	<b>27,416</b>	<b>26,823</b>	<b>98%</b>	<b>28,472</b>	<b>27,912</b>	<b>98%</b>	<b>30,231</b>	<b>28,186</b>	<b>93%</b>

Source: LBA analysis of Superior Court data.

*Organization And Management*

The Superior Court had 29 full-time justices and ten marital master positions, two of which were vacant and 207.5 authorized FTE non-judicial positions. The Superior Court is supervised by a Chief Justice. As of March 2003, 15.3 FTE non-judicial positions were vacant for a vacancy rate of 7.4 percent. Figure 9 shows there are eleven Superior Court locations in New Hampshire, one in each county except Hillsborough County, which has two locations. The Superior Court has an administrative center located in Concord with six authorized FTE non-judicial positions.

Figure 9



*Expenditures*

Table 6 shows Superior Court operating expenditures incurred between SFY 1997 and SFY 2002 totaled approximately \$123 million. Annual expenditures increased approximately ten percent from SFY 1997 to SFY 2002. Personnel costs average approximately 70 percent of the Superior Court’s budget, while Sheriff’s reimbursement and jury fees average six and four percent, respectively.

Table 6

<b>Superior Court Expenditures For SFY 1997 - 2002</b>							
	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>Total</u>
<b>Personnel</b>							
Non-Judicial Salaries	\$ 6,621,840	\$ 6,828,529	\$ 6,829,896	\$ 7,224,929	\$ 7,228,260	\$ 7,639,015	\$ 42,372,469
Justices/Marital Masters	3,408,993	3,373,735	3,456,518	3,590,794	3,403,231	3,685,241	20,918,512
Retired Justices & Widows	945,052	944,276	1,032,930	1,100,568	1,118,726	1,149,123	6,290,675
Benefits	<u>2,417,730</u>	<u>2,451,951</u>	<u>2,432,854</u>	<u>2,752,734</u>	<u>3,095,114</u>	<u>3,371,920</u>	<u>16,522,303</u>
<b>Subtotal Personnel</b>	<b>\$ 13,393,615</b>	<b>\$ 13,598,491</b>	<b>\$ 13,752,198</b>	<b>\$ 14,669,025</b>	<b>\$ 14,845,331</b>	<b>\$ 15,845,299</b>	<b>\$ 86,103,959</b>
Payments to DAS for Court							
Facilities Fees	\$ 2,380,135	\$ 2,499,730	\$ 2,657,017	\$ 2,683,355	\$ 2,486,067	\$ 2,546,023	\$ 15,252,327
Sheriff Reimbursement (Security)	1,284,316	1,093,046	1,103,239	1,248,362	1,157,467	1,276,233	7,162,663
Jury Fees	1,014,970	930,224	850,046	852,694	828,169	727,959	5,204,062
Current Expenses	535,264	569,566	573,897	522,697	529,521	555,767	3,286,712
Travel	239,655	220,207	225,891	215,107	182,689	236,312	1,319,861
Maintenance	127,396	146,181	144,682	169,948	158,836	112,021	859,064
Library	114,950	127,889	135,167	143,021	140,654	148,750	810,431
Computerization	13,618	60,495	26,753	218,160	118,883	214,905	652,814
Equipment	126,694	83,289	86,075	38,279	113,731	58,203	506,271
Facilities Escrow Account – Court Improvements	300,320	39,672	33,363	67,823	21,407	15,115	477,700
Grant Expenditures	126,409	160,736	25,255	95,213	15,149	0	422,762
Other	123,786	26,279	24,512	69,525	107,826	54,287	406,215
Rents & Leases	47,428	40,517	36,628	36,168	32,470	53,220	246,431
Continuing Education	9,581	13,879	16,169	28,663	17,625	11,693	97,610
Organizational Dues	<u>0</u>	<u>0</u>	<u>0</u>	<u>21,519</u>	<u>23,345</u>	<u>23,944</u>	<u>68,808</u>
<b>Total Operating Expense</b>	<b><u>\$ 19,838,137</u></b>	<b><u>\$ 19,610,201</u></b>	<b><u>\$ 19,690,892</u></b>	<b><u>\$ 21,079,559</u></b>	<b><u>\$ 20,779,170</u></b>	<b><u>\$ 21,879,731</u></b>	<b><u>\$ 122,877,690</u></b>
<b>Capital Expenditures</b>							
Information Technology Project	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>60,640</u>	\$ <u>60,640</u>
<b>Total Capital Expenditures</b>	<b><u>\$ 0</u></b>	<b><u>\$ 0</u></b>	<b><u>\$ 0</u></b>	<b><u>\$ 0</u></b>	<b><u>\$ 0</u></b>	<b><u>\$ 60,640</u></b>	<b><u>\$ 60,640</u></b>
<b>TOTAL EXPENDITURES</b>	<b><u>\$ 19,838,137</u></b>	<b><u>\$ 19,610,201</u></b>	<b><u>\$ 19,690,892</u></b>	<b><u>\$ 21,079,559</u></b>	<b><u>\$ 20,779,170</u></b>	<b><u>\$ 21,940,371</u></b>	<b><u>\$ 122,938,330</u></b>

Source: LBA analysis of Judicial Branch financial data.

## 1.6 District And Municipal Courts

Beginning in 1964, regional District Courts were consolidated from Municipal Courts, with the last Municipal Court closing in the spring of 2000. The District Courts have exclusive jurisdiction in civil cases where damages are less than \$1,500 and do not involve title to real estate. The District Courts enforce local regulations and have concurrent jurisdiction with the Superior Court in domestic violence cases, and civil cases involving damage claims from \$1,500 to \$25,000. The District Courts have exclusive original jurisdiction over all landlord and tenant disputes, violation and misdemeanor criminal cases, child abuse and neglect cases, and juvenile cases. Statute also allows the Supreme Court to expand concurrent jurisdiction in civil cases where damages do not exceed \$50,000.

In addition, search warrants and arrest warrants are issued by the District Courts. District Courts also hold criminal arraignments and probable cause hearings in felony cases, but do not hear these trials. Jury trials in criminal misdemeanor cases were held in Rockingham and Merrimack Counties until April 1, 2001 when they were suspended indefinitely.

Table 7 shows a total of 177,159 cases were filed with District Courts during SFY 2002, while 170,076 cases were disposed. This resulted in a clearance rate of 96 percent in SFY 2002. Criminal cases accounted for 75 percent of all cases filed in the District Courts during SFY 2002, while civil and juvenile cases accounted for four percent each.

**Table 7**

<b>District Courts Filings And Dispositions For SFY 1997 - 2002</b>									
	1997			1998			1999		
	Filed	Disposed	Clearance Rate	Filed	Disposed	Clearance Rate	Filed	Disposed	Clearance Rate
<b>Criminal</b>	140,339	142,737	102%	116,559	116,441	100%	122,388	122,708	100%
<b>Civil</b>	6,698	6,160	92	5,904	5,698	97	6,394	6,082	95
<b>Domestic Violence</b>	5,588	5,559	100	5,211	5,130	98	4,796	4,679	98
<b>Invol. Emerg. Admin.</b>	1,227	1,197	98	1,174	1,122	96	1,146	1,079	94
<b>Jury Trial</b>	2,906	2,651	91	2,681	2,654	99	2,900	2,992	103
<b>Juvenile</b>	6,980	7,144	102	7,120	6,928	97	6,688	6,464	97
<b>Landlord &amp; Tenant</b>	6,526	6,335	97	6,308	6,152	98	6,851	6,296	92
<b>Small Claims</b>	19,085	17,455	92	17,651	17,075	97	16,969	16,508	97
<b>TOTAL</b>	<b>189,349</b>	<b>189,238</b>	<b>100%</b>	<b>162,608</b>	<b>161,200</b>	<b>99%</b>	<b>168,132</b>	<b>166,808</b>	<b>99%</b>
	2000			2001			2002		
	Filed	Disposed	Clearance Rate	Filed	Disposed	Clearance Rate	Filed	Disposed	Clearance Rate
<b>Criminal</b>	128,390	126,411	99%	127,802	128,329	100%	133,359	128,685	97%
<b>Civil</b>	5,360	5,322	99	5,970	5,668	95	6,890	6,127	89
<b>Domestic Violence</b>	4,897	4,750	97	4,919	4,816	98	4,819	4,698	98
<b>Invol. Emerg. Admin.</b>	1,238	1,197	97	1,352	1,328	98	1,276	1,272	100
<b>Jury Trial</b>	3,536	3,216	91	2,961	3,703	125	21	154	733
<b>Juvenile</b>	6,579	5,910	90	6,565	6,342	97	6,731	6,401	95
<b>Landlord &amp; Tenant</b>	7,150	7,005	98	7,122	6,939	97	6,920	6,708	97
<b>Small Claims</b>	16,687	15,794	95	16,273	15,319	94	17,143	16,031	94
<b>TOTAL</b>	<b>173,837</b>	<b>169,605</b>	<b>98%</b>	<b>172,964</b>	<b>172,444</b>	<b>100%</b>	<b>177,159</b>	<b>170,076</b>	<b>96%</b>

Source: LBA analysis of District Courts data.

## Expenditures

As shown in Table 8, the District Courts expended a total of approximately \$101 million for its operations between SFY 1997 and SFY 2002. Annual District Court expenditures increased approximately 28 percent from \$14.5 million in SFY 1997 to \$18.5 million in SFY 2002. Personnel costs averaged approximately 73 percent of the District Court's operating expenditures during the audit period.

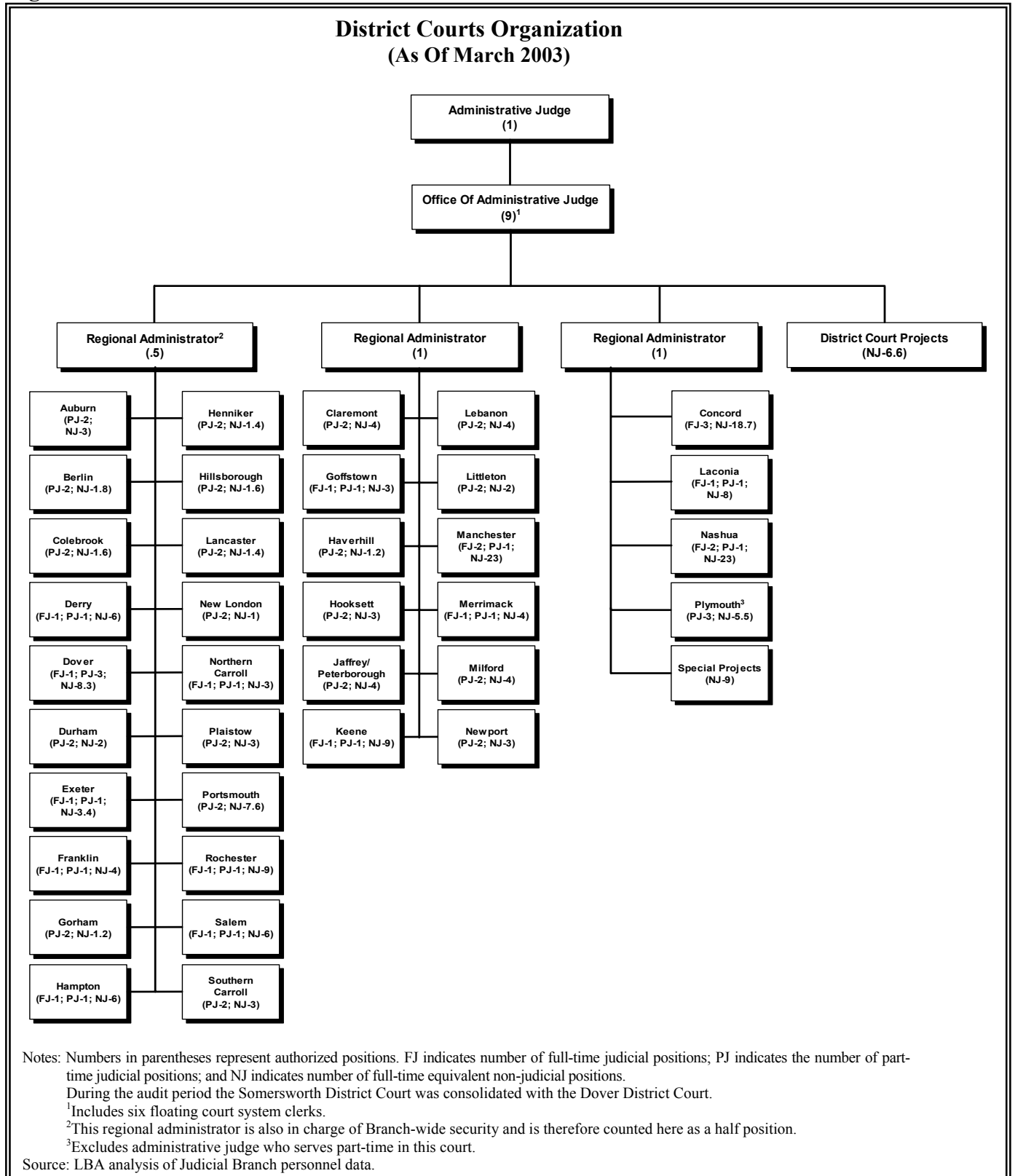
Table 8

<b>District Courts Expenditures For SFY 1997 - 2002</b>							
	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>Total</u>
<b>Personnel</b>							
Non-Judicial Salaries	\$ 5,618,136	\$ 6,024,169	\$ 6,027,100	\$ 6,636,345	\$ 6,712,634	\$ 6,541,226	\$ 37,559,610
Justices	2,989,836	3,049,996	3,238,265	3,502,528	3,484,869	3,545,896	19,811,390
Retired Justices & Widows	246,528	309,625	371,726	395,283	465,723	446,832	2,235,717
Benefits	<u>2,036,020</u>	<u>2,043,390</u>	<u>2,078,545</u>	<u>2,437,490</u>	<u>2,773,026</u>	<u>2,904,920</u>	<u>14,273,391</u>
<b>Subtotal Personnel</b>	\$ 10,890,520	\$ 11,427,180	\$ 11,715,636	\$ 12,971,646	\$ 13,436,252	\$ 13,438,874	\$ 73,880,108
Payments to DAS for Court Facilities Fees	\$ 2,010,182	\$ 2,510,362	\$ 2,634,485	\$ 2,674,463	\$ 2,472,918	\$ 2,705,962	\$ 15,008,372
Current Expenses	637,806	669,905	713,935	726,697	722,621	745,891	4,216,855
Grant Expenditures	197,123	350,699	215,175	313,626	211,292	736,040	2,023,955
Maintenance	254,589	221,477	225,964	230,346	199,325	189,084	1,320,785
Facilities Escrow Account – Court Improvements	56,999	156,540	248,361	112,588	34,907	127,238	736,633
Travel	91,937	113,146	128,625	116,912	125,551	91,858	668,029
Computerization	8,331	55,035	28,230	198,092	159,154	205,281	654,123
Equipment	103,092	79,000	97,253	68,723	129,120	38,429	515,617
Jury Fees	85,434	89,565	100,408	105,519	102,279	5,514	488,719
Library	78,151	80,633	85,259	74,984	80,663	81,193	480,883
Other	34,157	35,642	41,760	84,211	135,913	104,670	436,353
Rents & Leases	20,456	30,074	35,800	35,693	30,879	33,967	186,869
Continuing Education	6,546	6,294	6,558	15,597	5,501	11,057	51,553
Sheriff Reimbursement (Security)	10,686	11,898	15,610	5,910	1,297	71	45,472
Organizational Dues	<u>0</u>	<u>0</u>	<u>0</u>	<u>10,460</u>	<u>10,946</u>	<u>13,294</u>	<u>34,700</u>
<b>Total Operating Expense</b>	<u>\$ 14,486,009</u>	<u>\$ 15,837,450</u>	<u>\$ 16,293,059</u>	<u>\$ 17,745,467</u>	<u>\$ 17,858,618</u>	<u>\$ 18,528,423</u>	<u>\$100,749,026</u>
<b>Capital Expenditures</b>							
Information Technology Project	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 23,536	\$ 23,536
<b>Total Capital Expenditures</b>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 23,536</u>	<u>\$ 23,536</u>
<b>TOTAL EXPENDITURES</b>	<u>\$ 14,486,009</u>	<u>\$ 15,837,450</u>	<u>\$ 16,293,059</u>	<u>\$ 17,745,467</u>	<u>\$ 17,858,618</u>	<u>\$ 18,551,959</u>	<u>\$100,772,562</u>

Source: LBA analysis of Judicial Branch financial data.



Figure 10



### *Organization And Management*

Figure 10 shows the District Courts are managed by an administrative judge and had 220.8 authorized FTE non-judicial positions including 15.6 positions from various federally-funded court projects related to domestic violence, drug court, and child maltreatment. Of the 220.8 authorized FTE non-judicial positions, 17 were vacant as of March 2003. Judicial officers include judges, and special and associate justices. As of March 2003, there were 19 full-time judges, excluding the administrative judge, and 59 part-time judge positions, two of which were vacant. The District Courts have an Office of Administrative Judge, which coordinates District Court judicial schedules; develops continuing education programs; monitors judicial and clerical performance; and hires, fires, and supervises personnel. The District Court's Office of Administrative Judge had nine positions not including the administrative judge.

The administrative judge of the District Court is responsible for supervising judges and staff of the District Court system, including 6.6 FTE grant-funded positions. Three regional administrators supervise the clerks of court. One regional administrator supervises 20 courts and coordinates security for the AOC. Another regional administrator supervises 12 courts, and the third regional administrator supervises four courts and manages the District Court's special projects, which has nine FTE grant-funded positions. As of March 2003, there were 36 District Court locations throughout the State.

#### **1.7 Probate Courts**

Probate Courts have exclusive jurisdiction in adoption, termination of parental rights, guardianships, certain trusts, wills, estates, involuntary commitments, and name change cases. Probate Courts have concurrent jurisdiction with the Superior Court in certain trust matters, durable powers of attorney, and marriage waivers for minors.

Judicial officers in the Probate Courts include five full-time and five part-time judges sitting in the ten counties. Special masters may also be appointed to hear contested probate cases to the extent funds are available.

As shown in Table 9, a total of 9,976 cases were filed in the Probate Courts during SFY 2002. The Probate Courts disposed of 9,533 cases in SFY 2002, a clearance rate of 96 percent. SFY 2002 had the lowest clearance rate for any year during the audit period. SFYs 1997 through 2000 had clearance rates of 100 percent or more. The largest category of cases was estates and trusts, which accounted for 55 percent of all cases filed in SFY 2002.

Table 9

Probate Courts Filings And Dispositions For SFY 1997 - 2002									
	1997			1998			1999		
	Filed	Disposed	Clearance Rate	Filed	Disposed	Clearance Rate	Filed	Disposed	Clearance Rate
Adoption	407	463	114%	453	446	99%	444	455	103%
Equity	83	90	108	109	101	93	108	121	112
Estate & Trust	5,691	5,836	103	5,406	5,811	108	5,401	5,907	109
Guardianship	1,194	951	80	1,291	1,133	88	1,374	1,120	82
Involuntary Admission	358	353	99	335	338	101	325	322	99
Name Change	988	965	98	1,083	1,118	103	1,081	1,079	100
Relinquishment of Parental Rights	53	58	109	65	72	111	48	50	104
Termination of Parental Rights	93	102	110	139	129	93	199	165	83
Other <sup>1</sup>	153	160	105	146	160	110	239	234	98
<b>TOTAL</b>	<b>9,020</b>	<b>8,978</b>	<b>100%</b>	<b>9,027</b>	<b>9,308</b>	<b>103%</b>	<b>9,219</b>	<b>9,453</b>	<b>103%</b>
	2000			2001			2002		
	Filed	Disposed	Clearance Rate	Filed	Disposed	Clearance Rate	Filed	Disposed	Clearance Rate
Adoption	496	467	94%	519	518	100%	492	492	100%
Equity	137	126	92	106	106	100	161	121	75
Estate & Trust	5,404	5,732	106	5,559	5,627	101	5,517	5,576	101
Guardianship	1,453	1,176	81	1,426	1,184	83	1,622	1,269	78
Involuntary Admission	376	368	98	342	321	94	374	383	102
Name Change	1,180	1,205	102	1,236	1,188	96	1,257	1,201	96
Relinquishment of Parental Rights	79	74	94	85	49	58	82	78	95
Termination of Parental Rights	218	192	88	207	236	114	252	175	69
Other <sup>1</sup>	291	295	101	230	232	101	219	238	109
<b>TOTAL</b>	<b>9,634</b>	<b>9,635</b>	<b>100%</b>	<b>9,710</b>	<b>9,461</b>	<b>97%</b>	<b>9,976</b>	<b>9,533</b>	<b>96%</b>

<sup>1</sup>Includes the following case types: conservatorship, marriage waiver, power of attorney, nursing home-no administration, death certificate, successor custodian, child custody, uniform gift to minor, no case type, and preauthorization for surrogacy.  
Source: LBA analysis of Probate Courts data.

*Expenditures*

Probate Court operating expenditures totaled \$27 million between SFY 1997 and SFY 2002. Annual Probate Court expenditures increased 25 percent from SFY 1997 to SFY 2002 (Table 10).

**Table 10**

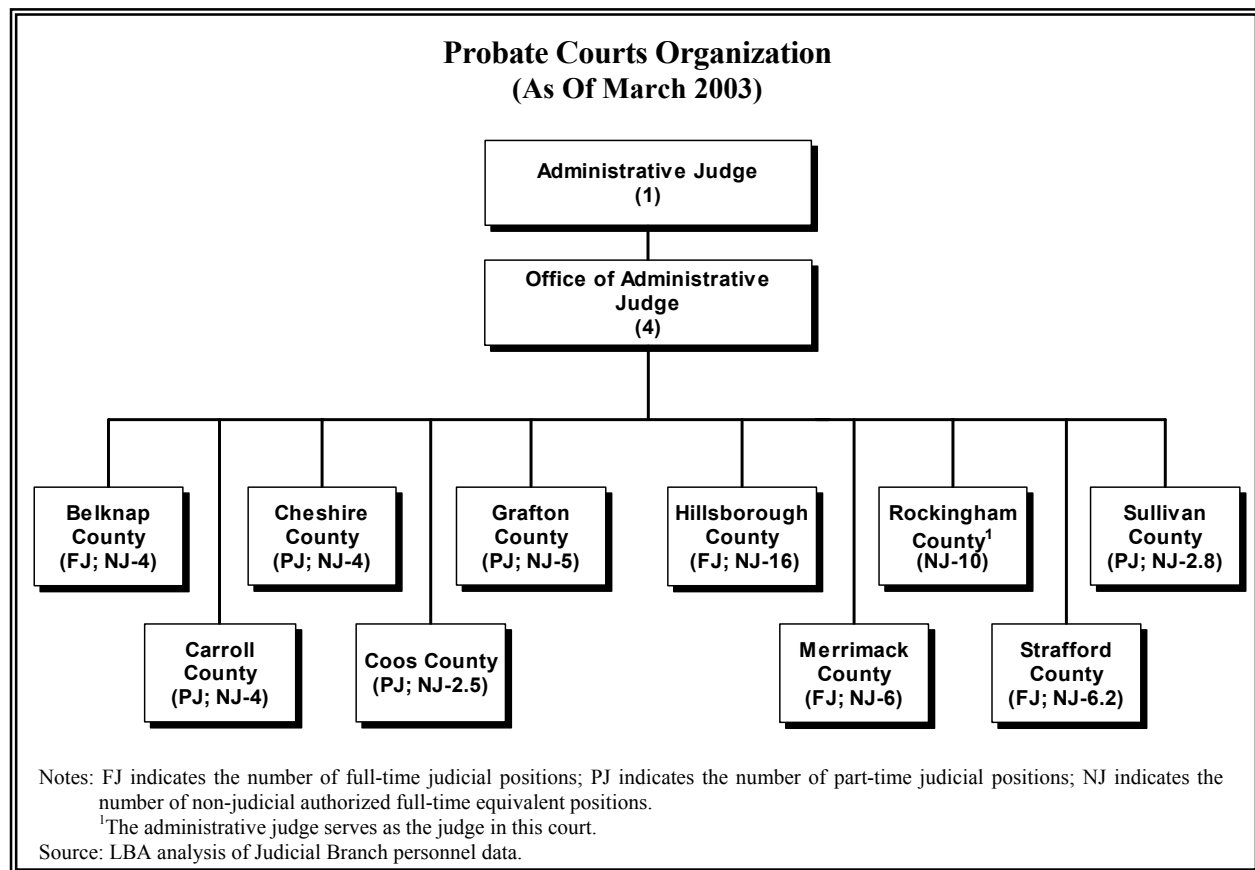
<b>Probate Courts Expenditures For SFY 1997 - 2002</b>							
	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>Total</u>
<b>Personnel</b>							
Non-Judicial Salaries	\$ 1,584,982	\$ 1,744,302	\$ 1,816,491	\$ 1,915,563	\$ 1,931,906	\$ 1,950,347	\$ 10,943,591
Justices	516,290	526,170	541,939	619,390	599,313	583,911	3,387,013
Retired Justices & Widows	56,131	56,131	58,937	71,724	82,659	85,003	410,585
Benefits	<u>596,935</u>	<u>614,824</u>	<u>629,771</u>	<u>753,109</u>	<u>823,768</u>	<u>887,071</u>	<u>4,305,478</u>
<b>Subtotal Personnel</b>	<b>\$ 2,754,338</b>	<b>\$ 2,941,427</b>	<b>\$ 3,047,138</b>	<b>\$ 3,359,786</b>	<b>\$ 3,437,646</b>	<b>\$ 3,506,332</b>	<b>\$ 19,046,667</b>
Payments to DAS for Court Facilities Fees	\$ 765,759	\$ 805,239	\$ 850,708	\$ 863,567	\$ 790,867	\$ 897,343	\$ 4,973,483
Current Expenses	222,962	239,555	242,689	229,693	241,085	234,836	1,410,820
Maintenance	74,202	66,542	67,138	61,924	55,936	43,484	369,226
Computerization	4,412	20,990	88,806	3,114	63,517	83,306	264,145
Sheriff Reimbursement (Security)	27,362	25,281	25,637	38,933	43,190	49,398	209,801
Travel	18,815	31,595	34,881	34,347	26,966	29,486	176,090
Equipment	20,891	25,263	27,499	20,460	45,153	16,032	155,298
Library	8,266	11,303	11,198	10,460	13,265	15,185	69,677
Rents & Leases	3,653	6,981	8,195	6,567	7,330	10,439	43,165
Facilities Escrow Account – Court Improvements	10,517	4,720	1,167	4,888	8,045	0	29,337
Continuing Education	1,821	2,414	696	10,862	6,093	1,977	23,863
Other	0	0	0	0	8,996	4,522	13,518
Organizational Dues	0	0	0	2,050	2,670	2,680	7,400
Grant Expenditures	<u>0</u>	<u>3,286</u>	<u>3,381</u>	<u>0</u>	<u>0</u>	<u>500</u>	<u>7,167</u>
<b>Total Operating Expense</b>	<b><u>\$ 3,912,998</u></b>	<b><u>\$ 4,184,596</u></b>	<b><u>\$ 4,409,133</u></b>	<b><u>\$ 4,646,651</u></b>	<b><u>\$ 4,750,759</u></b>	<b><u>\$ 4,895,520</u></b>	<b><u>\$ 26,799,657</u></b>
<b>Capital Expenditures</b>							
Information Technology Project	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 8,356	\$ 8,356
<b>Total Capital Expenditures</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 8,356</b>	<b>\$ 8,356</b>
<b>TOTAL EXPENDITURES</b>	<b><u>\$ 3,912,998</u></b>	<b><u>\$ 4,184,596</u></b>	<b><u>\$ 4,409,133</u></b>	<b><u>\$ 4,646,651</u></b>	<b><u>\$ 4,750,759</u></b>	<b><u>\$ 4,903,876</u></b>	<b><u>\$ 26,808,013</u></b>

Source: LBA analysis of Judicial Branch financial data.

*Organization And Management*

The Probate Courts are headed by an administrative judge and consists of a court located in each of the ten counties (Figure 11). The Office of Administrative Judge is located at the Rockingham Courthouse in Brentwood. The Probate Courts had 64.5 authorized FTE non-judicial positions, four of which report to the Probate Court administrative judge. These positions include an executive secretary, one staff attorney, the Probate Court administrative coordinator, and one court assistant. The Office of Administrative Judge handles probate-specific educational conferences for judges and staff, develops uniform policies and procedures, and handles recusals. As of March 2003, six of the 64.5 authorized FTE non-judicial positions were vacant for a vacancy rate of 9.3 percent.

Figure 11



### 1.8 Family Division Pilot Project

According to Chapter 152:1, Laws of 1995, the Family Division Pilot Project is intended to “promote the public interest and to better serve citizens” seeking judicial resolutions of “divorce, child custody and visitation, child support, legal separation, paternity, domestic violence, juvenile delinquency, child abuse and neglect, children in need of services, guardianship of minors, termination of parental rights, and adoption.” The stated goals of the pilot project are:

- geographically accessible court locations,
- respectfully treat all citizens,
- promptly and fairly resolve family issues,
- assign one judge or marital master to hear all family matters of a single family,
- decrease the adversarial nature of proceedings through the use of alternative dispute resolution, and
- select and train judges and marital masters to address family-related cases.

The Family Division Pilot Project consolidates a host of family issues into one forum. Traditionally, family-related cases have been handled by three levels of court in New Hampshire. The pilot project has taken over new cases previously handled by the Superior Court (primarily domestic relations cases), District Courts (primarily child protection, juvenile delinquency, and domestic violence cases), and Probate Courts (adoption, guardianship of minors, and termination

of parental rights cases) in Grafton and Rockingham Counties. These cases are handled in four courthouses in each county, as specified by Chapter 152:4, Laws of 1995. In Rockingham County the four Family Division Pilot Project sites are currently located in Brentwood, Derry, Portsmouth, and Salem; in Grafton County they are located in Haverhill, Lebanon, Littleton, and Plymouth.

There are two supervisory judges, one each for Rockingham and Grafton Counties, reporting to the Judicial Branch's Administrative Council. The supervisory judges and the Family Division Pilot Project administrator develop rules, policies, training, and forms.

Marital master positions were created for the Superior Court to hear marital cases throughout New Hampshire and have been incorporated into the Family Division Pilot Project. Marital masters are attorneys who have applied for and been appointed by the Superior Court for the position. Marital masters do not have the same powers as a judge; they do not have the power to impose sanctions for contempt of their orders and a judge must approve their decisions. Marital masters were intended to hear juvenile and marital cases in order to preserve the one judge for one family concept. An early appeal regarding marital masters was made to New Hampshire's Supreme Court, which found marital masters did not have the authority to hear juvenile delinquency cases. This ruling hampers the goal of having one hearing officer handle all family-related cases for one family.

The Family Division Pilot Project started on July 1, 1996. For the first three years, the Family Division Pilot Project drew upon resources from other levels of court for its operations. Operating expenditures increased 77 percent from SFY 1997 to SFY 2002 (Table 11).

**Table 11**

<b>Family Division Pilot Project Expenditures For SFY 1997 - 2002</b>							
	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>Total</u>
<b>Personnel</b>							
Non-Judicial Salaries	\$ 579,990	\$ 684,441	\$ 927,919	\$ 948,114	\$ 979,221	\$ 981,113	\$ 5,100,798
Justices/Marital Masters	254,995	476,837	479,848	575,646	601,040	664,937	3,053,303
Benefits	<u>226,058</u>	<u>257,010</u>	<u>272,650</u>	<u>381,079</u>	<u>429,982</u>	<u>507,741</u>	<u>2,074,520</u>
<b>Subtotal Personnel</b>	<b>\$ 1,061,043</b>	<b>\$ 1,418,288</b>	<b>\$ 1,680,417</b>	<b>\$ 1,904,839</b>	<b>\$ 2,010,243</b>	<b>\$ 2,153,791</b>	<b>\$ 10,228,621</b>
Payments to DAS for Court							
Facilities Fees	\$ 384,857	\$ 514,965	\$ 592,559	\$ 558,522	\$ 520,018	\$ 515,979	\$ 3,086,900
Current Expenses	106,209	110,671	100,103	92,992	96,712	96,578	603,265
Travel	27,710	35,821	31,581	38,652	41,074	39,234	214,072
Sheriff Reimbursement (Security)	10,436	16,559	0	17,437	30,258	29,925	104,615
Equipment	25,676	18,916	1,868	13,169	11,570	0	71,199
Computerization	0	1,447	377	0	15,831	35,319	52,974
Continuing Education	475	17,111	4,452	10,179	18,459	1,808	52,484
Maintenance	2,313	1,607	630	16,451	14,721	11,707	47,429
Facilities Escrow Account – Court Improvements	11,188	3,437	18,712	572	0	0	33,909
Other	1,991	1,410	1,838	10,765	5,390	1,841	23,235
Rents & Leases	1,320	2,278	2,101	2,888	2,542	3,202	14,331
Organizational Dues	0	0	0	1,160	1,203	1,523	3,886
Library	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1,465</u>	<u>1,465</u>
<b>Total Operating Expense</b>	<b><u>\$ 1,633,218</u></b>	<b><u>\$ 2,142,510</u></b>	<b><u>\$ 2,434,638</u></b>	<b><u>\$ 2,667,626</u></b>	<b><u>\$ 2,768,021</u></b>	<b><u>\$ 2,892,372</u></b>	<b><u>\$ 14,538,385</u></b>
<b>Capital Expenditures</b>							
Information Technology Project	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 3,847	\$ 3,847
<b>Total Capital Expenditures</b>	<b><u>\$ 0</u></b>	<b><u>\$ 0</u></b>	<b><u>\$ 0</u></b>	<b><u>\$ 0</u></b>	<b><u>\$ 0</u></b>	<b><u>\$ 3,847</u></b>	<b><u>\$ 3,847</u></b>
<b>TOTAL EXPENDITURES</b>	<b><u>\$ 1,633,218</u></b>	<b><u>\$ 2,142,510</u></b>	<b><u>\$ 2,434,638</u></b>	<b><u>\$ 2,667,626</u></b>	<b><u>\$ 2,768,021</u></b>	<b><u>\$ 2,896,219</u></b>	<b><u>\$ 14,542,232</u></b>

Source: LBA analysis of Judicial Branch financial data.

As shown in Table 12, there were 7,216 filings in the Family Division Pilot Project during SFY 2002 and 6,742 were disposed of resulting in a 93 percent clearance rate.

**Table 12**

<b>Family Division Pilot Project Filings And Dispositions For SFY 1997 - 2002</b>									
	<b>1997</b>			<b>1998</b>			<b>1999</b>		
	<b>Filed</b>	<b>Disposed</b>	<b>Clearance Rate</b>	<b>Filed</b>	<b>Disposed</b>	<b>Clearance Rate</b>	<b>Filed</b>	<b>Disposed</b>	<b>Clearance Rate</b>
<b>Adoption</b>	139	87	63%	168	146	89%	173	166	96%
<b>Domestic Violence</b>	2,041	1,846	90	1,987	1,903	96	1,960	1,959	100
<b>Guardianship</b>	121	48	40	210	64	31	199	111	56
<b>Juvenile</b>	2,790	2,302	83	2,646	2,425	92	2,473	2,367	96
<b>Marital</b>	2,608	1,541	59	2,760	2,492	90	2,753	2,892	105
<b>Termination of Parental Rights</b>	49	7	14	59	49	83	74	42	57
<b>TOTAL</b>	<b>7,748</b>	<b>5,831</b>	<b>75%</b>	<b>7,830</b>	<b>7,079</b>	<b>90%</b>	<b>7,632</b>	<b>7,537</b>	<b>99%</b>
	<b>2000</b>			<b>2001</b>			<b>2002</b>		
	<b>Filed</b>	<b>Disposed</b>	<b>Clearance Rate</b>	<b>Filed</b>	<b>Disposed</b>	<b>Clearance Rate</b>	<b>Filed</b>	<b>Disposed</b>	<b>Clearance Rate</b>
<b>Adoption</b>	248	199	80%	194	200	103%	230	191	83%
<b>Domestic Violence</b>	1,972	1,921	97	1,896	1,839	97	1,857	1,813	98
<b>Guardianship</b>	275	136	50	272	171	63	281	174	62
<b>Juvenile</b>	2,271	2,009	89	2,466	2,065	84	2,125	1,911	90
<b>Marital</b>	2,756	2,705	98	2,654	2,532	95	2,637	2,602	99
<b>Termination of Parental Rights</b>	91	52	57	72	93	129	86	51	59
<b>TOTAL</b>	<b>7,613</b>	<b>7,022</b>	<b>92%</b>	<b>7,554</b>	<b>6,900</b>	<b>91%</b>	<b>7,216</b>	<b>6,742</b>	<b>93%</b>

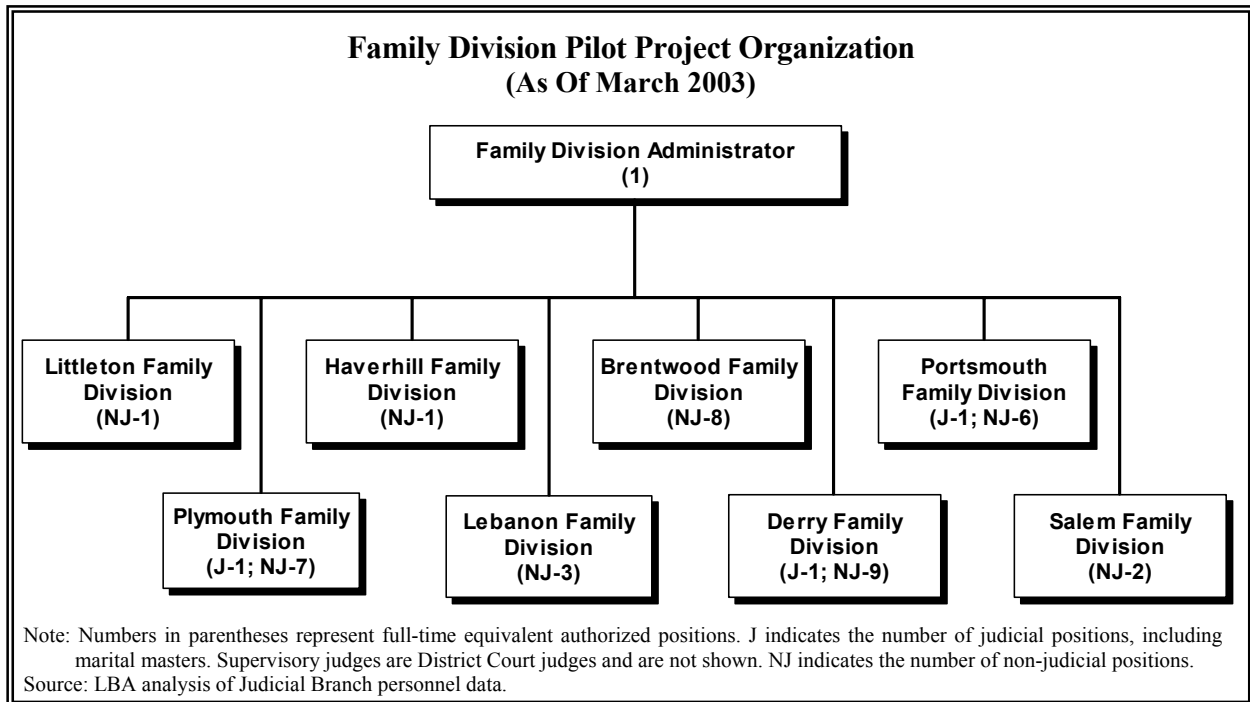
Source: LBA analysis of Judicial Branch data.

*Organization And Management*

The Family Division Pilot Project is administered by the Family Division Pilot Project administrator and had 38 authorized FTE non-judicial positions. Four of the 38 FTE non-judicial positions were vacant as of March 2003 for a vacancy rate of 10.5 percent. The Family Division Pilot Project has three full-time judicial positions, but also relies on utilizing judges from the District and Probate Courts. Figure 12 shows the organization of the Family Division Pilot Project as of March 2003.



**Figure 12**



## 1.9 Significant Achievements

It is important to recognize performance auditing by its nature is a critical process, designed to identify problems or weaknesses in past and existing practices and procedures. Noteworthy management accomplishments within the scope of the audit are included here. Such information provides a more fair presentation of the situation by providing appropriate balance to the report. Significant achievements are considered practices, programs, or procedures that perform above and beyond normal expectations. Changes made to enhance efficiency or effectiveness could be considered a significant achievement.

### 1.9.1 Supreme Court

#### *Backlog Reduction*

In December 2000, the Supreme Court instituted a summary procedure, known as the 3JX docket, for handling appealed cases the Supreme Court believes present issues of settled law and do not need a published opinion. This procedure has enabled the Supreme Court to hear more cases, to give cases different types of treatment based on their complexity, and to get a decision to the parties earlier than would have occurred if all cases were handled in the regular appellate process. Cases selected for the 3JX docket, which features shorter oral arguments before a three-judge panel, receive an unpublished written order with reasons for the Court's disposition. The decision of the Court must be unanimous. The 3JX docket has helped the Supreme Court reduce the backlog of cases awaiting oral argument.

In 2001 the Supreme Court worked to eliminate the backlog of cases awaiting decision after oral argument. The Supreme Court asked its entire staff to focus their efforts on clearing the backlog. The Supreme Court also rearranged its oral argument schedule; now it holds oral arguments for three consecutive months, followed by a month with no scheduled oral arguments other than 3JX arguments (except August when no oral arguments are scheduled). This reportedly permits the justices and staff to concentrate on drafting and issuing decisions in the argued cases, and to clear most cases within four-month time blocks.

### *Internal Reorganization*

In fall 2000, the Supreme Court began to review its internal structure. To assist in this review, the Supreme Court contracted with the National Center for State Courts (NCSC) to conduct a review of its operations, primarily related to case processing procedures. The NCSC made several recommendations, some of which were implemented. See Appendix B for a complete copy of the NCSC report.

In October 2001, the Supreme Court reorganized its administrative staff. With this reorganization, the clerk of court assumed primary responsibility for administrative operations and case processing. A separate position, reporter of decisions, was created, and is now responsible for reviewing and editing opinions and preparing the *New Hampshire Reports*. The Office of Staff Attorney, which assists in processing substantive issues, now reports directly to the justices. The Supreme Court also created an Office of General Counsel to advise the Supreme Court and Branch on legal matters.

The reorganization reportedly permits the Supreme Court to have more involvement in administrative and managerial activities, provides for greater accountability by ensuring the justices and staff are aware of their job performance requirements, and better utilizes staff resources.

## **1.9.2 Superior Court**

### *Individual Calendaring - Pilot Locations*

Two court locations experimented with individual calendaring - the assignment of a case to one justice following that case from entry to disposition. The system was reportedly designed and implemented using many strategies learned in case flow management training programs and is individually tailored for the two locations. It required coordination with other agencies working closely with the court, e.g., county and private attorneys. There are clearly advantages and disadvantages to this system and both locations reportedly experienced some of the positive and negative aspects.

### *Domestic Relations Rules*

Domestic relations cases have received particular attention over the past few years within the Superior Court and Family Division Pilot Project. The Superior Court developed new rules governing processing for these cases. The rules are intended to make the process easier for the

layperson to understand. Forms and procedures pertaining to domestic relations cases were also revised.

#### *Improved Service To Jurors*

A committee of clerks and judges was formed to revise and update the juror handbook - a critical piece of information jurors receive on their first day of jury service. The handbook provides jurors practical and useful information on what to expect during their term as a juror.

#### *Alternative Dispute Resolution In The New Hampshire Courts*

In March 1997, the Superior Court and the Family Division Pilot Project created a program to help parties resolve their marital cases. The program uses volunteer attorneys, trained by the court, to act as neutral evaluators. These evaluators help the parties better understand their respective positions and facilitate a dialogue to find ways to resolve these cases.

Mediation (as distinguished from neutral evaluation) of marital cases has been available on a voluntary basis. To provide a broader range of options, a volunteer committee comprised of Legislators, marital masters, judges, mediators, attorneys, domestic violence advocates, and court staff has worked to create a mediation program for family cases.

### **1.9.3 District Courts**

#### *Juvenile Drug Court*

In recent years the District Courts have applied for and received grant funding for planning and implementing juvenile drug courts. In 1999, the U.S. Department of Justice, Office of Drug Court Programs, awarded a planning grant for juvenile drug courts.

A pilot juvenile drug court site commenced in the Plymouth District Court in September 2001. The funding was obtained through the State's Department of Health and Human Services, Division of Alcohol and Drug Abuse Prevention and Recovery. Funds to initiate this program provided for treatment as well as hiring a program coordinator.

#### *Reclaiming Futures Initiative*

The District Courts sought and received a planning grant from the Robert Wood Johnson Foundation to design and build community-based solutions to substance abuse and delinquency. This project, as envisioned, will create a partnership between the juvenile justice system, substance abuse treatment systems, schools, youth, family, and community members to develop a strategy addressing juvenile drug abuse and delinquency.

#### *The Greenbook Project*

The Greenbook Project is a federally-funded initiative designed to bring together systems to better address the needs of families when domestic violence and child abuse and neglect co-

occur. The project is a joint effort among Grafton County District Courts and Family Division Pilot Project, the Division of Children, Youth and Families, the New Hampshire Coalition Against Domestic and Sexual Violence and the four domestic and sexual violence crisis centers serving Grafton County.

The court system's goals include increasing the ability of courts to identify cases where domestic violence and child abuse and neglect co-occur, and increasing information sharing among civil, criminal, and juvenile courts. Other goals include increasing batterer accountability and increasing interagency collaboration. The Greenbook Project grant was awarded in December 2000.

#### *Electronic Bench Warrants*

In 1993, the District Courts embarked upon a process to record and disseminate bench warrants electronically. A bench warrant is an arrest warrant issued due to the failure of an individual to appear in court, pay a fine, or otherwise comply with a court order. Prior to the institution of electronic bench warrants, all such warrants were on paper and disseminated only to the arresting department. Following the upgrade of the State Police network in 1998 the District Courts embarked on deploying the availability of electronic bench warrants for all of the State's District Courts. Under the current system, all law enforcement officials of the State have immediate access to the warrants 24-hours a day. This reportedly has created a more efficient mechanism for detaining individuals failing to abide by court orders.

### **1.9.4 Probate Courts**

#### *Estate Administration*

Starting in 2001 the Probate Courts have worked to simplify the process for administering the approximately 3,000 estates filed every year Statewide. The first step in this process was new legislation allowing a waiver of full administration for cases that met certain criteria. For those cases, an inventory and appraisal of estate assets, a fiduciary bond, and an accounting of the estate assets are not required, but are instead replaced by the completion of a single form.

#### *Forms On Website*

In mid-1997, the Probate Courts posted a web page dedicated to Probate Court information on the Judicial Branch's website. The page contains the most commonly used forms in estate administration as well as all Probate Court administrative orders and procedure bulletins. Interest in the site was the reported impetus for adding other probate forms for all case types, resulting in most probate forms now being available through the Internet.

### **1.9.5 Administrative Office Of The Courts**

#### *Supreme Court Information On The Internet*

The Judicial Branch's website on the Internet contains all Supreme Court Opinions released since November 1995, various forms and orders from the different court levels, contact information, and directions to the courts. It also contains new Supreme Court opinions, case acceptance lists, oral argument calendars, and orders. A search engine allows the public to search the site for needed information.

In addition, the AOC created the New Hampshire Judicial Branch list service to automatically notify members of changes to the website. This service is available to the public and can be accessed through the Branch's website.

#### *Intranet*

The AOC created an internal web server, available to the courts but not the public, which it uses to post material for staff and judicial use. This material includes all the pages the Branch has on its official website, Judicial Branch salary information, Judicial Branch personnel rules, and e-mail master lists. This intranet also provides Judicial Branch employees with confidential access to their leave balances.

#### *Digital Audio Recording*

The Judicial Branch has begun installing digital audio recording hardware and software throughout the Branch following an analysis of digital audio recording software available from major vendors. A 90-day evaluation period showed this solution to be viable for New Hampshire courts. Digital audio sound recording will enhance sound recording quality; allow immediate access to any part of recorded testimony; enable precise and automatic time referencing of audio recording; allow audio playback on a personal computer CD-ROM player; allow storage of a full day of court proceedings on a single CD-ROM; and allow judges, monitors, and attorneys to easily create electronic notes linked to the audio recording during proceedings.

#### *Domestic Violence Registry*

In the past, trial courts faxed domestic violence protective orders to the Department of Safety where officials maintained a registry. The registry was used to implement federal firearms restrictions and to provide law enforcement agencies with information about outstanding domestic violence protective orders. The AOC implemented procedures for courts to report those who had protective orders issued to a central point at the AOC. Protective orders could then be directly entered into the federal National Crime Information Center (NCIC) and state registries. Errors, delays, and misunderstandings are reduced by moving the data entry function out of the Department of Safety and into the AOC because the latter is closer to the point of origin of the subject orders.

Furthermore, the AOC electronically stores images of orders and makes those images available to local law enforcement entities twenty-four hours a day, seven days a week. Using codes and touch-tone telephone signals, law enforcement agencies can select an order and cause the AOC server to send a copy of the order to the agency by fax transmission. This feature provides local law enforcement officials with access to an image of the actual order rather than access merely to a database that contains summaries of orders.

**STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH ADMINISTRATION  
INFORMATION TECHNOLOGY**

The Judicial Branch's information technology (IT) resources are managed and supported by an IT group located at the Administrative Office of the Courts (AOC). The group has an IT manager and is staffed with three systems analysts/programmers, six programmers, four local area network (LAN) specialists, and a technical trainer.

During the six-year audit period, the Branch spent approximately \$6.9 million on IT hardware, software, and services, excluding personnel costs. The Branch replaced nearly all its personal computers with at least Pentium® III class processors during the SFY 2002-2003 biennium to prepare for the implementation of new case management systems.

Our research indicated the current "state of the art" technology in a court system includes:

- 1) *Computers on the judge's bench integrated with the case management system* - enables judges to issue orders immediately and eliminates the need for clerical staff to manually enter information into the electronic case record from a paper form.
- 2) *Electronic filing* – allows parties to file court documents electronically, thereby reducing the amount of data entry and document filing the clerk's office staff must do.
- 3) *E-mail* – enables the clerk's office staff to distribute case-related information to attorneys and other parties to the case rather than generating paper documents and sending them via regular mail.
- 4) *Digital audio recording* – allows the court to store recordings of court proceedings electronically on computer networks for future distribution to transcriptionists, parties to the case, or the media.
- 5) *Document imaging* – saves storage space and enables the electronic distribution of case-related documents.
- 6) *Teleconferencing/videoconferencing* – allows the court to conduct certain proceedings when one or more parties to a case are located in different physical locations.
- 7) *Evidence presentation systems* – enables evidence, such as written documents, photographs, or video to be projected on video monitors located on the courtroom wall or in the jury box for viewing.

The Branch has experimented with all of these technologies, and plans to expand its use of digital audio recording technology in the future. However, specific and formal plans to expand use of the other technologies and incorporate them into case management and administrative systems had not been developed at the time of our audit.

Information technology literature indicates thorough planning and workflow reviews are the key to ensuring technology improves the efficiency and effectiveness of an organization. The remainder of this chapter presents our observations on the state of the Branch's IT. We found the Branch needs to improve IT planning and development.

**Observation No. 1**

***Improve Information Technology Planning***

Information technology planning for the Judicial Branch can be improved by tying the IT plan to an organizational strategic plan, sufficiently addressing areas considered necessary for an adequate IT plan, and revising plans more frequently. Planning reduces risk and is characteristic of a successful organization and effective IT deployment. Information technology planning helps to establish goals towards which the Branch should be working.

*Information Technology Plans Should Support Organization-Wide Strategic Plan*

The most successful IT plans are developed subsequent to a strategic plan for the organization. Information technology supports the organization and therefore should be closely aligned with the organization's strategic plan. As discussed in Observation No. 12, the Judicial Branch has no current strategic plan. As a result, technology may not be properly utilized in support of the organization's goals.

*More Comprehensive Information Technology Plans Needed*

We examined the State's Strategic Information Technology Plan (SITP) Documentation Standard published by the Executive Branch's Division of Information Technology Management. The standard requires Executive Branch agencies to address several areas including agency organization; mission, vision, goals, and objectives; IT architecture; standards and policies; analysis of current environment; IT resource assessment (including human capital); future IT architecture; IT initiatives; budget; and compatibility with the Statewide strategic IT plan. While we acknowledge the Judicial Branch is not obligated to follow this standard, the standard illustrates best practices in IT planning. Our review of the Judicial Branch's IT plans indicated many of these concepts were either not addressed or addressed in very general terms.

*More Frequent Plans Needed*

The Judicial Branch last prepared an IT plan in January 2001. Prior to the 2001 plan, the Branch issued an IT plan in 1998. The Judicial Branch also considers memorandums written by Branch employees attending court technology conferences as updates to the plan. Plans should be updated every one or two years.

Without a strategic plan and a comprehensive, up-to-date technology plan, the Judicial Branch may not be able to adequately assess and communicate future technology needs, which increases the risks that technology initiatives may not fully support the future direction of the Branch.

**Recommendation:**

**We recommend the Branch develop IT plans to support organization strategic plans, include essential elements in its plan as outlined in the State's SITP guidance, and update its plan at least every two years.**



Auditee Response:

*The Judicial Branch agrees. With input from the Court Technology Committee, the AOC expects to recommend to the Supreme Court a revised and updated Judicial Branch Information Technology Plan.*

*On completion of a Judicial Branch Strategic Plan, the AOC expects to lead a more extensive IT planning process.*

**Observation No. 2**

***Immediately Develop A Branch-Wide Strategic Plan And Analyze Court Work Flow Concurrent With Implementing The New Case Management System***

On March 26, 2003 the Judicial Branch released a Request For Proposals (RFP) for a Statewide browser-based case management system for use by the trial courts. The new case management system will replace the existing SUSTAIN case management system implemented in 1990. The system is intended to support information management needs of the

Judicial Branch and policy makers, as well as make information exchange with other government entities possible. However, the long-term effectiveness of the new case management system may be jeopardized without a linkage to functional strategic and IT plans, and without process re-engineering and standardization of procedures among court levels and locations in advance of implementation.

Information technology literature recommends business process re-engineering before developing or implementing new computer systems. It is more expensive to make revisions to a system once it has been implemented than it is to fully identify system specifications and appropriate design before implementation. Business process re-engineering may have added importance to the Judicial Branch, where we observed similar functions are executed differently by court location and court level. Before investing in new or replacement IT systems, business processes should be documented, and where appropriate, rethought, restructured, and standardized. The U.S. General Accounting Office (GAO) recommends agencies carefully analyze processes or procedures to be modernized to ensure business needs dictate an organization's technology requirements. According to the National Center for State Courts (NCSC), a court must resolve work-process issues before implementing an automated system; otherwise, the system will magnify poor procedures. The NCSC specifically recommended in 1999 that the New Hampshire Judicial Branch study business processes and develop and document standard operating procedures applicable to all trial courts before purchasing a new trial court case management system. However, the Judicial Branch has not comprehensively examined court workflow prior to soliciting proposals for a new trial court case management system. Without examining the business processes in use, abandoning unnecessary work, and streamlining the remaining work, there is a risk inefficient and ineffective processes will become institutionalized in the new system.

Observation No. 12 notes the Judicial Branch needs to develop a strategic plan. A strategic plan identifies long-term goals and priorities, provides focus, involves many internal employees in determining the court's long-term direction, and is instrumental in making organizational

improvements. Through strategic planning the Judicial Branch could set organizational goals, as well as identify how it plans to meet those goals. Subordinate plans, such as IT plans, should be written to support the goals identified in the strategic plan. The Judicial Branch last produced an IT plan in 2001, but it was not linked to a strategic plan, nor does it contain essential elements identified in IT planning literature. Without a strategic plan and a proper IT plan, the Judicial Branch's goals may not be fully identified or prioritized, increasing the risk the new trial court case management system will not support the Judicial Branch's organizational goals.

**Recommendation:**

**We recommend the Judicial Branch begin strategic planning, IT planning, and business process re-engineering immediately; concurrent with the beginning stages of the implementation of the new trial court case management system project so the system will automate efficient and effective court processes and its final functionality can be aligned with fully-developed and articulated goals developed by the Branch.**

**Auditee Response:**

*The Judicial Branch agrees in part. The value of strategic planning is addressed in Observation No. 12.*

*The Judicial Branch expects to continue with its present information technology planning process until a Branch-wide strategic plan is developed.*

*Judicial Branch officials acknowledge the value of business process reengineering. One consultant projected the cost of conducting a business process reengineering effort in each of the three levels of established trial court at \$100,000. Budget reductions in recent years and related chronic staff shortages throughout the court system have made it impossible to allocate that sum of money to business process reengineering.*

*The Judicial Branch sought and obtained a grant to hire a consultant to facilitate a business process reengineering initiative in the trial courts. This project will depend heavily on Judicial Branch personnel. When the budget for FY 2004-2005 is finalized and we can project staffing levels in different areas of the Judicial Branch, we expect to meet with the consultant to determine how to proceed with business process reengineering in New Hampshire trial courts.*

*The Judicial Branch has minimized risks identified by the auditors in three respects:*

- We intend to purchase a new case management system that follows the functional standards developed by the Consortium for National Case Management Automation Functional Standards. These standards will position the Judicial Branch within the mainstream of court automation, avoiding inefficient and idiosyncratic case processing practices.*
- We intend to purchase a commercial off-the-shelf product that has been successfully used in other state court systems. Such a general purpose product will allow the NH Judicial*

*Branch to continue its automation efforts within the mainstream of national court automation.*

- *We intend to purchase a case management system that is readily adaptable to the changing needs of New Hampshire trial courts. As efficiencies are discovered in the business process reengineering project, the new case management system will be adapted to take advantage of those efficiencies.*

### Observation No. 3

#### ***Develop A Formalized Systems Development Methodology***

The Judicial Branch has not formally established a systems development methodology. A systems development methodology is a framework for guiding development of IT projects that result in the delivery of properly functioning, documented, and completed systems; and provides for on-going maintenance of these systems. The overall goal is to improve the quality and efficiency of software applications. The methodology provides a control structure for IT projects, whether developing a new system or enhancing an existing system.

The Judicial Branch is currently involved in two major IT projects. One project involves a no bid fixed-price contract worth \$400,000 signed in November 2001 to develop case management system software for the Supreme Court. Phase I of the project was delivered January 2002 as contracted. As of June 2003, phase II of the system remained in the testing phase despite a contracted completion date of May 2002. The second project is the procurement of case management system software for the trial courts that will replace the SUSTAIN case management system implemented in 1990. On March 26, 2003 the Judicial Branch released an RFP for a statewide browser-based case management system for use by the trial courts. The new case management system is intended to support the management information needs of the Judicial Branch and policy makers, as well as make information exchange with other government entities possible. As of June 2003, the AOC was reviewing bids and preparing to contract with a vendor for a new trial court case management system with an estimated cost of \$2 million. Without a formal systems development methodology, IT projects may not be properly focused, may fail to meet deadlines, and may not fulfill user requirements.

During the useful life of the SUSTAIN case management system end-users continually requested special computer procedures and reports that were not part of existing software systems. These requests were handled informally since no formal systems development methodology existed to service these requests. Without a formalized systems development methodology, informal user requests could be misunderstood, lost, or improperly prioritized. In addition, incomplete, improper, and/or untimely software development and implementation could occur.

The IT manager stated no systems development methodology is used because Judicial Branch projects tend to be small and the IT staff is experienced. Policies, procedures, and responsibilities outlined in a formal systems development methodology can help ensure consistent and thorough control is maintained over the IT function; prevent questions and misunderstandings on scope and limits of authority; and provide for appropriate involvement of senior management, IT management, and user management.

**Recommendation:**

**We recommend the IT group within the AOC adopt a formal systems development methodology to guide its IT projects. We also recommend that appropriate memoranda, directives, reports, and signoffs be utilized to provide evidence of adherence to the policies and procedures outlined in the methodology.**

**Auditee Response:**

*The Judicial Branch agrees in part. A simple and streamlined systems development methodology would be helpful and the senior systems analyst/programmer will prepare plans appropriate to different types of Judicial Branch systems development projects. While larger projects may benefit from more formal and elaborate methodologies, many small and routine projects can be accomplished with a more streamlined plan.*

*Because there are no commercial off-the-shelf appellate court case management systems on the market, the AOC contracted with IBM to (1) develop functional specifications for this project and (2) serve as project manager and prime contractor, utilizing a subcontractor which was tasked with adapting an existing case management system to the needs of the New Hampshire Supreme Court. Phase one of this project was delivered on time in January 2002. Delivery of Phase two, consisting of enhancements and refinements of the core application, has been delayed because the subcontractor underestimated the scope of this project. The AOC has allowed significant delays in this project, confident that IBM and the subcontractor will deliver a very useful appellate court case management system and that the delays are justified by the anticipated value of this product.*

**Observation No. 4**

***Develop Information Technology Policies And Procedures***

Policies and procedures are directives from management that identify and communicate preferred practices. The Judicial Branch has no formal policies or procedures governing its IT resources or operations. The Branch's IT manager reported policies sometimes are distributed to staff in letters but did not provide them to the audit team despite requests. Common IT policies and procedures found in organizations include the following general categories:

- acceptable use of computer resources;
- operations and systems responsibility;
- safeguards over data, including data backup and disaster recovery, and media disposal;
- e-mail use and expectation of privacy;
- virus protection and mitigation;
- intellectual property rights;
- security awareness, including remote access;
- incident response and reporting;
- internet use;
- access control and authorization, including password length and complexity;
- network management;
- change management;
- training; and
- use of unauthorized software.

There is not sufficient management concern regarding the development and implementation of policies and procedures. Without comprehensive IT policies and procedures, the Branch cannot effectively communicate required practices to Branch employees, which may expose it to unnecessary operational risks. In addition, the lack of policies and procedures may make it difficult to take disciplinary action against individuals engaging in risky IT practices.

**Recommendation:**

**We recommend the Branch develop and implement comprehensive IT policies and procedures, distribute them to affected personnel, and monitor compliance as appropriate.**

*Auditee Response:*

*The Judicial Branch agrees. Judicial Branch officials recognize the value of formal policies that describe preferred information technology practices.*

*As staff resources permit, the AOC expects to assemble and recommend policies that describe recommended information technology practices in areas not already covered by existing policies such as the New Hampshire Judicial Branch Personnel Rules. The development, monitoring, and updating of policies, methodologies, and plans recommended in this Observation and in Information Technology Observations Numbered 2, 3, and 5 will likely occupy one full-time equivalent technical planner/administrator.*

**Observation No. 5**

***Information Technology Disaster  
Recovery Plan Needed***

The IT group within the AOC has no disaster recovery plan for the Judicial Branch's IT resources. As a result, there is no assurance the organization could respond quickly and efficiently to a variety of potential emergencies or significant disruptions to computer operations. All organizations should have formal, customized strategies for recovery from significant interruptions to IT services.

Local clerks of court are responsible for the nightly backup of data and storing the backup tapes off-site. However, there is no policy regarding where tapes should be stored. According to the IT manager, he would only need the backup tapes and could procure replacement hardware in the event of disaster. In our view, a much more robust plan is necessary. Issues addressed in a typical disaster recovery plan are:

- the type of disasters covered by the plan;
- staff responsibilities;
- description of how systems will operate immediately after a disaster (e.g., manually/alternative computer site);
- list of where information such as backup files, programs, etc., are stored;
- checklists of requirements and supplies for each system where recovery is intended;
- a summary of personnel and third parties who should be contacted when a disaster occurs;

- a summary of what actions are required to re-establish processing capabilities, including the necessary insurance and legal arrangements to fund re-establishment costs, required equipment, software and data file retrieval, vendor support, and minimum staffing levels necessary for operations; and
- a list of critical applications and resources and their priority for re-establishment.

Once such a plan has been developed and distributed to the necessary management and staff and training has taken place, the plan should be regularly reviewed and updated. In order for the plan to remain current and effective, the plan should be updated when changes occur in the information systems processing environment (including software, hardware, personnel, and administration).

The IT manager stated there is no disaster recovery plan because developing one would take time and money.

**Recommendation:**

**We recommend the IT group within the AOC develop and implement a comprehensive IT disaster recovery plan. It should be closely coordinated with the Branch-wide business continuity and contingency plan we recommend in Observation No. 13. We also recommend the Judicial Branch test the disaster recovery plan and revise it periodically.**

*Auditee Response:*

*The Judicial Branch agrees. The AOC expects to prepare and recommend an Information Technology Disaster Recovery Plan in connection with the development of the Judicial Branch Disaster Recovery Plan.*

**Observation No. 6**

***Evaluate Network Design And Operations***

The Judicial Branch uses the State Police computer network as a wide area network (WAN) connecting each local courthouse to the AOC. The WAN provides connectivity for e-mail service and access to the Branch's intranet. Each court location uses a LAN to provide employees access to the local server containing the SUSTAIN case management system and other data files.

Each LAN in the 66 court locations around the State is managed by the local clerk of court. Each clerk of court is responsible for establishing user accounts for SUSTAIN, determining access rights for groups and individuals, and revoking user access credentials to applications from employees who separate from State service. The IT group located at the AOC sets up user accounts for access to the WAN. We noted the following issues related to the Judicial Branch's current network design and operations:

- The IT manager could not tell us whether user accounts in the local courthouses are discontinued upon employee termination. Best practices indicate user accounts should be established and revoked by the IT group within the AOC. The personnel office should

initiate the process upon change in employment status. The court clerk should then approve new users and forward his/her approval to the IT group who actually creates the account. The personnel office should forward terminations directly and immediately to the IT group.

- Potential intrusions and unauthorized access attempts are not monitored. The IT manager stated there was no need to monitor intrusion or access attempts because the network is managed by the State Police. Considering the importance and sensitivity of court data, intrusion detection and unauthorized access attempts should be monitored and acted upon.
- There is no current network map showing the network boundaries and methods of access. A network map is a tool from which an assessment of network security can begin. Information technology groups should have a current network map readily available.

The Judicial Branch is currently embarking on the purchase of a new case management system. It is an ideal time to assess whether the current network design is desirable and efficient. A centralized network could be beneficial because it would allow standards, such as password length and complexity, to be enforced across the organization and it would alleviate the burden for the local clerks of court for management tasks unrelated to their primary responsibilities.

### **Recommendation:**

**We recommend the AOC ensure the IT group assess whether the current decentralized organization and management of the trial court's computer systems will meet the needs of the new case management system and the trial court's IT needs. We also recommend the IT group map its current network topology, including all access points and identifying access method, and monitor the network for unauthorized users and attempted access. Further, the AOC should consider appointing an individual from within the IT group as a security officer.**

### **Auditee Response:**

*The Judicial Branch agrees in part. The AOC's request for proposals (issued March 26, 2003) for a new case management system specifies that the case management system will operate in a centralized system. The present network was designed in the late 1980s, conforms to standards of that era, and is now obsolete. Funding constraints have prevented the Judicial Branch from moving to a more modern and centralized architecture.*

*The present network topology is relatively simple; a map is unnecessary. The information technology team is presently designing a new LAN for the Supreme Court and the AOC; we expect to draw a diagram of the new structure. Likewise, we expect to draw a diagram of our network system when the information technology team and the vendor of the new case management system have finished preliminary design work.*

*The AOC Senior Systems Analyst/Programmer expects to appoint an information technology security officer who will monitor unauthorized access attempts.*

*The Observation suggests a higher level of vulnerability to unauthorized intrusion than actually exists in the Judicial Branch network architecture. The Judicial Branch network is appropriately secured from the outside world by firewalls and other security measures.*

*As the Judicial Branch moves towards a centralized computer architecture, the AOC information technology staff expects to consider a degree of centralization appropriate to the decisions, and actions, related to access to Judicial Branch information systems.*

**Observation No. 7**

***Employ Procedures Ensuring Dates In The SUSTAIN Case Management System Are Accurate***

Our file review to determine the accuracy of dates in SUSTAIN revealed some filing and disposition dates were inaccurate and some filing dates could not be verified. Additionally, we found instances where the year on the docket number did not match the year the case was filed. It is imperative for SUSTAIN to capture accurate dates in order for the Judicial Branch to effectively manage its caseload.

To verify docketing data in SUSTAIN were accurate, we generated a random sample of 720 trial court case files to review. During our file review, we found some filing dates and disposition dates in the case management system were inaccurate. Of 720 filing dates checked, 75 cases (ten percent) were inaccurate when compared to the actual case files and another 74 cases (ten percent) could not be verified. However, upon further examination we found 96 percent of the filing dates and 95 percent of the disposition dates in SUSTAIN were within one week of the date recorded in the case file. The majority of the cases that could not be verified (88 percent) were from the District Courts and many were complaints filed by local police departments.

Court clerks reported police departments deliver complaints to the court and are not always timely with their submission. Some police departments, especially those that are not in the same town as the court, hold the complaints until they have enough to warrant a trip to the court. Clerks reported many courts do not date-stamp these complaints when they receive them. Although personnel at various court locations reported they have started to date-stamp complaints, we found this practice to be inconsistent among the court locations. The date court staff enter the complaint into SUSTAIN is considered the filing date. According to the clerks, complaints are usually entered into SUSTAIN the day they arrive at the court or the following day.

Of the 720 disposition dates checked during the file review, 89 cases (12 percent) did not match the date in the case file and an additional 11 dates (two percent) could not be verified. Logically, the disposition date should not pre-date the filing date because it would mean the case was disposed before it was filed in the court. In databases we received in September 2002, which contained 1,310,118 cases, we found 633 instances in the Superior Court where the disposition date pre-dates the filing date, as well as 7,557 instances in the District Court, 70 instances in the Probate Court, and 105 instances in the Family Division Pilot Project. Additionally, we found



instances where the disposition occurs in the future. According to our analysis, 18 cases in the Superior Court were disposed between 2003 and 2010, nine Probate Court cases were disposed between 2005 and 2011, five Family Division Pilot Project cases were disposed between 2003 and 2019, and 160 District Court cases were disposed between 2003 and 2019.

Docketing information is organized so the docket number includes the year the case was filed. During our analysis, we found 209 instances in the District Court, 607 instances in the Superior Court, 299 instances in the Probate Court, and 100 instances in the Family Division Pilot Project where the docket number year did not match the year the case was filed. Many of these instances occurred during the first few months after the start of a new calendar year. Data entry mistakes can be made when the filing date or the docket numbers are entered into SUSTAIN, especially in the first few months after the start of a new calendar year. Our analysis of the data revealed that in 102 instances in the Superior Court, 104 instances in the District Court, 111 instances in the Probate Court, and 31 instances in the Family Division Pilot Project, the mistakes were within the first three months of a new calendar year. According to personnel at the AOC, the year in the filing date should always match the year in the docket number.

The American Bar Association (ABA) states courts should have a system to furnish prompt and reliable information concerning the status of cases and case processing. According to the NCSC, the court's information and management reports must be accurate and allow the court to assess its performance compared to its standards and goals. Court managers should periodically audit the accuracy of data entry and supervisors should review audit findings with the staff.

Inaccurate data limits the court's ability to properly monitor caseflow management guidelines or produce management reports that could assist them in managing their caseload.

**Recommendation:**

**We recommend the Judicial Branch establish a Branch-wide policy to date-stamp all case filings including complaints from police departments. The Judicial Branch should also ensure this policy is consistently followed.**

**We also recommend the Judicial Branch ensure the new case management system has the ability to test data entered for reasonableness when compared to data in other fields specific to that case. The system should then be able to generate error messages to warn staff if a date appears illogical compared to other dates pertinent to the case. Error messages should appear when the filing date entered does not match the year in the system's internal calendar. Additionally, error messages should appear if the disposition date seems unreasonable compared to the filing date.**

**Finally, we recommend the Judicial Branch conduct periodic audits of docketing information to ensure it is accurate and reliable for management purposes.**

Auditee Response:

*The Judicial Branch agrees in part. Superior Courts and Probate Courts date-stamp all pleadings filed. District Court officials are reviewing the feasibility of requiring that all pleadings be date-stamped.*

*As called for in the request for proposals issued March 26, 2003, the new case management system will verify the reasonableness of dates entered and notify users of illogical dates.*

*Judicial Branch officials recognize the value of periodic audits of data reliability. Unfortunately, one of three internal auditor positions is presently vacant. The remaining auditors direct substantially all of their time to financial issues. Without funds necessary to fill the vacant court auditor position, it is unrealistic to expect the depleted audit group to expand their activities. If the Legislature appropriates funds for the statistician referred to in Observation No. 26, that person could assist auditors in monitoring data reliability by planning and producing reports of apparent data entry errors. The appropriation to the Judicial Branch has been insufficient to employ enough court data entry personnel to timely process pleadings, notices, and court orders. It would be unwise to allocate scarce clerical staff time to the review of data reliability reports; this task would only interfere with efforts to timely process current documents. The resultant delays would cause only pain and inconvenience to litigants.*

*The Observation purports to document errors in SUSTAIN docketing data. Often "illogical" dates are entered in an effort to adapt SUSTAIN to particular needs. For example, Probate Court personnel purposely enter old wills, as a group, in a single year in order to maintain a convenient alphabetic reference to those documents. In addition, some case files that did exist when SUSTAIN was introduced to the Probate Courts have been subsequently entered into SUSTAIN, without entering case history information from the date of case filing to the present. Many other Probate Court case types follow the same pattern. That is, old cases are brought forward and entered into SUSTAIN years after the original case filing. It would appear that the actual case filing date and the case filing date recorded in SUSTAIN did not agree. However, trained court personnel understand how we have used our obsolete case management system and recognize that although these dates may be illogical, there was a method behind the entry of those dates.*

*The Observation purports to document errors made by District Court clerical staff in the entry of docketing information into SUSTAIN. Many of these errors are easily explained. For example, the auditors report of 7,557 District Court disposition dates that pre-date the filing dates include many domestic violence orders and search warrant orders that were acted on by a judge outside of the usual hours of court operation. When the orders are actually entered into SUSTAIN one or two days later, it may appear that the court record includes docketing errors. That is not the case; instead, court staff in fact enter some cases after judicial activity has occurred.*

*AOC staff considered modifying SUSTAIN in order to address some of the anomalies noted in this Observation and decided not to invest resources in this area for three reasons:*

1. We "capped" further development of SUSTAIN, in anticipation of a new docketing system;
2. Severe shortages of trial court staff make it impossible to invest clerical staff in activities that contribute nothing to the disposition of cases; and
3. We lacked sufficient AOC staff time to support trial court staff in implementing and monitoring changes in data entry.

*In light of the Judicial Branch dependence on an obsolete, DOS-based case management system, and in light of chronic staff shortages, and in light of the fact that most of the anomalies noted by the auditors are explainable, the performance of the trial courts in entering data into SUSTAIN is excellent.*

**Observation No. 8**

***Ensure The Supreme Court Has An Effective Electronic Case Management System To Properly Manage Its Caseload***

During the audit period, 5,036 appeals were filed at the Supreme Court. During this period the Supreme Court did not have an electronic case management system that could readily produce useful reports for management purposes. The Supreme Court tracked case information in Excel spreadsheets and Word documents. The Excel spreadsheets contained fields for the docket number, case name, filing date, court action, court appealed from, and closing date, as well as intermediate steps in the appellate process such as dates related to screening, ordering and filing the transcript, filing briefs, oral arguments, and decision. The tracking spreadsheets were reportedly created and maintained to track the file as it traveled through the Court. They were not used for tracking case processing time from filing to disposition and were not used for gathering statistical information. Supreme Court personnel reported some case information and formulas in the spreadsheets may be incomplete and inaccurate because staff entered data into the spreadsheets as time allowed. Our review of the data contained in these spreadsheets demonstrated some dates for intermediate steps in the appellate process were incomplete and other pertinent case information was also incomplete. In addition to the spreadsheets, the Court maintained docket cards in a Word document for each case filed. However these docket cards could not be used to compile statistical data. Court staff manually counted case information to compile statistical data.

The Supreme Court purchased a case management system during calendar year 2001. Phase I was delivered January 2002 as contracted. As of June 2003, phase II was still in the testing phase and was not capable of compiling docket statistics despite a contracted completion date of May 2002.

The ABA states courts should have a system to furnish prompt and reliable information concerning the status of cases and case processing. According to the NCSC, a court's information and management reports must be accurate and allow the court to assess its performance compared to its standards and goals. Insufficient data limits the court's ability to properly monitor caseload management guidelines or produce management reports that could

assist them in managing their caseload. Additionally, court managers should periodically audit the accuracy of data entry and supervisors should review audit findings with the staff.

**Recommendation:**

**We recommend the Supreme Court ensure all relevant dates are captured and entered into the new case management system. We also recommend the Supreme Court conduct periodic audits of docketing information to ensure it is accurate, reliable, and serves management purposes.**

**Auditee Response:**

*The Judicial Branch agrees with the recommendation that all relevant dates be captured and entered into the Supreme Court's new case management system. In fact, the system does accomplish this result. Regarding periodic audits of Supreme Court docket information, the docket is reviewed monthly. While not an audit in the traditional sense, the monthly docket review does help ensure the accuracy and reliability of the docket data. Over the years, the Supreme Court's docket data has proved to be accurate and reliable. Nevertheless, if the audit division of the AOC had sufficient staff to perform periodic audits of docket data, the Supreme Court would welcome such audits as a further effort to ensure accuracy and reliability of docket data.*

*The Observation is correct in stating that courts should have a system to furnish information concerning case status and processing. During the audit period, the Supreme Court had an information system. Individual case information has been kept on docket cards which through 2001 were on a word processing document and since then has been part of the first phase of the court's new case management system. From the docket information, various reports were compiled and distributed. These include screening reports, which told the justices what screening was outstanding; transcript tracking reports, which reported on the status of all outstanding transcripts; the fully briefed list, which provided a list of all the cases fully briefed and awaiting scheduling for oral argument; status lists kept of cases awaiting opinion both on a full court and individual justice basis and shown by age since submission of the case to the court; and finally, the list of cases pending reconsideration and rehearing. In addition, as mentioned above, the docket was monitored monthly in conjunction with the preparation of the oral argument calendar.*

*All of the above-mentioned reports are based on complete and accurate data entered in the court's docketing system. The management reports generated from that data have given the court staff and justices reliable and timely information on case status and processing. Moreover, since Volume 139 of the New Hampshire Reports, beginning on September 21, 1994, the Supreme Court has provided the public with aggregate statistics on the number of case filings and disposition and the manner of those dispositions. See e.g., 139 NH at xv. Also, for cases filed since January 1, 2002, the court has published the case status information on a quarterly basis as required by RSA 490:8-a, enacted by the 2001 Legislature.*

Finally, this Observation mentions the delayed implementation of the Supreme Court's automated case management system. The first phase of the system was delivered on time. The enhancements of the second phase are what have been delayed. A subcontractor grossly underestimated the complexity and cost of enhancements to the core elements of the case management system. The decision of the Judicial Branch to delay delivery of enhancements is justified by the likelihood a very useful product will soon be delivered.

#### Observation No. 9

***Ensure The New Case Management System Is Capable Of Tracking Statutory Compliance For Certain Probate Court And Family Division Cases***

The SUSTAIN case management system used by the courts does not fully support the information and reporting needs of the Probate Courts and the Family Division Pilot Project. Because of these shortcomings, the courts are unable to extract reliable and accurate information to monitor compliance with

time standards established in statutes or caseflow management guidelines.

#### Probate Courts

The Probate Courts currently do not have the ability to track and monitor compliance with caseflow management guidelines. These guidelines provide timeframes for events occurring between filing and disposition. SUSTAIN is able to track events such as case filing dates, as well as dates for guardianship, fiduciary, or other appointments. However, it does not have the ability to adequately track intermediate hearings (known as scheduled events), which are entered into the scheduled event screen. The primary function of the screen is to produce hearing notices. Scheduled event information can be monitored on a case-by-case basis by reviewing case history or reviewing the file and checking to see if a hearing has been scheduled. It can also be accessed for a group of cases by using the browse function or calendar functions allowing the user to view scheduled hearings by date, time, court, or judge.

According to Judicial Branch personnel, information in the scheduled event screens cannot be used to monitor compliance with caseflow management guidelines. This is reportedly because SUSTAIN lacks the ability to differentiate whether the scheduled event has occurred or if it was continued to another date. SUSTAIN also reportedly does not have the ability to distinguish between multiple events, such as guardian and temporary guardian appointments, and corresponding hearings. For instance, if a guardian is appointed and the case requires a temporary guardian, the separate sets of hearings cannot be differentiated.

According to the Probate Court coordinator, registers use a case status report to ensure cases are not overlooked. The case status report identifies cases that have no future scheduled event or time standard, a date calculated by SUSTAIN to identify when annual reports, accounts, and other annual filings are due.

Family Division Pilot Project

The Family Division Pilot Project reportedly follows timelines established in statute for juvenile cases. However, it does not have the ability to monitor its juvenile caseload for compliance with timelines established in RSA 169-B and 169-D.

SUSTAIN is able to track case events such as case filing and disposition, as well as the date of the charge. It does not have the ability to adequately track dates for scheduled events such as arraignments, adjudicatory hearings, and dispositional hearings. These hearings are also entered into a “scheduled event screen” to generate notices.

The Family Division Pilot Project does not have the ability to check its entire caseload for compliance with statutory timeframes. According to the Family Division Pilot Project administrator, the pilot project has the ability to monitor compliance on a case-by-case basis by checking time standards entered when the case is filed. Time standards are triggered when motions or documents are filed and generate a date for when the next event should occur or document should be filed. The Family Division Pilot Project has the ability to monitor cases not meeting time standards through exception reporting, however it reportedly no longer runs exception reports due to lack of staffing. The Family Division Pilot Project also checks cases for non-compliance with statutory timeframes by examining how many cases have filed continuances or waivers of time standards for speedy trial and adjudicatory hearings.

According to the NCSC’s *Caseflow Management*, successful caseflow management requires courts continually measure their actual performance against their goals. According to the ABA’s *Standards Relating to Trial Courts*, timely disposition standards are important management tools for evaluating court performance, as well as ultimate and measurable objectives for court system planning. Additionally, the ABA states courts should have a system to furnish prompt and reliable information concerning the status of cases and case processing as part of a delay reduction program. Using this information, the court should continually monitor and report caseflow results.

Without a method to adequately track case events, Family Division Pilot Project management cannot monitor the court’s juvenile caseload for compliance with statutory requirements. Without a method to adequately track case events, Probate Court management cannot determine compliance with case processing timelines nor can it monitor the court’s caseload for compliance with statutory requirements. As a result, the Probate Courts and the Family Division Pilot Project risk failing to meet statutory requirements for these cases. Additionally, without monitoring compliance with goals, the Probate Courts and the Family Division Pilot Project cannot institute corrective measures to ensure compliance with statutory requirements.

**Recommendations:**

**We recommend the Probate Court ensure the new case management system currently being acquired by the Judicial Branch has the ability to capture intermediate case events to allow it to monitor compliance with its case management timelines. Likewise, we also recommend the Family Division Pilot Project ensure the new case management system has**

**the ability to capture intermediate case events to allow it to monitor compliance with RSAs 169-B and 169-D.**

*Auditee Response:*

*The Judicial Branch agrees. On March 26, 2003, the Judicial Branch issued a request for proposals for a trial court case management system. Included with the request was Appendix A, which detailed the functional and non-functional requirements of the system. Section 4.3 of that appendix lists case monitoring requirements. Those requirements will allow the Probate Court to track intermediate hearings and to distinguish between different types of events and the Family Division Pilot Project to monitor its juvenile caseload for compliance with statutory timelines. Specifically, requirement 4.3.60 establishes that the system must have the ability to create and assign time standards at event and case levels. The response to the request for proposals of the company with which the Judicial Branch is negotiating a final contract for the case management system states that its system will meet this requirement.*

**Observation No. 10**

***Review Internet Access***

The Judicial Branch should review how the Internet is accessed from its trial court locations and the security of its Internet connections and equipment.

The Branch provides Internet access only to personnel physically located at the Supreme Court and AOC buildings on Noble Drive in Concord. Employees located in the AOC and Supreme Court receive Internet access via the New Hampshire Statewide Unified Network. The connection is a T1 line.

The Branch provides no Internet access to court employees located outside the Supreme Court and AOC. However, ten of 57 judges and marital masters and four of 39 clerks and registers responding to the survey question stated they use their own personal accounts to access the Internet from the court for court purposes. One clerk we spoke to dials into his personal Internet service provider from court and sees access to the Internet as a necessity because he believes his court should keep up with recent events and court practices in other states. The clerk also reported being asked by the judges to look up information on the Internet. As noted in Observation No. 4, the Branch has no Internet use policy despite use by court personnel.

Reportedly, the Supreme Court has not decided whether employees should be given Internet access or how it should be provided. According to the IT manager the Branch has no plans to offer additional employees Internet access because the State Police Online Telecommunications System used by the trial court locations as its WAN is owned and managed by the State Police and federal security requirements reportedly prohibit Internet access over the State Police network.

**Recommendation:**

**We recommend the Judicial Branch formally determine whether the Internet is necessary for its employees to carry out their assigned duties. The Branch should decide which**

**employees need Internet access to fulfill their assigned duties, and if necessary, how to deploy secure Internet access to those employees. If the Branch decides its employees do not need Internet access, it should develop policies to prohibit the use of personal Internet accounts from the courts.**

Auditee Response:

*The Judicial Branch agrees. Internet resources are increasingly valuable to judges and court staff. The AOC expects to ask the Court Technology Committee to recommend criteria for determining which judges and employees should have access to the Internet.*

*The Legislature has not provided sufficient funds to support trial court Internet access and the related requisite firewalls. The Judicial Branch has relied on the SPOTS Network to provide e-mail functionality to all Judicial Branch employees. Once we have identified those judges and employees who should have Internet access, the Judicial Branch expects to determine the cost of providing and supporting secure Internet access at appropriate court sites. The Judicial Branch expects to make a request for a general fund appropriation to implement this recommendation.*

*The AOC internal auditor expects to propose procedures by which auditors may determine whether judges and employees are using unauthorized modems or inappropriately accessing the Internet.*



**STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH ADMINISTRATION  
ADMINISTRATIVE FUNCTIONS**

The Administrative Office of the Courts (AOC) performs centralized functions that are essential to all courts and functions that depend on specialized knowledge or expertise. The AOC provides accounting, auditing, personnel management, information technology management, and fiscal management.

The AOC was the only administrative office in the Judicial Branch prior to Supreme Court Administrative Order 90-02 in 1990, which created the Administrative Council and established administrative judge positions for the Supreme, Probate, and District Courts. Supreme Court Rule 54, which superseded Administrative Order 90-02 in 1992, gives trial court administrative judges broad responsibilities concerning the management of judicial and non-judicial personnel, as well as budgeting and caseload management. The offices of the administrative judges assumed certain responsibilities from the AOC, and some of the AOC's court services representatives, who had previously served as generalists in trial court functions and undertook special projects within the trial courts, were transferred to those offices. As a result, responsibilities such as developing and maintaining weighted caseload systems and coordinating education and training are shared between the trial court administrative judge's offices and the AOC.

The Administrative Council, which consists of the administrative judges, a Supreme Court associate justice, and the director of the AOC, serves as a forum for trial court management to communicate with each other and with the Supreme Court. The Administrative Council also acts as an advisor to the Supreme Court, relying on the theory that issues of concern will "bubble up" to the Supreme Court through the Council. According to one administrative judge, administrative responsibilities frequently shift among the Administrative Council, the administrative judges, and the Supreme Court.

*Superior Court Administration*

The Chief Justice of the Superior Court currently serves as the Superior Court's administrative judge. The Chief Justice's staff includes an executive assistant, two secretaries, a receptionist, a court coordinator, and the secretary to the Sentence Review Division, who also participates in projects for the Chief Justice. Two floating court monitors are also assigned to the office, but work at the various court locations. The Office of the Chief Justice (also known as the Superior Court Center) performs other administrative functions in addition to those specified in Supreme Court Rule 54, which include coordinating judicial education for the Superior Court, scheduling floating court monitors and court reporters, and certifying court reporters and transcriptionists.

*District Court Administration*

The District Court administrative judge's office staff includes an office administrator, a secretary, a transcript coordinator, and six floating clerks that fill in at court locations. In addition to carrying out the duties of the administrative judge specified in Supreme Court Rule 54, the District Court administrative judge's office: 1) develops continuing education programs for District Court judges and staff; 2) develops weighted caseload systems for the District Court; 3)

coordinates transcription for District and Probate Courts, and the Family Division Pilot Project; 4) manages grants; and 5) performs other administrative functions specific to the District Courts.

District Court regional administrators supervise all activities of District Court clerks. One District Court regional administrator supervises special projects for the District Courts and oversees four court locations. Another regional administrator supervises 20 court locations and also serves as the Branch's security manager. The third regional administrator oversees 12 court locations. District Court regional administrators also assist the administrative judge with administrative duties such as case processing studies, management reviews, and human resources management.

#### *Probate Court Administration*

The Probate Court administrative judge's office staff includes an executive secretary, staff attorney, and the Probate Court administrative coordinator. A floating court assistant position in the office has been left vacant. The office also utilizes the deputy clerk of the Rockingham Probate Court. In addition to carrying out the administrative judge's duties stipulated by Supreme Court Rule 54, the office also monitors national probate court trends, coordinates Probate Court-specific education for judges and staff, develops procedures and rules manuals for the Probate Court, and performs other administrative functions specific to the Probate Court.

The Probate Court administrative coordinator works at the AOC. The administrative coordinator previously served as a court services representative on activities related to all trial courts, but was transferred to the Probate Courts with the advent of the administrative judge's office. The administrative judge believed the administrative coordinator could be part of AOC decision-making by remaining at the AOC. The administrative coordinator organizes Probate Court activities, conducts special projects for the Probate Court administrative judge, and handles Probate Court personnel issues.

#### *Family Division Pilot Project Administration*

The Family Division Pilot Project has two supervisory judges and an administrator accountable to the AOC director. The administrator is the top administrative official of the Family Division Pilot Project. In addition, a Family Division Pilot Project coordinator is assigned to each county in which the Family Division Pilot Project operates to oversee efficient and timely case processing, monitor customer service, and provide technical assistance. The Family Division Pilot Project does not maintain its own administrative office; its administrator is located at the AOC.

The remainder of this chapter presents our observations related to administrative functions.

**Observation No. 11**

***Establish The AOC And Define Its Responsibilities In Statute***

No statute or court rule establishes the AOC or defines its responsibilities. As a result, the trial court administrative offices have increasingly assumed responsibility for some aspects of certain administrative functions from the AOC, such as personnel management, judicial and non-judicial education, grant administration, and private sector transcriptionist certification. This creates inefficiency and ambiguity regarding administrative responsibility.

The Supreme Court's long-range planning task force, which was established by Supreme Court Order in 1989, noted clear authority is necessary for the AOC to be effective. According to *The Report of the New Hampshire Supreme Court Long-Range Planning Task Force*:

The specific duties and responsibilities of the AOC and any other administrative function within the Judicial Branch must be clearly articulated and effectively communicated to all persons who are affected by or have contact with the administrative and support services group. Unless both the administrators and those served by the administrators have a clear understanding of the respective roles of each, the likelihood of misunderstanding and a consequent impairment of effective working relationships is increased.

According to the American Bar Association's (ABA) *Standards Relating to Court Organization*, clearly established lines of administrative authority should exist, and the duties and responsibilities of court administrators should be specified. New Hampshire is presently the only New England state where the court's administrative office is not established in statute. Further, responsibilities of the court administrator or court administrative office are also specified in statute in Rhode Island, Connecticut, Maine, and Massachusetts. In Vermont, the court administrator's responsibilities are established by court order.

**Recommendation:**

**We recommend the Legislature consider formally establishing the AOC and defining its responsibilities in statute.**

**Auditee Response:**

*The Judicial Branch agrees in part. The Supreme Court established the Administrative Office of the Courts. It recognizes the value of more clearly defining the responsibilities and authority of the Administrative Office of the Courts. The Supreme Court will promulgate a rule that more clearly defines the responsibility and authority of the Administrative Office of the Courts.*

**Observation No. 12**

***Develop And Implement A Strategic Planning Process***

The Judicial Branch is not currently using an up-to-date strategic plan to assist with its operations or to prioritize its efforts. The last strategic plan was issued in 1990 when the Supreme Court commissioned a long-range planning task force to recommend

a vision for the Branch. Since 1990, no formal Branch-wide planning has been conducted. Two studies conducted by the National Center for State Courts (NCSC), one in March 1999 related to information technology planning and the other in March 2002 concerning the Supreme Court's operations, commented on the need for strategic planning.

Strategic plans must be continually reviewed and updated to reflect the current internal and external environment to remain effective. A monograph produced by the Colorado Center for Public Policy Studies, with support of the State Justice Institute, cites the following benefits of court strategic planning: 1) improves performance and accountability; 2) provides a rationale for making budget, operational, and other management decisions; 3) helps to identify and support the need for additional resources; 4) initiates internal and external dialogue; 5) identifies long-term priorities; 6) provides focus; 7) establishes a common understanding of issues among judges and other court officials and enables them to work towards common goals; 8) enhances relationships with external parties, community groups, and the public; 9) educates external parties about the court system; and 10) involves many internal people in determining the court's long-term direction and in making organizational improvements.

Without a strategic planning process, Branch operations may not be as efficient and effective as possible. In the absence of clearly articulated goals, and a process to unify and balance goals and resources, it is unclear how the Branch has prioritized its efforts.

**Recommendation:**

**We recommend the Branch implement a strategic planning process resulting in comprehensive, long- and short-term plans. In addition, the Branch should take steps to continually update the plans on a regular basis.**

*Auditee Response*

*The Judicial Branch agrees. Judicial Branch officials recognize the value of the strategic planning process. In fact, in 1990, the Supreme Court adopted a comprehensive Judicial Branch strategic plan and since then judges and court officials have worked diligently to implement the provisions of that plan.*

*Judicial Branch officials have discussed with various individuals outside the Judicial Branch the prospect of leading a Judicial Branch planning process. None has been able to commit the time necessary to ensure the success of a project of this magnitude, on a voluntary basis.*

*Judicial Branch officials are discussing funding, staffing, and leadership issues related to a Judicial Branch planning process with representatives of a private foundation. Those discussions will continue.*

*A comprehensive and useful Judicial Branch strategic plan will depend on the commitment of Legislative and Executive Branch leaders to participate in the planning process and cooperate in the execution of a plan, especially if the plan involves statutory changes and additional funding.*

While not involving comprehensive planning, there have been efforts during the audit period at long range planning in specific areas. An example of this is the "Red Jacket" conference on the appellate system organized by the New Hampshire Bar Association in 1999, which was followed by a Legislative study commission on Appellate System Reform. See Laws of 2001, Chapter 159. Other examples include the Pro Se Task Force and a public access committee which has studied issues regarding access to Judicial Branch information in the electronic age; the District Court Juvenile Justice Task Force of 1996, involving Legislators, members of the public, Executive Branch agencies, and judges and employees of the District Courts; the Court Improvement Project conducted by the District and Probate Courts to plan and improve practices in child abuse, neglect, and termination of parental rights cases; participation in the "9-11 Summit: Courts in the Aftermath of September 11," including the planning and training related to anti-terrorism; and a 1997 "Red Jacket" planning conference on "Family Court: Criteria for Evaluation."

**Observation No. 13**

***Develop A Continuity And Contingency Plan***

The Judicial Branch lacks a continuity and contingency plan that would enable it to quickly recover from the effects of damage caused by unexpected and undesirable events. Judicial Branch management initiated but has not completed a continuity and contingency planning process during 2003. However, the Branch operated without a continuity and contingency plan during the audit period.

The development of a continuity and contingency plan identifies essential court functions and establishes backup operation procedures. In general, the primary objectives of a continuity and contingency plan are to:

- provide the Judicial Branch with a tested process which, when executed, will permit an efficient, timely resumption of interrupted operations;
- ensure the continuity of the Judicial Branch's functions;
- minimize the inconvenience and potential disruption to citizens who must access the courts; and
- minimize the negative impact to the Judicial Branch's public image.

The most important task an organization can undertake to mitigate damage from unforeseen circumstances is to plan ahead. Continuity and contingency planning is especially important for courts because court operations are essential to an orderly society. In addition, because statutes and court rules establish time limits for many court actions, it is particularly important to eliminate delay caused by disasters or other interruptions in normal operations. According to the National Association for Court Management's *Disaster Recovery Planning for Courts: A Guide to Business Continuity Planning*, a court with a continuity and contingency plan is more likely to serve its community through a crisis, and will recover its information systems and resume its critical services faster than a court caught unprepared.

**Recommendation:**

**The Judicial Branch should complete and implement its continuity and contingency plan as soon as possible. Staff should be trained to implement those aspects of the plan for which they are responsible, the plan should be tested and rehearsed, and procedures should be established to ensure the plan is updated annually. Judicial Branch management should determine if one continuity and contingency plan will cover issues specific to court locations, or if each court location will produce a supporting plan that addresses location-specific issues.**

*Auditee Response:*

*The Judicial Branch agrees in part. The Judicial Branch has in place emergency and contingency plans related to circumstances such as Hostage Taking, Natural Disasters, Bomb Threats, Power/Utility Failures, and Fire and Medical Emergencies. Those procedures are set out in the New Hampshire Judicial Branch Court Security Officer Manual which has been distributed to all Judicial Branch court facilities. In addition, a Desk Side Quick-Reference Guide to emergencies has been distributed to all judges and employees. Finally, every court site has a written court evacuation plan.*

*An associate justice of the Supreme Court attended a conference on "Bio-Terrorism, Biological Attack and the Courts" on January 17-29, 2002 hosted by the Einstein Institute for Science, Health and the Courts and the Lawrence Livermore National Laboratory. That conference led to development of enhanced safety precautions at the Supreme Court and the AOC and was the impetus for the training that began in June 2002, as discussed below.*

*Beginning in June 2002, the Judicial Branch, in coordination with the New Hampshire Emergency Management Office provided Terrorism Response Training to all court employees at eight court sites. The training included definitions of types of terrorism, safety precautions, and management control of terrorist incidents.*

*An associate justice of the Supreme Court and the AOC security manager attended the national conference "9-11 Summit: Courts in the Aftermath of September 11" on September 25-27, 2002, to examine best practices in court planning and response to terrorist acts. Based in part on information learned at that conference, the AOC is presently leading a committee of representatives of each level of court in the development of a Judicial Branch Business Continuity Plan that will be more comprehensive and less specific than the contingency plans already developed. HB 217 relative to emergency powers of the Supreme Court, was introduced in the 2003 Legislative session, sponsored by Representative O'Neil at the request of County Attorney James Reams, and retained in the House Judiciary Committee. If this bill becomes law, it will be helpful to this effort.*

*Chapter 257 of the Laws of 2002 creates the Governor's Advisory Council on Emergency Preparedness and Security. That statute excludes Judicial Branch officials from participation; the Judicial Branch expects to request that the Judicial Branch of state government be permitted to participate in the Governor's Advisory Council.*

**Observation No. 14**

***Repeal Statutes Authorizing  
Payments For Commuting To Work***

Supreme Court and Superior Court justices, marital masters, and court reporters receive payments for expenses incurred while traveling to and from work, primarily in the form of private vehicle mileage. From our analysis of Judicial Branch payroll information for SFY 2002, it appears one Superior Court justice's payments were inappropriately processed as non-taxable, and six marital masters received payments for travel to and from work who are specifically prohibited by court rule from receiving such payments. In addition, we question the sensibility of laws allowing Judicial Branch employees to receive payment for travel between their home and primary place of business.

Supreme Court justices are entitled to actual personal expenses and reimbursements pursuant to RSA 490:18 and Superior Court Justices are entitled to the same pursuant to RSA 491:6-a. Supreme Court justices have been reimbursed for travel expenses since 1901; Superior Court justices since 1913. Court reporters are allowed actual expense reimbursement pursuant to RSA 519:29 as well as Superior Court Administrative Rule 3-10. Since 1911, RSA 519:29 has authorized court reporters to receive reimbursement for travel expenses. According to Superior Court Administrative Rule 12-15, marital masters not on circuit are not entitled to reimbursement for mileage not associated with an overnight stay on court business, although marital masters who must travel to various courthouses (i.e., those who are "on circuit") are entitled to mileage reimbursement.

According to federal Internal Revenue Service (IRS) regulation 26 CFR 1.62-2, pay for travel from an employee's home to the employee's primary place of business (i.e., regular work location) must be included in the employee's gross income and reported on IRS Form W-2, and is subject to withholding and payment of employment taxes. Pay for travel to locations other than an employee's primary place of business can be excluded from the employee's gross income and is exempt from IRS Form W-2 reporting, withholding, and employment taxes. The State may be liable for financial penalties if the Judicial Branch does not comply with IRS regulations.

*Superior Court Travel Pay*

Supreme Court Administrative Order 93-2 informs Superior Court justices entitled to reimbursement for expenses pursuant to RSA 491:6-a that mileage payments for travel to a principal place of business must be included in gross income for tax purposes, and mileage reimbursement for travel away from that principal location need not be included in gross income. The order directs Superior Court justices to annually certify their principal place of business within the meaning of the IRS code to the manager of operations at the AOC, although criteria for determining a principal place of business are not included. Similarly, Supreme Court Administrative Order 93-3 informs court reporters entitled to reimbursement for expenses of the tax status of travel payments. Although no administrative order pertains to marital master's mileage reimbursements, a memorandum dated March 11, 2003 from the Chief Justice of the Superior Court reminds Superior Court justices, court reporters, and marital masters of the taxability of mileage reimbursements and requires them to annually certify their principal place of business.

Our analysis of Judicial Branch payroll information for SFY 2002 showed: 1) 29 Superior Court justices received a total of \$127,850 in travel payments; \$89,404 was reported as taxable payments for commuting mileage and \$38,446 was reported as non-taxable reimbursements; 2) 19 court reporters received a total of \$47,822 in travel payments; \$36,181 was taxable payments for commuting mileage and \$11,641 was non-taxable reimbursements; and 3) ten marital masters received \$33,704 in travel payments; \$13,584 was taxable payments for commuting mileage and \$20,120 was non-taxable reimbursements. It is important to note we do not question non-taxable mileage reimbursements made for work-related activities, such as meetings.

Although most Superior Court justices, marital masters, and court reporters appeared to receive travel pay in accordance with IRS regulation 26 CFR 1.62-2, one Superior Court justice was not taxed on \$1,722 of mileage payments during SFY 2002, although the justice was scheduled to hear cases exclusively at his declared principal place of business. In addition, while Superior Court Administrative Rule 12-15 prohibits marital masters not on circuit from receiving reimbursement for mileage not associated with an overnight stay on court business, six marital masters not on circuit received \$13,584 in taxable payments for travel between their home and primary place of business during SFY 2002, in apparent violation of Superior Court Administrative Rule 12-15.

#### Supreme Court Travel Pay

Some Supreme Court justices received mileage payments for travel between their residence and Concord, none of which was taxed. According to a June 1, 1992 memorandum from the Supreme Court to the Office of Legislative Budget Assistant, Audit Division, the principal place of business for most Supreme Court justices is their residence. Supreme Court justices do not annually certify their primary place of business.

#### Travel Reimbursement Statutes

Statutes allowing Supreme Court justices, Superior Court justices, and court reporters reimbursement for travel between home and work date back to the early 1900s, and may be the result of the modes of transportation at the time and the historical practice of rotating Superior Court justices and court reporters among part-time county court locations. However, during 2002, only two Superior Court justices, three marital masters, and one court reporter were on circuit and did not have a primary place of business. Also, the practice of reimbursing certain judges and staff for commuting to work may be improper given the lack of any evidence showing benefit to the State for doing so, as well as the State's current fiscal climate. During SFY 2002, taxable commuting payments made pursuant to RSAs 490:18, 491:6-a, and 519:29 totaled \$139,169, not including the portion of travel reimbursements paid to Supreme Court justices that were for commuting from their home to the Supreme Court building in Concord.

#### **Recommendation:**

**We recommend the Legislature consider repealing RSAs 490:18, 491:6-a, and 519:29. We also recommend the Judicial Branch: 1) ensure marital masters are reimbursed for travel expenses in accordance with Administrative Rule 12-15; 2) review its policies regarding**



mileage payments for Superior Court justices and court reporters, and include criteria for determining principal place of business; 3) ensure Superior Court justices and all other eligible personnel are reimbursed for travel expenses appropriately, and periodically audit travel reimbursements to ensure compliance with IRS regulations; and 4) review its policy concerning Supreme Court justices' reimbursement for travel expenses and require Supreme Court justices to annually certify their primary place of business.

Auditee Response:

*Of the five areas encompassed within the scope of the audit, only one is even possibly relevant for this Observation. That is the second scope area, which states as follows:*

*An examination of administrative functions performed by the AOC and by the administrative offices of the trial courts.*

*The subject of mileage payments to judges, marital masters, and court reporters was never contemplated as within the scope of the audit in the descriptions of this audit scope area written by both the LBA audit division and the court as part of the negotiation process, which led to this audit. Therefore, this subject is beyond the scope of the audit.*

*In making mileage payments, the Judicial Branch complies with RSA 490:18, RSA 491:6-a, and RSA 519:29. It also complies with IRS regulations. The tax consequences of mileage payments vary depending on the circumstances of the recipient of the payments. It is the responsibility of each recipient of mileage payments to comply with federal income tax law.*

*The audit Observation does make reference to the taxability of mileage payments to one Superior Court judge and to the payment of commuting mileage to six marital masters. While beyond the scope of this audit, these would be appropriate subjects of a financial audit, and, therefore, the Judicial Branch shall respond to these issues.*

*As mentioned in the Observation, Superior Court justices annually certify to the manager of operations at the AOC their principal place of business within the meaning of the Internal Revenue Code. In the case of the Superior Court judge whose commuting mileage was reported as non-taxable when it should have been reported as taxable, the judge was reassigned to a new location shortly after the judge's annual certification. Through oversight, the judge did not report the change to the manager of operations at the AOC; therefore, from the time of the reassignment, the judge's mileage was reported as non-taxable. A corrected W-2 form is being filed with the IRS and the judge is being notified. In addition, the Chief Justice of the Superior Court has issued a memorandum to all judges notifying them that should their permanent assignment be changed during the course of the year, they are to file a modified form with the AOC. Upon the change of a judge's permanent assignment, the Chief Justice will issue to the judge whose assignment is changed the form which the judge must submit to the AOC.*

*Regarding the six marital masters who received commuting mileage even though not on circuit, the Judicial Branch admits that this was contrary to Superior Court Administrative Rule 12-15. These payments were an administrative oversight and have been discontinued.*

**Observation No. 15**

***Examine Revolving And Operating Fund Issues***

A Supreme Court administrative action established various revolving funds at each court location in 1984 “...for the sole purpose of paying postage, witness fees, and miscellaneous expenses under \$100 and creating a change fund.” The amount in each fund was reviewed by the courts in December 2002 and is set at a total of \$64,835 for all courts. Each court maintains an operating checking account for the deposit of all receipts. As of June 30, 2002, \$3,001,024 resided in these accounts. These accounts are used not only for revolving fund activity, but also as the primary depository accounts for various receipts (e.g., bail, transcripts, fines, and restitution).

During our review of the revolving funds we noted the following issues:

*Supreme Court Revolving Fund*

- 1) The Supreme Court has a revolving fund account maintained at \$7,950. Our review found this account is not used for the purposes identified in the court’s policy. Reportedly the account is for emergencies in the event a check is needed quickly so there would be no need to wait for a check from State Treasury. Our review of the check register revealed the account is used mostly to pay travel expenses. From our inquiries, checks from the State Treasury can usually be obtained the next business day. No criteria have been established for having a check issued from this account, whereas reimbursement from the Treasury requires preparing an expense voucher.
- 2) Funds from this account were used to establish another revolving fund account that supports the Greenbook Project, a domestic violence program, with no formal authorization. The Judicial Branch has no policies or procedures for establishing new accounts.
- 3) The account is not reconciled monthly and has gone unreconciled for as long as six months. The employee performing the reconciliation of the account is not aware of when reimbursements are requested for the account, thereby providing a risk deposits for the account could get lost and/or cashed inappropriately without being detected.

The Branch exposes itself to increased risk of loss or theft when maintaining separate checking accounts used to process payments outside its normal controls. Also, added clerical duties are needed to administer separate checking accounts (e.g., issuing checks, requesting reimbursements, reconciling accounts, and maintaining the check register). Using revolving funds for purposes other than those identified in policy may also put employees in compromising situations when allowable uses of the accounts are not clearly identified and communicated. Accordingly, the Branch should ensure effective internal controls are in place over the account or alternatively consider whether the account continues to be necessary if checks can be obtained from the State Treasury through the normal payment process within one business day.

### Trial Court Revolving Funds

- 1) According to policy, revolving funds in the 65 trial courts range from \$150 to \$4,100. However, the actual amount held in the trial courts' operating checking accounts is significantly higher because the accounts are also used to deposit receipts related to bail, transcripts, restitution, escrow funds, fines due to towns, and civil judgments. There is activity in the accounts that may best be accounted for centrally by the AOC rather than by 65 separate locations. Centralized accounting may reduce risk of loss and be a more efficient mechanism of accounting for these transactions. For example, RSA 597:3 states that bail "shall be held for the use of the state until the clerk of the superior court where the bail is deposited shall certify that no liability exists." These funds may be more appropriately remitted to the State Treasurer and accounted for by the AOC in the State's accounting system.
- 2) Our review of account activity indicated the courts occasionally overdraw the original revolving fund balance for court purchases. As a result, money may not be available when it must be returned. The practice of overdrawing the revolving fund balance for court purchases has been acceptable to Branch management as long as the court's requests for reimbursements are at least monthly. However, Branch policy provides that the courts' expense reports should be submitted weekly to the AOC for reimbursement.

### **Recommendation:**

**We recommend the Branch establish, implement, and monitor effective internal controls over all revolving fund accounts. Policies should be specific as to allowable uses of the funds and should be communicated to all employees with responsibilities in this area.**

### *Supreme Court Revolving Fund*

**We recommend the Supreme Court consider closing its revolving fund account as checks can generally be received from the State Treasury within one business day. If the Court determines the fund continues to be necessary, we recommend it:**

- **review the authorized amount in the fund to determine whether \$7,950 continues to be appropriate;**
- **adhere to its established policy for revolving fund uses or develop and implement a policy outlining other allowable uses; and**
- **establish, implement and monitor effective internal controls.**

### *Trial Court Revolving Funds*

**We recommend the Branch examine its current practice of having the custody of and accounting for millions of dollars decentralized in physical locations across the State. While it is recognized that courts need operating accounts, it is likely that some of the activity would be better controlled centrally.**

Auditee Response:

*This Observation is outside the scope of the audit. Although the second area in the audit scope ("an examination of administrative functions performed by the AOC and by the administrative offices of the trial courts.") appears to encompass these issues, the purpose of this audit area was to determine whether the AOC and the administrative offices of the trial courts perform duplicate or overlapping functions. The gist of this scope area was to find and eliminate wasteful duplication of effort and to increase efficiency in the Judicial Branch.*

*Nonetheless, the Judicial Branch will review past use of the Supreme Court Revolving Fund and determine how much money should be held in that account. The Judicial Branch will also consider adopting policies that would limit payments from the Supreme Court Revolving Fund and cause some payments to be made through the State Treasury.*

*In regards to trial court revolving funds, each court has authority to maintain a revolving fund and an operating account. The authority for the operating account is contained in the New Hampshire Judicial Branch Financial Policy Manual at page 33. The revolving fund is maintained in the operating account, as opposed to a separate account, at each court location, for the sake of efficiency. This is consistent with RSA 597:3 which provides that "all money deposited for bail shall be held for the use of the state until the clerk of the superior court where the bail is posted shall certify that no liability exists against the bail." (emphasis added)*

*Occasionally, when a clerk or register fails to timely submit a Request for Reimbursement, a trial court revolving fund may carry a negative balance. The float from the court's transfer of revenue to the State Treasury prevents an overdraft. A negative balance in the revolving fund has never prevented the timely return of bail. The Judicial Branch expects to review the locations of depository accounts and accounting practices related to those accounts.*

*Centralization of bail funds at the AOC would not improve the administration of justice. Often the rightful owner demands return of bail funds in person and on the day the underlying case is resolved. Involvement of the AOC and the State Treasurer would delay return of funds. The Judicial Branch expects to reassess internal controls and to consider whether some activity should be controlled centrally.*

**Observation No. 16**

***Request Administrative Services  
Resume Independent Review Of  
Judicial Branch Expenditures***

Judicial Branch expenditures do not receive formal independent review or pre-audit prior to payments being made. The Judicial Branch's chief accountant reviews and approves general expenditure transactions. RSA 21-I:18 (j) exempts the Judicial Branch from the pre-audit function performed by the Executive Branch.

The Department of Administrative Services (DAS), Bureau of Accounts performs a pre-audit function on all payment vouchers for both the Executive and Legislative Branches prior to payments being made. Although RSA 21-I:18 (c) exempts the Legislature from pre-audit by the Bureau of Accounts, it has elected to utilize an independent review of its expenditures.

The Judicial Branch participated in the Bureau of Accounts' pre-audit service until 1993, when insufficient staff within the bureau prevented it from continuing to process all expenditures for all three branches of State government. Both the former and current fiscal managers for the Judicial Branch agreed utilizing the Bureau of Accounts pre-audit function would be a good idea. The independent pre-audit function would provide:

- expenditures are charged to appropriate budget codes;
- funds are available within program administrative units (PAU);
- proper amounts are paid;
- expenditures are committed in accordance with established policies/guidelines; and
- the Judicial Branch properly authorized the expenditures.

**Recommendation:**

**We recommend the Judicial Branch request the DAS, Bureau of Accounts resume pre-audit of its expenditures. The Judicial Branch should provide the Bureau of Accounts with its policies and procedures to allow the auditors performing this function to effectively monitor the transactions for compliance. The Judicial Branch should also request the Bureau of Accounts provide periodic reporting of the number of errors discovered and the nature of such errors.**

*Auditee Response:*

*The Judicial Branch agrees with the auditor's report that the Judicial Branch participated in the Bureau of Accounts' pre-audit service until the Bureau discontinued the service, on account of insufficient staff.*

*The Judicial Branch expects to ask the Bureau of Accounts to resume pre-auditing of Judicial Branch expenditures, on a trial basis. This task will increase the Administrative Office of the Courts' accounting department workload.*

*After a reasonable trial period, the Judicial Branch expects to conduct a cost benefit analysis of the pre-audit activity performed by the Bureau of Accounts.*

**Observation No. 17**

***Re-Evaluate The Duties Of The New Hampshire Court Accreditation Commission And Implement Comprehensive Standards For Court Facilities***

RSA 490:5-a establishes the New Hampshire Court Accreditation Commission (Commission). RSA 490:5-c outlines the duties of the Commission, which include prescribing minimum standards for court facilities, regularly visiting and inspecting every trial court, and reporting its findings and recommendations to the Supreme Court annually. In addition, RSA 490:5-d requires the Commission to rate each court's level of accreditation.

The Commission approved "General Guidelines and Minimum Design Standards for New Hampshire Court Facilities" in 1991, a five-page document that still serves as the Judicial

Branch's facility standards. However, the Commission does not regularly visit the trial courts to inspect facilities, nor does it rate the accreditation of each court or report its findings and recommendations to the Supreme Court annually. Instead, the court services representative who coordinates facilities for the AOC regularly visits the trial courts and prepares an annual "Facilities Needs Plan" that communicates the Branch's priorities for facility improvements. The "Facilities Needs Plan" is submitted to the Commission for its approval. The court services representative reported the current procedure for identifying facility needs is adequate.

The AOC began developing comprehensive court facility standards during the audit period, though the standards have not been finalized or approved. The draft standards are based on the NCSC's *The Courthouse: A Planning and Design Guide for Court Facilities*, and include provisions for ensuring the federal Americans with Disabilities Act requirements and special information technology considerations are incorporated into facilities. The draft standards are intended to be used to evaluate both existing and proposed facilities, as well as during the design of new facilities.

According to the ABA's *Standards Relating to Court Organization*, the administrative office of the courts should develop and promulgate facility standards.

**Recommendation:**

**We recommend the AOC complete and implement comprehensive standards for court facilities. In addition, the Judicial Branch should determine whether the New Hampshire Court Accreditation Commission provides value to the Branch as it is currently established by statute. If so, the Branch should ensure the Commission fulfills its statutory duties. If not, the Branch should request statutory change to remove the Commission or amend its duties.**

**Auditee Response:**

*This audit Observation is beyond the scope of the audit. The Court Accreditation Commission is created by RSA 490:5-a et seq. It contains representatives of all three branches of government. The Supreme Court is the supervisory authority of the commission pursuant to RSA 490:5-c. Nowhere in the governing statute is the AOC mentioned or is administrative responsibility given to the AOC or the administrative offices of the trial courts.*

*Were this Observation within the scope of the audit, the Judicial Branch would agree with the recommendation. The AOC will attempt to complete the work that has begun on developing new comprehensive court facility standards. The person at the AOC who works on court facilities issues spends a portion of his time as the court's statistician, which Observation 26 recommends be a full-time position, among other duties. Thus, the continuation of the developments of court facility standards will be done on a time available basis. In addition, the Supreme Court, in conjunction with the Court Accreditation Commission, will examine the duties of the Commission and determine if any statutory changes should be requested in the Commission's enabling legislation which is over thirty-years-old and has not been amended in almost fifteen years.*

**Observation No. 18**

***Legislature Should Consider  
Discontinuing Budget Reduction  
Practice***

Budget footnotes since SFY 1991 have required Judicial Branch management to independently determine which functional units will absorb budget reductions imposed on the Judicial Branch. This

practice lessens Legislative control over line-item appropriations and compromises transparency in the budget process and accountability in budget execution.

The Legislature has required the Judicial Branch to reduce General Fund appropriations approved in Section 1 of the biennial State budget since SFY 1991. Reductions include \$2,000,000 for SFYs 1997, 1998, and 1999, \$4,563,000 for SFY 2000, \$4,480,000 for SFY 2001, and \$4,418,101 for SFY 2002. Language in budget footnotes requires the Chief Justice to notify the Department of Administrative Services regarding specific amounts to be reduced in specified line-item appropriations in functional units. This practice requires Judicial Branch management to determine which line-item appropriations to reduce without Legislative input or oversight. The AOC director sends a memorandum to the DAS identifying the line-items to be reduced. Although the complete State budget is published by department and by line-item and readily available to the public, it is impossible for the public to determine funding levels of the Judicial Branch functional units by examining the budget without also having access to the adjusting memorandum from the AOC, limiting the transparency of the budget.

Transparency and accountability as a budget is developed, approved, and executed helps enforce fiscal discipline, facilitates allocation of government resources to the areas of greatest current public priority, and encourages efficiency. The line-item budget enforces control over spending, using limits set by the Legislature, and mandates how resources are to be expended. The practice of allowing Judicial Branch management discretion in choosing which line-item appropriations to cut reduces Legislative oversight over the Judicial Branch, weakens Legislative control over expenditures, and compromises transparency and accountability in the budget process.

**Recommendation:**

**We recommend the Legislature discontinue its practice of requiring the Judicial Branch to independently identify reductions to its general fund appropriation and work with Judicial Branch management to identify priorities and areas for potential appropriation reductions through the State’s biennial budget process.**

**Auditee Response:**

*The subject of this Observation is outside the scope of the audit. The five audit areas are (1) technology, (2) the administrative functions of the AOC and the administrative offices of the trial courts, (3) weighted caseload system, (4) case processing practices, and (5) court reporting issues. The Legislature’s budgeting process is outside these five audit areas.*

*As a long-standing part of the budget process, the Supreme Court has implemented budget reductions mandated by the Legislature.*

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**STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH ADMINISTRATION  
WEIGHTED CASELOAD**

During the audit period, 1.3 million cases were filed in the trial courts. However, focusing on raw case counts offers little guidance for allocating judicial and clerical resources because it does not account for differences in the amount of work associated with each case type. Using raw case counts, for example, 100 shoplifting cases would be equivalent to 100 capital murder cases. According to the National Center for State Court's (NCSC) *Assessing the Need for Judges and Court Support Staff*, a weighted caseload system is the best direct measure of the demand for judges and court support staff. It provides an objective and standardized assessment of resource needs based on workload rather than caseload and recognizes cases vary in complexity. Therefore, different types of cases require different judicial and clerical attention. Additionally, in an environment of financial constraint and fiscal accountability, there must be an objective and independent process for determining the need for court personnel. This process must be understood and accepted by both the Court and the Legislature.

A weighted caseload study is comprised of two parts: establishing the case weights and determining the amount of staff time available per year to process cases.

*Determining The Case Weights*

A case weight represents the average amount of time to complete all tasks involved in processing a case. Table 13 illustrates the process of constructing a case weight. The first steps in conducting a weighted caseload study are determining the number of case processing events required to process each case type and determining the frequency with which each case event occurs. The average amount of time, in minutes, to accomplish the case events should then be collected through a time study. Once average time needed for each case event is established, it should be multiplied by the event frequency to obtain the case event weight. The case weight for each case type is then established by summing the individual case event weights.

It is important to note that case weights reflect the average amount of time required by judges and court staff to process each case type. Some cases will require more processing time than their assigned case weight, while others will require less. However, over the long run the case weights should approximate the amount of time judges and court staff spend on each case type. In this section, we refer to the accuracy of the case weights used in the weighted caseload systems. While we recognize case weights cannot be completely accurate because they are based on averages, they should, in the aggregate, approximate the time it takes to process cases.

**Table 13**

<b>Constructing The Judicial Case Weight For A Sample Felony Case</b>			
<b>Case Event</b>	<b>Average Time (in minutes)</b>	<b>Event Frequency</b>	<b>Case Event Weight</b>
Initial appearance	5	1.05	5.25
Preliminary hearing	17	.63	10.71
Arraignment	7	.64	4.48
Scheduling hearing	15	.03	.45
Pretrial hearing	15	1.83	27.45
Default judgment/Plea	15	.85	12.75
Court trial	47	.01	.47
Jury trial	480	.05	24.00
Verdicts/Post judgment	15	.18	2.70
Disposition/Sentencing hearing	18	.73	13.14
Bench warrant	5	.39	1.95
Appeal	5	.33	1.65
<b>TOTAL</b>	<b>644 Minutes</b>	<b>Case Weight</b>	<b>105.00 Minutes</b>
Source: LBA analysis of the NCSC's <i>Assessing the Need for Judges and Court Support Staff (1996)</i> .			

#### *Determining The Amount Of Staff Time Available To Process Cases*

The second step in conducting a weighted caseload study is to determine the amount of time per year court staff are available to process cases. This is done by first establishing the number of *days per year* court staff are available, excluding weekends, holidays, vacation and sick leave, and time spent on staff education. The next step is to determine the number of *hours per day* staff are available to process cases, excluding time for administrative duties and helping litigants. To determine the number of hours available per year, multiply the number of *hours available per day* by the number of *days available per year*. To determine full-time equivalent (FTE) court staff needed to process a court's caseload, the number of weighted case filings in minutes is divided by the number of minutes per year staff are available to process cases.

The Judicial Branch uses a *judicial* weighted caseload system in the District and Probate Courts and the Family Division Pilot Project. It uses a *clerical* weighted caseload system in all trial courts. We were unable to determine the accuracy of the case weights used in the weighted caseload systems because they were outdated. Therefore, we could not determine adequate staffing levels for the Judicial Branch.

Our review of the Judicial Branch's weighted caseload systems revealed the Branch needs to develop management policies to govern the use, development, and updating of the weighted caseload system. Additionally, we found the Branch should uniformly report statistical information and needs statistical support staff to monitor the weighted caseload systems.

**Observation No. 19*****A Judicial Weighted Caseload System Needed In All Trial Courts***

There is no Branch-wide policy requiring a weighted caseload system in all trial courts. The Superior Court did not have a completed judicial weighted caseload system during the audit period. The District and Probate Courts have used a judicial weighted caseload system since 1987 and the Family Division Pilot Project has had a system in place since the late 1990s. A proposal for a Superior Court judicial weighted caseload study was prepared in 1998. However, the Superior Court still has yet to adopt it according to court personnel, because Superior Court cases are complex, difficult to consistently classify into categories, and there is no way to quantify the pace at which different justices work.

The NCSC states the best measure of the demand for judicial and clerical resources is the number of weighted case filings, tempered by qualitative factors. Because unweighted cases are indirectly tied to workload, they offer minimal guidance for determining the need for judicial and clerical staff. Weighting cases provides an unambiguous process for shifting from caseload to workload and provides an objective and standardized method for allocating resources.

**Recommendation:**

**The Judicial Branch should adopt a policy requiring a weighted caseload system in all trial courts to ensure the fair and objective allocation of judicial resources. The Legislature should consider supporting the use of a weighted caseload system for all trial courts.**

**Auditee Response:**

*The Judicial Branch agrees in part. The Judicial Branch has had in effect since 1987 weighted caseload policies for judges and staff in the District Courts and in the Probate Courts. Those policies were instituted to objectively determine 1) the need for judge time in trial courts, and 2) compensation of part-time judges.*

*Weighted caseload systems have been important components in management of the trial courts. Since February 2001, we have been developing a process to objectively measure judicial workload in New Hampshire's only full-time trial court.*

*The Judicial Branch would consider adopting formal policies requiring use of weighted caseload systems in all trial courts to objectively measure the needs for judicial time and clerical support staff if the resources to do so without adverse impact to the work of the courts were provided. The Judicial Branch projects the need for two additional full-time employees to successfully implement this proposed policy.*

*The Judicial Branch should not adopt a formal policy to assess judicial and clerical workload in the Family Division Pilot Project until the Legislature determines the future of that Project. During the early part of the Pilot Project, new procedures and practices were developed and amended. It would have been impossible to measure workloads in that rapidly changing environment. In the later years of the Project, the Legislature has declined to expand the Project statewide.*

The Judicial Branch notes that our sister New England states of similar size, Vermont and Maine, do not have a weighted caseload system.

### Observation No. 20

***Monitor And Update Case Weights  
Used In Weighted Caseload Systems***

The case weights for the District and Probate Courts, and the Family Division Pilot Project weighted caseload systems have not received periodic review or update. District Court *judicial* case weights have been in use since the weighted caseload system was adopted in 1987 and have not been updated since. The AOC reviewed the case weights in the early 1990s, however the resulting weights were not adopted. The District Court *clerical* weighted caseload system has been in place since the mid-to-late 1980s and case weights have not been revised since its adoption. The weights in use do not account for changes to court procedures.

Case weights for the Probate Court *judicial* weighted caseload system were adopted in 1987 and last updated in the mid-1990s. Probate Court personnel stated despite the update, the case weights are still inaccurate and do not reflect current judicial procedures or expanded jurisdictions. Additionally, changes in law have made certain processes lengthier. Case weights for the Probate Court *clerical* weighted caseload system were updated in 2000. However, Probate Court personnel reported the system still does not accurately reflect court operations.

The Family Division Pilot Project does not have its own judicial or clerical weighted caseload systems. Instead, the case weights were transferred from corresponding case weights from the District and Probate Courts. The system dates back to the late 1990s and has not been revised to reflect new procedures and processes of the Family Division Pilot Project.

The Superior Court does not yet have a *judicial* weighted caseload system, as addressed by Observation No. 19. However, a Superior Court *clerical* weighted caseload system was developed in 1996 and has not been updated since.

According to RSAs 491-A:3 and 491-A:4, the “supreme court shall establish and revise as needed a weighted case value, relating the judicial time required for each type of case included in the court’s jurisdiction, which when multiplied by the caseload of each court will produce the number of weighted case units for that court.” The number of weighted case units shall be used for the purposes of calculating the annual salaries of part-time District and Probate Court judges.

The NCSC states periodic monitoring and updating of case weights are essential to reflect changes in case processing time resulting from new legislation, changes in court jurisdictions, or increased efficiency. This will help to ensure the weights continue to accurately represent workload. Additionally, weighted caseload systems are most criticized when case weights are not updated periodically. Ideally, case weights should be updated every four years unless major statutory or other changes directly impacting a case type’s weight occurs sooner. In this case, the affected case weights should be changed within one year.

The NCSC recommends the best approach for periodically monitoring case weights is by reviewing a selected sample of case events from a small number of courts. These events should

have a significant impact on the overall case weight, such as those that have a high frequency of occurrence or require the greatest amount of judicial or clerical time to perform. The sample should be comprehensive and include a sufficient number of events to ensure events occurring in every type of case are reviewed. Courts should also periodically monitor the impact of major changes in administrative practices or legislation.

Failing to periodically review and update case weights could result in inadequate judicial and clerical staffing calculations, as well as impact salary calculations for part-time District and Probate Court judges. Additionally, without an accurate indication of workload, judicial and clerical resources may not be fairly and objectively allocated.

Judicial Branch personnel reported the Branch has not adopted a formal method for maintaining and updating the weighted caseload system, resulting in no process for keeping the case weights current.

**Recommendation:**

**The Judicial Branch should update the case weights used in its weighted caseload systems. The Judicial Branch should determine what personnel resources are needed to continuously monitor and update the various weighted caseload systems used by the courts.**

**The Judicial Branch should also adopt a policy defining the process and methodology for updating the weighted caseload systems including establishing policies for when and how case weights should be updated. The Judicial Branch should also establish procedures to periodically monitor a sample of case events to determine if case weights are sufficiently accurate.**

**The judicial and clerical weighted caseload systems should be updated every four years or within one year when changes in jurisdiction or statutes affecting case processing time occur.**

**Auditee Response:**

*The Judicial Branch agrees in part. The Judicial Branch revised the District Court and Probate Court case weights and weighted caseload formulae in 1994. We requested funds with which to implement these revisions in the biennial budgets of FY 1996-1997, FY 1998-1999, FY 2000-2001, and FY 2002-2003. Mandatory budget reductions have prevented implementation of revised case weights and formulae.*

*Analyses of case weights show the work of judges and staff is increasing for many case types. Implementation of revised case weights or new weighted caseload formulae will require assignment of more judge time to the existing caseload. Without additional funds, an increase in judge time for the existing cases will leave the District and Probate Courts with fewer days of judge time.*

*During the audit the Judicial Branch has been working on revisions and updates to the judicial work assessment weights and formulae in the three established trial courts and clerical work assessment weights and formula in the Superior Court. Without individuals dedicated solely to this project, other responsibilities have been neglected and progress has been slow.*

*The Branch projects the need for two full-time employees to successfully monitor and update the weighted caseload systems. The Judicial Branch requested \$100,000 in FY 2000 with which to hire an outside consultant to conduct weighted caseload studies in the trial courts. Although those funds were appropriated in Section 1 of the Budget Act, that line was eliminated as part of the Judicial Branch implementation of the \$4,563,000 mandatory budget reduction in that year.*

*We should not adopt a policy defining the process and methodology for updating the weighted caseload systems including establishing policies for when and how case weights should be updated. There are multiple trial court workload methodologies available and all are evolving. Adoption of a specific and detailed policy would either deprive courts of developments in weighted caseload system methodologies or necessitate frequent policy revisions.*

#### **Observation No. 21**

***Develop Procedures Ensuring Updates To The Clerical Weighted Caseload Studies Are Consistent With Best Practices***

The trial courts all use clerical weighted caseload systems. However, the Judicial Branch has adopted neither a consistent approach to develop the weighted caseload systems nor a methodology to update them consistent with best practice as established by the

NCSC. Additionally, the Judicial Branch has no dedicated staff to monitor or update the weighted caseload systems. Court personnel report being unsure who is responsible for updating the weighted caseload systems and it becomes the responsibility of whoever is available at the time.

The Judicial Branch's case weights were not developed in accordance with best practices. The District, Probate, and Superior Courts developed case weights for the clerical weighted caseload systems by taking actual hours worked for each case type, less leave time, and dividing it by the number of cases filed for each case type. Court staff estimated the percent of time spent processing each type of case during the previous year and these percentages were used to determine the amount of time spent processing each case type. The Superior Court developed separate case weights for large and small courts.

Instead of using best practices for determining time staff are available, the District and Superior Courts use their own, differing methodologies. The staffing formula for the District Courts is based on each employee processing 1,700 unweighted cases per year. The District Courts then determined the amount of time it takes for staff to process 500 of each case type. To determine the number of court staff needed for each department, 500 cases were divided by the number of weighted cases filed for each case type, then multiplied by the proportional case type.

The Superior Court weighted caseload system established separate staffing formulas for deputy clerk positions, administrative support, and clerk's office staff. Based on case filings, the formula proposed a deputy clerk position for every 1,500 unweighted cases filed, as well as one

administrative support staff for every 1,000 unweighted cases filed in a small court and one for every 1,400 cases filed in a large court. The Superior Court first determined the recommended clerk's office staff level for each court by calculating average time spent for each case type. The court took the number of weighted cases per court and divided it by the number of recommended staff to determine an average of one position for every 244 weighted cases. According to the Superior Court's weighted caseload report, *Staffing Model for the Superior Courts*, the committee did not review case processing procedures in the courts. As a result, the case weights do not reflect recommended or ideal case processing times in the courts. Reportedly, the case weights developed, and the staffing model that resulted were not accurate and there was little confidence in the numbers from the time it was developed.

The Probate Court's system for determining available staff time follows closely with best practices. The system established the number of hours a FTE employee is available to work per year, less time allowances for supervision and administrative duties, annual and sick leave, and court monitoring.

As of May 2003, the Judicial Branch was in the process of updating the District and Superior Courts clerical weighted caseload systems. The Superior Court conducted Delphi surveys (See Observation No. 22) of court staff to determine case processing times, as well as time spent on administrative duties and helping citizens. Steering committees established to review each case type are reportedly in the process of validating the results. The District Courts suspended work on updating the clerical weighted caseload system until Fall 2003, reportedly due to time constraints. The District Courts have not yet developed methodology for the study.

Without a consistent method for conducting clerical weighted caseload systems in all levels of court, there is no way to compare resource allocation among the court levels and staff resources may not be allocated fairly and objectively throughout the system, resulting in a perception of disparity among the courts. Additionally, without a formal process for conducting updates to weighted caseload studies, the Judicial Branch is spending time developing a new methodology each time an update is needed.

### **Recommendation:**

**We recommend the Judicial Branch establish procedures for conducting updates to the clerical weighted caseload systems consistent with the NCSC's *Assessing the Need for Judges and Court Support Staff*.**

**We also recommend the Judicial Branch establish a steering committee representative of all trial court staff to coordinate and oversee the clerical weighted caseload system. The steering committee should select courts to participate in the weighted caseload time studies, as well as develop formal policies and procedures to govern the clerical weighted caseload system methodology and ensure all updates are conducted regularly using established methodology. The policies and procedures should include a consistent method for collecting case processing time data, as well as for data analysis. The Branch's policy should also include a schedule for periodically monitoring the case weights and updating systems as needed.**

**The Judicial Branch should determine whether dedicated personnel are needed to continuously monitor and update the clerical and judicial weighted caseload systems used by the courts and consider whether additional funding for staff is needed.**

Auditee Response:

*The Judicial Branch agrees in part. The first recommendation flowing from this Observation is that "the Judicial Branch establish procedures for conducting clerical weighted caseload systems consistent with the NCSC's Assessing the Need for Judges and Court Support Staff." The Judicial Branch notes that many of its clerical weights predate that 1996 publication. More importantly, that publication states, as part of its purposes, the goal "to develop a range of alternative approaches for determining the need for judges and court support staff." That goal is consistent with our response to Observation No. 20 to the effect that multiple trial court workload methodologies exist so we should not establish specific procedures which would adopt one methodology over another. We should remain flexible so that we can use procedures appropriate to the work involved to develop weighted caseload data. That being said, the Judicial Branch agrees that clerical weighted caseload studies should be consistent with best practices; however, since there is more than one best practice, the Branch should be able to match the method of study to the work involved. Also the method of doing a weighted caseload study is affected by the resources available to conduct the study.*

*The second recommendation flowing from this Observation is that "the Judicial Branch establish a steering committee representative of all trial court staff to coordinate and oversee the clerical weighted caseload system." We will consider establishing such a committee, but without the resources to properly conduct and update weighted caseload studies, the trial courts will probably be unable to carry out some or all of the recommendations of such a committee.*

*The subject of resources is the third recommendation flowing from this Observation. As stated in the response to Observation Nos. 19 and 20, the Judicial Branch projects the need for two full-time employees to successfully monitor and update the weighted caseload systems. It would be less expensive to hire personnel dedicated to this task than to hire outside consultants. Moreover, having personnel dedicated to this task would better ensure the constant monitoring and updating of weighted caseloads than would one-time consultants. The issue regarding resources for weighted caseload studies is at what point does the Judicial Branch decide that those resources are a priority. Currently, when there are more than sixty clerical vacancies in the Branch, personnel dedicated to conducting weighted caseload studies have been considered an unaffordable luxury.*

*The Judicial Branch has attempted to do its best with the resources it has been able to devote to weighted caseload analysis. In fact, the administrative judge of the District Courts estimates that the clerical weights in that court are accurate within a margin of error of ten percent. The problem is not the accuracy of the weights but rather the fact that funding by the Legislature has not historically allowed the Judicial Branch to fill the positions which the clerical weights demonstrate are necessary, even when they were current.*



**Observation No. 22*****Continue Updating Judicial Weighted Caseload Systems Using Time Studies In Accordance With Best Practices***

The case weights used by the District and Probate Courts judicial weighted caseload systems during the audit period were developed using Delphi surveys. The Delphi technique relies on judges' estimates of time necessary to process certain case types without directly measuring the actual time. Once average times are calculated for each of the case types, the results are shared with the participants, who are asked to adjust their original estimates in light of their colleagues' information. According to the NCSC, the Delphi technique is subjective in nature and may not be a completely reliable indication of case processing time because it is natural to remember the unusually long or complex cases. Instead, time studies are recommended because they are considered more accurate. According to the NCSC, the method used to determine the appropriate level of judicial and clerical resources must be credible to judges, court staff, and the legislature.

The Probate Courts developed its judicial weighted caseload system in 1987 and updated the case weights in 1993 using Delphi surveys. It validated Delphi results by conducting a time study in only one Probate Court.

The District Courts also developed its judicial weighted caseload system in 1987 using a Delphi survey, but did not use a time study to validate the results. The District Courts attempted to update the judicial weighted caseload system in 1994 by asking judges to complete a Delphi survey. The District Courts did not conduct a time study and did not adopt the updated case weights because they reportedly did not appear accurate.

As of May 2003, the Judicial Branch was in the process of updating the District and Probate Courts *judicial* and Superior Court *clerical* weighted caseload systems. The Judicial Branch will reportedly conduct four-week time studies to collect case processing time for the District and Probate Courts judicial weighted caseload systems. The Superior Court clerical weighted caseload study gathered time data through a Delphi survey and steering committees are reportedly in the process of reviewing and validating survey results.

According to the NCSC, even when consensus is reached on the time required to process case types, Delphi estimates may be significantly different from actual case processing time. As a result, case weights developed using the Delphi technique may lead to inaccurate assessments of judicial and clerical staffing needs.

**Recommendation:**

**We recommend the Judicial Branch continue conducting updates to each trial court *judicial* weighted caseload system using time studies consistent with best practice. We also recommend the Judicial Branch migrate towards conducting time studies for updating the *clerical* weighted caseload systems.**

**We recommend the Judicial Branch determine the personnel resources needed to continuously monitor and update the clerical and judicial weighted caseload systems used**

**by the courts. The Judicial Branch should consider seeking funding for staff dedicated to performing this function.**

Auditee Response:

*The Judicial Branch agrees. Time studies are the most labor intensive and, therefore, the most expensive method of conducting and updating weighted caseload studies. As noted in the Observation, the Judicial Branch has used time studies in the past to validate data developed by other methods. Moreover, it conducted time studies last year with respect to establishing a weighted caseload system for Superior Court judges and this year with respect to updating the weights for the system used by District Court and Probate Court judges. Thus, the Branch uses time studies and will continue to use them in its weighted caseload systems consistent with the availability of resources.*

*As in Observation No. 21, this Observation recommends determining the resources necessary to maintain weighted caseload systems. The Observation goes further to recommend that the Judicial Branch consider seeking funding for staff dedicated to this function. As stated in the response to Observation Nos. 19 and 20, the Judicial Branch projects the need for two full-time employees to successfully monitor and update the weighted caseload systems. Previously, in FY 2000, the Judicial Branch did have in its budget \$100,000 to hire an outside consultant to conduct weighted caseload studies in the trial courts. Those funds were eliminated as part of the implementation of the \$4,563,000 reduction mandated by the Legislature that year. As stated in the response to Observation No. 21, the issue regarding resources for weighted caseload studies is at what point does the Judicial Branch decide that those resources are a priority. Currently, when there are more than sixty clerical vacancies in the Branch, personnel dedicated to conducting weighted caseload studies have been considered an unaffordable luxury. The Judicial Branch will consider seeking funding in its next budget request for staff dedicated to weighted caseload systems.*

**Observation No. 23**

***Count Criminal Charges Against A Single Defendant Involving A Single Incident As One Case***

Our review of the District and Superior Court docketing information obtained from the SUSTAIN case management system shows the Superior and District Courts count each criminal charge against an individual stemming from a single incident as separate cases with separate docket numbers. An analysis of the *State Court Caseload Statistics* prepared by the NCSC for 2000 reveals that of the 41 states reporting a uniform method of counting criminal cases in *general jurisdiction* courts, only New Hampshire and three other states count each criminal charge stemming from a single incident as separate cases. The remaining 37 states count all charges stemming from a single incident or include multiple incidents against a defendant as one case. Of 25 states reporting uniform criminal case counting methods in *limited jurisdiction* courts, eight states count all charges stemming from a single incident as separate cases while the remaining 17 states count all charges stemming from a single incident or include multiple incidents against a defendant as one case.

The Judicial Branch counts each charge individually because each charge may take a different path and may have a different sentence attached. Some charges will be dropped or disposed of through plea bargain, therefore, not every charge will go to court for a decision. The AOC director reported counting each case individually has an administrative advantage because it makes it easier for clerks to match each sentence with a charge. Although court personnel create separate folders for each charge, we observed motions, correspondence, and dates of hearings are documented only in the lead folder.

Our analysis of criminal caseload data for the District and Superior Courts from SFYs 2000 through 2002 revealed counting criminal defendants rather than charges would result in 35,204 fewer criminal cases in SFY 2000, or a decrease of 24.8 percent. The caseload would decrease by 37,489 cases, or 26.4 percent, in SFY 2001 and 38,166 cases, or 25.8 percent, in SFY 2002. When Superior Court docketing information from SFYs 2000 through 2002 were compared by court, Rockingham Superior Court had the most criminal charges, however Hillsborough Superior Court – North had the most defendants. Additionally, when charges are counted, Carroll Superior Court ranked ninth for filings, however when defendants were counted, its ranking moved to tenth. Since the number of case filings is factored into resource allocation decisions, Hillsborough Superior Court – North and Carroll Superior Court may not be receiving adequate resources to process its caseload. Similar patterns existed for the District Courts.

In memoranda to court management from 1996, 1997, and 1999, one Superior Court clerk stated the current practice of counting criminal cases does not accurately measure the relative level of criminal case activity in each court. When a defendant enters a plea or goes to trial on 12 felony counts it is really one case because the pleas will usually be accepted at a single hearing or the cases will be tried at a single trial in front of one judge. Additionally, the clerk states there is usually little additional time or effort required to handle additional cases against the same defendant because the work is done in the lead case. For the purpose of allocating resources to the various court locations, the clerk suggested counting criminal defendants rather than criminal charges to get a clearer picture of workload.

The *Trial Court Performance Standards and Measurement System Implementation Manual* issued by the Bureau of Justice Assistance and the *State Court Model Statistical Dictionary* published by the NCSC advocate counting each criminal defendant and all the charges involved in a single incident as a single case for reporting purposes.

Counting all charges against a defendant stemming from a single incident as separate cases risks overstating the court's caseload.

**Recommendation:**

**We recommend the Judicial Branch count all charges against one defendant involved in a single incident as one case.**

Auditee Response:

*The Judicial Branch agrees in part. The Judicial Branch acknowledges that there is more than one valid way of counting criminal cases, by charge, by defendant, by incident, or a combination thereof. We have decided to count each individual charge for the case management reasons cited in the observation. We do not keep these records for purposes of supporting inappropriate budget requests or to artificially inflate the count. They are kept in this manner because it is easier to deal with the different pleadings, deadlines, and other issues each charge presents.*

*The practice of counting cases in this manner is a long-standing one. Others who deal with the courts count cases in a similar manner, such as police departments and prosecutors. Thus, for the Judicial Branch to change its method of counting criminal cases may affect other justice system users. It would also make our future data incompatible with our historic data.*

*This long-standing practice of keeping each charge separate also allows court administrators to easily comply with the recent New Hampshire Supreme Court decision in *State v. Ramos*, 149 N.H. 118 (2003). In that case, the court changed its traditionally permissive approach to joining multiple charges against a defendant for a single trial. Thus, in the future more multiple charge cases will likely be severed for separate trials.*

*Moreover, while a plea or a trial on 12 consolidated counts is only one court proceeding, it is more than one case. In the context of a plea, the judge must deal with each individual charge, making certain the defendant understands each one and the consequence of the plea to each one. In a trial, the prosecution must present evidence on each charge and the defendant has the opportunity to do the same.*

*In a weighted caseload system, the weighted caseload studies should be based on the manner in which cases are counted. The case weights will be lower on a per case basis if each charge is counted as a separate case. If the count is by defendant, then the weight per case would have to be greater to account for those cases which involve multiple counts.*

*We expect to consider the issue of how to count criminal charges as we install a new trial court case management system. It may be possible to count both ways, organizing case numbers by defendant or incident, with sub-numbers for each charge. Such a system would give the benefits of both a defendant count and a charge count. Whatever decision is made regarding counting, the weighted caseload numbers must be based on only one method to ensure their integrity.*

**Observation No. 24**

***Clearly Define Brought Forward Cases And Ensure Only Relevant Cases Are Included In The Court's Caseload***

As discussed in Observation No. 38, the trial courts define and track brought forward cases, or re-entries, inconsistently. A brought forward case is a case that has previously been closed but is re-opened for further action. The Superior Court tracks and reports

brought forward cases as part of the court's caseload, while the Family Division Pilot Project and the District Courts do not. Conversations with court personnel revealed some courts consider telephone inquiries, requests for record checks, or requests for copies of court orders as brought

forward cases. In a memo from March 2003, one administrative judge encourages the Judicial Branch to establish a common definition of re-entry, excluding all minor actions, and apply it consistently across all court levels. Our survey of court clerks revealed some clerks consider certain requests as brought forward while others do not. For instance, out of 33 court clerks responding to our survey question, 11 clerks consider a case brought forward if litigants request a certified copy of court orders and five clerks consider a case brought forward if exhibits are returned in a case.

Since brought forward cases are used in the weighted caseload system to determine clerical staffing needs in the Superior Court, counting actions such as telephone inquiries and requests for copies as brought forward cases can affect staffing calculations.

According to its staffing formula, the Superior Court has established and applies a case weight for marital brought forward cases. Additionally, Superior Court personnel stated the marital department has many brought forward cases and are a large part of the judges' caseloads. Court personnel stated they enter brought forward cases into SUSTAIN; however, our surveys showed the definition of a brought forward case is inconsistent. Finally, court personnel stated all cases entered into SUSTAIN are counted as part of the court's caseload and are included in the weighted caseload system.

**Recommendation:**

**We recommend the Judicial Branch define brought forward only as cases requiring judicial attention. Actions not requiring judicial attention such as requests for copies, returning exhibits, and telephone inquiries, should be included in time spent on administrative duties.**

**We recommend the Judicial Branch establish a separate case weight for brought forward cases.**

*Auditee Response:*

*The Judicial Branch agrees. The committee that the Administrative Council expects to appoint, and referenced in the response to Observation No. 38, will be asked to recommend a definition of brought forward cases.*

**Observation No. 25**

***Establish A Monitoring Case Weight For Probate Court Guardianship Cases***

Probate Court clerical case weights for guardianships over adults and children are applied annually to open cases, while case weights for other Probate Court cases are applied only to new case filings.

Guardianship of an adult can last until the person is deceased and guardianship of a minor can last until the person is 18 and in some cases, until 21. Open guardianship cases require annual maintenance by court personnel, including processing annual reports and accounts, and scheduling them for hearings, as well as answering questions about the case. The original case weight is applied to the guardianship case each year. However, the amount of work each case

requires generally decreases in years subsequent to when the case was filed. The case weight is applied to open guardianship cases to accommodate for the on-going nature of guardianships.

Because guardianship cases can be monitored for several years before they are closed, staffing needs in the Probate Courts may be inflated because cases open for monitoring are given the same value as those recently filed.

**Recommendation:**

**The Probate Courts should consider establishing a monitoring case weight to reflect the amount of time spent monitoring guardianship cases each year. This case weight should be applied for each subsequent year the guardianship is open for monitoring.**

**Auditee Response:**

*The Judicial Branch agrees. In conjunction with the installation of a new case management system, the Probate Courts will consider establishing a "monitoring" case weight for the time spent monitoring guardianship cases. The new system will allow the use of a case status for monitoring guardianship cases. See Observation No. 9 and response thereto.*

*Historically, when the Probate Courts developed the clerical weighted caseload system, it recognized that there was, as stated in the Observation, an ongoing workload associated with both a new and a continuing guardianship case as long as the case remained open. In addition to the annual reports, guardianship monitoring reports, related scheduling and general questions that occur while an adult guardianship is open, the Probate Courts are required by statute to send out an annual notice to the ward. That process alone requires verifying the validity of the time standard that triggers the action, pulling the case, verifying that the case is still active and that the case information is up-to-date, issuing the notice to the appropriate parties, and then responding to any inquiries generated by the notice. In minor guardianships, the courts frequently deal with motions to terminate the guardianship which require scheduling and handling pretrial hearings and other hearings. Therefore, in dealing with a clerical weighted caseload for guardianship cases, the Probate Courts set out to determine the average time spent annually per guardianship case, no matter whether a new or existing case. While court staff perform different functions each year in "monitoring" a guardianship from what they did in setting up the case, the average time per case was established through studies at 2.5 hours per year.*

**Observation No. 26**

***Centralize And Improve Statistical Resources***

A court services representative at the AOC currently serves as the Judicial Branch's facilities coordinator and statistician. The court services representative regularly produces some statistical reports for the trial courts, including quarterly trend analysis reports for the District Court administrative judge and regional administrators that identify staffing needs at the various locations, as well as ad hoc statistical analyses for trial court judges and staff, the Supreme Court, and other organizations such as the NCSC. In addition, both the

court services representative and the AOC internal auditor conduct statistical analyses pertaining to weighted caseload systems.

During 2002, the Superior Court's Office of the Chief Justice began maintaining statistics specific to the Superior Court backlog. Superior Court clerks prepare monthly counts of mail to be processed and sent, hearings to be scheduled, and case files to be closed for each court department (i.e., criminal, civil, equity, and domestic relations) and report them to the Office of the Chief Justice. The statistics allow the Chief Justice to make clerical workload comparisons among the Superior Court locations, as well as fulfill Legislative requests for information. The Offices of the District and Probate Court Administrative Judges do not maintain backlog statistics specific to their courts.

Clerks, registers, judges, and marital masters reported they receive reports assisting them in managing their caseload from multiple sources. Thirteen of 38 clerks and registers and 11 of 51 judges and marital masters responding to our survey question receive management reports from the AOC, while nine of 38 clerks and registers and 14 of 51 judges and marital masters receive management reports from their administrative judge's office. Fifteen of 38 clerks and registers create their own reports used to help manage their caseload. Thirteen of 38 clerks and registers and 20 of 51 judges and marital masters reported they receive no reports that assist them in managing their caseload.

According to the NCSC's *Caseflow Management: The Heart of Court Management in the New Millennium*, management reports including data on individual cases and court-wide caseload and performance are essential to day-to-day caseflow management because they allow judges and clerks to evaluate actual performance against expectations and direct resources to areas of concern. In addition, the American Bar Association's *Standards Relating to Court Organization* states the administrative office of the courts should be responsible for statistical compilation and analysis for the court system as a whole, and system-wide policies should promote uniformity in statistics. The AOC director and the District Court administrative judge both stated the AOC needs a full-time statistician to collect and disseminate statistical information Branch-wide.

### **Recommendation:**

**We recommend the Judicial Branch consider establishing a full-time statistician position at the AOC responsible for compilation, analysis, and dissemination of data Branch-wide. The statistician, in consultation with court management, should determine what reports will be most useful to judges, marital masters, clerks, and registers in all levels of court for caseflow management purposes and establish a system to regularly and promptly disseminate management reports to appropriate personnel. The duties of the statistician could also include auditing docket information pursuant to Observations No. 7 and No. 8, as well as monitoring and updating clerical and judicial weighted caseload systems discussed in Observations No. 21 and No. 22. In addition, we recommend the AOC implement Branch-wide policies promoting uniform statistical reporting.**

Auditee Response:

*The Judicial Branch agrees. The Judicial Branch recognizes the value of management reports and statistical reports that could be produced by an AOC employee dedicated solely to that task. The Judicial Branch requested funds in the FY 04-05 budget to hire a full-time statistician. In order to implement a \$6,000,000 reduction in the Judicial Branch budget request, the Judicial Branch has found it necessary to reduce the workforce in the Supreme, Superior, and Probate Courts and will be unable to fill other useful positions for which funds were requested. The Judicial Branch does not have sufficient resources to fill the court statistician position during this biennium.*

*The Judicial Branch expects to renew its request for funding to hire a full-time statistician in its next budget request.*

*The New Hampshire Judicial Branch annually processes over 200,000 cases filed among 66 courts that are organized into four levels of established court and one pilot project. The development, refinement, and timely distribution of helpful statistical reports to appropriate judges and managers will keep a single court statistician very busy.*

*The auditing of court data would be the responsibility of the internal auditors. Presently, one of the four Judicial Branch internal auditor positions is vacant.*

*The monitoring and periodic updating of six judicial and clerical weighted caseload systems should be the responsibility of two skilled employees dedicated to that enterprise. Although the statistician will support this process, he or she will be unable to allocate significant time to this monitoring and updating clerical and judicial weighted caseload systems.*



**STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH ADMINISTRATION  
CASE PROCESSING**

The American Bar Association (ABA), in its *Standards Relating to Trial Courts* and *Standards Relating to Appellate Courts*, promulgated timely case processing standards for trial courts and supreme courts respectively. According to the ABA, timely disposition standards are important management tools that provide a court with a basis for evaluating its performance, as well as ultimate and measurable objectives to direct planning. Additionally, the ABA states the absence of clear goals for directing supervisory efforts is one factor contributing to delay.

According to the ABA, any elapsed time other than reasonably required for pleadings, discovery, and court events is unacceptable and should be eliminated. To promote efficient and timely case disposition, the court should control the pace of litigation. Delay devalues judgment, creates anxiety in litigants, and signals a failure of justice, as well as subjects the court system to open criticism and loss of confidence in its fairness and utility. Accumulated delay creates backlogs that waste court resources. Additionally, the ABA states delay in the appellate process results in the injustice inherent in protracted litigation.

**5.1 Case Processing Guidelines**

Table 14 shows the ABA’s trial court case processing standards for criminal, civil, domestic relations, and juvenile cases.

**Table 14**

<b>ABA Standards For Trial Court Case Processing</b>	
<b>CRIMINAL</b>	
Felony	90% in 120 days of arrest
	98% in 180 days of arrest
	100% in 12 months of arrest
Misdemeanor	90% in 30 days of arrest or citation
	100% in 90 days of arrest or citation
<b>CIVIL</b>	
General Civil	90% in 12 months of filing
	98% in 18 months of filing
	100% in 24 months of filing
Summary Proceedings	100% in 30 days of filing
<b>DOMESTIC RELATIONS</b>	
General Domestic Relations	90% in 3 months of filing
	98% in 6 months of filing
	100% in 12 months of filing
<b>JUVENILE</b>	
Detention/Shelter Hearing	24 hours of arrest
Adjudicatory/Transfer Hearing: <i>In a detention facility</i>	15 days of arraignment
	<i>Not in a detention facility</i>
Disposition Hearing	15 days of adjudicatory hearing
Source: LBA analysis of the ABA’s “Standards Relating to Trial Courts” (1992 )	

According to the ABA, these standards are goals courts can and should reach and maintain, while striking a balance between allowing adequate time for litigants to exercise their procedural rights, while limiting delay. Additionally, the standards put into operation the general principle of delay reduction that recommends elapsed time is proportional to procedural activity.

In this section, we recommend the Branch revise caseflow management guidelines and monitor those guidelines for compliance.

**Observation No. 27**

***Revise Probate Court Guardianship Caseflow Management Guidelines***

The Probate Courts' timeframes for guardianship proceedings are not consistent with statute. According to RSA 464-A:5, III, orders of notice "shall be sent by first class mail or served by delivery to the office of any court appointed attorney or of the attorney retained by the proposed ward within 24 hours of the appointment by the court or of the notification to the court of the name and address of the attorney." The Probate Courts' caseflow management guidelines for guardianship of the person, estate, or both, states the court must set the time and place for the hearing and issue the orders of notice within five calendar days after the filing date. The Probate Courts' case management guidelines do not specify when the orders of notice should be sent in relation to the appointment of the attorney and could exceed statutory requirements by up to four days if the attorney is appointed immediately after the petition is filed.

Additionally, RSA 464-A:11-a states, "the probate court shall act upon the petition within 30 days of its filing," while Probate Court guidelines state a hearing must be held within 30 calendar days of when the orders of notice were issued. Since the timeline for issuing the orders of notice are exceeded by up to four days, this requirement is also exceeded by the same number of days.

**Recommendation:**

**We recommend the Probate Court revise its guidelines for guardianships to be in compliance with timeframes established in RSAs 464-A:5, III and 464-A:11-a. If the Probate Court determines this requirement is impractical, it should seek to have the statute amended.**

**Auditee Response:**

*The Judicial Branch agrees in part. The Probate Guidelines state timeframes from the date of filing, taking into consideration statutory requirements. The Guidelines allow one to five calendar days after the filing date to review the petition, appoint the attorney, and issue orders of notice. The statute states that the orders of notice must be sent within 24 hours of the (attorney's) appointment by the court. The Probate Courts are meeting that requirement. We will modify the Guidelines to specify the time frame for the various steps making certain that we clarify that the orders of notice must be issued within 24 hours of appointment.*

*Extensions of guardianship are the exception, not the rule. They are rarely filed in any Probate Court. We will ask the Legislature to amend RSA 464-A:11-a so that it reads "...the probate court shall act upon the petition within 30 days of orders of notice being issued."*

**Observation No. 28**

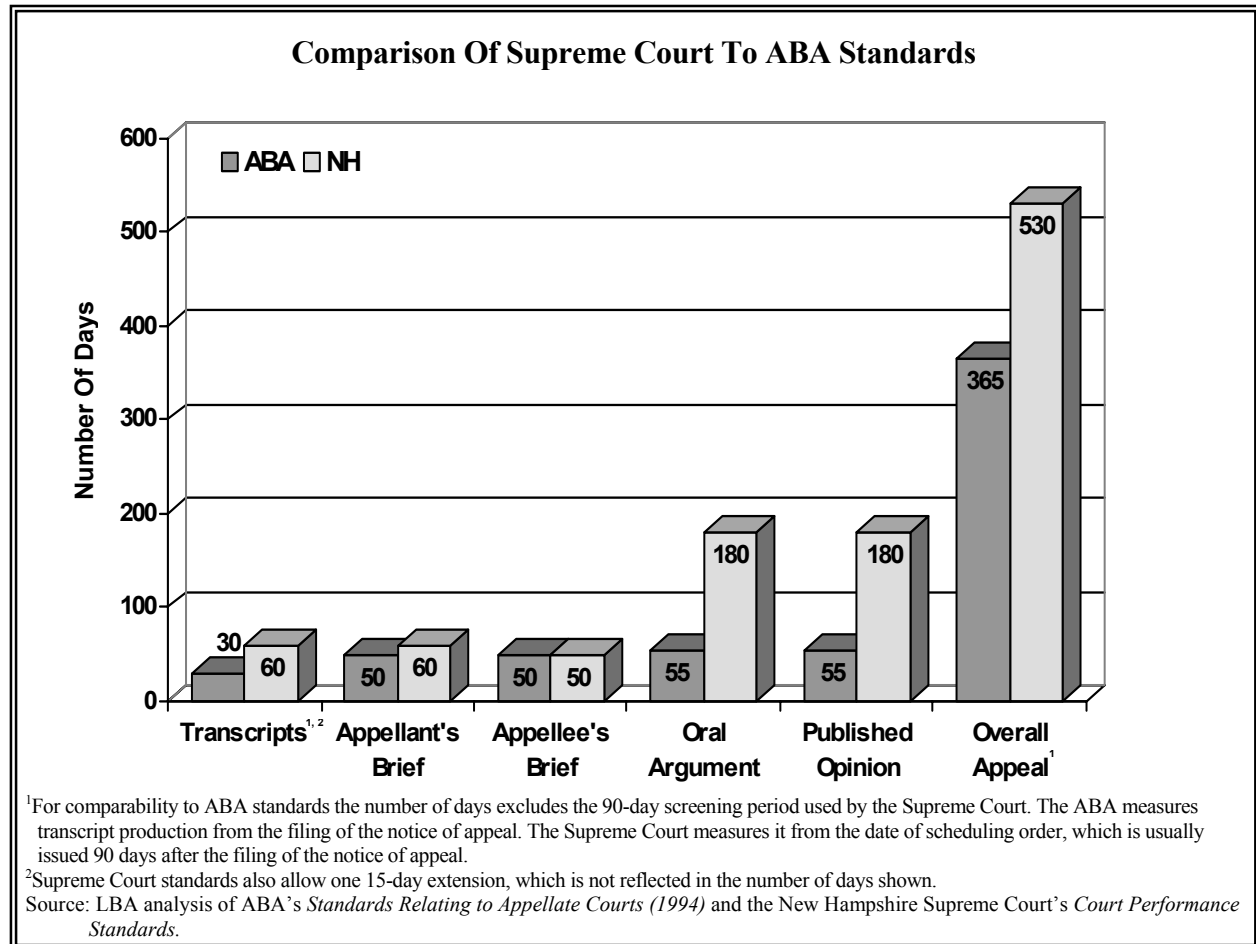
***Adopt Supreme Court Performance Standards Consistent With ABA Standards***

Court's time standards with standards promulgated in the ABA's *Standards Relating to Appellate Courts*.

The Supreme Court's performance standards allow significantly more time to elapse between case filing and disposition than standards promulgated by the ABA. Figure 13 shows a comparison of the Supreme Court's time standards with standards promulgated in the ABA's *Standards Relating to Appellate Courts*.

Overall, a state's supreme court should resolve 50 percent of its cases within 290 days, 90 percent of its cases within 365 days, and the remaining ten percent should be resolved as expeditiously as possible. However, the Supreme Court's performance standards allow 530 days to process an appeal from the date of the scheduling order to disposition. This exceeds ABA standards by 165 days.

**Figure 13**



As shown in Figure 13, when the standards are examined by case event, most of the time difference between New Hampshire's standards and the ABA's is consumed by the oral argument phase and publishing the court's opinion. According to the ABA standard, a case should be scheduled for oral arguments within 55 days of receiving the appellee's brief. The Supreme Court's standard allows 180 days to hold oral arguments, exceeding the ABA standard by 125 days. The ABA standard also permits 55 days between oral arguments and publishing the court's opinion. The Supreme Court's standard for publishing the Court's opinion allows the court 180 days, again exceeding the ABA standard by 125 days.

Figure 13 also shows the appellant's brief should be filed within 50 days from the filing of the transcript, however the Supreme Court's standard allows the appellant 60 days to file the brief. This exceeds the ABA standard by ten days. Observation No. 29 addresses the discrepancy between ABA standards and the Supreme Court's standards regarding transcript production.

Delay in the appeals process results in the injustice inherent in protracted litigation. In allowing appeals to exceed nationally recommended time standards, Supreme Court litigants may not receive timely resolution of their cases. During a review of randomly selected Supreme Court case files, we found an instance where a litigant claimed the Supreme Court violated his federal rights to due process by taking 3.5 years to decide his appeal.

### **Recommendation:**

**We recommend the Supreme Court adopt performance standards consistent with the ABA's Standards Relating to Appellate Courts.**

### **Auditee Response:**

*The Judicial Branch agrees in part. Time standards for the New Hampshire Supreme Court were first adopted in June 2001, a time when the court was experiencing backlog for oral argument and opinion writing. The standards were designed to address the New Hampshire reality of the time which stemmed from rising case volume through 1997 (rising from 504 to 915 case filings annually during the decade from 1988 to 1997) and opinion output on the low side in 1998, 1999, and 2000 (103, 158, and 124 opinions, respectively). By June 2001, when the standards were adopted, the situation was changing as a result of the adoption of a faster docket for cases of less precedential value, known as the 3JX docket, and a prodigious volume of opinions (322 opinions in 2001, including 223 full opinions and 99 3JX.). Still, the standards reflected the 2001 reality.*

*The ABA standards are written for an appellate court with mandatory jurisdiction, i.e. one which must accept and substantively decide all cases. New Hampshire is virtually unique in having a first level appellate court with discretionary jurisdiction. The ABA standards do not have a time segment for deciding whether to accept a case for appellate review. The New Hampshire time standard for that segment is 90 days.*

*Furthermore, as reported in the annual performance evaluation report for 2002, the New Hampshire Supreme Court's averages for all cases disposed of in 2002 are much closer to the*

*ABA standards than to its own. For the cases disposed in 2002, oral argument averaged 90 days after the appellant's brief, and opinions 76 days after argument. These figures are 90 and 104 days, respectively, lower than the New Hampshire standards, and only 35 and 21 days, respectively, above the ABA standards.*

*Finally, given the success of the New Hampshire Supreme Court in cutting down its backlog, it may be time to reevaluate the New Hampshire standards to reflect the 2003 reality. A caveat is in order on that issue. The New Hampshire Supreme Court announced in 2003 that it would change its system whereby the court will accept most cases for appellate review. The effect of this plan, which has been put on hold due to budget constraints, may make it wise to wait before revising the New Hampshire standards.*

*In any event, any adjustment to existing standards will reflect the situation in New Hampshire. National standards will be consulted but will not be followed just because they exist. Any time standard has to reflect the realities facing not only the court system in New Hampshire but also its many constituents, which for the New Hampshire Supreme Court include private attorneys, public attorneys, litigants, and pro se litigants.*

#### **Observation No. 29**

***Require Completed Transcripts  
Within 30 Days Of Supreme Court  
Scheduling Order***

New Hampshire Supreme Court Rule 15, allows court reporters and transcriptionists twice as long to complete a transcript as standards promulgated in the ABA's *Standards Relating to Appellate Courts*.

The ABA has established a time standard of 30 days from the filing of the notice of appeal for the production of a transcript. The New Hampshire Supreme Court has discretionary power to determine which cases it will accept for full appellate review. Once a case is accepted, the Court issues the scheduling order for the transcript. For comparative purposes, we calculated the time for transcript production from the date the scheduling order was issued. Supreme Court Rule 15 (4) states transcripts should be prepared "as early as possible within 60 days after the [court] reporter receives the scheduling order." Additionally, Supreme Court Rule 15 (4) allows court reporters to request an extension "not exceeding 15 days." Therefore, transcripts may not be completed until at least 30 days, and in some cases, 45 days beyond what the ABA standards recommend. We also note the Supreme Court's performance standards do not include a standard for transcript production.

According to the ABA, transcript preparation is fundamental to the appellate process and virtually no action can be taken until it is prepared. Additionally, the ABA has cited transcript production as the single greatest factor in the delay of appellate cases. According to the *Standards Relating to Appellate Courts*, if transcript production is kept as simple as possible, the 30-day standard for preparation of the transcript should be more than adequate for most courts and should be considered an outside limit. Without timely transcript production, appeals may be subjected to lengthy delays.

**Recommendation:**

**We recommend the Supreme Court change Supreme Court Rule 15 to require transcripts be produced within 30 days of the scheduling order. This time standard should be included in the Supreme Court’s *Court Performance Standards*.**

**Auditee Response:**

*The Judicial Branch agrees in part. As stated above, the triggering event in New Hampshire for transcript preparation is the scheduling order from the Supreme Court. The transcript is due at the Supreme Court 60 days from that scheduling order. Thus, the difference between New Hampshire and the ABA standard is whether the transcript should be filed within 30 or 60 days of the event that triggers its preparation. Reasonable people can differ on this question, but given the limited resources available in New Hampshire's trial courts for transcript preparation, 60 days is a reasonable choice.*

*Moreover, transcript preparation has not generally been a source of delay in appeals in New Hampshire. It has been in isolated cases, but as a whole delays in the appellate process in New Hampshire, when they have occurred, have not been caused by delay in receiving transcripts.*

*The court notes that in the proposed rules for a new appellate procedure, whereby most appeals would be non-discretionary, the time for production of the transcript is 45 days "after the reporter is notified by the lower court clerk to proceed with the transcription."*

*Finally, the Observation notes that the Supreme Court's performance standards do not include a standard for transcript production. The performance standards measure Supreme Court performance and include standards only for that performance. Transcript preparation is not part of the Supreme Court's performance and, therefore, is not part of its performance standards.*

**Observation No. 30**

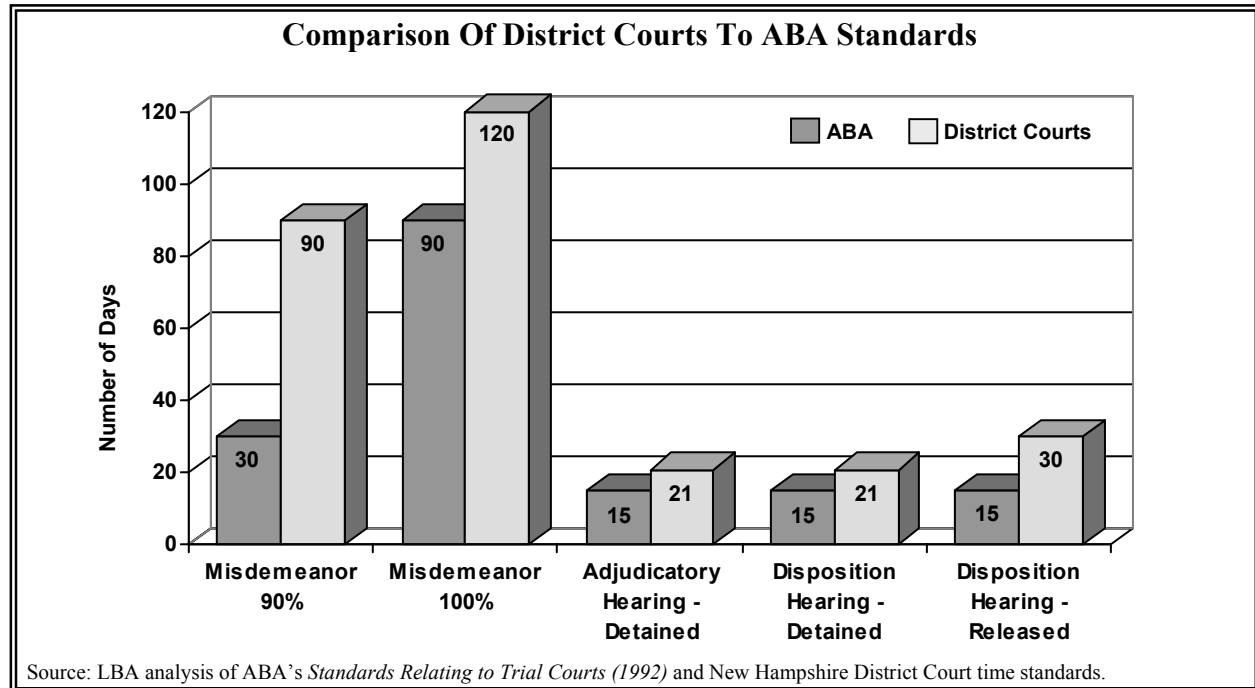
***Adopt District Court Case Processing Time Standards Consistent With ABA Standards***

The District Courts’ recommended case processing guidelines allow significantly more time to elapse between the filing date and date of disposition for misdemeanors and adjudicatory and dispositional hearings in juvenile cases than standards promulgated by the ABA. Figure 14 shows a comparison of District Courts time standards compared to ABA standards.

The District Courts have established a standard from arraignment to disposition, as well as a standard from the issuance of the complaint to arraignment. The District Courts’ standard states 90 percent of all misdemeanors should be adjudicated within 90 days of arraignment and 100 percent should be adjudicated within 120 days of arraignment, while arraignments should occur no later than 30 days from the issuance of the complaint. Conversations with District Court clerks revealed police departments are not always timely in submitting complaints to the court. *Excluding the time elapsed from the issuance of the complaint to arraignment*, District Court standards for misdemeanor cases exceed ABA standards for the 90<sup>th</sup> percentile by 60 days and exceeds the 100<sup>th</sup> percentile by 30 days.

According to the guidelines followed by the District Courts and established in RSA 169-B:14, II, an adjudicatory hearing for juvenile delinquents shall be held within 21 days of arraignment if a juvenile is detained. Therefore, the District Court guidelines and RSA 169-B:14, II exceed ABA standards by six days.

**Figure 14**



According to the guidelines followed by the District Courts and established in RSA 169-B:16, V, a dispositional hearing should be scheduled within 21 days of the adjudicatory hearing if the minor is detained and within 30 days if the minor has been released. Therefore, the District Court guidelines and RSA 169-B:16, V exceed ABA standards by six days when a juvenile is in a detention facility and 15 days when a juvenile has been released.

**Recommendation:**

**We recommend the District Courts adopt performance standards consistent with the ABA's *Standards Relating to Trial Courts* for all case types.**

**We recommend the Legislature consider amending RSA 169-B:14, II and RSA 169-B:16, V to reflect standards promulgated by the ABA.**

**Auditee Response:**

*The Judicial Branch agrees in part. The District Courts are undertaking a review of all time standards; however, any adjustment to existing standards or adoption of any new standards will reflect the situation in New Hampshire. National standards will be consulted but will not be followed just because they exist. Any time standard has to reflect the realities facing not only the court system in New Hampshire but also its many constituents, which for the District Courts*

include police departments, government agencies, private attorneys, public attorneys, litigants, and *pro se* litigants.

Data taken from the National Center for State Court's publication Case Processing Time Standards in State Courts, 2002-03 shows that only ten states have adopted case processing time standards in misdemeanor cases that comply with the ABA standards. For New Hampshire those standards may be an aspiration for the future; for now, as mentioned above, our standards will reflect our realities.

Specific comments regarding the Observation as it pertains to misdemeanor and juvenile cases in the District Courts follow:

**Misdemeanor Cases:** In New Hampshire, the District Courts have no control over the date complaints are filed or the dates arraignments are scheduled. Local police departments routinely issue summonses in lieu of complaints on the date of arrest pursuant to RSA:594:14. Complaints are prepared and filed weeks, and sometimes longer, after arrest. The court conducts regularly scheduled arraignment sessions; however, local police departments "schedule" the arraignments on the summons or complaint form, generally taking into consideration availability of officers, etc. The first time the District Courts can exercise control over scheduling is from the date of arraignment under our state's statutory scheme for filing of criminal complaints. Consequently, the establishment of time standards from date of arrest could not be effective absent the statutory requirement that all complaints be filed within a specified period from arrest and arraignments scheduled accordingly.

**Juvenile Cases:** The time standards established by the Legislature have been the subject of legislative review in the recent past. In establishing the 21/30 day rule in RSA 169-B:14, II and RSA 169-B:16, V, the Legislature received testimony from the law enforcement community, DCYF, guardians ad litem, prosecuting and defense attorneys, as well as the courts, that the current 21/30 day time frame was the minimum time necessary to allow adequate case preparation. The Legislature did, through RSA:169-B:14, II limit the reasons for continuances and the length of time that may be granted. It is noteworthy, as well, that in New Hampshire, pursuant to Supreme Court decisions (In re Russell C., 120 N.H. 260 (1980) and In re Eric C., 124 N.H. 222 (1983)), the 21/30 day requirements have been deemed mandatory by the Supreme Court, requiring dismissal of charges if not complied with.

### Observation No. 31

***Formally Adopt District Court Case Processing Standards For Civil Writ, Small Claims, And Landlord And Tenant Cases***

In the District Courts, civil cases are comprised of small claims, and those brought forth by civil writ as well as juvenile and domestic violence cases. During the audit period, 37,216 civil writs, 103,808 small claims, and 40,887 landlord and tenant cases were filed in the District Courts. However, the District Courts have not formally adopted case processing standards for these cases.

The District Courts follow timelines established by statute for landlord and tenant and small claims cases. In addition to the timeframes established in statute, the District Courts have



developed court rules outlining procedures regarding these cases. The procedures outlined in court rules for landlord and tenant cases establish timeframes for certain events in the processing of these cases such as discovery and trial. However, they do not establish a timeframe for disposing cases after filing. District Court rules and statutes governing small claims cases are very general and do not establish timeframes within which events must occur, nor do they establish a timeframe for disposing cases after filing. No timeframe guidelines exist for civil writ cases. The ABA has established a maximum case processing standard of 30 days for all summary civil cases such as landlord and tenant and small claims.

Without formal performance standards for civil writs, small claims, and landlord and tenant cases, the District Courts have no means of measuring case processing performance for these cases. As a result, District Court litigants may not receive timely disposition of their cases.

**Recommendation:**

**We recommend the District Courts establish case processing standards for civil writs, small claims, and landlord and tenant cases. Performance standards established for these cases should be consistent with case processing standards established by the ABA, as discussed in Observation No. 30. Additionally, these timelines should be adopted as formal case processing standards, as discussed in Observation No. 35.**

*Auditee Response:*

*The Judicial Branch agrees in part. The District Courts are undertaking a review of all case processing standards, including considering the adoption of standards for civil writs, small claims, and landlord and tenant cases; however, any adjustment to existing standards or adoption of any new standards will reflect the situation in New Hampshire, including legislatively adopted requirements. National standards will be consulted but will not be followed just because they exist. Any time standard has to reflect the realities facing not only the court system in New Hampshire but also its many constituents, which for the District Courts include police departments, government agencies, private attorneys, public attorneys, litigants, and pro se litigants.*

*Regarding whether these timelines should be adopted as formal case processing standards, see the response to Observation No. 35.*

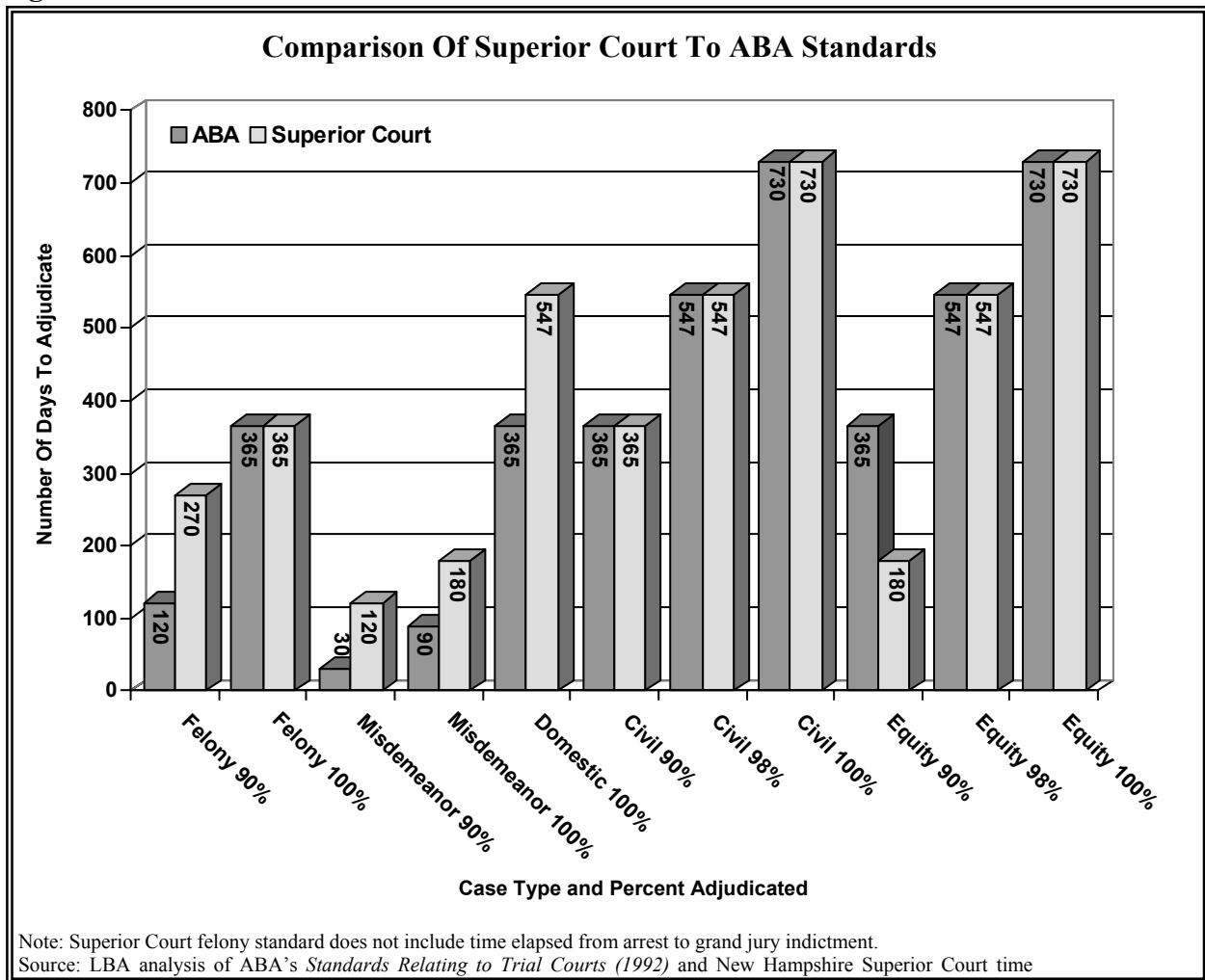
**Observation No. 32**

***Adopt Superior Court Case Processing Time Standards Consistent With ABA Standards***

Superior Court case processing guidelines adopted in 1997 allow significantly more time to elapse between the filing date and date of disposition for criminal and domestic relations cases than standards promulgated by the ABA. Case processing guidelines for civil and equity cases are consistent with ABA standards. Figure 15 shows a comparison of Superior Court time standards compared to ABA standards.

The Superior Court established standards for felony cases from grand jury indictment to arraignment and from arraignment to disposition. However, it has not established a time standard from arrest to indictment. According to the Superior Court’s time standards, incarcerated and non-incarcerated defendants should be arraigned within 15 days and 20 days of grand jury indictment, respectively. The Superior Court standards state 90 percent of all criminal felony cases should be adjudicated within nine months, or 270 days, after arraignment. *Excluding the time elapsed from arrest to grand jury indictment*, the Superior Court’s standards allow a minimum of 285 days to process a felony case from indictment to disposition. This exceeds the ABA standards by at least 165 days.

Figure 15



The Superior Court’s standards state 90 percent of all misdemeanors should be adjudicated within 120 days of entry and 100 percent should be adjudicated within 180 days. Therefore, Superior Court standards for misdemeanor cases exceed ABA standards for both the 90<sup>th</sup> and 100<sup>th</sup> percentile by 90 days.

The Superior Court’s standards state 100 percent of all domestic relations matters should be concluded within 18 months, or 547 days, of the date of case filing, exceeding ABA standards by 182 days.

**Recommendation:**

**We recommend the Superior Court adopt performance standards consistent with the ABA’s Standards Relating to Trial Courts for all case types.**

Auditee Response:

*The Judicial Branch agrees in part. The Superior Court will consider undertaking a review of all time standards; however, any adjustment to existing standards or adoption of any new standards will reflect the situation in New Hampshire. National standards will be consulted but will not be followed just because they exist. Any time standard has to reflect the realities facing not only the court system in New Hampshire but also its many constituents, which for the Superior Court include police departments, government agencies, private attorneys, public attorneys, litigants, pro se litigants, and jurors.*

*Data taken from the National Center for State Court's publication Case Processing Time Standards in State Courts, 2002-03 show that few states have adopted standards that meet the ABA standards. The following numbers of states have adopted standards that meet ABA standards, in the areas noted.*

<u>Case Type</u>	<u>States with ABA-Consistent Standards</u>
Civil	5
Misdemeanor	10
Domestic Relations	11
Felony	18

*For New Hampshire, those standards may be an aspiration for the future; for now, as mentioned above, our standards will reflect our realities.*

*Those realities in New Hampshire include declining clearance rates, i.e. case dispositions divided by case filings. As the Table 5 on page 26 of this report shows, the Superior Court had its lowest clearance rate of the audit period in SFY 2002. In fact in the Superior Court, the clearance rate exceeded 100% in the first three years of the audit period but was below it in the last three, dropping to only 93% in SFY 2002. Surely, fiscal constraints have contributed to the decline in clearance rates. Where resources have been increased, as they were at the Supreme Court in late 2000, the effect on clearance rates has been dramatic. See Table 3 at page 22.*

*Specific comments regarding the Observation as it pertains to felony, misdemeanor, and domestic relations cases in the Superior Court follow:*

***Felony Cases:*** *The Observation notes that the Superior Court does not have a time standard from arrest to indictment. That is because in New Hampshire that time span is not within the control of the Judicial Branch. It should also be noted that in felony cases there is an ultimate time standard. That standard is the rules relating to speedy trials established by the United States Supreme Court to enforce the Sixth Amendment to the United States Constitution.*

***Misdemeanor Cases:*** *The ABA standards on misdemeanor cases are applicable to the original trial of those cases, which often takes place in a court of limited jurisdiction as it does in New Hampshire. The Superior Court jurisdiction in misdemeanor cases is for a de novo appeal. Most such cases are appealed for the purpose of a jury trial. The ABA misdemeanor standards are not applicable to the misdemeanor jurisdiction of the New Hampshire Superior Court.*

***Domestic Relations Cases:*** *Domestic relations cases are the most labor intensive cases in the court system from a clerical point of view. As a result, the clerical vacancies that the Judicial Branch has been enduring for more than two years have had their greatest impact on these cases. As a result of recent budget issues, the number of clerical vacancies has reached a high point. As of September 10, 2003, there are more than 26 vacant positions in the Superior Court, or 12.73% of its non-judicial workforce. Meeting the ABA standards in domestic relations cases is nothing more than an aspiration for the Superior Court.*

### Observation No. 33

***Adopt Family Division Case Processing Time Standards Consistent With ABA Standards***

Family Division Pilot Project case processing time standards allow significantly more time to elapse between scheduling hearings for adjudicatory and dispositional hearings in juvenile cases than standards

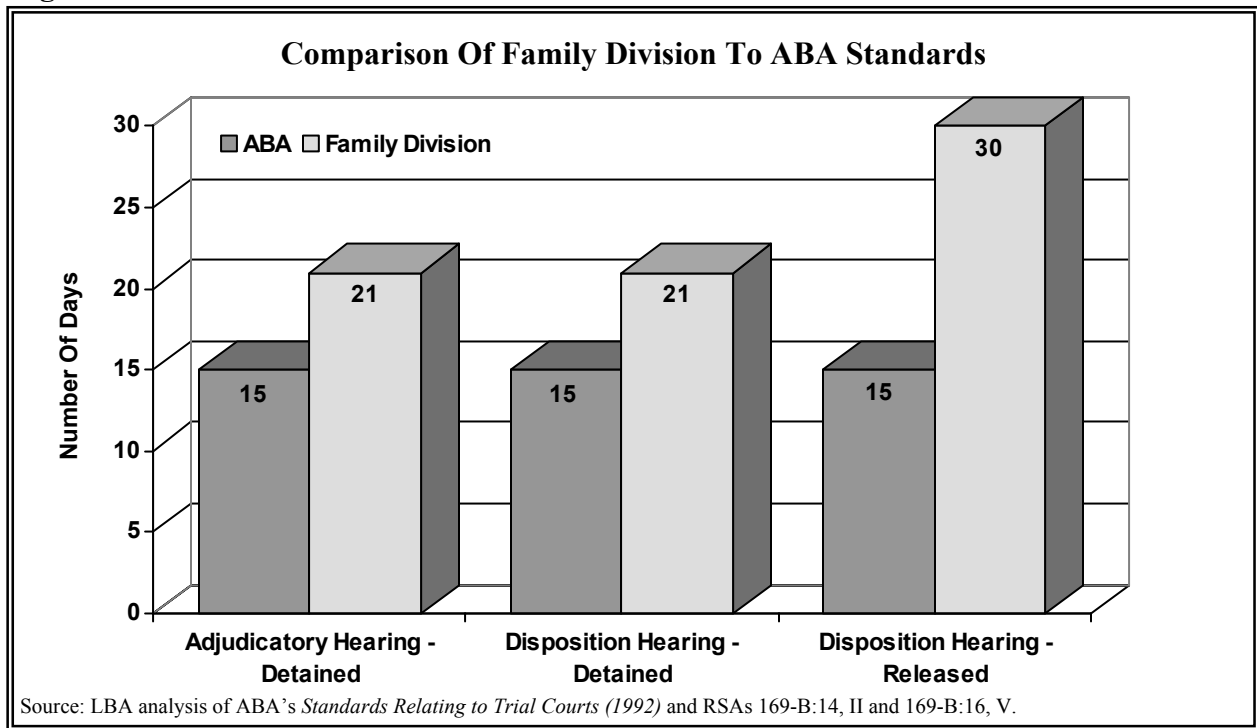
promulgated by the ABA. Figure 16 shows a comparison of Family Division Pilot Project juvenile time standards compared to ABA standards.

According to the guidelines followed by the Family Division Pilot Project and established in RSA 169-B:14, II, an adjudicatory hearing for juvenile delinquents shall be held within 21 days of arraignment if a juvenile is detained. Therefore, the Family Division Pilot Project guidelines and RSA 169-B:14, II exceed ABA standards by six days.

According to the guidelines followed by the Family Division Pilot Project and established in RSA 169-B:16, V, a dispositional hearing should be scheduled within 21 days of the adjudicatory hearing if the minor is detained and within 30 days if the minor has been released. Therefore, Family Division Pilot Project guidelines and RSA 169-B:16, V exceed ABA standards by six days when a juvenile is in a detention facility and 15 days when a juvenile has been released.

Since the Family Division Pilot Project allows adjudicatory and dispositional hearings in juvenile cases to exceed nationally recommended standards, juveniles may spend more time in a detention facility than is necessary.

Figure 16



**Recommendation:**

We recommend the Family Division Pilot Project adopt performance standards consistent with the ABA's *Standards Relating to Trial Courts* for all case types.

We recommend the Legislature consider amending RSA 169-B:14, II and RSA 169-B:16, V to reflect standards promulgated by the ABA.

Auditee Response:

*The Judicial Branch agrees in part. This Observation is identical to Observation No. 30 so far as that Observation pertains to juvenile cases. The response in that Observation so far as it pertains to juvenile cases is equally applicable to Observation No. 33.*

**Observation No. 34**

***Establish Probate Court Case Management Timelines For Adoption, Trust, Involuntary Admission, And Equity Cases***

During the audit period, the Probate Courts handled 2,811 adoption cases, 944 trusts, 2,110 involuntary admissions, and 704 equity cases. However, the Probate Courts have not established case management timelines for events in these case types.

The Probate Courts followed statutory timelines for adoption, trust, and involuntary admission cases. Case management timelines were not developed for these case types because the Probate Courts reportedly lack the means to track and monitor their compliance with the current case management system. The Probate Courts intended to wait until a new case management system or other method of tracking was in place before establishing timelines for these case types. Case

management timelines were established for events in guardianship, estate, and termination of parental rights cases in 1999 to help clarify statutory requirements and ensure all courts apply the statutes uniformly. The Probate Courts also did not have the ability to track compliance with these case types.

Without case management timelines for adoption, trust, involuntary admission, and equity cases, the Probate Courts have no means of measuring case processing performance for these cases. As a result, Probate Court litigants may not receive timely disposition of their cases. Additionally, since timelines serve to clarify statutes and ensure they are consistently applied, statutory requirements for adoption, trust, and involuntary admission cases may be inconsistently applied.

**Recommendation:**

**We recommend the Probate Courts establish case processing timelines for adoption, trust, involuntary admission, and equity cases. Additionally, these timelines should be adopted as formal case processing standards, as discussed in Observation No. 35.**

**Auditee Response:**

*The Judicial Branch agrees. The Probate Courts are committed to establishing timelines for all primary case types in its jurisdiction, including the case types mentioned in this Observation; however, the adoption of any new standards will reflect the situation in New Hampshire. Any time standard has to reflect the realities facing not only the court system in New Hampshire but also its many constituents, which for the Probate Courts include pro se litigants, government agencies, private attorneys, public attorneys, and litigants.*

*The first timelines developed in the Probate Courts were for guardianship, estate, and termination of parental rights cases. Guardianship and estate cases comprise more than half of the docket of the Probate Courts. Termination of parental rights cases were the subject of certain federal requirements so timelines were set for them. Timelines for adoption, trust, involuntary admission, and equity cases were not given the same priority for several reasons. First, timelines for these cases were seen as being less needed because the Probate Courts had greater confidence that the procedures used in these cases were more uniform statewide than with respect to guardianship, estate, and termination of parental rights cases. Second, for involuntary admission cases court created timelines were less necessary since the timelines in those cases are largely driven by statute. Finally, the category of cases covered by this Observation amounts to only 11% of the caseload of the Probate Courts.*

*Regarding whether these timelines should be adopted as formal case processing standards, see the response to Observation No. 35.*

**Observation No. 35**

***Adopt And Monitor Trial Court Case Processing Standards***

The Superior, District, and Probate Courts, and the Family Division Pilot Project have established and adopted timelines to guide case processing for various case types within their jurisdictions. However these timelines reportedly serve just as guidelines and are not standards monitored for compliance. Results from our survey of court clerks and registers indicate 17 of the 44 respondents to the question do not track the time it takes to process the court's caseload from filing to disposition. In addition, 13 of the 38 respondents to another question do not produce reports to assist them in caseload management.

According to the National Center for State Courts' (NCSC) *Caseflow Management: The Heart of Court Management in the New Millennium*, adopting case processing standards reflects a commitment that timely disposition of cases is an important goal. Additionally, courts with successful caseflow management programs have a clear understanding of what they are trying to accomplish because their goals are reflected in case processing time standards they have adopted. According to the ABA's *Standards Relating to Trial Courts*, standards of timely disposition are important management tools providing a mechanism to evaluate a court's performance. Time standards provide a yardstick for measuring management effectiveness and serve as a benchmark for determining whether the pace of court proceedings is acceptable. Additionally, the ABA states one factor contributing to delay is the absence of clear goals toward which a court can direct its supervisory efforts. In a 1999 study conducted by the NCSC, researchers concluded a court's degree of commitment to case processing time goals shapes the impact these goals have on attorneys and judges and ultimately, on the pace of litigation.

Absent clear case processing goals, processing times may not be reviewed and monitored. As a result, litigants may not receive timely disposition of their cases. The absence of clear goals also diminishes management's ability to compare case processing time from court to court and among court departments to ensure resources are distributed fairly and equitably. Additionally, without enforced standards and a method for checking compliance with those standards, there is no accountability for timely disposition of cases.

**Recommendation:**

**The Superior, District, and Probate Courts and the Family Division Pilot Project should monitor compliance with adopted standards.**

**Auditee Response:**

*The Judicial Branch agrees. As shown in prior responses, the Judicial Branch has been moving toward the adoption of case processing guidelines in all levels of court and is committed to their adoption in areas where standards do not exist today. Furthermore, the Judicial Branch agrees that compliance with the guidelines should be monitored. A good example of this monitoring is the performance evaluation report for 2002 where the Supreme Court compared its performance for all the cases disposed of in 2002 with its time standards.*

*To monitor compliance with standards, a necessary tool is proper management reporting. The trial courts in the Judicial Branch are still operating a case management system run on DOS and originally installed in the 1980s. It is simply incapable of the type of management reporting needed to either monitor or enforce compliance with standards. The Legislature appropriated capital funds in the 2001 session, and has extended that appropriation in the 2003 session, sufficient for the Branch to purchase the hardware necessary to run a modern case management system and the software comprising the system. The hardware is now in place, and a contract for the purchase of the software is expected shortly. Thus, the Judicial Branch anticipates that during the current biennium it will have a case management system capable of monitoring compliance with standards.*

*Proper monitoring of standards, however, is extremely labor intensive. Once the management reports identify cases outside the parameters of the standards, it takes people to review the files and take the action necessary to bring offending cases into compliance. With more than sixty clerical vacancies in the Judicial Branch, a number that now exceeds ten percent of its clerical workforce, the manpower to properly monitor standards is just not there.*

*In sum, the Judicial Branch is committed to adopting case processing standards and to monitoring compliance.*

## **5.2 Delay Prevention And Reduction**

Courts can prevent delay and ensure timely case processing by establishing a delay prevention and reduction program. According to the ABA and the NCSC, elements of a delay prevention and reduction program include continuous court supervision and control over the movement of cases, promulgating and monitoring case processing time standards, commencing trials on the original scheduled date, and a firm, consistent policy for minimizing continuances.

Early intervention and continuous monitoring are key components of timely disposition. Once a case is filed, courts should assume responsibility for moving it through the judicial process. The ABA, in its *Trial Court Performance Standards*, recommends courts initiate procedures for early differentiation of cases according to their urgency, complexity, subject matter, and common parties through the use of Differentiated Case Management (DCM). DCM eliminates the first-in-first-out model of case processing and replaces it with a caseload management program based on complexity and readiness of the case to proceed to the next step. DCM attempts to maximize resources by quickly disposing of cases that can be easily resolved, freeing up resources for complicated cases. One element of DCM is establishing multiple tracks and criteria for assigning individual cases to these tracks. Courts should also institute early case screening to identify and eliminate case events that do not contribute to case resolution while incorporating events that promote early case disposition. Results from our survey of court clerks and registers revealed seven out of 46 court clerks and registers responding to the survey question do not screen cases for complexity or other issues. Additionally, seven out of 45 court clerks and registers report their court has not established specialized tracks for processing cases.

To achieve management results, courts must adhere to and monitor case processing goals. Case processing goals help identify cases that exceed appropriate standards for case disposition as



well as help courts monitor delay by providing a method to evaluate progress. Court personnel report the case processing guidelines used by the trial courts serve only as guidelines and are not standards to which the courts must adhere. Our survey of court clerks and registers revealed 17 of 44 respondents to the question do not monitor the time it takes to process a case from filing to disposition. Additionally, 13 of 38 clerks and registers responding to the survey question report they do not receive or generate reports to assist them in managing their court's caseload.

Judges should retain exclusive authority to grant continuances and the court system should establish a strict, written continuance policy that is consistently applied. According to the ABA, a court that is too liberal in granting continuances encourages attorneys to be unprepared and encourages more requests for continuances. Firm enforcement of deadlines breaks this cycle and encourages attorneys to prepare for appearances, resulting in fewer delays in the judicial process. The court should track all requests for continuances and issue disciplinary action for excessive requests. The State Justice Institute advocates a continuance rate of 15 percent or less. Our survey of court clerks and registers revealed 21 out of 45 respondents to our question reported their court does not have a formal written continuance policy. Ten of 31 clerks and registers reported the clerk or register also grants continuances. Two District Court clerks also reported court assistants grant continuances. According to our survey of court clerks and registers, ten of 38 respondents to the question reported their court has a continuance rate of more than 15 percent for pre-trial hearings and 18 of 43 respondents to the question reported a continuance rate of more than 15 percent for trials.

According to the NCSC, about 95 percent of all criminal cases are disposed by plea or other non-trial means. Therefore, management of criminal cases should focus on ways to provide for meaningful plea discussions at the earliest stage of the proceedings as possible. Establishing a plea cut-off date ensures the docket for the day does not collapse due to last minute plea negotiations, leading to better utilization of court resources. The NCSC advocates the court schedule a conference between the prosecutor and defense attorney where the prosecutor's best plea offer is presented. Any plea entered after the designated plea cut-off date should be to the original charge. This helps prevent defendants from waiting for the most favorable deal and reduces the number of cases that go to trial. Additionally, eliminating last-minute plea negotiations allows the court to better schedule cases and ensures better use of judicial time. In our survey of court clerks and registers 25 of 37 respondents to the question reported their court does not have a written plea cut-off policy. Through the surveys and our field visits, five court clerks expressed last minute plea negotiations are a problem for their court. Three expressed many pleas are entered on the day of court and some defendants do not start to discuss a plea until the jury has been selected and they know trial is imminent. One clerk expressed that judge time could be better utilized if there is a plea cut-off date.

Firm trial dates are as important as enforcing a firm continuance policy. Therefore, the court should adopt firm policies regarding scheduling trials and trials should start on the first date scheduled. According to the ABA, uncertainty regarding trial dates lends itself to last minute continuances and settlements, leading to underutilization of court resources.

The remainder of this section presents our observations regarding the Branch's compliance with ABA case processing standards.

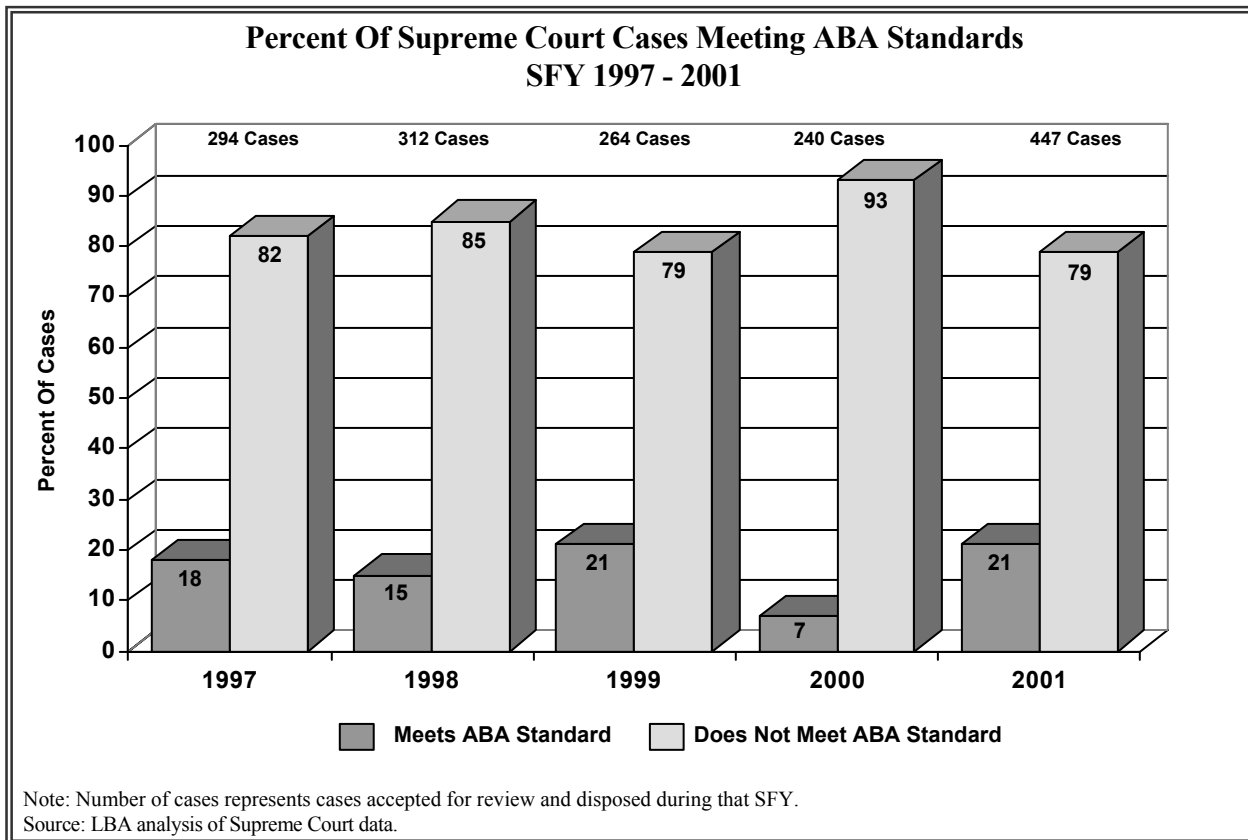
**Observation No. 36**

***Employ Delay Reduction Procedures In The Supreme Court Consistent With ABA Standards***

Since the Supreme Court did not have an automated case management system, we could not readily calculate the time between intermediate steps in the appellate process or determine the Supreme Court’s compliance with established standards for these steps. We were able to calculate the time from filing to disposition and determine compliance with these standards. The Supreme Court could not provide automated case information for calendar year 2002; however, we manually collected the data in December 2002 using docket cards printed from the case management system. SFY 2002 data is not included in the analysis because at the time we gathered the data, 61 percent of cases accepted for review had not yet been disposed.

According to the ABA’s *Standards Relating to Appellate Courts*, an appellate court should dispose of 90 percent of its cases within one year of filing the notice of appeal and the remaining ten percent should be disposed as quickly as possible. As shown in Figure 17, from SFY 1997 through 2001, the Supreme Court met the ABA standards in 18 percent, 15 percent, 21 percent, seven percent, and 21 percent of the cases respectively for a five-year average of 16 percent. In other words, only 21 percent of the cases filed in SFY 2001 were disposed of within 365 days.

**Figure 17**



The Supreme Court reportedly experienced a backlog during our audit period. During this time the court had a long fully-briefed list, so some cases were not being scheduled for oral argument until other cases on the list had been scheduled, regardless of how long the case had been waiting

on the list. To alleviate the backlog, the Court instituted the Three Justice Expedited (3JX) Docket in December 2000. Court personnel reported, as of July 2003, the Court has no backlog, therefore cases are being scheduled for oral argument immediately after they are fully briefed. However, Court personnel stated if the Court becomes backlogged again, scheduling cases for oral argument could become an issue.

Supreme Court Rule 21(7) reportedly addresses continuance requests. However, Rule 21(7) does not address continuances directly, rather it addresses non-dispositive motions and orders in general. The court manually tracks continuances because neither the old tracking system nor the new case management system has the ability to track continuances.

### **Recommendation:**

**We recommend the Supreme Court establish a delay reduction program consistent with elements proposed by the ABA. To prevent cases from waiting unnecessarily for oral arguments, the Supreme Court should schedule cases for oral argument based on the date the briefing is completed. As discussed in Observation No. 8, the Supreme Court should ensure the new case management system can readily track information necessary to monitor compliance with case processing standards. Finally, the Supreme Court should establish and strictly enforce a formal continuance policy.**

### **Auditee Response:**

*The New Hampshire Supreme Court agrees with these recommendations and submits that they are being accomplished by the court on an on-going basis.*

*This Observation makes the following four recommendations: (1) that the Supreme Court establish a delay reduction program; (2) that cases be scheduled for oral argument based on the date briefing is completed; (3) that the Supreme Court ensure its new case management system has the ability to track information necessary to monitor compliance with case processing standards; and (4) that the court establish and enforce a formal continuance policy. Each will be discussed in turn.*

*The Supreme Court has established a delay reduction program. In the fall of 2000, more than 180 argued cases were awaiting opinions, and approximately 150 fully-briefed cases were awaiting argument. The court set about on a delay reduction program on several fronts. First, it hired additional staff both on the professional and clerical levels. This move was long overdue since the increase in the Supreme Court's staff during the decade from 1988 through 1997, when case filings increased from 504 to 915, did not come close to keeping apace with that volume increase. Second, it established a program for early case differentiation, known as the 3JX docket, whereby cases of less precedential value were heard sooner, in shorter arguments, before three judges. Early case differentiation is one of the points mentioned in this Observation. Third, it began sitting for oral argument for three consecutive months, not having argument in the fourth month to concentrate on finishing all opinions in cases argued in all but the last month of the prior three. This pattern is repeated for each four month segment of the year. As such, the court has set a recurring goal for itself. Goal setting is another of the points mentioned in this*

*Observation. The result of these delay reduction efforts has been the elimination of the backlog faced in 2000. The court is now scheduling cases for oral argument on a current basis. At the end of each four-month cycle of three months of argument and one without argument, the court has been very close to completing opinions in all cases argued more than two months earlier. This successful delay reduction effort would not have been possible without the increase in court staff.*

*The second recommendation is that cases be scheduled for argument based on the date briefing is completed. Both a system of scheduling cases based on the date of completion of briefing and one based on the date the case was filed are logical. The New Hampshire Supreme Court has opted for the latter system because it gives preference to the oldest cases on the docket. In fact, this Observation itself concentrates on statistics of case disposition based on time between case filing and case disposition. Scheduling cases for oral argument based on case filing dates, as does the New Hampshire Supreme Court, will result in the lowest possible filing to disposition time period. It should also be noted that there are exceptions to the date of filing rule. Certain classes of cases, such as cases involving the status of a child, landlord and tenant cases, lawyer discipline case, and domestic violence cases are scheduled on a priority basis. In addition, the court in its discretion can expedite the processing of time sensitive cases – another method of case differentiation.*

*The third recommendation is that the court ensure its new case management system has the ability to track information necessary to monitor compliance with case processing standards. The new system will allow this tracking. Even using manual systems for the past many years, the court has, as mentioned in the response to Observation No. 8, engaged in an extensive monitoring and control system based on accurate data. Court staff has produced many reports for staff and the justices. These include screening reports, which told the justices what screening was outstanding; transcript tracking reports, which reported on the status of all outstanding transcripts; the fully briefed list, which provided a list of all the cases fully briefed and awaiting scheduling for oral argument; status lists kept of cases awaiting opinion both on a full court and individual justice basis and shown by age since submission of the case to the court; and finally, the list of cases pending reconsideration and rehearing. Furthermore, as reported in the annual performance evaluation report for 2001 and 2002, the New Hampshire Supreme Court monitors its compliance with the time standards it has set. In addition, the court's docket is monitored monthly in conjunction with the preparation of the oral argument calendar. Continuous court supervision and control of its docket has always existed at the New Hampshire Supreme Court, even at the height of the court's backlog.*

*Finally, this Observation recommends the establishment and enforcement of a formal continuance policy. Continuances have not been a serious source of delay at the New Hampshire Supreme Court. One justice is in charge of continuance requests, thereby achieving consistency and oversight of continuances.*

**Observation No. 37**

***Employ Delay Reduction Procedures In The Trial Courts Consistent With ABA Standards***

The Superior and District Courts and the Family Division Pilot Project do not meet some case processing standards established by the ABA (Table 15). No national standards exist for processing probate cases. However, the Probate Courts have established caseflow management guidelines for processing steps in termination of parental rights, guardianship, and estate cases, but SUSTAIN does not have the ability to measure compliance with the time frames.

**Table 15**

<b>Average Percentage Of Trial Court Cases Meeting ABA Standards For SFY 1997 - 2002</b>				
<b>CRIMINAL</b>				
	<b>ABA Standard</b>	<b>Superior Court<sup>1,2</sup></b>	<b>District Courts<sup>2</sup></b>	<b>Family Division</b>
Felony	90% in 120 days of arrest	19%	N/A	N/A
	98% in 180 days of arrest	39%	N/A	N/A
	100% in 12 months of arrest	80%	N/A	N/A
Misdemeanor	90% in 30 days of arrest or citation	28%	38%	N/A
	100% in 90 days of arrest or citation	42%	76%	N/A
<b>CIVIL</b>				
	<b>ABA Standard</b>	<b>Superior Court</b>	<b>District Courts</b>	<b>Family Division</b>
General Civil	90% in 12 months of filing	72%	93%	N/A
	98% in 18 months of filing	87%	94%	N/A
	100% in 24 months of filing	93%	94%	N/A
<b>EQUITY</b>				
	<b>ABA Standard</b>	<b>Superior Court</b>	<b>District Courts</b>	<b>Family Division</b>
Equity <sup>3</sup>	90% in 12 months of filing	84%	N/A	N/A
	98% in 18 months of filing	90%	N/A	N/A
	100% in 24 months of filing	93%	N/A	N/A
<b>DOMESTIC RELATIONS</b>				
	<b>ABA Standard</b>	<b>Superior Court</b>	<b>District Courts</b>	<b>Family Division</b>
General Domestic Relations	90% in 3 months of filing	42%	N/A	43%
	98% in 6 months of filing	63%	N/A	65%
	100% in 12 months of filing	82%	N/A	86%
<b>JUVENILE</b>				
	<b>ABA Standard<sup>4</sup></b>	<b>Superior Court</b>	<b>District Courts</b>	<b>Family Division<sup>5</sup></b>
Arraignment to Disposition	45 days of arraignment	N/A	66%	N/A

<sup>1</sup>Felony data were calculated from the date the case was filed in the court.  
<sup>2</sup>Misdemeanor data were calculated from the date the case was filed in court.  
<sup>3</sup>ABA general civil standards are applied to the Superior Court's equity cases because equity is a specialized civil case.  
<sup>4</sup>Days are the sum of the maximum number of days for arraignment to adjudicatory hearing and adjudicatory hearing to dispositional hearing.  
<sup>5</sup>Family Division Pilot Project data could not be calculated because data was not available.  
 Source: LBA analysis of Judicial Branch caseload data.

The Superior Court does not meet any of the ABA's felony case processing standards. The ABA calculates the days from filing to disposition in a felony case beginning with the date of arrest.

The date of arrest was not available in the database obtained from the Judicial Branch, therefore data were calculated from the date the case was filed in the Superior Court.

Misdemeanor arraignments for Superior Court cases occur in the District Courts prior to being sent to Superior Court. Additionally, our conversations with District Court clerks revealed police departments are not always timely in submitting complaints to the court. Therefore, we calculated the number of days for adjudication beginning the day the case is filed in the court.

As discussed in Observations No. 30 and 33, RSA 169-B:14, II requires an adjudicatory hearing within 21 days of arraignment if a juvenile is detained and within 30 days if the juvenile is released. Additionally, RSA 169-B:16, V requires a dispositional hearing within 21 days of the adjudicatory hearing if the minor is detained and within 30 days if the minor is released. As discussed in Observation No. 9, we were unable to check the Family Division Pilot Project's juvenile caseload against ABA standards because SUSTAIN does not have the ability to track necessary data. For our analysis of District Court juvenile cases, we assumed every juvenile was released, using a conservative estimate of 45 days, the maximum number of days under ABA standards. We then calculated the number of days for adjudication beginning the day of arraignment. Table 15 shows the average percentage of criminal, civil, equity, domestic relations, and juvenile cases meeting ABA standards.

### **Recommendation:**

**We recommend the trial courts establish delay reduction programs containing elements advocated by the ABA. The delay reduction programs should include elements of DCM, monitoring case processing guidelines, and establishing firm trial dates and continuance policies.**

### **Auditee Response:**

*The Judicial Branch agrees in part. The issue of adopting ABA standards with respect to the trial courts has been previously discussed in the responses to Observation Nos. 30 through 34. Reference should be made to those responses.*

*Currently, delay reduction is not occurring in New Hampshire's trial courts. Since the adoption of the budget for fiscal year 2002 in June 2001, vacancies in the clerical workforce in the trial courts have climbed. For fiscal year 2002, the Judicial Branch averaged approximately 40 vacancies, or about 7% of its workforce, in order to live within its appropriation. For fiscal year 2003, just ended, that number increased to approximately 50 vacancies, or more than 8% of the non-judicial workforce. As of September 10, 2003, even with a recent cancellation of the layoff of 28 employees, there exist 70 non-judicial vacancies in the Judicial Branch workforce. This amounts to almost 12% of that workforce.*

*In light of these numbers, delay reduction is not a reality in New Hampshire's trial courts. Delays are increasing. A good indication of that fact can be seen in the Judicial Branch's Annual Report for 2002. For each level of trial court, the number of cases filed exceeded the number of cases disposed in fiscal year 2002. That fact means that backlogs are increasing.*

*The fact that filings are exceeding dispositions in the trial court is confirmed in this report. Every level of trial court had its worst clearance rate, i.e. case dispositions divided by case filings, in the last year of the audit period, SFY 2002. Moreover, all of those clearance rates were 96% or below, whereas in the first three years of the audit period (SFYs 1997 through 1999), the Superior and Probate Courts were 100% or above each year and the District Courts were at either 99% or 100%. See Tables 5, 7, and 9, at pages 26, 29, and 33.*

*Money is not the answer to every problem in the court system; however, the system cannot continue to endure a shrinking workforce and be expected to reduce delay at the same time. An exception to the shrinking workforce was seen in the New Hampshire Supreme Court in 2000-2001. As part of a delay reduction program, its workforce was increased, as is detailed in the response to Observation No. 36. It is not a coincidence that the Supreme Court was the only court in New Hampshire to dispose of more cases than were filed in fiscal year 2002. The increase in the clearance rate at the Supreme Court has been dramatic. See Table 3 at page 22. The Supreme Court, though, has not been spared the recent workforce declines. Currently, one clerical and three professional positions at the Supreme Court are vacant.*

*New Hampshire's trial courts have been used to delay reduction. In the mid-1990s, the Superior Court led the nation in the percentage of cases disposed of to cases filed. It is sad and frustrating to see the opposite trend take hold in the trial courts. Without even nearly adequate human resources, however, delay reduction is not possible in the very labor-intensive environment of the trial courts.*

### **5.3 Management Issues**

We found the Judicial Branch should develop Branch-wide definitions of data elements. We recommend the courts give defendants their sentences in writing. Finally, we recommend the Legislature consider eliminating Saturday arraignments.

#### **Observation No. 38**

***Establish Branch-Wide Definitions  
Of Data Elements And Ensure They  
Are Consistently Applied***

The trial courts use different definitions of when a case is disposed, as well as what constitutes a brought forward case, or re-entry. A brought forward case is a case that has previously been closed but is re-opened for further action. The Superior Court created a statistical definitions and entry procedures manual in 1999. However the guidelines were inconsistently followed and are reportedly subject to each clerk's interpretation.

For example, responses to our survey of court clerks and registers revealed different definitions for when a criminal case is disposed through a trial. Thirty-two respondents reported four different definitions. Sixteen clerks reported using the date of the judge's order as the disposition date, ten clerks reported using the date of sentencing, eight clerks reported using the end of the appeal period, and one clerk reported using the date of the clerk's notice as the disposition date. However, three clerks reported more than one definition for disposition.

Similarly, 36 respondents gave four different definitions of disposition for criminal cases where a plea of guilty is entered. Two clerks reported more than one definition of disposition. Also, 37 respondents reported five definitions for disposition in settled civil cases. In this case, three clerks reported more than one definition of disposition.

Definitions of disposition for other case types such as domestic violence, juvenile, and violations were similarly inconsistent among survey respondents.

The trial courts also define and track brought forward cases inconsistently. The Superior Court tracks and reports brought forward cases as part of the court's caseload, while the Family Division Pilot Project and the District Courts do not. In a memo from March 2003, the District Court administrative judge encourages the Judicial Branch to establish a common definition of re-entry and apply it consistently across all levels of court.

According to the NCSC, uniform definitions of case events allow management to gather comparable data from all courts. Court rules or statutes should specify a clear set of definitions and management should conduct periodic audits to ensure data elements are reliable and uniformly defined. The Judicial Branch uses caseload information for the weighted caseload system; therefore, data used to establish case weights and determine allocation of resources should be reliable, valid, and comparable.

Without a standardized definition of disposition, the Judicial Branch cannot ensure all courts are measuring their case processing timelines based on the same endpoint. Our file review of a random sample of 720 cases from the trial courts showed that 89 disposition dates (12 percent) were inaccurate. Different definitions of disposition among the courts could have contributed to this. Additionally, the absence of a consistent definition of disposition diminishes management's ability to evaluate court performance.

When brought forward cases are inconsistently defined, statistics may not be kept uniformly among the trial courts and courts risk overstating or understating their caseloads. Without consistent data, Judicial Branch management are unable to compare workload and adequately determine the need for judicial and clerical resources among courts.

**Recommendation:**

**We recommend the Judicial Branch establish Branch-wide definitions of data elements and case processing events in court rules and ensure they are consistently applied.**

**Auditee Response:**

*The Judicial Branch agrees in part. The Administrative Council expects to appoint a committee charged with identifying core court events and recommending definitions of those events for use by all court personnel. This task will proceed slowly because the committee will consist of, and depend on, personnel whose time is already fully committed to serving the immediate needs of litigants.*



*The capacity of the Judicial Branch to ensure that the definitions of events are consistently used at 66 court sites will depend largely on the willingness of the Legislature to appropriate funds necessary (1) to fill a vacant court auditor position and (2) to hire a full-time court statistician.*

*Court rules are intended to bring order, consistency, and predictability to practices and procedures followed by litigants. Data element definitions will not be promulgated in court rules.*

**Observation No. 39**

***Provide Sentences In Writing To Defendants At Time Of Sentencing***

Sentences are not always given to defendants at sentencing in written form. Instead, the sentence is typically read to the defendant in court. An administrative judge speculated copies are not given to defendants because the clerk's offices do not have the staff resources to provide it, but also agreed defendants should receive written sentences.

Defendants not immediately receiving their sentences in written form may have difficulty complying because they may misunderstand or may not recall the provisions. One clerk stated defendants default because they are unaware of when a fine is due, resulting in an arrest warrant for the defendant.

**Recommendation:**

**We recommend the Judicial Branch ensure all defendants receive a written copy of their sentence at sentencing. We further recommend the Judicial Branch examine the feasibility of generating the sentence from the bench using the new case management system thereby enabling the sentence to be given to the defendant at sentencing. Until then, the Branch's multi-page complaint form should be redesigned to add a page to allow the defendant to receive a copy of the sentence.**

**Auditee Response:**

*The Judicial Branch agrees that providing written sentences to defendants at the time of sentencing is a good idea. There are, however, practical obstacles to accomplishing that goal. The Administrative Council will consider whether this idea can be made a reality at a reasonable cost.*

**Observation No. 40**

***Amend RSA 594:20-a To Eliminate Saturday Arraignments***

RSA 594:20-a requires arrested persons appear before the District Court within 24 hours, excluding Sundays and holidays. Their initial appearance, or arraignment, is to ensure due process by reading the formal charges to the defendant. As a result, the District Courts currently hold Saturday arraignments as necessary in 36 District Court locations across the State. According to the District Courts administrative judge, Saturday arraignments are unnecessary and could be eliminated without violating a defendant's rights under the United States Constitution.

Thirty of 35 judges and 32 of 33 clerks responding to our survey question indicated they would like to see the practice changed by either excluding Saturdays *or* utilizing video arraignment to centralize Saturday arraignments and utilize District Court judges on a rotating schedule. Upon further inquiry judges and clerks overwhelmingly recommended revising RSA 594:20-a to exempt Saturdays in addition to Sundays and holidays.

According to the District Courts administrative judge there are no Constitutional issues involved with revising the statute. In addition, he stated counties would primarily benefit because they would save the cost of transporting prisoners to court on Saturday. The State would have minimal savings because the District Courts try to use salaried employees to attend Saturday arraignments, but some of the larger courts bring in security officers who are paid on a per diem basis.

**Recommendation:**

**We recommend the Legislature consider revising RSA 594:20-a to eliminate the requirement of the District Courts to hold arraignments on Saturdays.**

**Auditee Response:**

*The Judicial Branch takes no position. The Judicial Branch complies with RSA 594:20-a as it currently exists and, if it is amended, the Branch will comply with it as amended.*

**STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH ADMINISTRATION  
COURT REPORTING**

The Judicial Branch relies on court reporters, court monitors, and untrained court personnel to record court proceedings. Court reporters take stenographic notes during court proceedings and are paid a per-page fee to produce transcripts from their notes. Court monitors operate either analog (tape) or digital (computer-based) audio recording machines and take log notes during proceedings. Audio recordings of court proceedings are transcribed by either private sector transcriptionists or by Branch-employed court monitors trained as transcriptionists. As of March 31, 2003, the Branch employed 17 full-time court reporters, 26 full-time court monitors (including three transcriptionists), and one part-time court monitor. All court reporters and most court monitors are assigned to the Superior Court.

In this chapter we recommend the Judicial Branch make changes to the level and management of its current record-taking resources. In addition, we found areas where policies, procedures, and rules concerning court reporters and court monitors can be improved, including performance evaluations, ownership and storage of stenographic notes, confidentiality of transcripts, and timekeeping.

**Observation No. 41**

***Reduce The Number Of Court Reporters Employed And Increase The Use Of Court Monitors And Digital Audio Recording Technology***

Although court reporters provide certain benefits specific to their method of taking the record, the cost to retain all 17 court reporters presently employed by the Judicial Branch is not justified when the relative cost of employing court monitors,

the need for additional court monitors in the other trial courts, and the benefits of digital audio recording technology are considered.

The Judicial Branch is replacing its analog audio recording machines, which are presently used in 123 courtrooms, hearing rooms, and chambers, with digital audio recording technology. The Branch is also phasing out its use of court reporters by replacing them with court monitors as the court reporters leave State service, reportedly due to the high cost to employ court reporters relative to court monitors, and because the Branch would like to discontinue the practice of allowing court employees to serve as independent contractors by selling transcripts.

The Judicial Branch conducted a 90-day pilot evaluation of digital audio recording technology at Strafford Superior Court during 2001. AOC technology personnel evaluated three digital recording products for functionality and price before choosing one product to use in the pilot project. Personnel testing the digital audio recording technology at Strafford Superior Court and the AOC technology staff concluded the technology met all expectations. According to the Judicial Branch, the benefits of digital audio recording technology include: 1) superior sound quality relative to analog audio recordings, 2) immediate access to any part of the recorded testimony, 3) precise and automatic time referencing of audio, 4) storage of a full day of court proceedings on a single CD ROM, 5) electronic note taking capability, 6) ability to review log notes and audio from earlier proceedings while continuing to record, and 7) improved transcription quality and timeliness.

The Federal Judicial Center's *Digital Audio Recording Technology: A Report on a Pilot Project in Twelve Federal Courts* supports the AOC's conclusions relative to digital audio recording technology. According to the report, digital audio recording technology provides opportunities for integration with other digital systems such as case documents, as well as the ability to transmit the record electronically to other court offices and transcriptionists. While some courts involved in the federal pilot project experienced difficulties in implementing the new technology, all twelve courts recommended approving digital recording as a method for taking the official record. In September 1999, the federal Judicial Conference approved digital audio recording technology as a method of taking the official record of federal court proceedings.

At the state level, the California Legislative Analyst's Office concluded in 2003 that audio recording is a reliable and cost-effective alternative to court reporting. Its conclusion was based on a survey of other states' practices and experiences as well as the results of the California Judicial Council's evaluation of a pilot project that tested audio and video recording at 75 sites. However, it noted the availability of monitoring staff is important to the successful implementation of the technology.

Judicial Branch personnel, including court reporters and court monitors, identified various benefits and drawbacks with both court reporters and recording technology staffed by court monitors. According to survey responses and interviews, benefits of court reporters include: 1) accuracy of the transcripts they produce, 2) familiarity with the proceedings they transcribe, 3) ability to ask those present in the courtroom to restate inaudible portions of testimony, 4) availability of same-day transcripts, and 5) real-time reporting technology provides near-instant text of court dialogue on computer monitors for hearing impaired individuals. Drawbacks of utilizing court reporters noted by court personnel include: 1) the high compensation cost, including pay for travel to and from work and to produce transcripts at work; 2) required breaks during court proceedings; and 3) no procedure to check the accuracy of the work products.

Reported benefits of utilizing court monitors to record court proceedings include: 1) accuracy of the record, 2) testimony can proceed while exhibits are marked, 3) proceedings can be reviewed on audio recordings without ordering a transcript, 4) accuracy of transcripts can be challenged with the audio recording, 5) ability to ask those present in the courtroom to restate inaudible portions of testimony, and 6) the lower cost to employ court monitors relative to court reporters. In addition, court monitors provide clerical assistance in the clerk's office during breaks in courtroom proceedings. Drawbacks of court monitors noted by court personnel include: 1) greater difficulty to order transcripts relative to court reporters, 2) no same-day transcripts, and 3) instances of inaudibles noted in transcripts produced from recordings.

Our analysis of the cost to the Judicial Branch to employ and equip court monitors and court reporters during SFY 2002 shows the cost of taking a courtroom record utilizing a court reporter is approximately *double* that of utilizing a court monitor. Our analysis of Judicial Branch payroll information showed the average annual cost to employ a court reporter during SFY 2002 was \$77,328, or \$297 per day, including regular and longevity pay, benefits, and taxable mileage payments for travel between home and work. Court reporters themselves pay for most of the equipment they use to perform their duties. We estimate the annual cost to the Judicial Branch to employ a court monitor using computer-based digital recording equipment during SFY 2002 was

\$39,113, or \$150 per day. The estimated annual cost to employ a court monitor using analog recording equipment was \$38,224, or \$147 per day. These estimates include regular and longevity pay, overtime pay, and benefits, as well as equipment purchase and maintenance costs. According to the AOC director, the Branch's digital audio recording equipment vendor will provide training to a limitless number of court personnel with the installation of one new digital audio recording unit, and the Branch's cost to train one employee on analog recording equipment is \$125.

Either a court reporter or court monitor takes a record of all proceedings in the Superior Court. However, District and Probate Courts, and Family Division Pilot Project proceedings are usually held in monitor-less courtrooms, where untrained court personnel turn on an audio recording machine when the judge enters the courtroom but do not take log notes or monitor the recorder. During monitor-less proceedings, the clerk is responsible for ensuring the recording machine is operating properly and has sufficient tape. The District and Probate Courts share one full-time floating court monitor and one part-time floating court monitor, and the Family Division Pilot Project locations share three full-time floating court monitors, who offer limited court monitoring resources to those courts.

According to District and Probate Courts management, the practice of relying on untrained court personnel to occasionally monitor recording equipment significantly compromises the quality of audio recordings. District Court regional administrators reported instances when a recording machine's tape has run out during a proceeding or the machine was not turned on at all. In addition, court monitors take log notes that aid the transcriptionist, as well as court staff when preparing tapes for transcription. As noted in Observation No. 42, better coordination of court reporters and court monitors would allow for better coverage of proceedings by trained recording personnel in all courts.

By eliminating most court reporter positions, the Judicial Branch could hire additional court monitors who would enable it to continue to staff each Superior Court proceeding with a trained court monitor and add additional court monitor coverage of proceedings in the other trial courts. Additional court monitors could utilize the mix of analog and digital audio recording units presently available in trial court courtrooms and hearing rooms, while the Judicial Branch expands its use of digital audio recording technology in all levels of trial court as resources permit.

**Recommendation:**

**We recommend the Judicial Branch eliminate most court reporter positions except a small number of court reporters with real-time capability to aid hearing-impaired parties who rely on that technology, and add additional court monitor positions. The Branch should consider using per diem court reporters for certain proceedings where a court reporter with real-time capability may be necessary, such as those with hearing-impaired parties, attorneys, or witnesses. We also recommend the Judicial Branch determine how many additional court monitors are needed Branch-wide, while considering such factors as the number of courtrooms at each court location, the proximity of court locations, and the**

**likelihood of appeal of all types of cases. We further recommend the Judicial Branch continue to deploy digital audio recording technology as resources permit.**

Auditee Response:

*The Judicial Branch agrees in part. Presently 17 court reporters and 19 court monitors take records in the Superior Court for 28 sitting justices, 9 full-time marital masters, and one-half time marital master. Pursuant to Superior Court policy, no justices or marital masters preside in a courtroom without either a court reporter or a monitor, in order to preserve the record of the proceeding for an appeal or for later reference and also to protect the justice or marital master against false accusations by a party displeased with the court's decision. A competent, complete record of all Superior Court courtroom proceedings is essential. The Branch also believes that a record should be available, as needed, in the District Courts, Probate Courts, and Family Division Pilot Project sites.*

*Consistent with the auditors' recommendation, the Judicial Branch has in place a long-standing plan to eliminate court reporter positions and replace them with court monitor positions as court reporters resign or retire from office. In connection with that process, the Judicial Branch expects to appoint a committee charged with 1) evaluating the success of court monitors; 2) recommending additional training in court procedures, professionalism, and tasks related to monitoring the record; and 3) recommending a court monitor compensation plan consistent with the skills required of court monitors, the responsibilities imposed on court monitors, and the importance of the record for which they are responsible. When this analysis is complete, the Judicial Branch expects to reassess the need for stenographers in the New Hampshire Judicial Branch, with an eye, among other things, toward increasing the number of monitors available to District Courts, Probate Courts, and Family Division Pilot Project sites. We will encourage the District Courts to utilize their funds to increase the availability of record takers in the District Courts.*

*Some of the issues regarding court reporter compensation were addressed with the decision to discontinue paying full-time court stenographers for transcripts and judges' orders typed after August 1, 2003.*

*The Judicial Branch expects to continue to upgrade audio recording equipment to take advantage of digital audio recording technology, as resources permit.*

*The Observation incorrectly reports that Probate Court proceedings are usually held in "monitor-less" courtrooms where untrained court personnel simply turn on an audio recording machine but do not take log notes or otherwise monitor the record. Eight of the ten Probate Courts use either a court monitor or court staff member to monitor the record and take log notes in 100% of their recorded cases. In the remaining two Probate Courts, one register reports use of a monitor or staff person in at least 90% of their cases; the last court reports use of a monitor or staff person in at least 75% of recorded cases. Court staff who monitor audio recordings are court assistants who have been trained in the use of audio recording equipment and in the practice of taking log notes.*

**Observation No. 42*****Improve Management Of Court Reporters And Court Monitors***

Court reporters and court monitors are managed in a decentralized manner resulting in ineffective deployment of the Judicial Branch's record taking resources Branch-wide. The Superior Court retains authority to assign nearly all of the Judicial Branch's court monitors to its court locations for both record taking and clerical work, while the other trial courts frequently use untrained clerical staff and court security officers to operate and monitor recording equipment during proceedings. No procedure exists for reassigning Superior Court court reporters and court monitors to other trial courts when they become available and trained recording personnel are needed elsewhere.

Either a court reporter or court monitor takes a record of all proceedings in the Superior Court. As of March 31, 2003, the Superior Court had 17 full-time court reporters and 22 full-time court monitors. According to their job description, court reporters are under the general supervision of a judge, yet it is not clear who has responsibility for supervising them in practice. A memorandum dated November 20, 2002 from the Superior Court Chief Justice instructs court reporters to assume the responsibilities of court monitors when freed from duties with an assigned judge so court monitors can perform clerical tasks in the clerk's office. However, court reporters are also allowed to leave the courthouse before the end of the day with the permission of a supervisory judge for the purpose of preparing transcripts, for which they are paid a per page fee in addition to their regular salary. This practice may create morale problems among other court employees who are not afforded the same privilege.

Four of the Superior Court's court monitors are "floaters" who often travel to fill in for court reporters or court monitors absent from work, while another three serve exclusively at Hillsborough Superior Court – South and function mainly as transcriptionists. Court monitors preparing transcripts do not receive a per page fee in addition to their regular salary. The remaining court monitors generally work at their home court, though they may be required to travel to other Superior Court locations as well. Hiring procedures and supervision for court monitors in the Superior Court differ depending on whether the employee floats or works primarily at one court.

The manager of operations at the AOC coordinates the assignments of one full-time floating court monitor and one part-time floating court monitor. These court monitors are considered by District and Probate Court management to be shared staff of those two court levels. However, according to the manager of operations, they may be assigned to any level of court, and are primarily assigned to record Supreme Court and Probate Court proceedings. On days when no District or Probate Court requests a court monitor from the AOC, the full-time floater is directed by the Probate Court administrative coordinator to perform clerical tasks at a Probate Court. District Court management stated the monitors are used primarily by the Probate Courts, and are often unavailable to operate recording machines in the District Courts.

The Family Division Pilot Project has three full-time floating court monitors; two are shared by the four Rockingham County locations, one is shared by the four Grafton County locations. The judges and clerks of the Family Division Pilot Project coordinate their daily courthouse assignments.

Recording machines are sometimes monitored by court security officers or clerical staff, which takes them away from their regular work. According to District and Probate Courts, and Family Division Pilot Project management, the lack of trained personnel available to monitor recording equipment has resulted in recordings that are incomplete or contain inaudibles, making transcription difficult or impossible. Some cases have reportedly been appealed to the Supreme Court with an incomplete record.

According to the American Bar Association's (ABA) *Standards Relating to Trial Courts*, all aspects of record making should be governed by system-wide policies administered by the administrative office of the courts. Policies should apply to both court reporters and court monitors, and cover such matters as appropriate record making procedures for different situations.

The ABA states the trial court administrator should be responsible for the management and supervision of court reporters and court monitors, including their assignments and the establishment of pooling procedures for assigning work and priorities in making the record. However, it may be more appropriate for the AOC to assume these responsibilities in New Hampshire, given the lack of record-taking personnel available to the District and Probate Courts and the Family Division Pilot Project. In addition, the relatively small geographic size of the State and the proximity of trial court locations make pooling these trial court staff an efficient alternative.

**Recommendation:**

**We recommend the Judicial Branch centralize the management and coordination of record-taking services at the AOC and develop policies and procedures that apply to both court reporters and court monitors working in the trial courts. Priorities should be established for the assignment of court reporters and court monitors to trial court locations for the purpose of taking the record. In addition, the Judicial Branch should discontinue its practice of allowing court reporters to leave the courthouse early with the permission of a supervisory judge.**

**We note that if the Judicial Branch implements our recommendation to Observation No. 41 by eliminating most court reporter positions in the Superior Court, replacing those eliminated positions with new court monitor positions, and expanding court monitor staffing in the District and Probate Courts and the Family Division Pilot Project, it may be more appropriate for the trial court administrative offices to manage and coordinate the assignments of record-taking personnel.**

**Auditee Response:**

*The Judicial Branch agrees in part. In light of the planned reassessment of the need for stenographers, it is appropriate for trial court administrative offices to manage and coordinate the assignments of record-taking personnel.*



*Effective and efficient management and coordination of those who take the record in New Hampshire's trial courts requires accurate and up-to-date information concerning trials and hearings scheduled at 65 trial courts and one appellate court. Hearings and trials are frequently cancelled without warning mainly because of settlements or pleas; on the other side of the equation, reporters and monitors are often unexpectedly unavailable. It is unrealistic to expect that information can reliably be collected, stored, and updated by the AOC and then used to more efficiently deploy 40 full-time record takers and one part-time record taker among 66 courts sites. Those tasks are best left to administrators at each level of court because they have other responsibilities related to, and are much closer to, the court operations that depend on the presence of a record taker. Responsibility for management of the record making process in New Hampshire courts lies with trial court administrators, consistent with the ABA Standard cited by the auditors.*

*All New Hampshire trial courts are courts of record. A complete and accurate record is essential to all courtroom proceedings in every trial court. The Judicial Branch would need a significant additional appropriation if it were to provide staff dedicated to taking the record in every trial court. The District Courts, the Probate Courts, and the Family Division Pilot Project sites will continue to make use of court monitors when they are available. However, due to budget constraints, it is likely they will continue to depend on court assistants trained in the operation of audio recording equipment and in the taking of log notes to take the record in those courts. The Judicial Branch expects to request funds for adequate staffing and modern equipment to improve the quality of the records of trial court procedures.*

*The responsibility of the AOC is to support New Hampshire courts in areas that require special expertise or that lend themselves to centralization. While the responsibilities discussed in this Observation require skill, they do not require special expertise and they do not lend themselves to centralization. In fact, on account of the issues outlined in the second paragraph above, these responsibilities lend themselves to de-centralized management. For these same reasons, the AOC does not have responsibility for trial court operations in any other part of the New Hampshire Judicial Branch. It would be exceptional, and inappropriate, to create conflicting and confusing lines of authority by making the AOC responsible for this part of trial court operations.*

#### **Observation No. 43**

##### **Require Court Reporters To Submit Bi-Weekly Payroll Time Reports**

According to the Judicial Branch's *Court Financial Policy Manual*, all employees must submit bi-weekly payroll time reports documenting time worked and leave taken during pay periods. Payroll time reports must be approved by a clerk or register and submitted to the AOC. However, court reporters do not submit bi-weekly payroll time reports. Instead, court reporters' payroll hours default to 75 hours per pay period.

Court reporters are classified as administrative employees and therefore accrue annual, sick, and administrative leave time pursuant to accrual rates specified in Judicial Branch Personnel Rule 45. Court reporters' requests for leave time are directed to the Superior Court Chief Justice for approval. As noted in Observation No. 42, court reporters are also allowed to leave the courthouse before the end of the day with the permission of a supervisory judge for the purpose of preparing transcripts, for which they are paid a per page fee in addition to their regular salary.

Without bi-weekly payroll time reports completed by court reporters, the Judicial Branch cannot ensure court reporters completed leave slips or received the permission of a supervisory judge for all leave time taken during a bi-weekly pay period.

**Recommendation:**

**We recommend the Judicial Branch require court reporters to submit bi-weekly payroll time reports that document all time worked and approved time away from work in compliance with established Judicial Branch policy.**

*Auditee Response:*

*The Judicial Branch agrees. The AOC information technology staff expects to adapt payroll system software to facilitate electronic recording of court reporters' (1) time worked and (2) actual leave approved and taken.*

**Observation No. 44**

***Ensure The AOC Communicates Information Regarding Ownership Of Stenographic Notes And Develop A Policy Regarding Proper Storage Of Stenographic Notes***

Pursuant to RSA 519:29, the supplies court reporters (stenographers) use in court business, such as paper and computer disks for taking stenographic notes, are paid for and provided by the courts. Accordingly, Superior Court Administrative Rule 3-8 states: "Any and all stenographers' notes ... shall be the sole property of the Superior Court." However, survey responses by court reporters indicate confusion regarding ownership of the notes they produce and the mediums on which they record their notes. Of the 14 court reporters responding to our survey, four indicated they own the notes, tapes, and disks they produce while taking a record of court proceedings, while another four indicated both the court reporter and the court share ownership. In addition, four Superior Court clerks believed court reporters own the notes, tapes, and disks they produce while taking a record of court proceedings.

Ownership of stenographic notes becomes an issue when court reporters leave State service. Court reporters indicated notes and disks produced by court reporters that have left State service are sometimes retained by those individuals. Without court access to the stenographic notes from a proceeding, a transcript of the proceeding cannot be prepared by another court reporter.

According to the ABA's *Standards Relating to Trial Courts*, the court should have ownership and control over court reporters' records of court proceedings. In addition, system-wide policies administered by the administrative office of the courts should govern ownership and storage of stenographic notes.

**Recommendation:**

**We recommend the AOC ensure all court reporters receive a copy of Superior Court Administrative Rule 3-8 regarding the court's ownership of stenographic notes, tapes, and**

**disks. We also recommend the AOC develop and implement a policy regarding custody, storage, and inventorying of stenographic notes, tapes, and disks.**

*Auditee Response:*

*The Judicial Branch agrees. With input from the Administrative Council, the Supreme Court expects to promulgate a policy concerning possession and storage of stenographic notes, tapes, and disks. That policy, and information concerning Superior Court Administrative Rule 3-8, will be distributed to reporters and monitors by the appropriate supervisory authorities.*

**Observation No. 45**

***Improve Performance Evaluations  
Of Court Reporters, Court Monitors,  
And Transcriptionists***

Court reporters, court monitors, and Superior Court Transcript Center transcriptionists receive performance evaluations annually. The evaluation form and criteria used are the same for evaluating all other non-judicial personnel. However, their work is uniquely specialized and technical relative to the work of other non-judicial employees and quality is critical to the accuracy of the court record.

According to their job description, court reporters are evaluated based on the speed and accuracy of their work, which includes taking stenographic notes during court proceedings and preparing accurate and timely transcripts from those notes. However, no formal process exists for evaluating court reporters' unique work products. A customized evaluation form could be used to evaluate court reporters' performance allowing the evaluator to comment on quality of work, timeliness of transcripts, and adherence to transcript formatting requirements specified in Supreme Court Rule 15(7).

The court monitor job description does not mention specific performance evaluation procedures, and there is no process for evaluating court monitors' specialized work, which includes monitoring and controlling courtroom recording equipment and preparing extensive log notes. Court monitors could be evaluated based on criteria established in their work manual, *Procedures for Sound Recording Practices in New Hampshire Courts*, which contains information relating to court monitors' responsibilities as well as specific procedures to be followed that are part of maintaining an accurate record. Superior Court Transcript Center transcriptionists, who hold the court monitor job title and sometimes perform the duties of a court monitor, are not evaluated based on the quality of the transcripts they produce. The Office of the Chief Justice of the Superior Court plans to evaluate transcripts produced by the transcriptionists based on its own *Standards For Transcriptionist Certification and Transcript Format in the New Hampshire Superior Court* beginning in 2003.

Employee performance evaluations can be used in compensation and promotion decisions, as well as to identify training needs. Without addressing the quality, accuracy, or timeliness of their respective work products, performance evaluations of court reporters, court monitors, and transcriptionists do not consider the full scope of their job responsibilities, and the Judicial Branch has no assurance the record of court proceedings is accurate.

**Recommendation:**

**We recommend performance evaluations of court reporters, court monitors, and transcriptionists consider the quality, accuracy, and timeliness of their respective work products.**

**Auditee Response:**

*The Judicial Branch agrees. The AOC Manager of Operations expects to work with appropriate Judicial Branch personnel to recommend performance evaluation forms that address the special job requirements of court reporters and monitors.*

*By order dated July 16, 2003, the Supreme Court eliminated the Superior Court Transcription Center at Hillsborough Superior Court – Southern District and abolished the transcriptionist positions.*

**Observation No. 46**

***Centralize Coordination Of  
Transcription Services***

The Judicial Branch currently utilizes court reporters, court-employed transcriptionists, and approved private sector transcriptionists to produce transcripts of court proceedings. Court policies and procedures for ordering transcripts and monitoring compliance with appropriate time standards for completion of transcripts differ depending on trial court level, court location, and method of transcription. Lack of uniformity in policy and procedure can result in differences in treatment of those responsible for preparing transcripts, and makes it impossible to comprehensively monitor and evaluate transcript producers.

The Superior Court uses court reporters, Superior Court Transcript Center transcriptionists, and approved private sector transcriptionists to transcribe Superior Court proceedings. Court reporters prepare transcripts of proceedings they recorded using a stenotype machine. Supreme Court Rule 15, Superior Court Rule 80, and Superior Court Administrative Rules 3-1 through 3-7 communicate court reporters' responsibilities regarding transcription. The Superior Court Center maintains monthly reports that indicate the number of pages each court reporter has remaining to be transcribed, though it does not monitor the timeliness of all transcripts court reporters produce for management purposes.

The Superior Court Transcript Center primarily produces transcripts of proceedings recorded on analog audiotape<sup>1</sup> at its home court, Hillsborough Superior Court – South, and it also produces transcripts of proceedings held at other trial courts as resources allow. The Transcript Center monitors the timeliness of the transcripts it produces. When other Superior Court locations receive a request for a transcript of a proceeding recorded on tape and the Transcript Center cannot process the request, court staff sends the request and a copy of the recording to an approved private sector transcriptionist. Each Superior Court is responsible for monitoring the timeliness of transcript requests it sends to private sector transcriptionists.

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<sup>1</sup> The Superior Court Transcript Center cannot transcribe proceedings recorded using digital recording equipment. Digital recordings must be transcribed by one of four approved private sector transcriptionists capable of transcribing digital recordings.

According to a procedural memo from the District Court administrative judge, when a transcript is requested at a District Court or the Family Division Pilot Project, court staff must send a completed “District and Family Court Transcript Order Form” and the original tape containing the proceeding to the transcript coordinator at the office of the District Court administrative judge. The transcript coordinator makes a copy of the tape and completes a different transcript order form, then sends the form and copy of the tape to one of the approved private sector transcriptionists selected on a rotational basis. If the tape is of poor quality or if the proceeding to be transcribed is unusually long, the transcript coordinator sends original tapes to the private sector transcriptionist, leaving the District Courts and the Family Division Pilot Project without a record of certain proceedings for a period of time. There is also no guarantee original or copied tapes will be returned, since private sector transcriptionists reportedly do not always return copied tapes after transcription is complete. The transcript coordinator took the initiative to begin informally tracking the timeliness of transcript completion in a handwritten ledger during 2002; however, timeliness is measured from the date the request is received by the transcript coordinator, and not the date the request was submitted to the court. The ledger indicates the transcript coordinator processed 1,836 transcript requests during the audit period, mostly from District Courts and the Family Division Pilot Project.

According to procedural memorandums from the District Court administrative judge and Probate Court administrative coordinator, when a transcript is requested at a Probate Court, court staff has the option to send a completed “District and Family Court Transcript Order Form” and the original tape to the District Court transcript coordinator. Four of the Probate Courts reported sending transcript requests to the District Court transcript coordinator, while six Probate Courts reported sending original tapes directly to approved private sector transcriptionists, which leaves the Probate Court without a record of certain proceedings for a period of time and no guarantee the tapes will be returned. Each Probate Court is responsible for monitoring the timeliness of transcript requests it sends to private sector transcriptionists.

According to the ABA’s *Standards Relating to Appellate Courts*, preparation of transcripts is fundamental to the appellate process and virtually no action can be taken until it is prepared. The ABA cites transcript production as the single greatest factor in the delay of appellate cases. Timely preparation of transcripts can be ensured by accountability and efficient procedures. The ABA’s *Standards Relating to Trial Courts* states all aspects of record making, including transcription, should be governed by system-wide policies administered by the administrative office of the courts. Additionally, the administrative office of the courts should continuously supervise the transcript production process to ensure compliance with established policies. The Judicial Branch could transfer the District Court’s transcript coordinator position to the AOC and establish Branch-wide policies and procedures relative to transcript preparation for the transcript coordinator to enforce. Policy could stipulate the transcript coordinator will be informed of the ordering and completion of all transcripts produced on behalf of the Judicial Branch to allow for comprehensive monitoring and evaluation of transcript producers.

**Recommendation:**

**We recommend the Judicial Branch centralize the coordination of transcription services at the AOC and establish Branch-wide policies and procedures relative to transcription. The**

**AOC should continuously supervise transcript production for all trial court levels to ensure compliance with established policies.**

Auditee Response:

*The Judicial Branch agrees. The Judicial Branch expects to establish uniform policies and procedures relative to transcription. (See Observation No. 48) The Judicial Branch expects to centralize the coordination of transcription services at the Administrative Office of the Courts to ensure uniform compliance with established policies and procedures.*

**Observation No. 47**

***Discontinue Operation Of The Superior Court Transcript Center And Use Private Transcript Firms For Producing Transcripts From Audio Recordings***

The Superior Court Transcript Center at Hillsborough Superior Court – South located in Nashua did not produce sufficient revenue from transcript production sales to cover its operating expenses during SFY 2002. The Transcript Center provides transcription services mostly for its home court, while approved private sector transcriptionists perform the majority

of the Judicial Branch’s audio transcription at the expense of the party requesting the transcript. The Judicial Branch could achieve significant savings by discontinuing operation of the Transcript Center and reassigning its staff.

The Transcript Center began in 1994 as part of a grant-funded pilot project that evaluated transcript production from videotape and audiotape recordings. The two transcriptionists<sup>2</sup> hired as part of the pilot project were kept on staff after the pilot project was completed in 1997, and a third position was added during 1996. The three transcriptionists produce transcripts from analog recordings of court proceedings. The Transcript Center largely handles transcript requests submitted to that court, and it also handles requests placed at other Superior Court locations and the other trial courts as resources allow. Transcriptionists at the Superior Court Transcript Center are paid a salary plus benefits and do not receive a per page fee for the transcripts they produce. Transcript fees generated from the Transcript Center go to the General Fund. The transcriptionists also work as court monitors and provide clerical assistance in the clerk’s office when necessary.

To determine the cost-effectiveness of Transcript Center operations, we estimated the Transcript Center’s operating cost during SFY 2002 and compared it to the estimated income it generated from the sale of transcripts requested during SFY 2002 (Table 16). We estimated an operating cost of \$110,303 for the Transcript Center during SFY 2002, including salary and benefits for the three transcriptionists. We did not include expenses for equipment and supplies. Our estimate included annual compensation for the two lowest paid transcriptionists, plus two-thirds the annual compensation for the highest paid transcriptionist, to account for Transcription Center staff time spent performing other court duties. One transcriptionist spends an average of one hour per day in the courtroom, and one transcriptionist spends an average of one day per week performing clerical tasks in the clerk’s office.

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<sup>2</sup> Transcriptionists hold the “court monitor” job title.

The Transcript Center tracks transcript information in a hand-written ledger kept in the clerk's office. According to that ledger, the Transcript Center received 118 transcript requests during SFY 2002 that were processed by its staff. Of the 118 requests, 109 entries included an estimate of the number of pages to be transcribed, which totaled 14,055 pages. Most transcript requests are for an original transcript, which the court retains, plus one copy for the customer, and page estimates prepared by the court tend to be high. Superior Court Administrative Rule 3-7 sets the price for an original transcript plus one copy at \$3.00 per page. Therefore, we estimate the Transcript Center sold 14,055 pages of transcript at \$3.00 per page for a total of \$42,165.

**Table 16**

<b>SFY 2002 Superior Court Transcript Center Operations</b>	
Estimated annual operating cost:	<b>\$110,303</b>
Estimated number of pages of transcript requested <sup>1</sup> :	<b>14,055</b>
Estimated annual income from fees for transcripts requested:	<b>\$ 42,165</b>
Estimated annual operating loss:	<b>(\$ 68,138)</b>
Estimated production cost for one page of transcript (\$110,303.27/14,055 pages):	<b>\$ 7.85</b>
Price to the public for one page of transcript plus one copy:	<b>\$ 3.00</b>
Estimated loss per page of transcript sold:	<b>\$ 4.85</b>
<sup>1</sup> Does not include page estimates from nine transcripts produced during SFY 2002. Source: LBA analysis of Transcript Center ledger and Judicial Branch payroll information.	

Table 16 shows the Transcript Center sold an original transcript plus one copy to the public for \$3.00 per page that cost the Transcript Center an estimated \$7.85 per page to produce, for a loss of \$4.85 per page and a total annual operating loss of \$68,138. If the Judicial Branch discontinued operating the Transcript Center, audio recordings of proceedings could be forwarded to approved private sector transcriptionists who are paid according to the Judicial Branch's established transcription rates with amounts collected from the requesting party by clerk's office staff. The Judicial Branch could then utilize its Transcript Center staff as court monitors, since they are also trained as court monitors and hold the job title of court monitor.

**Recommendation:**

**We recommend the Judicial Branch discontinue operating its Superior Court Transcript Center and reassign Transcript Center staff to court monitoring duties.**

**Auditee Response:**

*The Judicial Branch agrees. In response to this preliminary observation draft, by order dated July 16, 2003, the Supreme Court eliminated the Superior Court Transcription Center at Hillsborough Superior Court – Southern District and abolished the transcriptionist positions.*

**Observation No. 48**

***The AOC Should Certify Transcriptionists And Ensure Confidentiality Of Recordings And Transcripts***

The Judicial Branch utilizes five transcriptionists from the private sector to produce transcripts of proceedings recorded on analog audiotapes and digital media. The AOC originally approved the five private sector transcriptionists to produce transcripts for the trial courts. A committee of Superior Court personnel developed *Standards For Transcriptionist Certification and Transcript Format in the New Hampshire Superior Court* during 2002. The Office of the Chief Justice of the Superior Court plans to annually re-certify the five approved private sector transcriptionists and the three court-employed transcriptionists at the Superior Court Transcript Center based on those standards beginning in 2003. The Office of the Chief Justice of the Superior Court also plans to accept applications for certification from other private sector transcriptionists.

The standards for transcriptionist certification developed by the Superior Court do not include safeguards that address private sector transcriptionist access to recordings of proceedings that are confidential by statute, rule, or order. Safeguards are important not only because the private sector transcriptionists are asked to produce transcripts of confidential proceedings, but also because original and copied tapes sent to the private sector transcriptionists routinely contain recordings of proceedings other than those which are to be transcribed that may be confidential.

The District and Probate Courts and the Family Division Pilot Project were not involved in developing the Superior Court's transcriptionist certification and transcript format standards, nor do those standards apply to the other trial courts. However, the District and Probate Courts and the Family Division Pilot Project rely exclusively on the same five private sector transcriptionists for transcription services.

Development and implementation of separate standards by any of the other trial courts would result in duplicating administrative policy and procedure, and could cause different treatment of transcriptionists from one court to another. Accordingly, the ABA's *Standards Relating to Trial Courts* states all aspects of record making, including transcription, should be governed by system-wide policies administered by the administrative office of the courts.

**Recommendation:**

**We recommend the AOC implement a system-wide transcriptionist certification program. The AOC should evaluate the Superior Courts' transcript format and transcriptionist certification standards and consult personnel from the other trial courts before implementing the program. Standards related to confidential recordings and transcripts should also be addressed.**

**Auditee Response:**

*The Judicial Branch agrees. The Judicial Branch expects to review existing transcriptionist certification standards and consider whether to 1) apply those standards to all trial courts, and 2) add confidentiality policies to the standards.*



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**OTHER ISSUES AND CONCERNS**

In this section, we present issues and concerns we encountered during our audit not developed into formal observations, yet we consider noteworthy. The Judicial Branch and the Legislature may consider these issues and concerns deserving of further study or action.

**Evaluate The Necessity To Acknowledge Misdemeanors**

During the audit period RSA 592-A:7 required a criminal complaint for violation, misdemeanor or felony to be signed under oath. The complaint form used by the court system requires the complaining officer to swear to the facts of the case typically in front of a Justice of the Peace before the case is filed with the court. During the 2003 Legislative session RSA 592-A:7 was amended to eliminate the need for an officer to swear under oath before filing a violation-level offense with the court. Requiring the complaint to go to a Justice of the Peace before it is submitted to the court is superfluous and hinders electronic submission. The Legislature and the Judicial Branch should consider whether misdemeanor and felony complaints need to be sworn before a Justice of the Peace.

*Branch Response: RSA 592-A:7 requires that misdemeanors be signed under oath and the Judicial Branch will honor that statute unless and until the Legislature amends it.*

**Job Classification And Compensation Study Purchased But Not Released Or Utilized**

The Judicial Branch contracted with a consultant in June 1999 to conduct a study of job classifications and compensation for non-judicial employees. However, the Judicial Branch has not implemented any of the consultant's recommendations.

The Judicial Branch stated in its Request for Proposals for the study that it needed to revise its entire personnel classification and pay system because many employees had reached the maximum of their assigned salary grade, the current classification system had career-path limitations and did not provide adequate career-path movement, and State and federal law made it imperative the Branch be able to identify the essential job functions of any position, which it could not do with its existing job descriptions.

According to the approved project proposal, consulting work would include developing Americans with Disabilities Act/Equal Employment Opportunity-compliant job descriptions for each job class, new salary range/grade structures and pay scales, and fiscal impact estimates of alternative salary policies and structures. The consultant agreed to provide assistance with implementing its proposed job classification and compensation plan for one year following project completion. The consultant's final report was scheduled for completion during March 2000. Our review of Judicial Branch expenditures showed the Branch paid the consultant \$69,990 for services between 1999 and 2001.

Despite repeated requests during audit fieldwork to the Branch for a copy of the final report of the job classification and compensation study and assurances a copy would be provided, the

Branch did not provide us with a copy until September 2003. According to the director of the Administrative Office of the Courts (AOC), the final report has not been released because the Branch does not have the money it needs to implement all the changes the final report suggested. Due to the lateness of receiving this report, we could not determine if the AOC received the consulting services it paid for, nor could we assess whether all or some recommendations contained in the final report, such as suggested changes to job descriptions that would ensure compliance with federal laws, could be implemented without additional funding. In addition, the Judicial Branch's inaction elicits concerns it did not adequately plan for the implementation of the consultant's potential recommendations, and therefore the expenditure of \$69,990 on consulting services may have been premature in the absence of a plan to fund any potential recommendations.

We suggest the Judicial Branch make publicly available the final report of the job classification and compensation study, implement any worthwhile recommendations contained in the final report not requiring additional funding, and develop a plan to implement other worthwhile recommendations the Branch believes would require additional appropriation.

*Branch Response: The Judicial Branch contracted with a consultant for a review of the Judicial Branch classification and compensation schedule because Judicial Branch personnel rules require that a complete review of the classification plan be conducted at least once every five years. It would have cost the Judicial Branch approximately \$450,000 to implement the consultant's recommendations. Since completion of the study, the Judicial Branch has not received funding sufficient to implement the consultant's compensation and classification recommendations. Furthermore, since completion of the report, the Judicial Branch has consistently held many non-judicial positions vacant in order to keep expenditures within appropriations.*

*Because it has been unable to implement the consultant's recommendations, the Supreme Court has not adopted the report. The report has not been made public because many of its recommendations would only aggravate a serious morale problem among diligent employees who struggle to provide excellent constituent service even as many non-judicial positions are held vacant in the Judicial Branch.*

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**CONCLUSION**

In many ways the Judicial Branch is similar to the Executive Branch organizations we have audited. While the Judicial Branch is a co-equal branch of State government that carries out sacred Constitutional functions instrumental to the proper functioning of State government and New Hampshire society in general, its health and proper functioning depend on effective and efficient management.

We found New Hampshire's unified court system could benefit from increased centralized administration. The Superior, Probate, and District Courts function independently in many areas. Under the authority and supervision of the Supreme Court each administrative judge has broad powers to issue administrative directives affecting court operations and procedures within that level of trial court. The AOC is not charged with setting consistent policies and uniform procedures to coordinate, standardize, and improve activities common to all trial courts. The Legislature and the Supreme Court should empower the AOC to coordinate administrative and operational activities throughout the court system, which will allow judges and staff to spend more time processing cases and less time dedicated to administrative tasks pertaining only to one level of court.

While assessing the adequacy of the Judicial Branch's financial resources and staffing levels were not a part of this audit, it is difficult to ignore comments made throughout the audit by Judicial Branch management and staff that the Branch lacks the resources necessary to function efficiently and effectively. At every turn we heard "lack of staff" as the reason for not being able to do something. We believe the best way for both lawmakers and the Branch's management to assess the adequacy of the Judicial Branch's human resources is through weighted caseload systems.

Unfortunately, the Branch's present weighted caseload systems are out of date and may be inaccurate. In the Superior Court, a weighted caseload system for judges was started but is not yet completed. As a result, neither the Branch nor the Legislature can identify the Branch's appropriate staffing level with any reasonable approximation. Branch management claim it cannot develop and maintain accurate judicial and non-judicial case weights for each trial court without additional staff to assume that responsibility. We believe the Judicial Branch needs to find a way to do the work necessary to make its case for additional staff, and the best way to make such a case is by developing methodology for a weighted caseload system that both they and the Legislature agree will produce accurate and reliable results. Once a weighted caseload system is completed, it should be independently audited and continually monitored to ensure it accurately reflects court procedures. If, according to the weighted caseload system, the Branch can show it needs additional staff to process cases in a reasonable amount of time, the Legislature should seriously consider funding such a request.

We believe there should be more transparency and accountability in the Judicial Branch budget than current Legislative budgeting practices provide. The Legislature's practice of requiring Judicial Branch management to determine imposed budget reductions outside the budget process reduces Legislative and public oversight. In addition, laypeople are not able to identify how money is allocated within the Judicial Branch without obtaining separate documents created after

the budget is approved that outline where the Branch made cuts to its budget. We recommend the Legislature work with Judicial Branch management to identify appropriate funding for each Judicial Branch line item within the State's biennial budget process.

We believe the Judicial Branch could benefit from hiring a consultant knowledgeable in court processes to review its case management and processing practices to eliminate redundant or unnecessary procedures. Such a study should be conducted concurrent with the Branch's implementation of a new case management system for the trial courts to maximize efficiency and return on its investment.

We recognize that efficiency is not the central organizational goal to the Judicial Branch that it is to other organizations. Due process and fairness are typically among the criteria used to evaluate a judicial system. However, due process and fairness are not mutually exclusive of efficiency; on the contrary, improved efficiency can help the Judicial Branch improve responsiveness to the needs of New Hampshire citizens. Management practices, such as planning, monitoring, and reporting, as well as commitment to performance standards, can be improved throughout the Judicial Branch. By implementing the recommendations contained in this report, we believe the Judicial Branch can become a more efficient and effective organization.