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AN EVALUATION
OF THE
SUPREME COURT OF NEW HAMPSHIRE
"COMMITTEE ON JUDICIAL CONDUCT AND PROFESSIONAL CONDUCT COMMITTEE"

GRANT NUMBER

78-I-A2001 E07

PROJECT PERIOD

November 4, 1977 - March 31, 1979

VIRGINIA GARRELL-MICHAUD
EVALUATION SPECIALIST

NEW HAMPSHIRE GOVERNOR'S COMMISSION ON CRIME AND DELINQUENCY

February 23, 1979

56020

SUB-GRANTEE Supreme Court of New Hampshire

PROJECT TITLE "Committee on Judicial Conduct and Professional Conduct
"Committee"

PROJECT DIRECTOR James Gainey/Wesley Miller

GRANT NUMBER 78-I-A-2001 E07

GRANT PERIOD November 4, 1977 - June 30, 1979

GRANT BUDGET \$16,667

<u>Item</u>	<u>Total</u>	<u>Fed.</u>	<u>State</u>	<u>Local</u>
Personnel Services				
Consultant Services	\$9,050	\$8,145	\$905	
Travel and Subsistence	1,972	1,775	197	
Capital Equipment	1,900	1,710	190	
Construction and Renovation				
Rental	750	675	75	
All Other	1,480	1,332	148	
Indirect Costs	<u>1,515</u>	<u>1,363</u>	<u>152</u>	
Total Cost	\$16,667	\$15,000	\$1,667	

PREVIOUS PROJECT HISTORY

<u>Grant Period</u>	<u>Total Funding</u>	<u>Fed.</u>	<u>Percentage State</u>	<u>Local</u>
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ACQUISITIONS

EVALUATOR: Virginia Garrell-Michaud
DATE: March 2, 1979

BACKGROUND

On October 17, 1977, the New Hampshire Governor's Commission on Crime and Delinquency awarded a grant in the amount of \$16,667 to the Supreme Court of New Hampshire to begin operation of the Committee on Judicial Conduct and to continue operation of the Professional Conduct Committee.

The Committee on Judicial Conduct was established in July, 1977, under Rule 28 of the Supreme Court of New Hampshire. The purpose of that Committee was to investigate violations of the Code of Judicial Conduct alleged to have been committed by any member of the judiciary.

The Professional Conduct Committee was established in June, 1974, under Rule 26 of the Supreme Court of New Hampshire. The Court's purpose in establishing that Committee was to provide a means by which complaints against lawyers could be formally and thoroughly considered under the jurisdiction of the Court. Beginning in January, 1976, two successive years of funding were provided by this Commission for an Administrator of the Professional Conduct Committee. In the current grant period, the Supreme Court of New Hampshire signed a contract with the Professional Conduct Committee in order to award them \$5,200 of grant funds. The funds were to be used to continue the Professional Conduct Committee's operation for the interim period of April 1, 1978, through June 30, 1978, at which time support funds would be provided by the New Hampshire Bar Association through an increase in membership dues. The remainder of grant funds were to be used by the Committee on Judicial Conduct.

Capital equipment costs were to be used for the purchase of a verbatim recording/transcribing system. Purchases under the category of "All Other" were to include telephone services, report publication, postage, and consumables. The original grant period was established as November 4, 1977, through December 31, 1978. That grant period has been extended through June 30, 1979.

PROJECT DESCRIPTION

The immediate objective of this project was to insure that complaints relating to violations of the Code of Judicial Conduct and/or Code of Professional Responsibility are reviewed, investigated and heard so that appropriate action could be taken regarding each allegation.

Each committee and its respective procedures will be discussed below.

Committee on Judicial Conduct

The Committee on Judicial Conduct consists of seven members appointed by the Supreme Court of New Hampshire. Membership consists of three judges, two lawyers, and two laypersons. In addition, the Committee has one part-time executive secretary and one part-time secretary. The executive secretary is responsible for coordination of meetings, recording of all proceedings and all other administrative matters incidental to the functions of the Committee. The secretary is charged with all clerical responsibilities.

Each member serves a four-year term. However, in order to achieve staggered terms, initial appointments were adjusted to two and three-year terms.

The Committee considers allegations of conduct on the part of any judge, master or referee contrary to the Code of Judicial Conduct. Complaints are submitted in writing by any person who is directly affected by the alleged misconduct or is present when the alleged misconduct occurs.

The Committee does not consider frivolous or unfounded complaints nor do they consider complaints against a judge, master or referee relating to his rulings.

Upon receipt of a complaint, the Committee's chairperson or designee provides a copy of the complaint to the respondent judge. The respondent is then required to submit a response to the Committee within twenty days and forward that response to the complainant. Following receipt of the judge's reply, the Committee may initiate an investigation. To accomplish this, grant funds

provided under the category of "consultant services", are used to contract with private investigators. If the investigation does disclose sufficient cause to warrant further proceedings, the complainant and the respondent are notified that a violation of the Code of Judicial Conduct is evidenced. If further action is warranted, a formal hearing is conducted by the Committee. Notice of the hearing is given to both parties at least thirty days prior to the hearing date.

The Committee has the authority to subpoena witnesses and documents. All evidence necessary to establish a code violation should be clear and convincing, but no judge is compelled to testify. At least five Committee members must concur in determining that a code violation exists and in the subsequently recommended action. Action occurs on two levels depending upon the severity of the code violation. For less serious violations, remedial action or oral reprimand is recommended. More serious violations which could warrant formal disciplinary action, censure or suspension are referred to the Supreme Court where the case is heard.

Committee on Professional Conduct

The Committee on Professional Conduct is comprised of fifteen court-appointed members representing both lawyers and non-lawyers. Each member serves a term of three years. In order to achieve staggered terms, initial appointments were adjusted so that the terms of five members would expire each year.

Coordination of Committee matters is performed by a salaried Committee Administrator. The Administrator receives all complaints, and makes initial determinations as to their legitimacy. In cases where a complaint is considered founded and within the jurisdiction of the Committee, the Administrator pursues the matter through the established procedure. That procedure requires that a copy of the complaint be sent to the complained against lawyer in order that

he may respond. The response is then sent to the complainant, who may make additional comments. In the event that misconduct is indicated, an investigation is initiated by the Administrator. The results of the investigation determines the action to be taken. A letter of discipline may be issued, or the Committee may appoint a hearing panel. If a hearing panel is scheduled, both the complainant and the lawyer are given the opportunity to present their cases. Upon the recommendation of the panel, the entire Committee decides whether the lawyer did engage in professional misconduct. If misconduct is determined, the Committee then refers the matter to the Supreme Court for further action.

PROJECT OPERATION

Committee on Judicial Conduct

Programmatically, it appears that the Committee on Judicial Conduct is operating as proposed in the grant application. As stated previously, the Committee on Judicial Conduct was established on July 30, 1977, by Supreme Court Rule 28. On March 9, 1978, the Supreme Court approved the Operating Rules of the Committee on Judicial Conduct. Those rules were modified in December, 1978, were approved, and are to be effective as of March, 1979. In revising the Operating Rules, the Supreme Court has renumbered the supporting rule as Rule 39.

The Committee has located office space in the Frank Rowe Kenison Supreme Court Building in Concord, New Hampshire. The positions of executive secretary and secretary are filled by Mr. James Gainey and Ms. Ann Manias, respectively.

The Committee's membership is organized as proposed. The Chairperson of the Committee is Chief Justice Edward J. Lampron of Nashua; the Vice Chairperson is Associate Justice William F. Batchelder of Plymouth. The other members are Justice William J. O'Neil of Manchester; Matthias J. Reynolds, Esq., of Manchester; Frederick K. Upton, Esq., of Concord; Mrs. Isabelle M. Hildreth of Nashua; and Mr. Peter J. Campbell of Concord.

Committee meetings are convened by the chairperson, vice-chairman, executive secretary or on the written request of three Committee members. Meetings are held in the Supreme Court Conference Room. In order to transact any Committee business a quorum of five members must be present. No investigative or disciplinary action of the Committee is valid unless concurrence by at least five members is obtained. Hearings and all other proceedings are conducted in private and all records are confidential with the exception of the Supreme Court's final decisions. If, however, broad knowledge and interest is involved in a Committee proceeding, the Committee may, with the consent or at the request of the judge concerned, issue announcements confirming or denying the existence of charges. The Committee may also respond to any unfair criticism of a judge. In addition, under the Confidentiality Rule (Rule 3), the Committee may issue summary reports on the conduct of the affairs of the Committee. However, such reports and releases may not identify by name, position, address or other information any person involved in any proceedings before the Committee.

The Committee convenes on the average of once every other month for a session of three to four hours duration. During the period from July 30, 1977, through December 31, 1978, the Committee has met as a body nine times. During that period the Committee has received thirty-five written complaints. Six of these complaints are currently pending. The Committee voted to dismiss twenty complaints as patently without merit or as beyond the jurisdiction of the Committee and voted to initiate nine investigations. Following the investigations, the Committee dismissed eight of the complaints and found one to be meritorious and accordingly disciplined the judge. Specific information on the nature of the complaints and method of discipline was requested. However, by virtue of Rule 40, subsection 3, that information cannot be disclosed.

During the grant period, the Committee on Judicial Conduct has been publicized in numerous New Hampshire newspapers. In addition, the Committee on Judicial Conduct has been described in several Supreme Court publications.

Furthermore, an annual report is completed at the conclusion of each calendar year and is distributed to all New Hampshire judges and clerks of court, as well as selected libraries throughout the State.

As indicated previously, \$1,900 was budgeted through this grant for the purchase of a verbatim recording/transcribing system. As of this writing, that system had not been purchased.

Administratively, the Committee on Judicial Conduct is not operating under this grant in accordance with Federal guidelines. This grant provides \$5,650 to the Committee on Judicial Conduct for consultant services to be used to employ attorneys to represent the Committee as well as respondent judges, and for professional investigative services. In all cases, where attorneys and investigators were employed by the Committee, no written personal services contracts were executed. In addition, funds were expended without adequate documentation of time and attendance or specific travel expenses.

Professional Conduct Committee

The Professional Conduct Committee has located office space at 77 Market Street, Manchester, New Hampshire. Coordination of Committee matters is performed by Mr. Wesley Miller. Mr. Miller has served as Committee Administrator since April, 1976. As proposed, the Committee is comprised of fifteen Court appointed members representing both lawyers and non-lawyers.

As indicated previously, grant funds were used to continue the Professional Conduct Committee during the interim period of April 1, 1978, through June 30, 1978. During that period the Committee has met as a body on seven occasions and has received a total of fifteen complaints which required investigation and consideration by the Committee. As a result of these complaints, the Committee has conducted four hearings; one resulted in the attorney resigning with prejudice. In addition, one disciplinary matter evolved into a three-day hearing before a judicial referee and resulted in a suspension of the lawyer involved.

Committee activities are publicized in articles and news items published in the New Hampshire Law Weekly, in a pamphlet entitled "Complaints Against Lawyers", and in interviews and references printed in various news media.

Several administrative difficulties were identified with respect to the Professional Conduct Committee. First, the contract drawn between the Supreme Court of New Hampshire and the Professional Conduct Committee which awarded the Committee \$5,200 of grant funds was never approved by this Commission. It should be noted that the subgrantee submitted this contract to the Governor's Commission on Crime and Delinquency in March, 1978, and did not receive a reply indicating approval or disapproval. The subgrantee did follow up on this request to no avail. Second, in reference to this same contract, one is left to question the validity of a contract signed between an agency and a branch of that same agency. Third, the contract was based upon a firm fixed price agreement in the amount of \$5,200. Payment in that amount was made upon the execution of the contract by the Supreme Court to the Professional Conduct Committee and deposited in the Committee's private checking account. Therefore, payments for services provided to a State agency were made from a private account. Furthermore, in that expenses for services other than those provided for under this contract were also paid out of the Committee's private account, the Committee's system of accountability is questionable.

CONCLUSIONS AND RECOMMENDATIONS

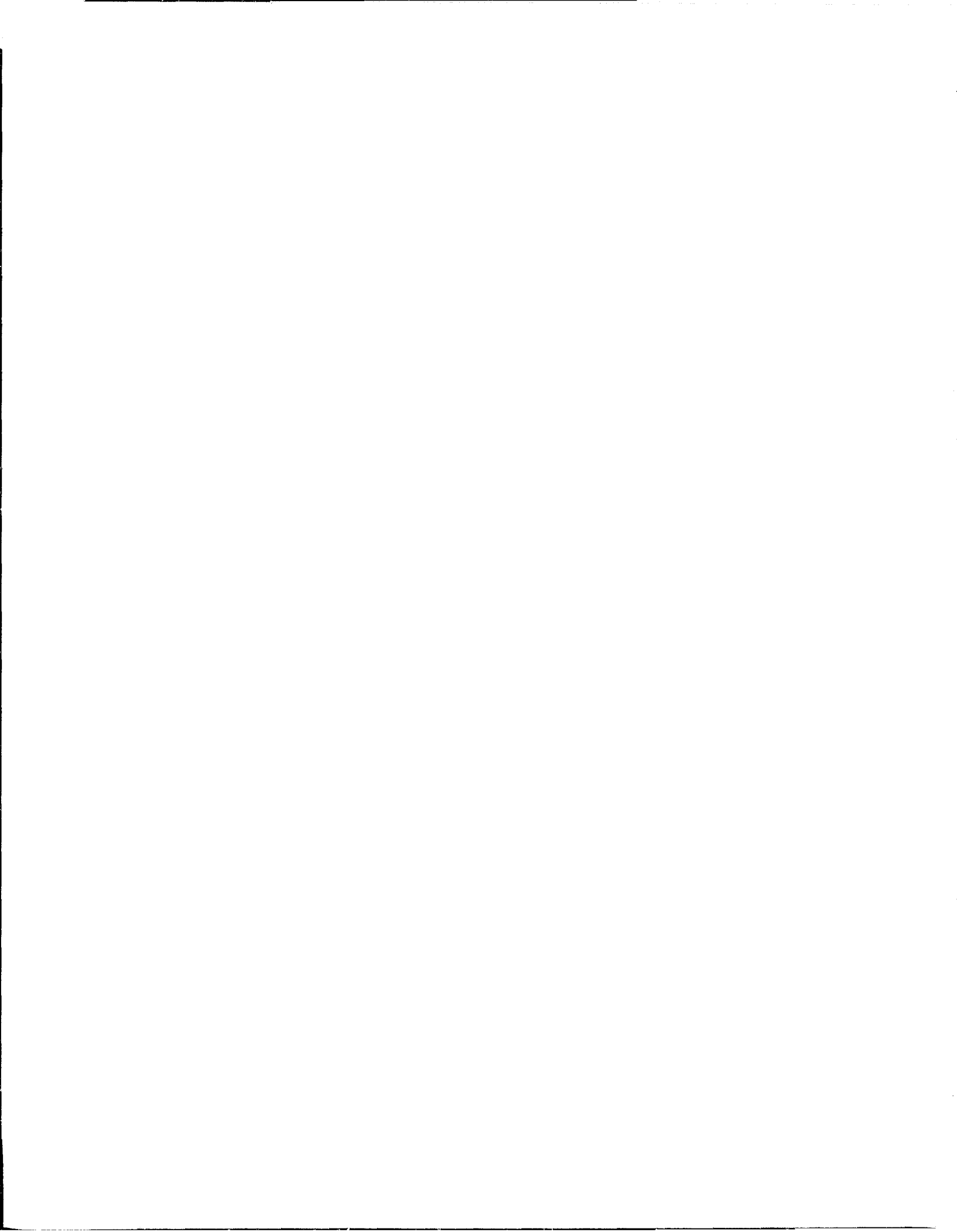
Programmatically, it appears both the Committee on Judicial Conduct and Professional Conduct Committee are operating as proposed in the grant application. The existence of these two Committees has provided the citizen with a means of recourse for mistreatment by judges and lawyers. Furthermore, the mere existence of two such Committees, may prevent judicial and professional misconduct by serving as a deterrent and by providing a system of accountability. The need for such Committees is clearly evidenced by the nature of our legal system.

Several administrative difficulties have been identified with respect to both the Committee on Judicial Conduct and the Professional Conduct Committee. In reference to the Committee on Judicial Conduct, no personal services contracts were drawn up prior to employment of any consultant. Furthermore, grant funds were expended without adequate documentation of time and attendance or specific travel expense documentation.

The Professional Conduct Committee is operating without a valid contract. In addition, this Committee is paying for services rendered to a state agency through a private account.

Considering the extent of the administrative difficulties identified by this writer, an audit is recommended. It is also recommended that no further grant funds be expended from the current grant without substantial documentation of adherence to financial guidelines as required in LEAA Guidelines Manual M7100.1A.

A recommendation for future funding will be contingent upon the audit findings.



END