

1     **New Hampshire Citizens Commission on State Courts**  
2     **Draft Recommendations for Consideration March 13, March 20**

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5     **Recommendation #31**

6     **Research Committee:** The Third Branch

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8     **Recommendation:**

9     Maintaining constructive working relationships with executive and  
10    legislative branches.

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12    A. The Court System continue its activities to develop and maintain  
13    constructive working relationships with the leadership of the  
14    Legislative and Executive branches, while incorporating procedures  
15    and safeguards to promote transparency and minimize risk to the  
16    Court System's reputation for decisional independence.

17    B. Specifically, the System should develop and adopt a written policy  
18    statement setting forth the objectives for conducting such outreach  
19    activities, outlining the permissible subjects of such activities, stating  
20    what subjects will not be pursued through such activities, and  
21    establishing a process for selecting the person or persons authorized to  
22    conduct such activities on the System's behalf and the subjects they  
23    are authorized to pursue.

24    C. The policy statement should be made available to the public.

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26    **Rationale:**

27    The Committee appreciated the opportunity to consult with Chief Justice  
28    Broderick, along with the chief justices of the Superior and District Courts  
29    and Court System administrative officials, to learn about the System's recent  
30    efforts to rebuild and strengthen inter-branch working relationships in  
31    connection with System budgeting and other operational issues.

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33    The Committee also met in separate sessions with the Governor, the Speaker  
34    of the House and the President of the Senate, to get the benefit of their views  
35    on the subject. In general, the leaders of the Executive and Legislative  
36    branches agreed that working relationships had improved, and expressed  
37    approval of the System's efforts. However, certain cautions also were  
38    expressed. 1) Most advocacy should be conducted "on" and not "off" the  
39    record. 2) System representatives should be consistent, candid and fully  
40    informed. 3) Mechanisms should be set up to invite opportunities for the

1 Executive and Legislative Branches to communicate with representatives of  
2 the System .

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4 Recently, there have been statements in the media suggesting that the  
5 System's decisional independence has somehow been compromised by its  
6 efforts to improve its working relationships with the other branches Without  
7 accrediting their accuracy, such statements, as well as the constructive  
8 comments from the Governor and legislative leaders, demonstrate that the  
9 System's improved inter-branch outreach efforts can generate risk to the  
10 System's reputation for decisional independence, if not pursued openly and  
11 carefully.

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13 The Committee believes that the System's reputation for decisional  
14 independence is fundamental, and risk of damage to that reputation must be  
15 avoided or minimized. The Committee concludes that a written and publicly  
16 available policy statement for conducting the System's inter-branch outreach  
17 activities, if well constructed and carefully adhered to, can improve the  
18 effectiveness of such activities, while at the same time reducing the risk of  
19 harm to its reputation for decisional independence.

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22 **Recommendation #32**

23 **Research Committee:** The Third Branch

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25 **Recommendation:** Budget

26 The Commission does not recommend changing RSA 9:4-a, that outlines the  
27 current budget process, but believes that

- 28 A. The Court System would benefit from consulting with the  
29 Governor's Budget Director to obtain the Governor's advice and  
30 expertise in preparing its budget for submission to the legislature,  
31 and that  
32 B. The Court System should voluntarily participate in the Governor's  
33 budget hearings to give the Governor, the legislature, and the  
34 public an additional opportunity to understand the Court's budget.

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36 **Rationale:**

37 Pursuant to RSA 9:4-a, the Chief Justice of the Supreme Court submits the  
38 judicial budget to the Commissioner of Administrative Services, who  
39 includes the request in the Governor's budget in the amounts requested by  
40 the Court, for submission to the legislature. The Governor is not permitted

1 to alter the amounts requested by the Court System. The Third Branch  
2 Committee appreciated the opportunity to meet with the Governor, the  
3 Speaker of the House and the Senate President regarding the Court System.  
4 The leaders agreed that the Court System had greatly improved the  
5 information it provided to them during the budgeting process, however, they  
6 noted that the Court System would benefit from receiving the advice and  
7 expertise of the Governor's Budget Director and from participating in the  
8 same process as other agencies in preparing its budget for submission to the  
9 legislature.

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12 **Recommendation #33**

13 **Research Committee:** The Third Branch

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15 **Recommendation:** Follow-up and follow through

- 16 A. That the Judicial Council continue its activities to improve the  
17 administration of justice in the state of New Hampshire, taking full  
18 advantage of its statutory authority to serve as an institutional forum  
19 for the on-going and disinterested consideration of issues affecting the  
20 administration of justice, with the added inclusion of acting as a  
21 conduit for communication between the Judicial-Executive-  
22 Legislative branches.
- 23 B. That the Judicial Council consider the recommendations of the  
24 Citizens Commission on the Courts
- 25 C. That the Judicial Council develop and adopt a written policy statement  
26 setting forth objectives for the Council to achieve, including serving  
27 as a forum for individuals and groups (such as the Citizens  
28 Commission on the Courts) to bring matters of concern forward and to  
29 agree upon ways to modify practices and procedures to serve the ends  
30 of the justice system
- 31 D. That the General Court shall provide adequate funding to the Judicial  
32 Council as may be necessary and prudent to accomplish the objectives  
33 stated therein.
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36 **Rationale:**

37 The Committee researched the purpose and objectives of the Judicial  
38 Council, including the statutory authority outlined in Chapter 494-The  
39 Judicial Council. Further, the Committee discussed the Judicial Council with  
40 the Executive Director Nina Gardner, as well as four of our colleagues,

1 former Attorney General Peter Heed and current Attorney General Kelly  
 2 Ayotte, former N.H. Senator Andy Peterson and Dartmouth College  
 3 Professor Dick Winters, who all have served or currently serve on the  
 4 Judicial Council.

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 6 The Judicial Council was established by the Legislature in 1945 “to serve as  
 7 an institutional forum for the on-going and disinterested consideration of  
 8 issues affecting the administration of justice.” The Council is comprised of  
 9 5 members of the judicial branch, the attorney general, a clerk of the  
 10 Superior Court and a clerk of the district and municipal courts, the president-  
 11 elect of the N.H. Bar Association, the chairs of the Senate and House  
 12 Judiciary Committees, 8 members appointed by the governor and council,  
 13 and 5 members appointed by the chief justice of the supreme court.

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 15 In recent years, the activities of the Judicial Council have been focused upon  
 16 administration of the funding for legal assistance for disadvantaged New  
 17 Hampshire citizens, as well as on legislation relating to the administration  
 18 and funding for legal assistance programs. The Committee respectfully  
 19 suggests that the Judicial Council is the appropriate forum for inclusion and  
 20 administration of these recommendations for improvement.

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 24 **Recommendation #34**

25 **Research Committee:** The Third Branch

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 27 **Recommendation:** Civic Education

28 We urge Justices of the New Hampshire Supreme Court, Superior Courts,  
 29 and District Courts to more actively educate the New Hampshire citizenry in  
 30 the importance of a vital and independent judiciary. The Justices’ efforts  
 31 should be cooperative and in concert with New Hampshire’s other elected  
 32 officials, as well as via individual efforts of members of the Judiciary.

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 35 **Rationale:**

36 We believe that there is great value in strengthening general public  
 37 understanding of the complementary and balancing roles of the three  
 38 branches of New Hampshire state government. The Judiciary, as the one  
 39 unelected branch of government, has a particular interest in furthering such  
 40 understanding by working cooperatively with the leaders of the other

1 branches to engage in civic education programs that would serve to enhance  
2 the spirit of comity among the branches. The Judiciary should take the lead  
3 in examining the feasibility of organizing a statewide series of symposia on  
4 the topic of "Your Government and How it Works." Ideally these fora (in  
5 schools, Town halls and community centers) would feature informal  
6 presentations by the Governor, Legislative leaders and the Chief Justice  
7 followed by dialogue and discussion amongst the government leaders and  
8 the public.

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10 The Judicial Branch is the unique part of a set of interdependent governing  
11 institutions. The uniqueness of the judiciary is that it, alone among the  
12 governing institutions, is the unelected one. The Governor, members of the  
13 General Court, and Executive Councilors restore and recharge their standing  
14 with the electorate every two years via the vote. The unelected Judiciary,  
15 appointed for life on good behavior, is the democratic and republican  
16 anomaly. It is a "democratic" anomaly because of its appointive (albeit with  
17 Council approval) nature. It is a "republican" anomaly because in an  
18 elected-representative system of government, judges are appointed,  
19 essentially for professional "life," for reasons of affiliations, beliefs, and the  
20 high qualities of their professional and legal standings. Put differently, the  
21 judiciary is the unrepresentative branch of our government. Its standing in  
22 our representational, majority-rule democracy is therefore more tenuous.  
23 Further, it is precisely following occasions when controversial and enduring  
24 conflicts come to a head in cases such as Claremont, that individual and  
25 several members of the judicial branch must redouble their efforts in setting  
26 out their reasoning and interpreting their decisions to those most affected, in  
27 this case, the tax-paying voters.

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