



**CHIEF/DIVISION CHIEF PROSECUTOR
PERFORMANCE EVALUATION**

ORIGINAL

Employee Name: Dan Simons	Court Assignment: Court 14
Time Covered by This Evaluation: From: 7/5/2016 To 11/11/2016	Title/Position: Chief
	Attorney Supervisor: Luis Batarse

Use this rating scale when evaluating the job performance categories.

EXTRAORDINARILY SURPASSES EXPECTATIONS	5
FREQUENTLY EXCEEDS EXPECTATIONS.....	4
MEETS EXPECTATIONS/SOLID PERFORMER.....	3
IMPROVEMENT NEEDED/PERFORMANCE SOMEWHAT BELOW EXPECTATIONS	2
DOES NOT MEET EXPECTATIONS/UNACCEPTABLE PERFORMANCE.....	1

* You must provide comment AND rating for each sub-category

1. **MANAGERIAL SKILLS** a. Critiquing/Evaluating (candid/fair/detailed) b. Teaching/Training c. Decision making ability d. Personnel utilization (equitable case distribution) e. Personnel supervision f. Leadership qualities g. Trial Assistance (including sitting 2nd chair with #2 and #3)

Specific Examples/Comments: Dan has a strong personality. He is decisive, assertive, competitive and confident. While often positive attributes, at times they appear to negatively influence his decision making, especially with regard to his competitiveness. As a result, Dan appears to make some decisions based on a desire to "win" rather than a desire to seek justice. He has demonstrated this decision making process to the ADA's he supervises, and this gives me serious concerns regarding his ability to teach and train junior prosecutors. I cannot trust Dan to seek justice in every case. See more below under Judgment.

Dan does not consistently communicate with his supervisors when problems arise in his court. For instance, there was an incident that occurred while his #3 prosecutor was in trial where the court attempted to lock the courtroom to the public. Instead of contacting us to ask for assistance, Dan sent an email stating: "Come see the seating in this trial... It is something you don't see." I learned from other prosecutors and defense attorneys, who were unable to enter the courtroom, what was going on, and that led me to go to the court to resolve the issue. Dan needs to learn to identify serious problems in order to get help when needed. See more below under Judgment regarding additional incidents involving a failure to properly communicate with supervisors.

Managerial Skills Rating (1-5): 1

2. **TRIAL ABILITY** a. Voir dire b. Direct examination c. Cross examination d. Arguments e. Willingness to try tough cases f. Other trial techniques (i.e., technical aids, etc.)

Specific Examples/Comments: I was not able to observe Dan in trial.

Trial Ability Rating (1-5): N/A

3. **PREPARATION** a. File documentation b. Witness preparation c. Case Evaluation d. Motions and notices e. Pleadings f. Ability to make a tough case better

Specific Examples/Comments: Dan was not always adequately prepared to discuss cases with me. There were issues or evidence he had not addressed before making his conclusions regarding his recommendations. See more below under Judgment.

Preparation Rating (1-5):

4. **KNOWLEDGE OF LAW** a. Application of law to facts b. Spotting legal issues c. Building on earlier acquired knowledge of the law.

Specific Examples/Comments: Dan's knowledge of the law is generally where I would expect it to be for a Felony #3 prosecutor. However, Dan is sometimes unable to distinguish between areas of the law he is and is not familiar with. There have been instances I have observed in private and in public where Dan has communicated the law incorrectly with complete confidence.

Knowledge of Law Rating (1-5):

5. **COMPLETION OF ASSIGNED TASKS** a. "To Dos" b. Additional assignments c. Attentiveness and communication with victims d. Administrative duties (i.e.; parole protest, destruction orders, extradition requests, trial reports, capital murder summaries, monthly court statistics, Semi-Annual and annual court reports/statistics; etc.)

Specific Examples/Comments: Dan is able to complete the daily administrative duties assigned to chiefs, including destruction orders, extradition requests, PTI memos, and trial reports.

Completion of Assignments Rating (1-5):

6. **ORGANIZATIONAL SKILLS** a. Time management b. File organization c. Docket management

Specific Examples/Comments: Dan manages his time well when present. His office appears to be organized and he has been able to reduce the docket while in Court 14.

Organizational Skills Rating (1-5):

7. JUDGMENT a. Plea bargaining b. Responsiveness to critique c. Issue spotting and resolution d. Makes well reasoned decisions e. Solves unique problems

Specific Examples/Comments: I have serious concerns regarding Dan's judgment. Dan and I discussed several cases together, and during these discussions, I expected his presentation of the facts and evidence to be prepared, complete and accurate. On more than one occasion, I observed him to be unprepared, not having considered relevant evidence necessary to make an informed decision regarding a case. I also observed his presentation of the facts to be selective at best, or intentionally misleading at worst.

By way of example: Dan and I discussed a misdemeanor DWI he believed needed to be refiled as an Intoxication Assault. He advised that the defendant struck a car occupied by an elderly couple and the female passenger ultimately had to undergo back surgery to address her injury. Dan explained that the doctor who performed the surgery believed the injury he treated qualified as serious bodily injury. Therefore, Dan wanted permission to re-file. As we were discussing the case, I began to skim the file and discovered important information Dan had not mentioned. I read that the complainant was ambulatory immediately following the collision and refused to be transported to the hospital. I learned that the complainant did not undergo surgery until several days after the collision. The medical records appeared to indicate that the complainant may have had some medical ailments that could have preceded the collision. I expressed concerns as to whether or not we could prove causation, namely that the collision actually caused the injury the physician ultimately treated, not merely advanced age and possible pre-existing medical conditions (as would likely be argued by defense). While Dan originally told me he had reviewed the medical records and the file, he did not appear to be aware of the issues I was raising. I was unsure if this was due to lack of experience with the issues associated with these cases and advised him that before we can make the decision to refile, we need to know what all of the records, taken in conjunction with all of the information before us, would actually mean. I explained that he needed to actually sit with the doctor(s) and have them explain the medical records. I explained that I would be willing to help and that it would be a good idea to present this case to Alison Baimbridge or someone in VATS. Dan advised he would complete the work on the file and let me know. Approximately 2 months later, Dan came into my office to discuss refileing the same case. I recalled our original discussion and asked whether he addressed some of the specific issues we had discussed. Dan had not addressed the issues I had raised and I again asked him to do the work necessary to figure out what needed to be done. Later that day, possibly the next day, he advised that he had discussed the case with Alison Baimbridge and she agreed to refile the case as an Intoxication Assault.

Regardless of the ultimate decision to re-file, my concerns rest with Dan's handling and presentation of the case. Had I not personally reviewed the file during our first discussion, I do not believe Dan would have informed me of the issues I identified. At that time, I could not be sure if this was due to a lack of awareness/experience with these issues or a lack of preparation. I gave Dan the benefit of the doubt and asked him to thoroughly review and analyze the case in order to figure out what needed to be done. Because of this, I was more concerned during our second discussion. Dan did not address the issues we had discussed before re-presenting the case. He then re-presented the case to me as if we had not had the initial discussion a couple of months earlier. He did not mention any of the things I had asked him to do until I brought them up, and he was still unable to answer my questions. It was clear that he either disregarded what I asked him to do or that he re-presented the case in a manner specifically intended to allow him to refile the case without completing the additional work required. The latter was confirmed by Alison Baimbridge, who advised Dan did not mention the complainant having any potential pre-existing condition, nor did he mention the complainant's advanced age when he presented the case to her (~~see attached memo written by Alison Baimbridge~~). This behavior is disconcerting and consistent with a desire to prosecute indiscriminately rather than to seek justice.

Dan is at times unreceptive to critique due to his own perceived high level of expertise in trial advocacy. This was expressed clearly during a conversation with his bureau chief, his chief and I, where he communicated his belief that he is more qualified to train misdemeanor prosecutors than the ~~the~~ felony and division chiefs who have previously provided trainings. The original intent of the meeting was to address an unauthorized training he had planned without communicating with the training coordinator and/or his supervisors.

Judgment Rating (1-5):

8. **TEAMWORK** a. Properly delegates work to administrative assistants, paralegals, investigators, and interns
b. Cooperates with other prosecutors assigned to the court c. Offers to assist others in the office (peers, administrative assistants, and subordinates)

Specific Examples/Comments: Dan is willing to help others when necessary and when he is available. He appears to have a genuine desire to teach others.

Teamwork Rating (1-5):

9. **PROFESSIONAL DEMEANOR** a. Shows proper deference to the court b. Respect for court staff
c. Assertive when needed d. Interaction with members of defense bar e. Interaction with staff, law enforcement, victim/witness and others

Specific Examples/Comments: I have observed Dan in court while supervising his prosecutors and he exhibits an appropriately deferential demeanor. He was able to work in an often challenging court setting. I was able to observe him resolve a difficult issue with the court with relative ease. However, it should be noted that a number of his peers have voiced their concerns regarding Dan's suitability to be a prosecutor.

Professional Demeanor Rating (1-5):

10. **AVAILABILITY** a. Punctuality and attendance b. Availability during work hours c. Work extra hours when needed

Specific Examples/Comments: At the beginning of his time as chief, there were times Dan was not available during work hours without having given notice to his supervisors. After being reminded to do so, Dan gave required notice that he was not going to be in the office. However, his requests for time off were more frequent than normal, even for a misdemeanor chief. In the roughly four months covering this evaluation, Dan took off more than twenty days, or four work weeks, not including sick time. The division chief eventually had to deny his additional requests. It is difficult to adequately guide and assist your prosecutors if you are not present to do so.

Availability Rating (1-5):

11. **Issues that may delay or prevent promotion and/or advancement in the future:** _____

12. **Ready or not to be promoted to next level:** (Consider in addition to prosecutor ability: judgment, mentor acumen, diligence, people skills, approachability, reliability):

Indicate Yes/No/Unsure

Specify Why: I do not feel comfortable allowing Dan to supervise and teach younger prosecutors because I ultimately do not trust his judgment.

13. **Any additional comments:** _____

Evaluated by Supervisor:



Date: 12/16/16

Reviewed by Division/Bureau Chief:



Date: 12-21-16

Employee Signature:



Date: 1.19.17

**Any objection or rebuttal to this evaluation must be submitted in writing to your immediate supervisor within 3 working days.