For the consideration of the Judicial Retention Committee:

Attached is my updated Work Improvement Plan, which includes additional details and timeframes that reflect ongoing discussions with Judge Zonay and Judge Valente (the Bennington County Presiding Judge) regarding implementation of the plan. I believe that this plan is both effective and achievable. For the past few months, I have no longer felt like my workload is unmanageable, or that keeping up requires that I devote all waking hours to work. I attribute this shift to the progress that I have made in dramatically reducing the number of cases under advisement, the improvements in efficiency that I have seen as I have gained experience in all areas, and successful and effective treatment for ADHD along with increasing my understanding of my brain and implementing techniques that work for me.

I continue to prioritize improved management of my workload, using what I have learned over the past two years to prepare for hearings and issue well considered rulings in a timely manner. With Judge Zonay's assistance, I have identified and connected with Judge Kalfus and Judge Warren as writing supports, both of whom have agreed to provide oversight and feedback for my written decisions. I have also started reaching out to experienced judges for writing samples, with a very positive response. I am now meeting weekly with Judge Valente to review my workload and any challenges. These meetings have been helpful, with Judge Valente offering both encouragement and insights. I also check in frequently (more than weekly), with the Court Operations Manager, Wendy Dickie, about any issues with the domestic and juvenile dockets. We have recently worked together with staff and Judge Valente to add additional time to the schedule for juvenile hearings, to accommodate an increase in case numbers, while maintaining regular and sufficient findings time for me. I have also been in frequent contact with retired Justice Cohen, as we have preliminary discussions about judicial coaching. At his suggestion, I have begun keeping a journal about my work, which has been a useful means of focused reflection.

I hope that I have adequately expressed how seriously I take the Committee's concerns and my commitment to continued improvement. While I was already aware that there were frustrations with my work, reviewing the feedback offered by attorneys and staff was a humbling experience. I do not want to be the judge reflected by those criticisms. I do believe that I am already no longer that judge, but I acknowledge that I also have much to learn and improve upon. I am certain that the leadership within the judiciary and those involved in oversight of the judiciary also take these concerns seriously. I expect that I will be held accountable for any failure on my part to adhere to my plan and my commitment to issuing more timely orders, not just through reminders and encouragement, but through discipline as well.

I understand that the committee has received additional written feedback from a litigant and I would like to take this opportunity to respond, both generally as to the concerns raised by the litigant, and specifically as to the particular proceedings mentioned. None of the claims made by this litigant about the eviction or restraining order proceedings are supported by the record. Further, I granted the litigant's request for a restraining order, and the litigant appealed the eviction decision and order to the Vermont Supreme Court, and the appeal was dismissed. However, I do recognize that the litigant feels that they were treated unfairly in both proceedings,

as they believe I did not accommodate their disability, and I showed bias towards another party. While I likely cannot change their mind, I do not agree with their assessment.

In any hearing on a request for any type of restraining order, it is my practice to advise defendants of their right to an evidentiary hearing and the option of stipulating to a final order without an evidentiary hearing. When the defendant is also subject to criminal liability for the alleged conduct, I advise them that their testimony could be used against them in a future criminal proceeding if they choose to testify during an evidentiary hearing. Stipulation to a final order without a finding does not prejudice the plaintiff, as the final order offers the same protections regardless of whether the Court makes findings to support the order after an evidentiary hearing or the parties stipulate to an order with no findings. Frequently in this type of proceeding, both parties are unrepresented, and given the significant criminal consequences for violating a restraining order, I believe that procedural due process requires that I inform the defendant of their options and the potential consequences. It's my understanding that this is standard practice throughout the state.

Generally, with regard to all court proceedings, I am always mindful of the need to make accommodations for litigants with disabilities, so that they have the full ability to be heard. This can range from allowing litigants to appear remotely, moving a hearing to a more accessible courthouse, or providing additional audio equipment in the courtroom, to appointing a litigant a communication support specialist. It can also include allowing litigants additional time to prepare for hearings. When it comes to eviction hearings, I consider myself quite generous in allowing continuances for tenants, as I am very sensitive to the reality that their ability to remain housed is contingent on their having a fair hearing and when they are self-represented, as many are, it can be challenging for them to navigate procedural and evidentiary rules on their own. At the same time, multiple requests for continuances, particularly those without a reasonable basis, must be balanced against the impact on the landlords, who may not be receiving rent from the tenant, as well as other tenants, who may be impacted by the tenant's conduct. When a motion to continue is filed on an emergency basis on the day of a trial, when a full day has been aside and multiple witnesses are present, if the opposing party objects to the continuance, I believe the Court has an obligation to require some corroboration of the emergency circumstances. Particularly when litigants are self-represented, I am flexible in my approach, allowing whatever form of corroboration a party can reasonably obtain and provide to the Court. I also will delay the start of the proceedings to allow them additional time for this. And, if the litigant does not provide any corroboration and their motion to continue is denied, I will entertain a motion to reconsider the denial of the continuance after the hearing, if they are able to provide documentation of the emergency at that point, and will allow them reasonable time to do so. I believe this is in line with the approach taken by other judges in these circumstances.

I thank the Committee for the time they have taken to review my request for retention. This has been a challenging two years, beyond what I could have imagined. Yet, through it all, my commitment to this position has never wavered. The weight of the decisions we make is not easy, but against that we have the joy of ongoing discovery and consideration of new questions of law and procedure, the pride that comes with properly running a courtroom, the honor of upholding due process and procedural fairness, and the privilege of helping our fellow citizens sort out conflicts safely and fairly and encouraging those who are striving to become productive

members of our community. We have all sought out this work because we care deeply about the work of the courts being done properly, and because we love and enjoy doing that work. I firmly hope that in six years I will be before this Committee again with a record that demonstrates any litigate in my courtroom can expect and will receive fair treatment and timely justice.

Thank you.

Rachel M. Malone