

APPELLATE COURT PERFORMANCE MEASUREMENT: TRANSFORMING PROCESSES AND BUILDING TRUST IN THE OREGON COURT OF APPEALS

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In an era when technological and cultural changes abound, courts must keep pace or risk the erosion of public trust and confidence. The deployment of modern case management systems that facilitate the objective measurement of institutional court performance over time is a bulwark in the defense of public justice.

Historically, courts have not found change easy. Courts are institutions whose hallmarks have been consistency, stability, predictability, and, sometimes, isolation. But the acceleration of cultural and technological change in society in the last generation has created a different dynamic, one that has required us to justify and explain ourselves in new ways. Among other challenges, courts have struggled to keep up with the private sector in the development of functional technological support for their work. They also have been caught in a resource bind, where the demands of their traditional case-deciding role are in competition with the need to reach out to external stakeholders to explain the importance of public justice in a free society.

Apropos of those developments, in 2004 the Oregon State Bar created a task force to study Oregon's state appellate courts. Although the resulting report was generally positive in its appraisal of the Oregon Court of Appeals, it identified resource-driven delay in resolving cases and a lack of communication and transparency in internal processes as two areas where improvement was needed. Those concerns were legitimate and, frankly, they mirrored our own concerns.

Since then, the court has taken several steps to address those issues. First, we have updated our internal processes in conjunction with the implementation of a new

computerized case management system, eliminating numerous redundancies and archaic case- and file-handling practices. *The Oregon Court of Appeals Internal Practices Guidelines* describe the internal workings of the court, from the filing of documents that trigger the court's jurisdiction through the issuance of judgments that end it. Included are descriptions of the organization of the court and its professional and administrative staff, how the court processes various filings at the initiation of an appeal or judicial review proceeding, how the court typically arrives at its decisions, and how it prepares them for publication. It also includes descriptions of how the court processes its several thousand motions annually and how cases may be referred to its nationally recognized Appellate Settlement Conference Program. The court hopes that, by providing these insights into its internal workings, its work will be more accessible and its rules and procedures easier for litigants to follow. Copies of the Guidelines may be obtained online at the court's Web page on the Oregon Judicial Department's Web site at <http://tinyurl.com/practicesguidelines>.

Second, we have implemented an electronic Appellate Case Management System, which has contributed to increased processing efficiency by providing functions such as:

- Automated case tracking and data entry
- Document generation through the use of predefined templates
- Data tracking and automated statistical report generation

Third, and in harness with the Appellate Case Management System, the court has undertaken a performance measurement project that will help us to be more transparent and accountable. Through that project, we have identified three core values in the planning and performance of our work. The first is quality: fairness, equality, clarity, transparency, and integrity of the judicial process. The second is the resolution of cases in a timely and expeditious manner. And the third, but not least, is the cultivation of public trust and confidence, which fundamentally flows from the first two values. To measure the achievement of those values, the court has adopted the following four key performance measures.

MEASURE 1. APPELLATE BAR AND TRIAL BENCH SURVEY

Definition

The percentage of members of the Oregon appellate bar and trial bench who believe that the court of appeals is delivering justice, both in its adjudicative and other functions.

Purpose

Trust and confidence in the judicial process are enhanced when a court demonstrates that it adequately considers each case and resolves it in accordance with the law. That involves balancing the expeditious resolution of a case with thoughtful review of its unique facts and legal complexities in the context of the parties' assignments of error and arguments, as well as existing precedent. Trust and confidence in the judicial process are also enhanced when a court is accessible. Physical access is important, but a court user's perception of the broader sense of accessibility also is influenced by the court's procedures and fees and by the effectiveness of the court's communication with its stakeholders about court procedures, operations, and activities. Oregon's trial court judges and its appellate bar are uniquely positioned to assess accessibility to the court and whether the court is fulfilling its responsibility to consider each case and resolve it in accordance with the law. Their responses about how well they believe the court is fulfilling its duties are an indicator of the court's quality.

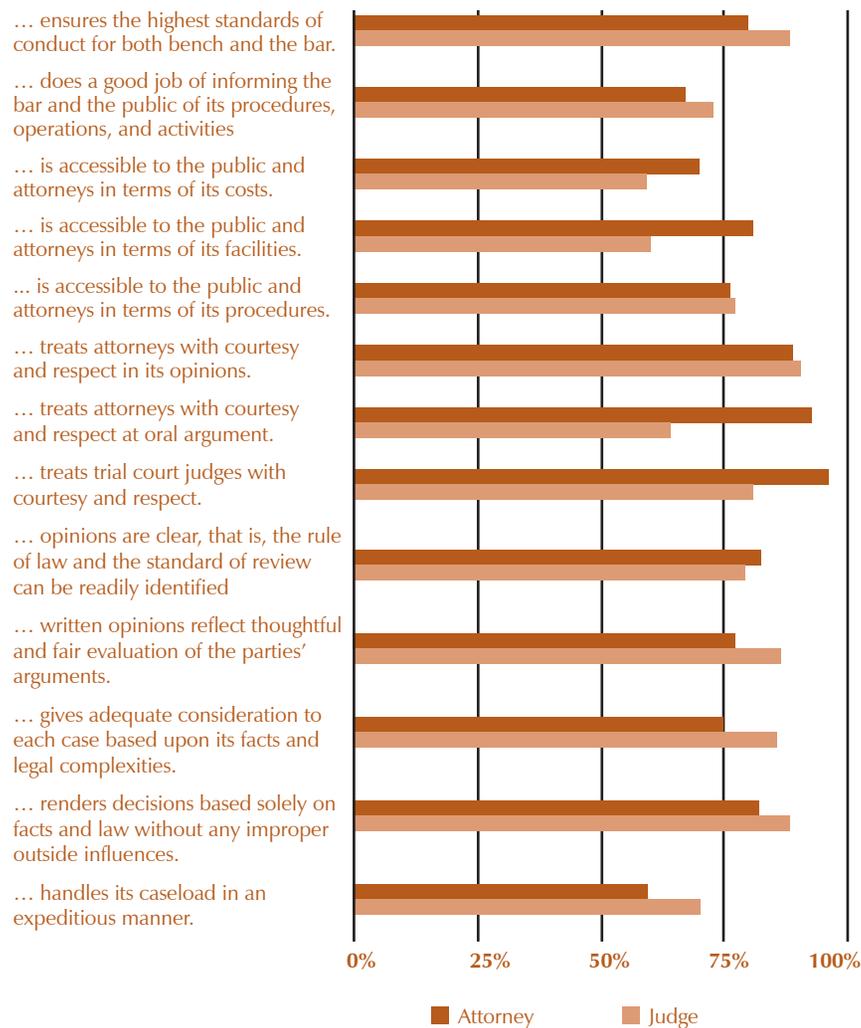
Method

This performance measure was obtained by a survey using a simple self-administered questionnaire. Survey respondents were asked to rate their agreement with the survey items on a scale from "strongly agree" to "strongly disagree." The survey items derived primarily from the performance standards applicable to every state appellate court system articulated in the *Appellate Court Performance Standards* (1995) and the *Appellate Court Performance Standards and Measures* (1999) by the Appellate Court Performance Commission and the National Center for State Courts.

As our first formal effort to measure the quality of the court's work, in the spring of 2007, the court invited attorneys and judges involved in trial court cases on appeal

Oregon Court of Appeals, Survey of Appellate Bar and Trial Bench, March 2007, Percent of Respondents (Judge or Attorney) Who Strongly Agree

The Court of Appeals ...



Source: Oregon Court of Appeals

in which any case dispositional decision was entered between July and December 2006 to complete an anonymous online survey. The survey was administered confidentially and analyzed automatically via the Internet using an inexpensive online-survey service. The results were reported and analyzed based on generalized categories concerning the nature of a respondent's contact with the court (e.g., appellate attorneys' frequency of contact with the court).

Survey respondents gave the highest marks to the court's treatment of the trial court judges and appellate attorneys involved in the cases on appeal. Nine out of ten reported that the Oregon Court of Appeals treats them with courtesy and respect. A lesser percentage of respondents, approximately two out of three, indicated that the court handles its caseload efficiently, that the court is accessible to the public and attorneys in terms of cost, and that the court does a good job in informing the bar and the public of its procedures. Overall, four out of five appellate attorneys and trial judges indicated that the court is doing a good job.

MEASURE 2. ON-TIME CASE PROCESSING

Definition

The percentage of cases disposed of or otherwise resolved within established time frames.

Purpose

Appellate court systems should resolve cases as expeditiously as possible. Although all litigants want their appeals resolved quickly, adequate review of an appeal requires careful consideration by the court. Thus, on-time case processing is a balance between the time needed for review and the court's commitment to expedite the issuance of a decision. By resolving cases within established time frames, the court enhances trust and confidence in the judicial process.

Unlike Measure 3, Clearance Rate, which focuses on clearance rates broken down by appellate case type—that is, civil, criminal, collateral criminal, juvenile, and agency/board—Measure 2 focuses on 1) specific case types and subtypes with particular benchmarks for issuance of case dispositional decisions and 2)

a “composite category” for all remaining case type-subtype combinations. In conjunction with Measure 3, this measure is a fundamental management tool that helps the court assess the length of time that it takes to issue a case dispositional decision once a case has been submitted.

Method

This measure determines the percentage of cases in which the court issued its first case dispositional decision within established time frames from the date that the case was submitted to the court. The measure requires information about the actual time between the date that a case is first submitted to the court and the date that the court issues its earliest case dispositional decision that is not later withdrawn.

Much of the information that is needed to make the calculations that underlie this measure is obtained from the Appellate Case Management System. For each resolved case, the system is queried to determine the number of days between the filed date of the earliest docket entry that reflects the submission of the case to the court and the filed date of the case-dispositional-decision docket entry.

Benchmarks are necessary for calculating the percentage of cases in which a case dispositional decision was issued within established time frames. Although some benchmarks originate in statutes and rules, the court has established specific benchmarks for calculation purposes. For any case type or subtype not having a specific statutory or rule-based benchmark, the court has adopted a 180-day residual benchmark. In 2008 the court disposed of 91 percent of such cases within the residual benchmark period, and in 2009 the court disposed of 87 percent of such cases within that period.

For each resolved case, the number of days calculated is compared to the established case type-subtype benchmark to determine whether the case was resolved within the established benchmark. For each of the case type-subtype categories listed above, a percentage is calculated—that is, the number of cases resolved by the benchmark in the category divided by the total number of resolved cases in the category. This measure is reviewed each quarter and at the end of each calendar year.

MEASURE 3. CLEARANCE RATE

Definition

The ratio of outgoing cases to incoming cases expressed across all case types and disaggregated by case type—that is, civil, criminal, collateral criminal, juvenile, and agency/board.

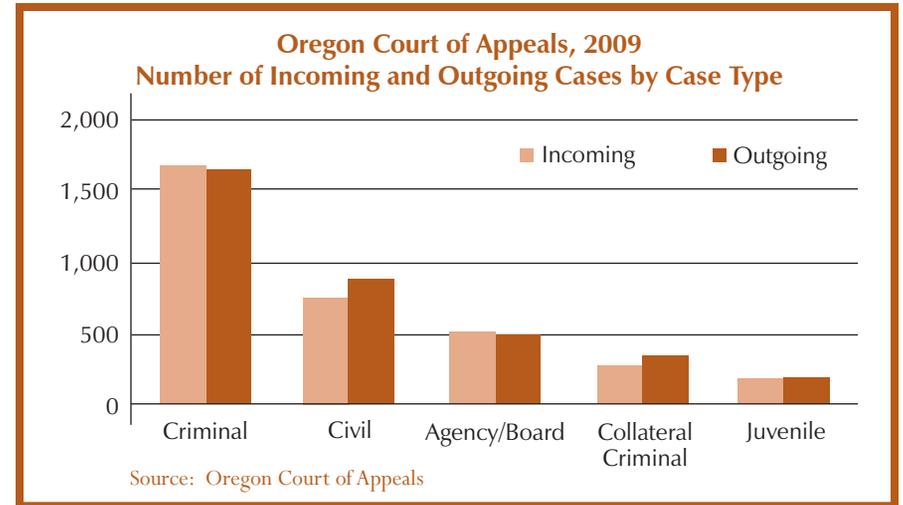
Purpose

A court should regularly monitor its productivity in terms of whether it is keeping up with its incoming caseload. At least in the short term, it is quite possible for a court to dispose of cases that it hears in a timely manner, as indicated by Measure 2, On-Time Case Processing, and yet fail to keep up with the cases filed. That is so because a mandatory review court like the Oregon Court of Appeals has no control over the number of cases that it must consider. An indicator of whether a court is keeping up with its incoming caseload is the ratio of case disposition or clearance rate—that is, the number of cases that are disposed of in a given period of time divided by the number of case filings in the same period.

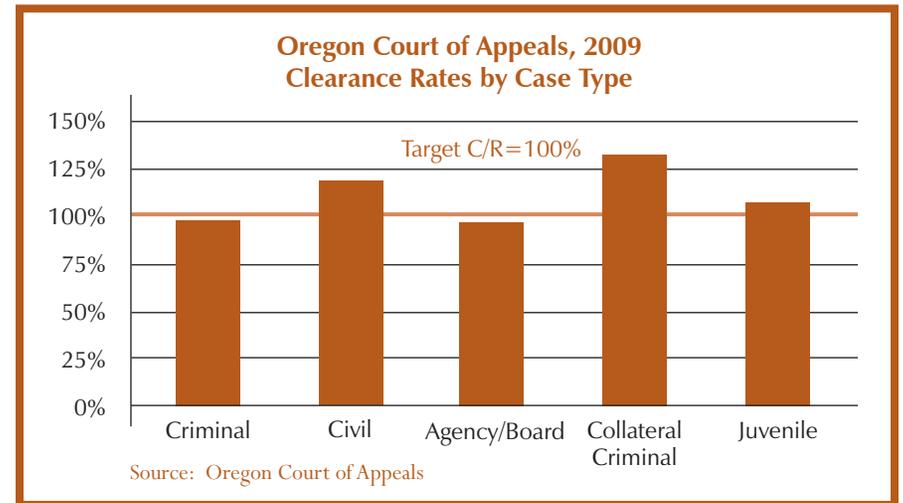
Although mandatory-review courts have no control over the number of cases filed, ideally they should aspire to dispose of at least as many cases as are filed. If a court is disposing of fewer cases than are filed, a growing inventory and backlog are inevitable. Knowledge of clearance rates for various case categories over a period of time can help suggest improvements and pinpoint emerging trends, problems, and inherent resource limitations. The initial result of taking the measure can serve as a baseline, answering the question, “Where are we today?” Successive measures can show how the rate of case disposition is changing over time compared against the baseline measure. Such trend measures can quickly highlight clearance levels over time and answer questions such as, “How have we been doing in our delay reduction efforts over the last 12 months or several years?”

Method

This measure requires information about the number of incoming and outgoing cases broken down by case type during a given period of time. Unlike Measure 2, which concerns the court’s disposition of cases within established time frames and focuses on several specific case type-subtype combinations, the information in Measure 3 is disaggregated only by case type—that is, civil, criminal, collateral criminal, juvenile, and agency/board—and not by the various case subtypes.



To determine the number of incoming and outgoing cases during the reporting period, data is generated from the Appellate Case Management System. The clearance rate for each category is calculated by dividing the number of outgoing cases by the number of incoming cases. Finally, to obtain a clearance rate for all case types, the total number of incoming cases in all case types is divided by the total number of outgoing cases.



MEASURE 4. PRODUCTIVITY

Definition

The number of cases resolved by the Oregon Court of Appeals broken down by decision form—that is, signed opinions, per curiam opinions, AWOPs (affirmances without opinion), and case dispositional orders.

Purpose

An appellate court should ensure that each case is given due consideration, thereby affording every litigant the full benefit of the appellate process. However, not all cases require the same time and attention to achieve this standard. And the particular form that the court's decision takes does not necessarily determine whether this standard has been met. For example, some cases, particularly those involving unique facts or legal issues of first impression, may require more extensive written analysis than others, resulting in full, signed written opinions. Some cases are sufficiently similar on their facts to others already decided by the appellate court that the legal analysis applied in those cases can be assumed to apply without the need for extensive discussion or analysis. This is one reason that a case may be affirmed without any written opinion. In other cases, a mere reference to precedent on the same or a similar point is helpful, but more than that is not necessary. An opinion issued per curiam is an example.

Method

This measure requires information about the number of case dispositional decisions issued by the court for a given period of time (e.g., each year, quarter, month, week) disaggregated by four decision forms (i.e., signed opinions, per curiam opinions, AWOPs, and case dispositional orders). A “signed opinion” is a majority opinion that is longer than two pages in slip-opinion format. A “per curiam opinion” is an unsigned majority opinion that is two pages or less in slip-opinion format. An “AWOP” is an unsigned decision indicating that the court is affirming a case without writing an opinion that explains the court's reasoning. A “case dispositional order” is one that disposes of the case.

This measure focuses on information for each decision-form category, as well as information across categories. The number of case dispositional decisions in each

decision-form category is reported, as is the court average per judicial officer—that is, the number of case dispositional decisions divided by the number of judicial officers.

Conclusion

The processes and measures described in this article are based on the Oregon Court of Appeals' experience and may not be applicable to courts of last resort or other courts of appeal that are organized differently. However, despite those differences, the myriad challenges facing our courts create opportunities to work more efficiently and collaboratively and to establish better lines of communication with all justice system stakeholders. By performing our judicial function with the aid of modern technology, implementing transparent, more user-friendly processes, and adopting core values that can be objectively measured to track institutional performance, courts can gain and sustain the trust of a public that confronts the same challenges on a much larger canvas.

RESOURCES

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