



CourTools

**Giving
Appellate
Courts
the
Tools to
Measure
Success**

Measuring Appellate Court Performance

Performance assessment is taking hold in a number of state appellate courts primarily because performance measurement can provide valuable information for the purposes of transparency, accountability, and continuous improvement.

Satisfying the expectations of court customers who vary in their roles and goals is a daunting challenge. Moreover, judges, court administrators, and court staff have only limited opportunities to view their work in perspective. The press of caseloads, along with everyday operational challenges, often seems all consuming. In this context, performance assessment actually helps court managers set goals as well as understand and manage organizational performance. With performance indicators in place, judges and court managers can gauge how well the court is achieving basic goals, such as quality of access and fairness, timeliness, and organizational effectiveness.

Not everyone will see and accept the purported benefits of court performance measurement. Skeptical reactions range from “performance measurement won’t tell us anything we don’t already know” to “we’re happy with the way things get done now” to “we just don’t have the time and money to even try this.” Simply stated, an understandable response to the call for a new set of responsibilities is “why shouldn’t we just continue to try to do a good job, rely on our sense of how we’re doing, and strive to minimize daily problems as much as possible?”

These types of reactions show the need for a discussion of why the bench and court managers should devote energy to the systematic and ongoing task of court performance management.

Five Reasons to Assess Court Performance

1 One reason for embracing performance measurement is that perceptions and beliefs of court insiders about how work is getting done are not always accurate. As a result, positive anecdotes and personal accounts are dismissed by court critics who see what is happening in terms of their personal, and perhaps negative, experiences. In contrast to endless debate over conflicting images, performance data allow everyone to test the reality of their assumptions of how well things are going. Performance evaluation sorts out whether what court insiders think is happening is, in fact, taking place.

2 A second attractive aspect of performance assessment is the capacity to identify and focus on areas of greatest importance to a broad and diverse audience. Multiple indicators permit courts to respond to the varied concerns of constituents, including litigants, attorneys, the public, and funding authorities. Certainly the bench and court staff are in a prime position to assess internal operating procedures, but court customers might have quite different criteria in mind when they evaluate the quality of service. By clarifying and measuring key outcomes relevant to the individuals and groups being served, the court averts the problem of making incorrect assumptions about what will best satisfy the public.

3 Fostering greater creativity among court staff is a third reason for being clear on desired outcomes. When court leaders and managers explicitly state what matters most, court staff more easily engage in determining how to make it happen. This is done by standardizing the ends rather than dictating the means to achieve them. Setting the desired outcomes in terms of clear measures (e.g., 95% of case files could be retrieved within 15 minutes) help staff better understand their individual contributions and empower court staff to devise creative means to achieve the desired outcome.

4 The value of performance data for preparing, justifying, and presenting budgetary requests constitutes a fourth reason why chief judges and senior administrators should consider performance assessment as a standard management practice. Performance assessment's focus on multiple goals and corresponding measures makes clear that courts use resources to achieve multiple ends. Information on how well the court is doing in different work areas provides essential indicators of whether goals are reasonably being achieved, which ones are being met more fully than others, and which ones are marked by poor or unacceptable performance. As a result, courts can articulate why some activities need tighter management oversight, improved administrative practices, more resources to support promising uses of new technology, or different configurations of personnel. In this manner, performance

Five Reasons to Assess Court Performance

assessment is a critical foundation for building evidence-based requests for new initiatives and additional resources. Performance assessment across a spectrum of goals establishes a natural priority of emphasis and shields courts from the criticism that budget requests are the product of some individual judge's or administrator's personal preference. Instead, budget proposals flow from the mission of meeting agreed-upon goals.

5 Fifth, and finally, attention to the results of court activities is more than just a polite gesture to the outside world. For the nation's courts, failure to highlight performance goals and measure them undermines the judiciary's proclaimed ability and need to govern its own affairs. Formal performance assessment signals a court's recognition, willingness, and ability to meet its critical institutional responsibilities as part of the third branch of government. Effective judicial governance and accountability require courts to identify primary responsibilities for which they can and should be held responsible. Since courts use public resources, taxpayers and their elected representatives are legitimately entitled to raise questions about efficiency and effectiveness in the expenditure of court funds. In response, performance assessment provides the means for courts to demonstrate the value of services delivered.

The foregoing observations suggest that performance assessment shifts the focus of court management from paying attention primarily to internal processes to delivering quality and value for the taxpayer dollar to court customers. However, actually establishing measures of value in the court context is a complex task. No single best measure for assessing high performance (like profitability in the private sector) exists to guide court leaders. Traditional court management typically measures a blend of inputs (e.g., the number of court staff employed) and outputs (e.g., the number of cases processed by court staff). But measures that focus on outcomes—the ones that allow people to say, “Yes, I see the value delivered for the investment”—are much more difficult to craft. *Appellate CourtTools* proposes a small but well-considered set of outcomes that appear to be widely accepted as valuable.

Appellate CourTools, developed by the National Center for State Courts, is a first effort toward providing appellate courts a common set of indicators and clear methods to measure performance in a meaningful and manageable manner.

Design criteria

The choice and formulation of the six *Appellate CourTools* measures are shaped by three interrelated criteria: (1) fundamental court values; (2) balanced perspective on the work of the court; and (3) feasibility and sustainability. Performance measures must be relevant to a court's mission, purpose, and strategic plan. In designing *Appellate CourTools*, the NCSC draws on the civic ideals and major performance areas unique to courts, as defined by the *Appellate Court Performance Standards (ACPS)*. These include, for example, providing procedural transparency, reducing delay, and ensuring fairness. *Appellate CourTools* also includes other success factors linked to management effectiveness that are relevant to all public institutions, such as client-customer satisfaction and the effectiveness and efficiency of internal processes. The six measures making up *Appellate CourTools* provide concrete and specific indicators of success.

Achieving a balanced perspective means core performance measures should cover the most important dimensions of court performance and offer meaningful indicators of success in each area. Many court managers recognize the need for measurement in appraising current practices and procedures, but may not view performance measurement as essential beyond the arena of case-processing. The management approach associated with a "balanced scorecard" entails both the idea of achieving balance (e.g., unifying traditional case-processing measures like time-to-disposition with measures of access, procedural fairness, and court-employee opinion) and the need to regularly score performance. The goal is making performance measurement an integral part of the management process.

Finally, feasibility and sustainability require measures that are limited in number, readily interpretable, and durable over time. *Appellate CourTools* constitutes six vital indicators of court performance, with more specific focus than the 15 measures of the *ACPS*. The *Appellate CourTools* indicators are easier to use initially and permit regular, periodic applications. The effort to apply the measures is not exorbitant or exhausting.

Delivering quality service

Let us now consider the relationship between these three design criteria and the six measures. To facilitate the measurement of what constitutes a well-performing court, performance is defined in terms of service delivery, a concept associated with the outcomes of public institutions. For courts specifically, key services include how individuals are treated, the manner in which cases are handled, and the integrity of how a court controls its operations. Courts exist to provide the services of a controlled, efficient, and orderly legal process.

Within each area of service delivery, there are criteria for evaluating the quality and value of services rendered. In the treatment of individuals, we focus on measures of access and fairness, which are key values in the *Appellate Court Performance Standards*. In the handling of cases, we focus on the criterion of timeliness, a value enshrined in the U.S. Constitution. Drawing on the insights of contemporary management literature, we examine organizational effectiveness and integrity, a standard calling for purposeful and deliberative administrative actions.

Appellate CourTools: Six Measures

Appellate courts frequently identify their organizational goals and objectives, or key success factors, as

- Quality of the judicial process,
- Timely and efficient case management,
- Organizational effectiveness and integrity, and
- Promotion and preservation of public trust and confidence in the judicial system.

An appellate court should adequately consider each case and resolve it according to the law. This involves balancing the expeditious resolution of a case (access) with thoughtful review of its unique facts and legal complexities in the context of the parties' assignments of error, arguments, and existing precedent (fairness).

Access and fairness, as two measures of the quality of an appellate court's judicial and administrative services, emphasize the fundamental importance of individuals and how they are treated in the American legal system. The degree to which these values are achieved in the real world is measured by ratings of court customers.

Measure 1: Quality of Services Survey is a survey measuring trial court judge and appellate attorney satisfaction with how well the appellate court is fulfilling its responsibility to consider each case and resolve it in accordance with the law.

MEASURE

Quality of Services Survey

Quality of Services Survey

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
1. The Court resolves its cases in a timely manner.	1	2	3	4	5
2. The Court gives adequate consideration to each case based upon its facts and applicable law.	1	2	3	4	5
3. The Court renders its decisions without any improper outside influences.	1	2	3	4	5
4. The Court's written opinions reflect thoughtful and fair evaluation of the parties' arguments.	1	2	3	4	5
5. The Court's written opinions clearly state the applicable legal principles that govern the decision.	1	2	3	4	5
6. The Court's written opinions clearly inform the lower courts and parties of what additional steps, if any, must be taken.	1	2	3	4	5
7. The Court treats trial court judges with courtesy and respect in its written opinions.	1	2	3	4	5
8. The Court treats attorneys with courtesy and respect.	1	2	3	4	5
9. The Clerk's Office staff responds well to inquiries.	1	2	3	4	5
10. The cost of appealing a case is affordable for litigants.	1	2	3	4	5
11. The Court's Web site provides useful information.	1	2	3	4	5
12. The Court communicates its decisions and orders in a timely manner.	1	2	3	4	5
13. The Court makes good use of information technology to provide easy access to case information.	1	2	3	4	5

Background Information

- a. Are you a:
- Judge
 - Appellate Attorney

- b. What is your gender?
- Male
 - Female

- c. How do you identify yourself?
- American Indian or Alaska Native
 - Asian
 - Black or African American
 - Hispanic or Latino
 - Native Hawaiian or Other Pacific Islander
 - White
 - Mixed Race
 - Other

- d. If you are a judicial officer, indicate the number of years you have served on the bench:
- Less than 1 year
 - 1-3 years
 - 4-10 years
 - More than 10 years

- e. If you are an appellate attorney, indicate the approximate number of appeals you have participated in during your career.

- 1-10
- 11-25
- 26-50
- 51-100
- 101+

- f. If you are an appellate attorney, indicate the approximate number of appeals you participated in during [the measurement period].

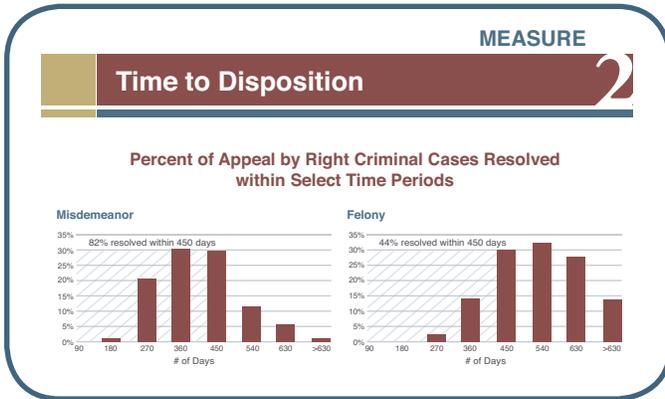
- 1-5
- 6-10
- 11-20
- 20+

- g. If you are an appellate attorney, indicate the primary court in which you practice:
[Court can include this question, customized to its state, if appropriate]

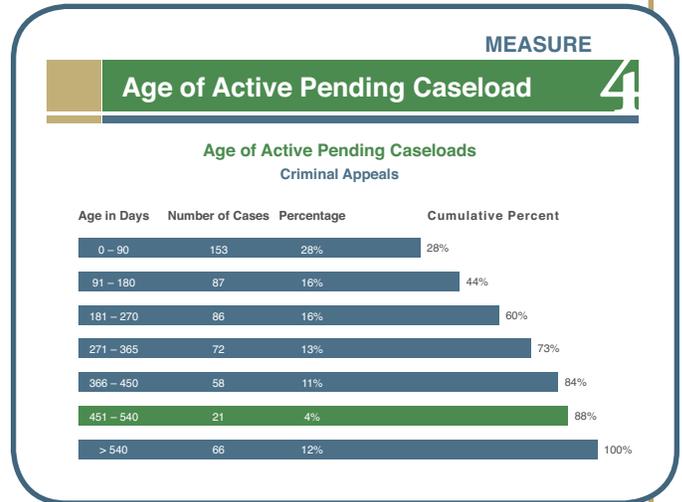
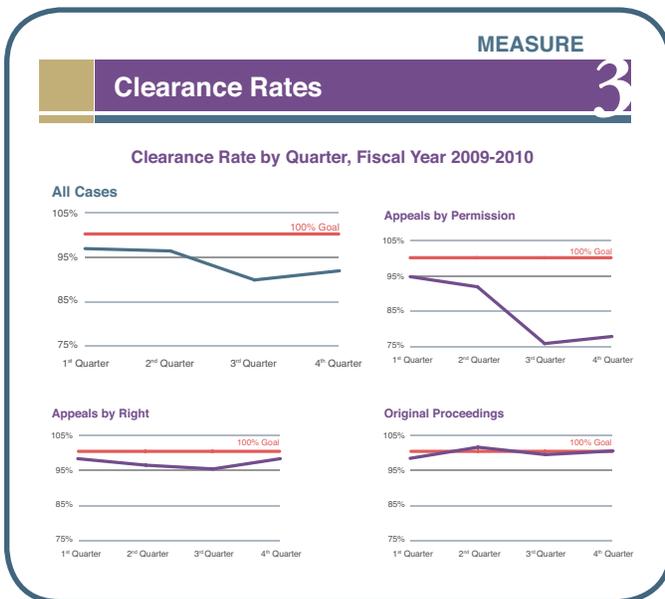
- District 1
- District 2
- District 3

Appellate CourTools: Six Measures

Timely and efficient case management emphasizes the concern of court participants, the public, and policymakers that the legal process is controlled and well-managed. Three measures highlight the general requirement that appellate court functions be performed within a proper and reasonable timeframe.



Measure 2: Time to Disposition calculates the length of elapsed time from case filing to case resolution, with the recommendation that the result be compared to some stipulated or agreed-upon case-processing time standard. **Measure 3: Clearance Rates** examines court productivity in keeping current with the incoming flow of cases.



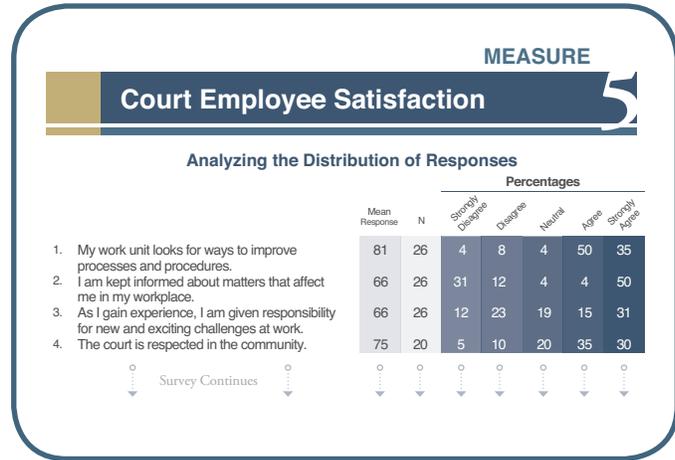
A related indicator of timeliness is the amount of time cases have been pending or awaiting resolution—**Measure 4: Age of Active Pending Caseload**. It is possible for a court to show expeditious processing of disposed cases, yet have undesirably high figures for the age of its pending caseload. This happens when routine cases move smoothly through the court system while problematic cases are allowed to continue aging. Moreover, an increase in the age of pending cases foreshadows difficulties a court might have in continuing its past degree of expeditiousness.

Appellate CourTools: Six Measures

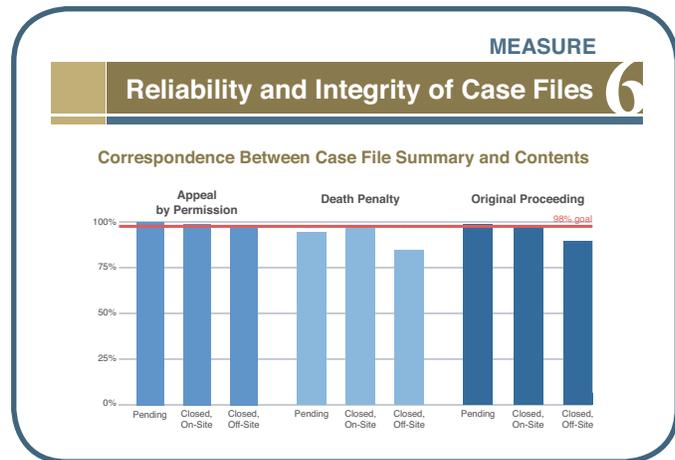
Organizational effectiveness and integrity highlights the nexus between operating procedures that are strictly internal and outcomes important to the court’s customers. Success in meeting this key value is assessed in the two remaining Appellate CourTools measures.

Measure 5: Court Employee Satisfaction

uses a survey, drawn from contemporary management literature, to gauge employee perspective on the quality of the work environment and relations between staff and management. Conflict, low morale, and doubt about the appropriate division of labor among court employees undermine service to the public. Moreover, effective supervision and direction by managers are essential to the ongoing growth and development of court staff. Clarity and a sense of empowerment by employees facilitate judicial efforts to process cases in a timely and effective fashion.



Measure 6: Reliability and Integrity of Case Files is vital to the public interest (individual litigants and taxpayers alike) in that the records of court decisions and actions officially determine the rights and responsibilities of individuals and the government. Inaccessible or incomplete case files seriously compromise the court’s integrity and undermine the judicial process. A well-performing court maintains case files completely and correctly in recordkeeping systems, which also permit expeditious retrieval and support timely case processing.



Conclusion

Appellate CourTools enables courts to collect and present evidence of their success in meeting the needs and expectations of customers. Basic indicators of court performance are a necessary ingredient of accountability in the administration of justice and effective governance of the third branch. Moreover, performance measures provide a structured means for courts to communicate this message to their partners in government. *Appellate CourTools* should appeal to judges and administrators interested in setting the agenda of policy discussions and evaluations of institutional performance. Designed to demonstrate the quality of service delivery, *Appellate CourTools* fosters consensus on what courts should strive to achieve and their success in meeting objectives in a world of limited resources.

CourTools



Contact the National Center's Court Services Division to learn more about implementing **Appellate CourTools** in your court.

Call us toll-free at:
800-466-3063

Download a free copy of **Appellate CourTools** at:
www.courttools.org

Send an email to:
courttools@ncsc.org

Readings and Sources

These references are intended to serve as a resource for further inquiry into performance assessment generally, research underlying the six Appellate CourTools measures, and the concept of a balanced scorecard.

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