



## CIVIL JUSTICE COMMITTEE AGENDA

Friday, January 29, 2016  
1:30pm - 3:00pm  
UNC School of Government, Room 2102  
Chapel Hill, NC 27514

- I. Approval of December 4, 2015 Minutes
- II. Discussion of Professor David Ammons's Remarks
- III. Discussion of Committee Work to Date
- IV. Discussion of Areas of Further Investigation and Research
- V. Adjourn



## MINUTES

January 29, 2016

**Civil Justice Committee breakout session**

**UNC School of Government**

Committee members: Janet Ward Black; Sheila Eley; ED Gaskins; Rob Harrington; Calvin Hill; Anne Lloyd; Julian Mann; Darrell Miller; Michael Mitchell; Osmond Smith.

Other attendees: Barbara Moore; Shelby Benton; Danielle Seale; Amanda Lacroff; other AOC staff and interested citizens.

### **Meeting open at 1:52 p.m.**

Minutes from last meeting approved.

The meeting began with a question stemming from the presentation at the Full NCCALJ meeting: What processes and facts are necessary to measure improvements to, and the performance of, the civil justice system in North Carolina?

The discussion that followed included remarks that the Committee should begin to shift from its fact-finding mission to date, to begin to develop and propose solutions to the identified issues. A Committee member noted, and others agreed, that data that have little to no value, or do not accurately represent the work being done in the judicial system, should no longer be collected, as doing so takes up a significant amount of time and resources.

For example, several Committee members observed that the “time on bench” data currently collected doesn’t fully represent the amount of time that judges spend on a case in chambers, or on other administrative tasks and responsibilities. As such, the data might be meaningful in some sense, but that meaning can easily be misconstrued or misrepresented and perhaps lead to an allocation of resources based on mistaken impressions. Moreover, some of the start/stop times are best guesses rather than accurate recordings. Some of these flaws have been communicated to the legislature through the AOC’s legislative liaison and staff. A more thorough workload study over a four-week

period, in which judges report their time in five-minute increments, is used as the basis for recommendations for how many judges are needed in a given district, and for expansion budgets.

Committee members noted that there is widespread agreement that there is room for improvement in terms of efficiency in the civil justice system, but “efficiency” may be difficult to measure and defined differently by different parties. For example, one Committee member observed that time spent on the bench may actually suggest inefficiency, if more cases should be resolved outside of open court.

Further, what is the objective in keeping these statistics? Is fairness and justice being served? Is time standard being met? Measurements can’t just be how fast cases are disposed, but should reflect the health of the system, and tell us if the system is delivering justice? Likewise, “satisfaction with the court system” might always be 50 percent, but is that sufficient? Does it mean anything? Is there such a thing as a “median participant” that would capture the balance between efficiency and just results? And is there really a good objective measure of “fairness”? Even reversal rate isn’t entirely accurate, as it wouldn’t capture mistaken reversals, or the fact that the most difficult cases are often the ones actually appealed. Perhaps it is more useful to ask citizens about how they felt about their interactions with the system—and maybe survey them before a decision is issued. One suggestion is for the Committee to hear a presentation on how to think through how to design a metric to assess variables like “fairness”?

A Committee member analogized to assessing/evaluating teachers, noting that the best teachers often spend lots of time outside of the classroom. He suggested that there may be other examples that could provide some lessons for performance metrics in the civil justice system, as this is not an isolated issue but rather common for those providing services to the public.

Another Committee member cautioned against taking too much comfort in numbers, and stated that we shouldn’t go “too far” in the direction of relying solely on performance metrics to measure success. In addition, another member noted that numbers can be susceptible to manipulation and misuse—and emphasized that the Committee should consider what values to put into what is selected for measurement, that not everything can be measured, so expressing some value judgments by choosing certain metrics over others. The individual doing the measuring also matters, as judges or clerks or citizens will each have a different perspective on how the system is working. Similarly, should other dispute resolution mechanisms be measured, to capture those not actually interfacing with the court system but who perhaps would prefer to be?

Discussion then turned toward the way forward, and the suggestion to articulate the Committee’s goals and objectives, before then moving on to what data or other measures would indicate/reflect success? Four proposed overarching goals: Fairness, access, timeliness, and lowest expense possible (acronym: FATE). What are the objectives within those goals? Systemic objectives—can affect system that improve the situation for any/each of these four goals. Expense is a bit different.

A Committee member suggested that a first step should be to identify and define exactly what we're trying to do and change—not measurement. For example, in industry, when seeking to improve safety, a company will begin by tracking the missteps that lead up to accidents, so they can get ahead of the trends and prevent the actual accidents. For the civil justice system, the Committee should find the three (or whatever number) key things that want to change, and then go back behind to see root causes and figure out measurement from there.

Another Committee member asked: What are the success factors that we are looking for? What are the key things that the court systems that are doing “well” are doing? How do we increase belief and confidence in the justice system? Holistic view of system and judges' behavior.

Along similar lines, a Committee member suggested that sometimes making guidelines actual deadlines works well—if rules are clear, then compliance will follow. Another added that aggregate statistics can help, but the buy-in must happen at the local courthouses, so that changes are from the bottom up, and measures can be used to figure out what's going on and whether it's consistent with perceptions.

However, a Committee member noted that we may all agree on the overarching goals—but must also recognize that some of these are in tension (e.g., could always have absolutely fair and just result, if willing to spare no expense). Tradeoffs have to be acknowledged and made. State-sanctioned dispute resolution should be what citizens want to use (as opposed to fighting in the streets or other approaches that would have negative effects).

Returning to the process moving forward, the Committee was reminded that the preliminary draft of their recommendations will go out as a green paper, released with a solicitation for comments/responses that are then finalized into more concrete recommendations. To that end, dual tracks of getting information and figuring out recommendations still make sense. The Committee also hasn't examined the issue of expense in a meaningful way.

Along those lines, the Committee discussed other topics that it hasn't yet fully examined but which have significant impacts on the civil justice system: family law cases (and those citizens might have a very different perspective on what “fairness” is, one judge/one case is key to making it work, specific timelines improve efficiency); huge volume of small claims (and differing responsibilities of magistrates); juvenile courts; other specialty courts (e.g., drug court); domestic violence protection orders; discovery limitations to rein in costs; jury management; how any recommendations will affect pro se litigants in particular. All should be done while maintaining access and fairness.

This also led to a discussion of uniformity—and the observation that North Carolina is a unified system, but not a uniform system. As such, best practices aren't replicated all over the state because of different local budget, priorities, politics, and other situations. A Committee member cautioned that the state is becoming a system of haves and have-nots, with the state paying for certain personnel in some counties but not elsewhere, so the state might start thinking that counties should have to pay if they want a program, despite

a lack of resources. How should funding work to promote a more uniform system if desirable? Technological capacity could also help provide uniformity beyond creating the actual infrastructure in each county.

The Committee discussed the feasibility and desirability of case management orders in every case, perhaps from the “system” (e.g., templates or one-page roadmaps that could be adapted for each case) or from the parties or trial court administrators, rather than from individual judges. Perhaps preliminary status conferences would also have an effect on expense and strategy. What’s appropriate for a given type of case? How do different local rules, NC RCP and FRCP affect/improve case management? A Committee member reminded everyone that much work has been done in the area of case management, and that research should be fully explored without reinventing the wheel. The suggestion was made to use AOC resources to respond to the practicality of possible recommendations—so if there’s something that would definitely not work, then need to know that early so that don’t waste time on it. Try to use existing best practices and recommendations and apply them to our system.

There was some back-and-forth about why fewer cases in the civil system but each is taking longer—might be lawyers holding on to them and working them longer, might be more complex, might be cost of litigation, might be delaying tactics as part of strategy. A Committee member observed that we should be as concerned about the case that doesn’t get filed as the one that does—the opt-out problem because the public doesn’t have confidence in the system, or thinks it will be too expensive and take too long, etc.

The February meeting of the Committee will consider Chief Justices’ report and recommendations, including case management and tracking. Not every case that comes in the door is going to require a full trial, we need a system in which people think of the court to get dispute resolved as a first recourse, not last—so provide options for resolution in a day or two to divert cases and let citizens know this is an option. Manage expectations of public—be realistic about what they’re told about how long something might take, etc., so that they trust the process.