

MINUTES  
(Unofficial until approved)  
Judiciary Standards Committee  
Supreme Court Conference Room  
March 21, 2014

Members Present

Municipal Judge William Severin, Chair  
Judge Norman Anderson  
Sen. Kelly Armstrong  
Linda Bata  
Judge Sonja Clapp  
Stacey Dahl  
Daniel Dunn  
Rep. Diane Larson  
Tim Ottmar  
Sheila Peterson

Members Absent

Justice Daniel Crothers  
Joel Fremstad  
Anna Frissell  
Judge Richard Hagar  
Sen. David Oehlke  
Judicial Referee Connie Portscheller  
Judge Jay Schmitz

Chair Severin called the meeting to order at 1:00 p.m. and welcomed new members appointed by the Chief Justice: Judge Norman Anderson, Sen. Kelly Armstrong, Rep. Diane Larson, and Tim Ottmar. He then drew Committee members' attention to Attachment B (March 13, 2014) - Minutes of the December 13, 2013, meeting.

**It was moved by Sheila Peterson, seconded by Linda Bata, and carried that the minutes be approved.**

Judicial Improvement Program - Technical Assistance Review

Chair Severin noted the earlier referral by the Supreme Court of a Technical Assistance Review of the judicial improvement program conducted by a team from the National Center for State Courts (NCSC), and the Committee's discussion of the review at the December 2013 meeting. The Committee's December discussion concluded with a request that an ITV meeting with the authors of the review be arranged to further consider the concerns and recommendations set out in the review. The Committee requested further consideration of Concerns 1, 2, 3, 4, and 8 as outlined in the review.

Chair Severin then welcomed David Rottman, Principal Court Research Consultant, NCSC, and Jennifer Elek, Court Research Associate, NCSC, for their further comments regarding the technical review.

Minutes  
Judiciary Standards Committee  
March 21, 2014

Mr. Rottman generally outlined the National Center for State Courts and its role in assisting state courts in resolving various issues related to judicial system programs, operation, and future projects. He noted that North Dakota is one of eighteen states that has established some method for evaluating its judges for purposes of judicial improvement or evaluation. He said the principal focus of the technical assistance review was to assist the North Dakota judicial system in achieving the objectives of the judicial improvement program as set out in Administrative Rule 48. He then turned to Jennifer Elek for further explanation of the concerns and recommendations about with the Committee requested additional discussion.

Ms. Elek noted the provision under Administrative Rule 48, Section 3D, that the list of those to be surveyed as part of the judicial improvement process should include attorneys and court personnel appearing before or working with the judicial officer in the twelve months immediately preceding the survey period. She said the provision is linked to Concerns 1 and 2 and the related recommended improvements:

- Concern 1: Court personnel survey procedures may lead to respondents evaluating a judge based on reputation rather than personal experience with the judge. Improvement: distribute survey to only those respondents who have direct experience working with the judge.
- Concern 2: Survey questions are too general and may allow reliance on assumptions. Improvement: Develop new questions that focus on actual, observed behaviors of the judge rather than an interpretation of a judge's behavior.

She said feedback received during the technical review seemed to indicate that the survey process may not be implemented in practice as the rule describes. She said there appeared to be opportunity for those with less experience with a judicial officer than the rule contemplates to offer survey responses, which in turn is related to the possibility of those survey respondents relying on reputation or word-of-mouth, rather than meaningful experience, as the basis for evaluating the judicial officer.

Staff noted the concern related to gender bias expressed in the technical assistance review and its relation to Concerns 1 and 2 and asked how that bias relates to the surveying process.

Ms. Elek explained that research literature regarding judicial evaluation particularly, and social judgment generally, indicates that people are inclined to rely on cognitive short-cuts and stereotypes that introduce subtle biases into survey responses. For example, she said, if questions are very general or broad and high-level and perhaps focused on attributes or temperament, then

Minutes  
Judiciary Standards Committee  
March 21, 2014

respondents tend to rely more on short-cuts and stereotypes in providing responses. She said more specific, behavior-focused questions tend to elicit more accurate information about interaction with the judicial officer.

Mr. Rottman noted that research indicates the presence of subtle, unconscious ideas about a judge's association with male attributes, which are then related to different expectations based on gender and which are then caught up in the surveying process.

Ms. Elek said there is a risk that non-specific questions tend to require a respondent to draw inferences about a judge's conduct or temperament, which may result in distorted response results.

In response to a question from staff, Ms. Elek said the structure of the survey as a whole, rather than a specific question, is generally the more important consideration in terms of eliciting useful, unbiased information. She said there are survey techniques that can be introduced at the beginning of the survey that will involve respondents in thoughtfully recalling examples of behavior and drawing on those direct experiences as subsequent questions are answered.

Mr. Rottman said the NCSC had assisted the Illinois judiciary in constructing an evaluation that is considered to be free of gender bias-related issues. He said they are currently working with the Idaho judiciary in reviewing the survey instruments in that jurisdiction. He noted that survey instruments generally do not transfer easily from jurisdiction to jurisdiction since each has its own objectives, rule environment, and judicial and legal culture to consider.

Ms. Elek then drew attention to the third concern related to self-represented litigants:

- Concern 3: Obtaining meaningful feedback from self-represented litigants. Improvement: Consider reporting responses from self-represented litigants separately from attorney responses.

She said the review focused on the response process, but she said there are additional issues related to the general understanding of self-represented litigants of the survey questions. She said a more helpful measure may be the general perception of fairness in the proceeding, such as whether the litigant thought there was an adequate opportunity to be heard or whether there was fair treatment. She said combining responses of self-represented litigants with attorney responses may lose some of that perspective. She said a separate survey for self-represented litigants may be worth considering.

With respect to the perception of fair treatment, Rep. Larson asked whether that perception inevitably depends on whether the litigant won or lost in the case. Mr. Rottman said there is a

Minutes  
Judiciary Standards Committee  
March 21, 2014

reasonable concern that case outcome may drive the perception of fairness. However, he said research indicates that the public can move beyond the specific case outcome if there is a general sense that the party was treated fairly during the court process.

Judge Severin asked whether the number of questions, the general length of the survey affects responses. Mr. Rottman said ease of completing the survey can be a factor. He said when a new survey is constructed it is generally useful to have trial tests to determine the time it generally takes to complete the survey and whether there was any difficulty in responding.

With respect to the possible use of an electronic surveying process, Judge Severin asked how confidentiality would be handled. Mr. Rottman said an outside contractor is generally used for electronic surveys and the contractor would be responsible for destroying any surveys after results have been compiled. He said an identification number, rather than a name, is typically used in an electronic survey. Ms. Elek said it would be important for the data to be stored on a remote secure server.

Ms. Elek then discussed the fourth concern regarding response rates:

- Concern 4: Low survey response rates. Improvement: Consider a reminder notification process; improve user-friendliness of survey (online system); cutoffs based on number of survey responses

She said 2012 data considered in the technical assistance review indicated an average attorney response rate of about 20% and an average court personnel response rate of about 40%. She explained that in other states the response rate tends to be between 50% and 60% when a tailored reminder process is used. Mr. Rottman said a reminder process is easier to use and manage if electronic surveying is used.

Ms. Elek next reviewed the eighth concern related to the phrasing of survey questions:

- Concern 8: Current survey questions framed in a way that assumes the judge is doing a good job. Improvement: Frame questions in a uniform way to ask for identification of strengths and areas of improvements.

She said the questions are framed in a manner that suggests, or sets the tone, that the judicial officer is doing a good job, rather than being more evenhanded in prompting evaluations of whether conduct is good or needs improvement. She said it is important that questions do not serve as cues for particular assessments.

Minutes  
Judiciary Standards Committee  
March 21, 2014

Mr. Rottman noted generally that the state of the art of surveys is constantly improving and becoming more refined and effective. He said it is possible to devise an effective, useful judicial performance survey.

Judge Severin asked whether it is beneficial to ask attorneys what kinds of questions about judicial performance they would like to see included in a survey. Ms. Elek said there is value in soliciting that information as it can increase the buy-in of the attorney community in the survey process.

Judge Severin asked whether there is a difference in benefit between narrative survey responses and numeric responses. Ms. Elek said one benefit of some kinds of numeric responses is that they can provide a general overview for the judge receiving the information. She agreed that a mixed survey of narrative and numeric responses would have some advantages over surveys that used only one or the other.

Ms. Elek said the opportunity for open-ended answers could help distinguish the general purpose of a judicial improvement program - improvement of individual judge behavior - as compared to numeric responses, which are more often used to provide ratings for purposes of judicial retention elections. She said qualitative information that results from open-ended responses can also assist in developing education programs to address issues generally identified in the responses.

Sheila Peterson asked whether, if mixed narrative and numeric response questions are used, respondents will simply answer the numeric and skip those questions requesting an open-ended response because it would be quicker. Ms. Elek said there is a risk of that occurring, but the survey could be constructed to put the major focus on narrative questions.

Following further discussion, Chair Severin asked what the next step would be if further work on the improvement program is to occur.

Mr. Rottman said NCSC involvement would depend on the scope of assistance the Committee might request. He said if there is an interest in devising new survey questions then a group could be identified to work with NCSC staff to consider possible question development. He said focus groups of attorneys, court personnel, and others could be used to determine what is considered important to ask and learn from a survey. Additionally, he said, there could be an identification of which aspects of judicial work would or should be the focus and questions could then be structured to obtain the relevant information.

Ms. Elek said it would be useful in determining the structure of the survey process to know if what is learned from the surveying would be connected in some manner to judicial education directed at improvement measures.

Minutes  
Judiciary Standards Committee  
March 21, 2014

In response to a question from staff regarding the time needed to complete the project, Mr. Rottman said one year would be the optimum time frame to build a new surveying process. Ms. Elek said an additional year would likely be needed if the process is to be implemented and data gathered and analyzed to determine if the new surveying process is achieving the desired objectives.

Chair Severin thanked Mr. Rottman and Ms. Elek for their advice and assistance and for taking time to meet with the Committee.

After Committee discussion, it was agreed that the State Court Administrator should be requested to contact Mr. Rottman and Ms. Elek and request a general project description and cost estimates for alternatives based on a one-year, more narrowly focused project and a two-year project including implementation and data gathering and analysis.

#### Administrative Rule 30 - Minimum Standards for Municipal Courts - Draft Rule Amendments

Chair Severin drew Committee members' attention to Attachment D and E (March 13, 2014) - draft amendments to Administrative Rule 30 and the associated certificate of compliance and the general survey of municipal judge salary information compiled by Municipal Judge DeNae Kautzmann.

Staff said the draft amendments to the rule and the related amendments to the compliance form are based on the Committee's December meeting discussion.

**It was moved by Linda Bata and seconded by Dan Dunn that the draft amendments to AR 30 and the compliance form be approved and recommended to the Supreme Court for consideration.**

Judge Severin drew attention to the provision in Section 3B, which would be mandatory under the draft amendments, that each municipality furnish the courtroom with various desks and chairs. He wondered whether the requirement would be burdensome for small towns with few resources. He noted that the provision is a recommended standard under the current rule.

Linda Bata said court is held in some small towns in multi-purpose rooms or rooms other than a dedicated courtroom. She said the desks and chairs would likely be available in those alternative spaces.

In response to a question from Rep. Larson regarding the salary amounts set out in Section 4, Linda Bata noted that the amounts are recommended standards and the amount could be adjusted, for example, with respect to a municipal judge who serves only part-time. She said general concerns about the recommended salary standards in the current rule were expressed at the last municipal judge education seminary. The rule amendments, she said, may address those concerns at least in

Minutes  
Judiciary Standards Committee  
March 21, 2014

addressing the effect of inflation. She said the issue can be taken up with the Municipal Judges Association if there is further concern with the amended salary amounts, if the amendments are adopted.

After further discussion, **the motion carried.**

Chair Severin said Committee members would be notified when the requested information is received from the National Center for State Courts regarding the judicial improvement project.

There being no further business, the meeting was adjourned at 11:40 p.m.

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Jim Ganje, Staff