

TO: Chief Justice Jensen

FROM: Sally Holewa

RE: Judicial improvement Program

DATE: December 28, 2020

Since its inception in 2003, we have worked with the Bureau of Governmental Affairs (BGA) at UND to administer the Judicial Improvement Program. The paper-based biennial process we have been using is labor intensive and time-consuming and typically only yields response rates between 12– 24%.

The number of judicial officers required to participate in the program following each election cycle has ranged from 14 to 27. On average, we mail 327 surveys per judicial officer and average an undeliverable rate of 171 surveys per judicial officer. Fifty-two percent of the 7,194 surveys we mailed out in 2018 were returned as undeliverable. Counting just those that were delivered we had a 12% response rate for litigants (attorneys plus self-represented litigants) and a 52% response rate for court staff.

The contract cost to administer the program is based on the number of participants and averages out to \$21,850 per biennium or approximately \$900 per judicial officer. In staff time it costs approximately 3 weeks of Renee Barnaby's time to print, sort and mail surveys and track returned mail. It also takes time for IT to run queries to generate a unique list of potential survey respondents for each judicial officer and it takes time for district court staff to coordinate the reviewer process.

Because of the manual labor involved in receiving, sorting and compiling responses, we have been limited to running the program during a 60-day window in the in the summer months when BGA is able to utilize graduate level interns to assist with the process.

I have been working with BGA on the feasibility of converting the Judicial Improvement Program into a primarily electronic survey process that is done on a monthly basis. We believe this would reduce the time and labor involved in administering the program and result in a higher response rate while still allowing us to conduct the surveys within the timeframe required by section 4 of Administrative Rule. This model would also allow us to easily scale the program up or down as time, budget or number of participants dictates.

To that end, I am proposing changes to Administrative Rule 48 that would allow us to distribute surveys and collect responses electronically. If these changes are adopted the current process would change in the following ways:

- (1) Instead of administering surveys of a large number of judicial officers once every two years we would administer a maximum of 3 surveys each month;
- (2) Rather than generating a list of individuals who have appeared before a specified judge, we would open a survey period and send notice of the survey via the court's internal

listserv and the SBAND list serv. This process would exclude self-represented litigants as respondents.

Under this proposal these things would not change:

- (1) BGA would continue to administer the program;
- (2) Responses would continue to be compiled by BGA;
- (3) Confidentiality of responses would continue to be protected; and
- (4) Frequency of required participation of judicial officers would be maintained.

Self-represented litigant responses are rolled into attorney responses so BGA does not maintain separate data specific to their response rates. When I asked BGA staff about the response rate of self-represented litigants, I was told that they have a high rate of undeliverable mail and that typically only a handful of self-represented litigants (4-5) return their surveys during any given survey cycle.

Under the BGA proposal, the cost per judicial officer would be \$1,847. Although the BGA proposal would be more costly in actual dollars than the current process is it would eliminate most of our labor costs. Since the proposal is for a small volume of regularly scheduled work it would also allow BGA to eliminate the use of interns so we would be working exclusively with a single researcher.

Administrative Rule 48 - NORTH DAKOTA JUDICIAL IMPROVEMENT PROGRAM

Effective Date: 6/1/2016_____

SECTION 1. POLICY.

The North Dakota Judicial System policy is to promote the self-improvement of judicial officers by establishing a mandatory judicial improvement program that assists each judicial officer in improving judicial performance and conduct in order to enhance the effective and efficient performance of judicial duties.

SECTION 2. APPLICATION.

This rule applies to all judicial officers. For purposes of this Rule, "judicial officer" means justices of the Supreme Court, judges of the District Court, and judicial referees. This rule does not apply to surrogate judges or judges of the municipal courts.

SECTION 3. IMPLEMENTATION.

A. Except for the compiling and summarizing of survey results, the judicial improvement program will be managed by trial court administrative personnel designated by the presiding judge in each judicial district with respect to surveys regarding district court judges and judicial referees, and by personnel designated by the Chief Justice with respect to surveys regarding justices of the Supreme Court the office of the State Court Administrator consistent with the requirements of this rule.

~~A.~~—B. Approved forms must be used throughout the state as the minimum survey document to provide comments to the individual judicial officer. The forms may be modified periodically. Survey instruments may elicit both qualitative, non-

numerical and quantitative, numerical responses.

~~C. Lists of attorneys, self-represented litigants, and court personnel will be generated from judicial case management systems. The lists should include as many attorneys, self-represented litigants, and court personnel appearing before or working with the judicial officer in the 12 months immediately preceding the survey as possible. The time period may be shortened in areas with high numbers of appearances. Whenever possible, the court will use an electronic survey process. Attorneys and court personnel will be notified when the survey period for a judicial officer has been opened. The response period will be 14 days from the date of the notice.~~

~~B. D.~~ Surveys must be mailed to the survey respondents by personnel designated under Section 3A. The subject of the survey must not receive or see the completed survey document. The subject judicial officer shall select another judicial officer or other person, or both, who will review the survey results with the judicial officer. The subject judicial officer shall provide the name of the reviewer to personnel designated under Section 3A, who shall notify the entity identified in Section 3E.

~~C. E.~~ The Supreme Court shall contract with an independent entity for purposes of receiving and summarizing survey information, and transmitting survey summaries to reviewers. ~~All survey responses must be sent to the entity in a pre-posted envelope provided for that purpose.~~ Upon receiving the survey results, the entity shall summarize the responses and provide narrative and statistical summaries to the reviewer selected by the subject judicial officer. The summaries should separately reflect information provided by attorneys and self-represented litigants and by court personnel unless, based on the number of responses, segregating the information may result in identification of survey respondents.

~~D.~~ F. Upon receiving the survey summary, the reviewer shall review the information with the subject judicial officer and make recommendations to aid in improving judicial performance.

SECTION 4. FREQUENCY OF SURVEYS.

Judicial improvement surveys must be conducted within two years following the election of the subject judicial officer unless the judicial officer is a referee, in which case the surveys must be conducted during each four year period following the referee's appointment. Only one survey for each judicial officer is required during each term of office, or four year period, but a judicial officer may elect to have surveys conducted more frequently.

SECTION 5. CONFIDENTIALITY—DISPOSITION OF SURVEY RESULTS.

Survey results, summaries, and any reports are confidential and shall not be disclosed except as provided in this rule. The subject judicial officer shall not publicly disclose information resulting from the review conducted under Section 3F. The reviewer shall not disclose survey summary information to anyone other than the survey subject. Following completion of each survey process, the reviewer shall return the summary information to the entity described in Section 3E. After the return of the survey summary, the entity shall immediately destroy the summary, along with any related survey information. The entity shall not retain any survey information concerning a subject judicial officer after completion of the survey process.

EXPLANATORY NOTE

Rule 48 was adopted March 1, 2003; amended effective March 1, 2005; amended effective June 1, 2016,_____.