

# HOW FAIR, FAST, and CHEAP SHOULD COURTS BE?

*Instead of letting lawyers and judges decide,  
New Mexico asked its customers*

by John M. Greacen

**T**he American Bar Association and many state court systems have established time standards for disposition of various types of cases. For instance, the ABA's standards for disposition of civil cases are 90 percent decided within one year, 98 percent decided within a year and one-half, and all cases decided within two years. The standards for domestic relations cases are 90 percent disposed of within three months, 98 percent decided within six months, and all cases decided within one year. Those standards, and similar ones in many states, are set by judges, court administrators, and lawyers. They represent a professional consensus of the time within which the legal system should resolve most cases.

Current management theory does not recommend setting goals in this way. Instead of deciding within the company how fast to provide a service, the best-run companies today

find out from their customers what standard of performance they want. In the language of total quality management, such customer "wants" are called "the voice of the customer." The current performance of the business or agency is called "the voice of the process." The gap between the two becomes the challenge for process improvement.

Making the system fairer, faster, and cheaper are at the top of most agendas for restoring public trust and confidence in the legal system. But how much fairer, faster, and cheaper do the courts need to be to meet the public's needs? So long as the only benchmarks are those the courts set for themselves, we can never be confident that meeting them will ensure we are providing adequate public service.

New Mexico has gathered benchmark information from litigants—the true customers of the legal system—on their "wants" for the

system's fairness, cost, and speed in civil and domestic relations cases in the state's general jurisdiction trial courts. The findings for fairness largely confirm existing impressions. The findings for cost are dramatic; the courts and lawyers now know how much most New Mexicans think a civil or domestic relations matter should cost. The findings for timeliness are not as clear, but the data show that the public wants cases decided within a time frame much faster than imagined, although they do not want to sacrifice thoroughness for speed.

## The polling process

With funding from the State Justice Institute and the New Mexico State Bar,<sup>1</sup> and the services of a professional polling firm, the New Mexico judiciary conducted a series of three surveys to learn what the public

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1. State Justice Institute Technical Assistance Grant #T-97-008, in the amount of \$30,000. The New Mexico State Bar contributed \$13,500 to the project. The Administrative Office of the Courts contributed staff time to administer the project and to collect names, addresses, and telephone numbers of litigants from court files. Points of view expressed in this article are those of the author and do not necessarily represent the official position or policies of the State Justice Institute.

2. Research & Polling, Inc., Community Survey of Lawyers and the Legal System (June 1997) (manuscript available from the New Mexico Ad-

ministrative Office of the Courts). Key findings of the survey are that only 39 percent of New Mexicans have a favorable view of the legal system. Two-thirds think it is too slow. Sixty percent think it is too expensive. Only 20 percent think it treats all persons equally. Lawyers are considered dishonest and unethical. A majority support the jury system, but 59 percent think the legal system needs a complete overhaul. Overwhelming majorities think the courts are too lenient in criminal cases, dismiss criminal cases on technicalities, and decide cases on political grounds.

thinks of and wants from the legal system. The first phase consisted of telephone calls to New Mexico residents, asking their views of lawyers, judges, and courts. The results were uniformly discouraging.<sup>2</sup> Persons who reported having a recent court expe-

**Table 1** Litigant perception of judge's fairness in civil and domestic relations cases

Very fair	45%
Fair	37%
Neutral	12%
Unfair	13%
Very unfair	16%

**Table 2** Relationship of "winning" to perception of fairness

Perception of fairness	Won	Outcome Mixed	Lost
Very fair or fair	82%	39%	22%
Neutral	11%	11%	15%
Unfair or very unfair	7%	50%	63%

rience had the same views of the courts as those who had not. The second phase was a series of focus groups of litigants with recent experience in civil and domestic relations cases in New Mexico's general jurisdiction trial court.<sup>3</sup> Those groups repeated some of the criticisms of the public—the process is too slow and too expensive. But they added a new dimension—the judges and court staff lack respect for persons coming into the courthouse and the courtroom. The third phase was another telephone survey—this time of litigants in civil and domestic relations cases from all of the state's general jurisdiction trial courts.<sup>4</sup> That survey attempted not only to learn what litigants didn't like about their experience, but also what would have satisfied them.

If litigants felt they had not been treated fairly, what could a fair judge have done to demonstrate fairness? If the cost of the process was not fair, what would a fair price have been? Finally, if the process was not fast enough, how fast would litigants have wanted the system to be?

Skeptics expected that those who won would report satisfaction and those who lost would be critical—what the latter would have wanted was to win. For the most part, the results did not bear out the skeptics' predictions.

The litigant survey results contrasted starkly with the public opinion survey and the focus group results in some areas. Litigants, for the most part, were much more positive about their experience than the public. For instance, only 20 percent of

the public in New Mexico believes that the courts treat all litigants equally. By contrast, only 11 percent of the litigants surveyed expressed concern that they had been treated unfairly on the basis of race or ethnicity. Furthermore, that 11 percent was spread evenly across all racial groups rather than being concentrated among minorities.

The focus groups reported lack of courtesy and respect by the judges and court personnel. The litigant survey found a very high level of satisfaction with the courtesy of both judges and court staff. (Eighty-one percent of litigants reported that the judge was courteous; 82 percent reported that the staff were courteous.)

The litigant survey contains a wealth of information on numerous topics. But the unique part of the New Mexico survey was the attempt to learn from litigants what they "want" from the court system. Here are the results for each of the three questions—fairness, cost, and speed.

### Fairness

Most litigants (58 percent) reported that the judge in the case was "very fair" or "fair." (See Table 1.) Ideally, we would hope that 100 percent of litigants would report that the judge was fair or at least neutral. The skeptics predicted that 50 percent would think the judge fair and the other 50 percent unfair, based directly on whether the litigant won or lost. In the survey, less than one-third of the respondents thought the judge "unfair" or "very unfair." Interestingly, domestic relations litigants reported judges were fairer than general civil litigants. Sixty-two percent of domestic relations litigants rated the judge "very fair" or "fair" while 54 percent

of the general civil litigants rated the judge in the highest two categories. Perceptions of winning and losing did have a bearing on the litigants' fairness ratings, but the relationship is not as clear as the skeptics believed it would be. (See Table 2.)

There were four other interesting findings concerning fairness: women found judges fairer than did men (62 percent to 54 percent); persons with a graduate degree were least likely to find the judge fair (42 percent); persons who settled their cases thought the judge was fairer than those who took them to trial (65 percent to 55 percent); and persons not represented by lawyers found judges fairer than those represented by lawyers (64 percent to 54 percent). When the data was broken down by geographical region, the best rating was 65 percent "fair" or "very fair" compared to a low of 47 percent. Those same two regions had the greatest variation in negative ratings as well—18 percent "unfair" or "very unfair" compared to 41 percent.

Table 3 indicates what respondents thought judges could do to show that they were fair. Other interesting observations that were suggested by 1 percent or fewer of the respondents:

- Take time
- Show up on time
- Follow the rules
- Listen to story, then decide
- Be more consistent
- Do not use personal life to decide
- Do not fall asleep
- Pay attention

3. Research & Polling, Inc., Focus Group Research on the Legal Process (August 1997) (manuscript available from the New Mexico Administrative Office of the Courts).

4. Research & Polling, Inc., Survey of Litigants (April 1998) (manuscript available from the New Mexico Administrative Office of the Courts).

- Review case before court
- Address parties with respect
- Stick to schedule
- Decide on present information, not past cases
- Be more sympathetic
- Be more personal
- Address parties with respect
- Do not make so much of technicalities
- Do not be so arrogant

Very few respondents mentioned "decide in their favor" (3 percent). Many of the suggestions involve active listening skills (22 percent); judges not only need to listen but to demonstrate to the parties that they heard what was said. Equality of treatment was also mentioned by 22 percent of the respondents. The comment about making sure the evidence provided was honest points out the expectation of some litigants that judges be omniscient—that they should be able to distinguish truth from un-

**Table 3 What could judge have done to be more fair?**

Listened to both sides equally	12%
Treated both sides equally	7%
Reviewed all evidence	5%
Had more knowledge about type of case	3%
Decided in my behalf	3%
Listened to my side	3%
Made sure evidence provided was honest	2%
Allowed parties to speak on own behalf	2%
Don't know	2%
Nothing	25%
Don't know/won't say	29%

truth automatically. Perhaps judges can create a more realistic expectation by explaining that they cannot know that something is untrue unless they hear evidence of the truth. Litigants want their cases decided without reference to extraneous issues such as "politics" or the judge's personal life experiences. Finally, several of the comments bear on the importance of the judge's relating to the litigants on a personal level—demon-

**Table 4 Actual costs versus litigant views of reasonable costs**

Cost range	% of litigants reporting this as their actual cost	% of litigants reporting this as their estimate of a reasonable cost
Nothing/no cost	-	5%
\$1 to \$250	19%	21%
\$251 to \$1,000	22%	28%
\$1,001 to \$3,500	17%	28%
\$3,501 to \$7,000	20%	9%
\$7,001 to \$15,000	8%	9%
\$15,001 to \$30,000	8%	5%
More than \$30,000	6%	1%
Mean value	\$8,385	\$3,682
Median value	\$2,500	\$1,000

**COST**

strating care and concern.

The litigants' perception of judges' fairness appears to be related to their perception of judge and staff courtesy and helpfulness. The survey asked litigants several questions about courtesy. Was the judge courteous? Did he or she explain the proceedings? Did he or she hear your side of the case? Did the judge decide the case as quickly as possible? Was the staff courteous? Was the staff able to answer your questions? Although the sample size was not sufficient to obtain data on an individual judge or individual court, it was sufficient to compare courts in different regions of the state. That differentiation was sufficient to identify 3 of the judicial districts separately, lumping the other 10 into 3 other groupings.

Analyzed in this fashion, the data showed significant regional variation in both litigant perceptions of fairness and in litigant perceptions of courtesy. Courts scoring high in the first category also scored high in the latter, and vice versa. The only question that does not follow the common pattern is the question on deciding the case as fast as possible. Litigants appear not to correlate speed of disposition with fairness or courtesy.

In summary, 71 percent of litigants regard New Mexico judges as fair or neutral, although those perceptions differ from region to region within the state. Winning and losing does affect the litigant's perception of the judge's fairness, but significant num-

bers of winning litigants considered their judge unfair, and significant numbers of losers considered their judge fair. Judges would be perceived as fairer if they:

- took steps to convey to the litigants that they heard what the litigants were saying,
- took greater pains to give the same attention to each side,
- pointed out at the beginning of a proceeding their inability to know the truth of the case unless the parties present it in court,
- related on a personal level to the litigants, and
- treated all litigants courteously, explained the proceedings, and encouraged their staff to treat litigants courteously.

### Cost of the process

Litigants generally agree with the public that the process is too expensive. But what would be a fair price? Remarkably, the survey appears to have found an answer. In New Mexico, the public objects far more to a fee above \$3,500 than to one at or below that amount, for a civil or domestic relations matter. Table 4 shows for each cost range what percentage of the litigants actually paid this amount and what percentage thought this would be a reasonable cost.

The table shows that half of the respondents reported that they thought the reasonable cost for their case would have been \$1,000 or less. However, a different analysis shows

**Table 5 Perception of overcharging for persons charged more or less than \$3,500**

Range of actual amount charged	Actual cost of legal services		Estimated reasonable costs of legal services		Difference between actual and reasonable	
	Mean	Median	Mean	Median	Mean	Median
\$1 to \$3,500	\$964	\$600	\$708	\$350	-27%	-42%
\$3,501 or more	\$18,728	\$9,018	\$7,828	\$3,000	-58%	-67%

**Table 6 Actual versus reasonable amount of time to resolve case**

Time range	% of litigants reporting this as their actual time	% of litigants reporting this as their estimate of a reasonable time
Less than 1 month	11%	19%
1 to 2 months	18%	30%
3 to 6 months	24%	32%
7 to 12 months	15%	15%
13 to 24 months	22%	3%
More than 24 months	10%	1%
Mean number of months	11	5
Median number of months	6	3

**Table 7 Desired disposition times**

Time	Domestic relations	Civil
Less than 1 month	18%	15%
1 to 2 months	32%	24%
3 to 6 months	29%	28%
7 to 12 months	9%	17%
13 to 24 months	-	5%
More than 24 months	-	2%
Don't know	10%	9%

that \$3,500 is the breaking point at which the most dramatic difference appears between actual and reasonable cost reports (Table 5). Persons actually charged \$3,500 or less reported, on average, that they should have been charged 27 percent less. Persons charged more reported, on average, that they should have been charged 58 percent less.

**Speed of the process**

Respondents were asked how long their cases took and how long they would have wanted them to take. No attempt was made to verify from court records how long the cases actually took. The time periods reported are the respondents' estimates of the time it took to resolve their cases. On the whole, litigants wanted their cases resolved in half the time they reported the case took, regardless of how long it actually took.

Although the sample of litigants

was taken from recently closed cases, 9 percent of the respondents reported that their cases were still not resolved. This may reflect that while the judge had rendered a decision, the judgment had not been paid or otherwise resolved. Table 6 displays the results. The desired disposition times for domestic relations and civil cases are shown in Table 7.

In general, domestic relations litigants express faster case resolution needs than civil litigants. Note that only 1 percent of domestic relations litigants and 7 percent of civil litigants were willing to have their cases last more than one year. Only 10 percent of domestic relations litigants and 24 percent of civil litigants were happy when their cases lasted longer than six months.

The mean and median desired times for domestic relations and general civil cases are 3.4 and 2.0 months and 6.1 and 3.0 months, respectively.

One interpretation would be that the average speed requested by litigants was 3.4 months in domestic relations cases and 6.1 months in general civil cases. However, the median shows that half of those surveyed wanted their domestic relations case resolved in two months and their general civil case resolved in three months. An even more graphic picture arises when you ask the question the other way—"How fast would the domestic relations and civil calendars have to be to please 25 percent, 50 percent, 75 percent, and all of the respondents?" The results are shown in Table 8.

What sense can we make of this data? To have made all litigants happy, the legal system would have had to resolve all cases in less than 1 month! But it does appear that litigants in New Mexico are saying they want a process that reaches a resolution in most domestic relations cases in no longer than 60 days and in most general civil cases in no longer than 90 days. Those expectations are at considerable odds with the American Bar Association standards of 90 and 180 days for most domestic relations and general civil cases, respectively.

**Tradeoff analyses**

Respondents were asked whether they thought the legal system should move slowly to allow people time for their emotions to cool down or whether they thought it should move quickly to reduce the time during

**Table 8 How fast would the process have to be to satisfy most of the litigants?**

	Domestic relations cases	General civil cases
25% of respondents	3 months	7 months
50% of respondents	1 month	3 months
75% of respondents	1 month	1 month
All respondents	less than 1 month	less than 1 month

**Table 9 Importance of allowing time for emotions to cool**

Need to move slowly so that emotions can cool	26%
Process is too slow, drags out negative emotions	61%
Don't know	13%

which people experience the negative emotions associated with the case. The answer was quite clear (see Table 9). The public does not agree with those judges and lawyers who believe it important to provide time in the process to allow emotions to cool.

Respondents were also asked whether they would prefer to have the case resolved in half the time or at half the cost. Forty-nine percent said half the time, 40 percent half the cost, and 11 percent didn't know. One way of interpreting this finding is that a majority of the public would be willing to pay for a process that met their needs for timely resolution of cases. Such an interpretation is consistent with business research that finds that most members of the public are willing to pay a surcharge for good service.

Would respondents prefer that their cases were resolved more quickly or more thoroughly? Forty-nine percent wanted their case handled more thoroughly, 40 percent resolved more quickly, and 11 percent didn't know. This was one question on which the litigants' perception of winning and losing had a strong bearing. Sixty-three percent of those who reported losing would have preferred a more thorough process, compared to 31 percent of those who won. Conversely, 59 percent of those who won would have preferred to win more quickly, while only 32 percent of the losers would have preferred to lose more quickly. Consequently, this finding is less clear than the other two tradeoff answers.

### What customers want

New Mexico believes it has obtained important and useful information by

asking customers what they want from the court system. It learned that customers believe judges are fair by more than a two-to-one margin; what judges can do to be perceived as fairer than they are today; and about litigants' perception of a fair cost for a civil or domestic relations lawsuit. A majority would like to be able to get their case resolved for \$1,000, but they will not complain too loudly if the cost goes as high as \$3,500. Litigants want the legal system to move faster than lawyers and judges ever imagined—case processing goals have been set far longer than most court users want. But customers do not want to sacrifice a thorough review in order to get a faster result.

Other jurisdictions and research institutions should engage in this same sort of inquiry. The questions we asked were relatively unsophisticated. The sample size was not sufficient to conduct all of the analyses that one might have liked, although the polling consultant did provide detailed analyses of the results of each question by the household income of respondents; their ethnicity; their gender; their education; the type of case; whether the case was resolved by trial or out-of-court settlement; by judge or jury; whether the litigant thought he or she won, lost, or had a mixed outcome; and the region of the state in which the litigant resides. In short, a lot more data than this short article presents was obtained, but it was less than what we would ideally have wanted.

Other court systems might consider a different approach. For instance, are there other professionals outside the legal system whose views

might be relevant in fashioning fairness and case disposition time standards? Should we consult with marriage counselors and adult and child psychologists to get a better understanding of the relationship between the time a domestic relations case takes to resolve and the quality of the lives of the persons affected by it? Would it make sense to convene focus groups of litigants in personal injury cases—injured persons, defendants, and insurance carriers—to see if they could arrive at a consensus concerning a desired time frame for resolving such cases, without having their judgment influenced by the presence of lawyers or judges? Would the optimum time frame be different for construction cases? What about disputes over software licenses? One can envision a far more differentiated analysis of general civil cases than the survey conducted in New Mexico.

The New Mexico survey shows the value of looking beyond the perimeter of the legal profession to obtain information on the goals we should seek to attain in the court system. People who use the courts appear to have values quite different from those of the lawyers and judges. And they would appear to make different tradeoff choices from the ones lawyers and judges have always considered correct. Unless we are willing to ask questions of the right persons—the litigants themselves—we will not be able to set goals that will produce results satisfactory to the citizens the courts were created to serve. ☞