

OPEN SESSION AGENDA ITEM

701 SEPTEMBER 2018

DATE: September 14, 2018

TO: **Members, Board of Trustees**

FROM: Ron Pi, Principal Program Analyst, Office of Research and Institutional Accountability

SUBJECT: Approval of Discipline Metrics

EXECUTIVE SUMMARY

Case backlog has been used as the primary metric to represent and evaluate the work of the attorney discipline system for years despite the fact that backlog captures only one dimension of case processing. In response to the growing recognition that a more comprehensive and balanced set of metrics is needed to measure the performance of the discipline system, and following Strategic Goal 2c, Bar staff propose a series of additional metrics related to various operational areas in the discipline system.

BACKGROUND

Business and Professions Code Section 6086.15(a) specifies the data that the Bar is required to report in the Annual Discipline Report (ADR) and defines backlog as “complaints as of December 31 of the preceding year that were pending beyond six months after receipt without dismissal, admonition, or the filing of a notice of disciplinary charges.”

The centrality of backlog to the reporting requirements contained within Business and Professions Code has made it the primary indicator for measuring the performance of the attorney discipline system. It figures prominently in debate about the efficacy of the discipline system and has shaped the operational priorities of OCTC, ranging from the design of the workflow process, deployment of resources, and ultimately the decision-making process in disposing cases.

While backlog provides important information on caseload and the speed with which cases are being processed, the overreliance on a single metric has distorted organizational incentives, which in turn may affect the bar’s ability to meet its core mission of protecting the public.

In 2017, the Bureau of State Audits recommended that the bar “identify key goals and metrics to measure how well its attorney discipline system is meeting the State Bar’s core mission to protect the public from attorney misconduct.” In support of this recommendation, the bar’s five-year strategic plan for 2017-2022 adopted the goal (Strategic Goal 2c) to “develop and implement transparent and accurate reporting and tracking of the health and efficacy of the discipline system,” which specifically includes the “development of new metrics for measuring

the effectiveness of the discipline system including any needed revisions to the statutory backlog metric.”

To implement Strategic Goal 2c, Bar staff began to develop measures that aim to provide a set of balanced metrics to supplement the backlog metric. This report presents the metrics that have been discussed at previous Board of Trustees meetings for Board approval.

DISCUSSION

At the Board of Trustees’ July meeting Bar staff presented a plan for developing Discipline System Metrics that encompasses several operational areas at the bar that are involved directly in processing discipline cases, including

- The Office of Chief Trial Counsel (OCTC);
- State Bar Court;
- Office of Probation;
- Lawyer Assistance Program (LAP); and
- Client Security Fund (CSF).

While the specific metrics vary across operational areas, they fall into three types depending on the focus and meaning of the metrics. The first type includes metrics that are directly related to *measuring the efficiency* of various aspects of case-processing activities. Examples in this category include indicators related to caseload clearance and case disposition time.

The second type is *externally oriented, designed to seek feedback from the public and attorneys* with regard to their experiences interacting with the Bar on their cases. Metrics in this category will be constructed from surveys of complaining witnesses and respondents. With the survey questions focused on two key concepts – access and fairness – the metrics in this category will be applied across several operational areas.

The last set of metrics is based on various measures of recidivism designed to provide information for *evaluating the efficacy of various actions taken in the discipline system*. Similar to the second type of metrics above, recidivism measures will be deployed across several operational areas in the discipline system.

Metrics Proposed for OCTC

For case-processing activities in OCTC, the following metrics are proposed:

- Caseload clearance rate;
- Case disposition time at median and 90th percentile;
- Case inventory trends;
- Backlog trends;
- Case prioritization and expedited processing;
- Second Look cases; and
- Walker petitions.

Caseload clearance rate, calculated from the number of cases disposed divided by the number of new cases received during a period, serves as an indicator for monitoring the caseload trend in relation to resources available to process the cases. Expressed as a percentage, a clearance rate of 100 percent means that the ability to resolve cases is keeping up with the caseload. When it drops below 100, it indicates that incoming cases are outpacing the rate at which old

cases are being resolved. As the rate is likely to fluctuate over time, this metric is most useful when measured over time to provide an indication of the *trend* of caseload clearance.

Related to caseload clearance rate, case disposition time provides information for monitoring the speed with which cases are being disposed. Other things being equal, one would expect a declining trend of caseload clearance to be associated with rising case disposition time. The combination of median and 90th percentile time would enhance the ability to use this metric as a diagnostic tool to examine the pattern of case disposition time.

Case inventory and backlog trends are often used by OCTC management as metrics for evaluating the workload trend. In combination with caseload clearance and disposition time, these metrics would serve as diagnostic tools to identify issues in processing cases and take appropriate actions.

The above-mentioned metrics for OCTC are largely geared toward measuring the capacity to process the caseload in a timely and efficient manner. The final three items on the bullet list above – case prioritization and expedited processing, Second Look cases, and Walker petitions – in contrast, are focused more on the efficacy or qualitative aspects of case-processing decisions. Case prioritization provides an indication of the severity of the cases being handled and should result in differentiated case management. Metrics related to Second Look cases and Walker Petitions reflect the appropriateness of OCTC charging decisions, and the extent to which complaining witnesses accept case outcomes.

With slight variations in the specific measures, the metrics proposed for other operational areas are designed to cover multiple dimensions of case-processing activities in a similar manner as those discussed above for OCTC's metrics.

Metrics Proposed for State Bar Court

- Caseload clearance rate;
- On-time case processing (related to various timelines);
- Case disposition time at median and 90th percentile;
- Petition for review (appeals to Supreme Court);
- Remands (cases sent back for reconsideration by Supreme Court); and
- Reversals or changes to the level of discipline by Supreme Court.

Metrics Proposed for Probation

- Successful completion;
- Reasons for non-completion; and
- Satisfaction of restitution orders.

Metrics Proposed for Lawyer Assistance Program (LAP)

- Successful completion; and
- Reasons for termination.

Metrics Proposed for Client Security Fund (CSF)

- Caseload clearance;
- Case inventory; and
- Time from final discipline to payment.

Recidivism and Procedural Fairness Metrics for Multiple Operational Areas

As discussed above, metrics related to both recidivism rate and procedural fairness will be created for multiple operational areas in the discipline system, including:

- OCTC;
- Probation;
- State Bar Court; and
- LAP.

There are two elements that define the construction of the recidivism metric:

1. Events that are considered to represent reoccurrence of an incident which the actions taken by the discipline system is intended to deter or reduce; and
2. The length of follow-up time to track the reoccurrence of the recidivating event.

To enhance the validity and reliability of a recidivism measure, a series of events will be tracked rather than focusing only on a single type of event. The measure will include new complaints filed subsequent to a discipline decision and new complaints that result in the filing of an NDC with the SBC and other discipline actions.

With regard to the length of follow-up time, recidivism rates will be calculated at 6, 12, 24, and 36 months after the imposition of various discipline actions and decisions.

Adoption and Incorporation of New Metrics into State Bar Reports

As the Bar begins to develop the data necessary to produce the proposed metrics, evaluate the data quality, and design the format for presenting and interpreting the metrics, the new metrics will be gradually incorporated into existing reports including:

1. The Annual Discipline Report submitted to the Legislature every year in April;
2. The Annual report of Court Performance Standards and Assessment submitted to the Supreme Court by the SBC; and
3. The Discipline System Statistical Report (DSSR) submitted monthly to the Committee on Regulation and Discipline.

In recent years the DSSR has undergone a number of modifications including a major overhaul of the data presentation and the elimination of redundant data in the report. As the new metrics are being implemented, old reports will need to be modified and data that have not proved useful should be removed from the reports. Among the items that should be modified from existing reports are:

- The removal from the DSSR of hypothetical backlog numbers for a 197 and 243 day backlog target. These reports were developed to evaluate whether a different backlog target would make a meaningful difference in the backlog and have not proven useful; and
- The consolidation and / or differentiation of Client Security Fund information that is reported to RAD and to the Finance & Planning Committee.

Following the adoption of the discipline system metrics, performance targets will be adopted as the aspirational goals to continually improve the performance of the discipline system.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 2. Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

Objective 2c-c: Development of new metrics for measuring the effectiveness of the discipline system including any needed revisions to the statutory backlog metric.

RECOMMENDATION

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approves the discipline system metrics outlined in this report and directs staff to continue refining these metrics and incorporating them into reports that are delivered to the Board, Board Committees, the Legislature, and the Supreme Court.

ATTACHMENT(S) LIST

- A. Presentation from July 2018 Meeting of the Board of Trustees.



The State Bar *of California*

Discipline System Metrics Proposed Measures and Indicators

Ron Pi
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Purpose of Discipline System Metrics

- ✓ *The State Bar should, by December 2017, identify key goals and metrics to measure how well its attorney discipline system is meeting the State Bar's core mission to protect the public from attorney misconduct.*

- 2017 State Audit Report

- ✓ *Develop and implement transparent and accurate reporting and tracking of the health and efficacy of the discipline system*

- Strategic Goal 2c



Components of the Discipline System under Consideration:

- The Office of Chief Trial Counsel (OCTC)
- State Bar Court
- Office of Probation
- Lawyer Assistance Program (LAP)
- Client Security Fund (CSF)



Types of Metrics

Different Meanings and Purposes

- Internal oriented, focused on case processing, with benchmark targets to be established for assessing efficiency and efficacy
- External oriented, seeking feedback from the public served to identify issues, assess procedural fairness, and improve quality of service
- Follow-up impact of discipline actions or interventions taken



Proposed OCTC Performance Metrics

- Caseload clearance rate
- Case disposition time at median and 90th percentile
- Case inventory trends
- Case prioritization and expedited processing
- Backlog trends
- Second Look cases
- Walker petitions



Proposed State Bar Court Performance Metrics

- Caseload Clearance Rate (# of cases closed compared to # of cases filed)
- On Time Case Processing (meeting various deadlines)
- Case disposition time at median and 90th percentile
- Petitions for Review (# of Appeals to Supreme Court)
- Remands (cases sent back for reconsideration by Supreme Court)
- Reversals or changes to the level of discipline (by Supreme Court)



Proposed Probation Performance Metrics

- Successful completion
- Reasons for non-completion
- Satisfaction of restitution orders



Proposed LAP-ADP Performance Metrics

- Successful completion
- Reasons for termination



Proposed CSF Performance Metrics

- Caseload clearance rate
- Case inventory
- Time from final discipline to payment



System-Wide Measures

Follow-up recidivism rates at 6, 12, 24, and 36 months, including:

- OCTC Intake, Investigation, Pre-filing
- Probation
- State Bar Court
- LAP-ADP

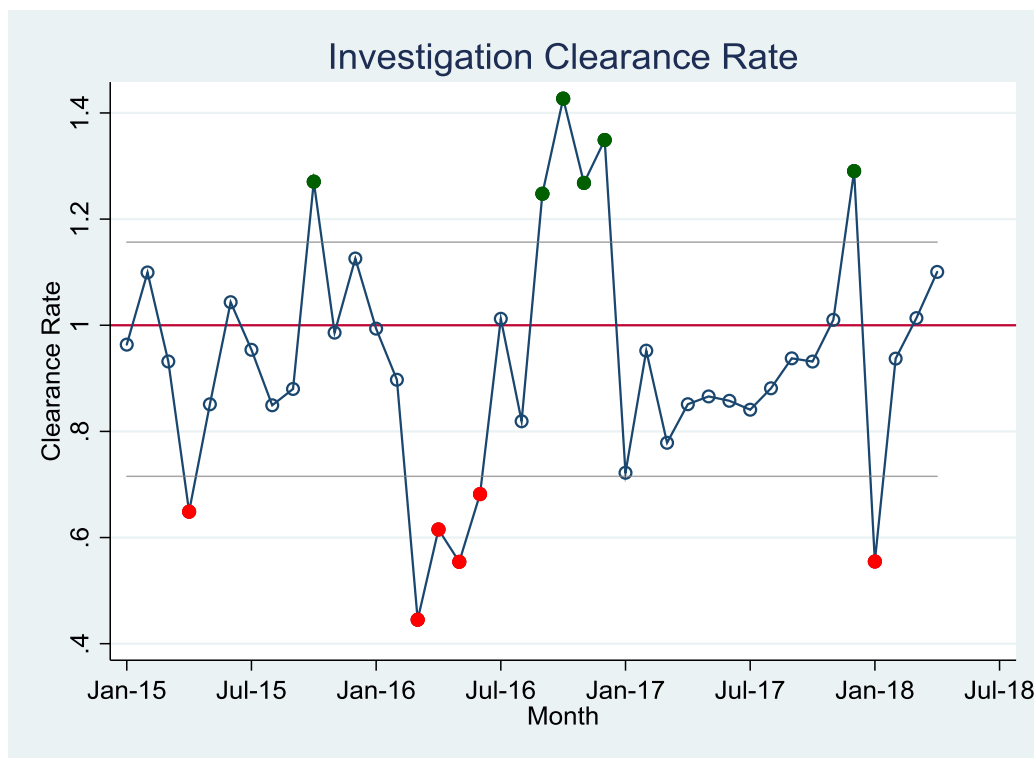
Procedural fairness surveys of complaint witnesses and respondents, including:

- OCTC
- Probation
- State Bar Court
- LAP-ADP



Metrics and Benchmarks

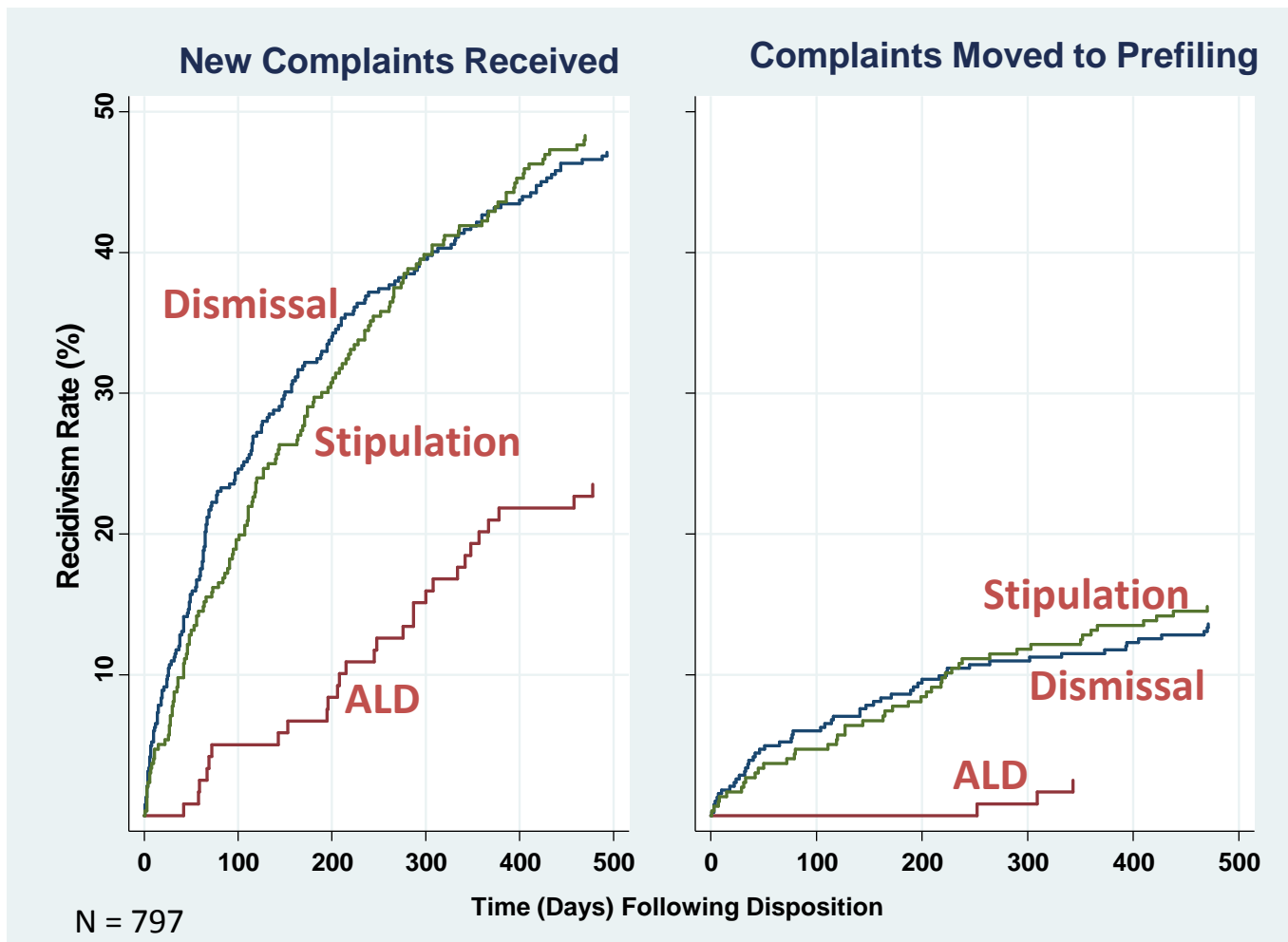
Example: maintain caseload clearance within 10 points of 100 percent





Recidivism Rate Example

Comparison of Two Recidivating Event Types

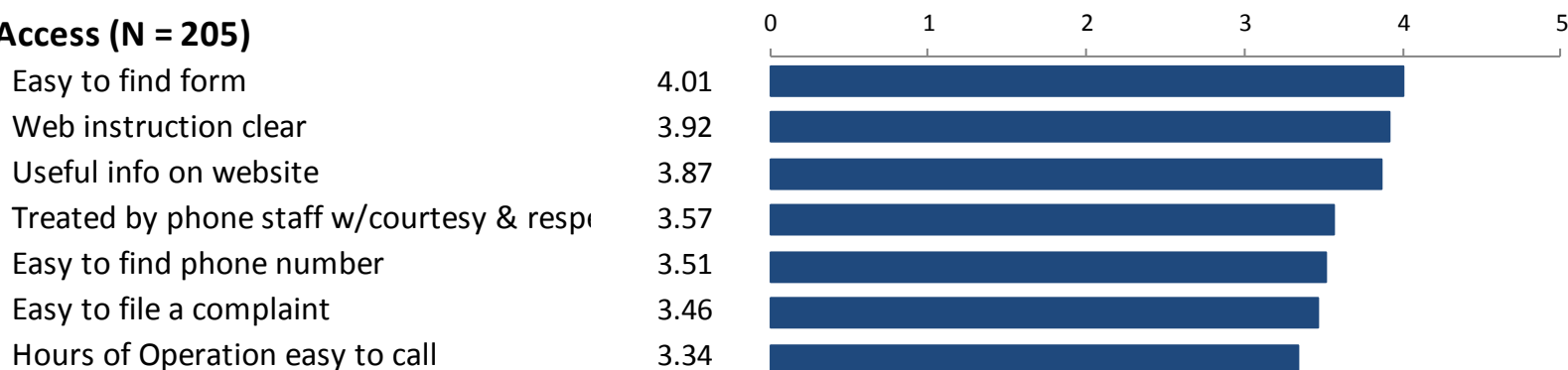




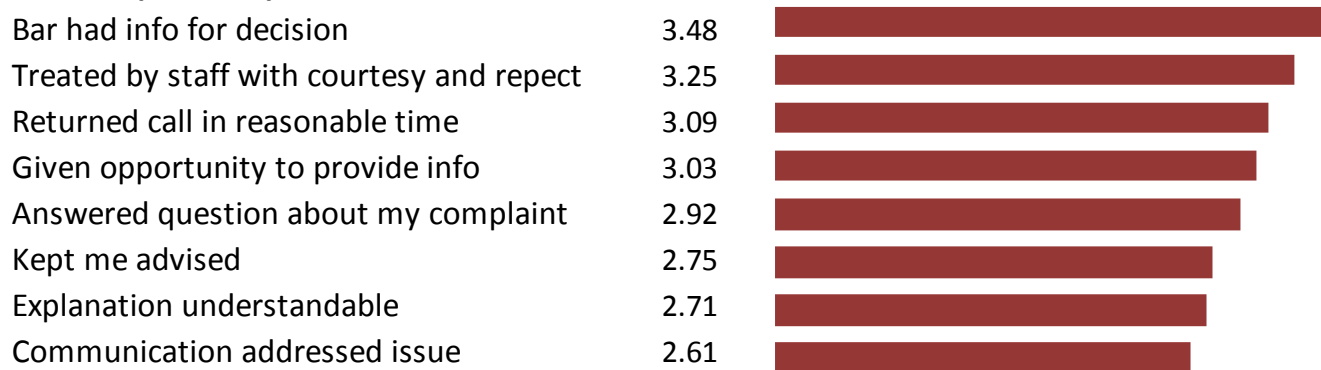
Components of Access and Fairness Measures

Average Scores on 5-Point Scale

Access (N = 205)

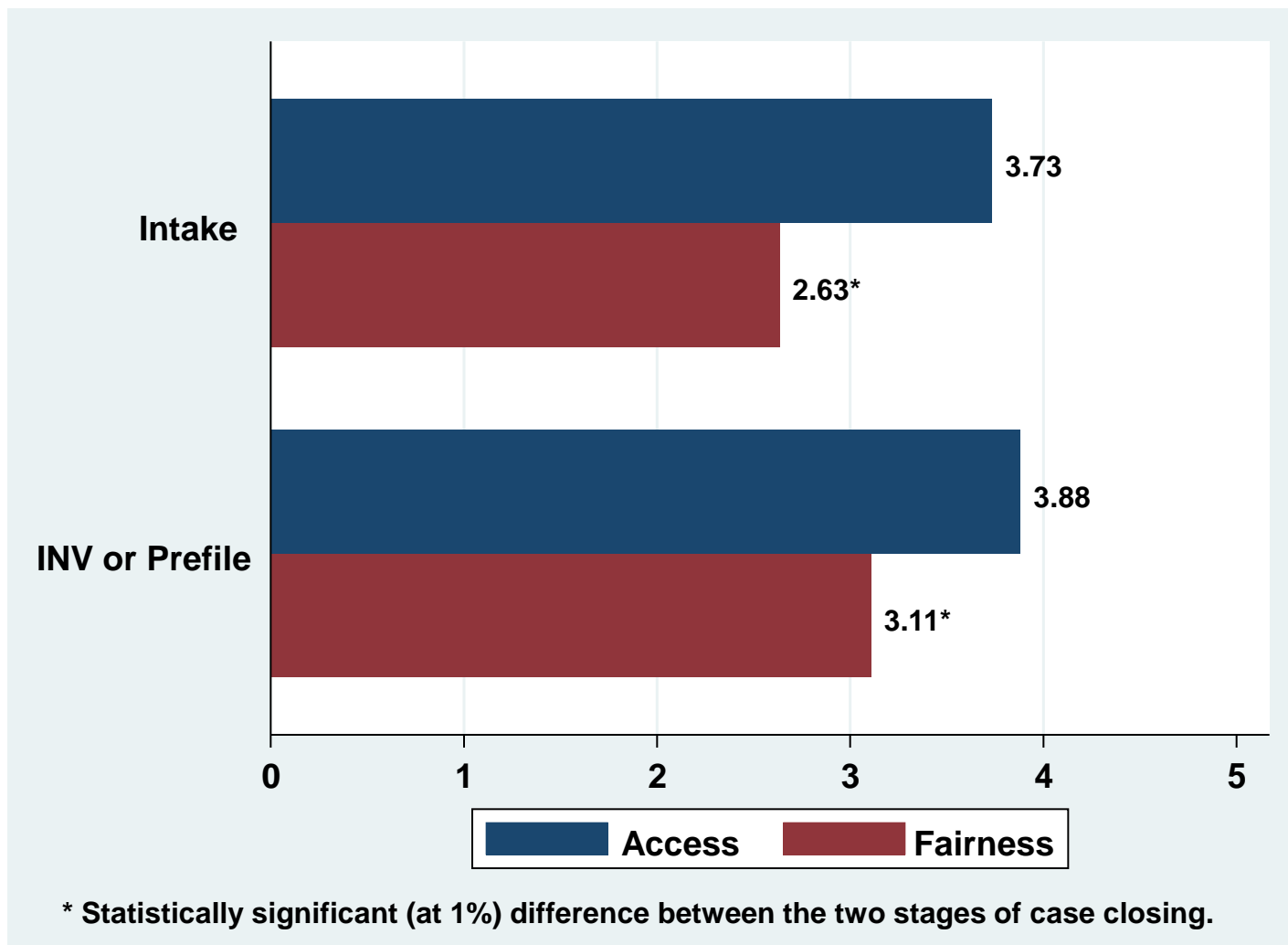


Fairness (N = 235)





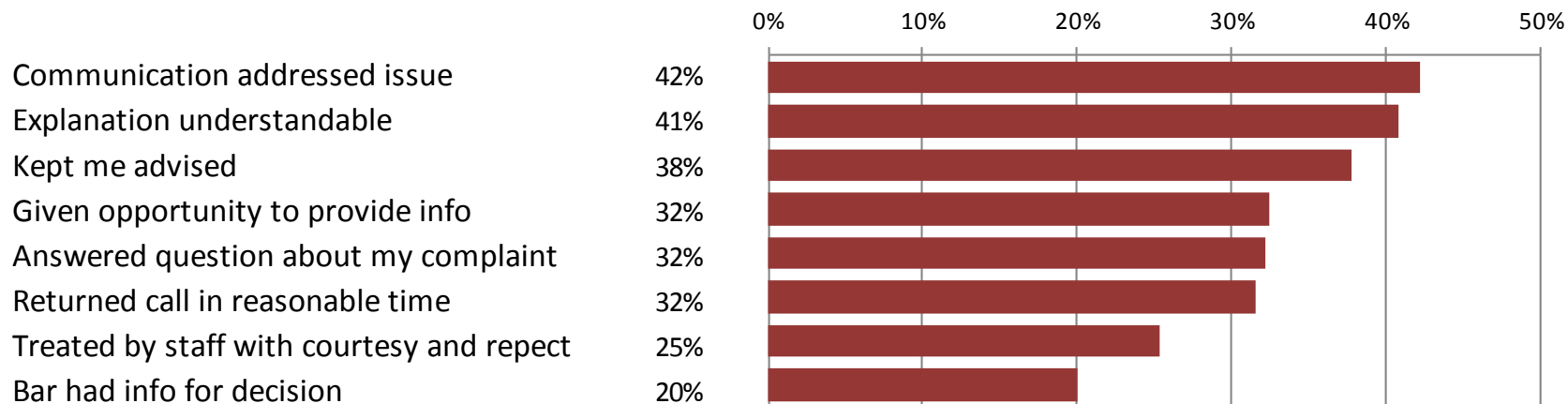
Comparison of Access and Fairness Composite Scores by Stage of Case Closing





Identify Areas with Strong Negative Ratings

% Selecting 1 on 1-5 Scale indicating “Strongly Disagree”



Overall 13% selected 1 (“Strongly Disagree”) in Access-related questions, compared to 34% in Fairness-related questions.



Next Steps

- Evaluate metrics data and propose standards for benchmarks
- Identify additional relevant metrics