

**MONTANA SUPREME COURT PERFORMANCE MEASURES**  
**2018 Bench and Bar Survey**  
**Prepared by Office of Court Administrator**  
**October 2018**

### ***Background***

In September 2018, the Supreme Court conducted its sixth bench and bar survey. The purpose of the anonymous on-line survey, which is conducted every other year, is to ask District Court judges, appellate attorneys, and law school faculty how they think the Court is performing. Respondents rated the Court's performance in several core areas, including whether the Court's decisions are based on facts and applicable law, whether the Court's published opinions explain deviations from established law and the adoption of new developments in law, and whether the Court treats judges and attorneys with courtesy and respect. The survey also asked about the Court's timeliness in completing its work and about the attorney disciplinary process.

This "consumer" satisfaction survey is one of several performance measures adopted by the Court in 2008. In addition to the survey, the Court has implemented case flow measures involving on-time case processing, case clearance, and age of pending caseload. These performance measures were developed with assistance from the National Center for State Courts and are derived from the Center's *CourTools*. Quarterly case flow data is available on the Judicial Branch's website.

### ***Survey Results***

The bench and bar survey was sent to 1,027 individuals: District Court and Water Court judges, law school faculty and adjunct faculty, and appellate attorneys involved in cases disposed of by opinion between July 1, 2016 and June 30, 2018.

The survey response rate has fallen to 38% percent of people receiving the survey. In previous years upwards of 47% responded. However, this year marked the largest number of survey recipients, so the total respondents, while a smaller percentage, have remained fairly constant. Three hundred and ninety-three (393) people responded, including 31 District Court judges, 11 faculty members, and 331 attorneys. (Twenty respondents did not identify their occupation.)

**Appendix A** provides a summary of the survey results. The percentage and number of respondents who said that they “strongly agreed” or “agreed” to each of the 10 statements are provided for all respondents and by respondent occupation. (Note: percentages are rounded, and undecided respondents are removed from the calculation.)

- The Court continues to enjoy high rankings from those familiar with the workings of the court – attorneys, judges and law faculty. Averaging the responses to all statements, 90% of the respondents strongly agreed or agreed with the Court’s overall performance. This is the highest overall rating since the survey was first conducted in 2008. In 2008, the Court had a 72% overall favorable rating.
- When asked about the Court’s published opinions, 86% said that the opinions clearly state the appropriate rule of law, identify and apply standards of review, and provide instructions on remands while 80% believed that the Court’s published opinions explain deviations from the principle of *stare decisis* and the adoption of new developments of law. A large majority of respondents – 85% - agreed that the Court’s decisions are based on facts and applicable law.
- 94% of the respondents believed that the Court does a good job in issuing opinions in adversarial cases in a timely manner. While 93% of the respondents said that the Court completed its overall workload in a timely manner.

- In regard to attorney discipline, 90% of the respondents agreed that the Court's attorney disciplinary process is fair and 90% agreed that sanctions imposed on attorneys are proportionate to the misconduct.

### ***Comparisons to Baseline Data (2008)***

The first bench and bar survey was conducted in 2008. **Appendix B** represents the percentage and number of “strongly agree” and “agree” responses for 2008, 2010, 2012, 2014, 2016 and 2018 and provides the percentage point change between the 2008 and 2018.

- In 2018, the Court's overall average rating improved from 72% to 90%, an increase of 18 percentage points.
- The biggest change by far in the satisfaction levels occurred in the area of timeliness. In 2008, 31% of respondents believed that the Court issued opinions in adversarial cases in a timely manner. This number soared to 94% in 2018, an increase of 63 percentage points.
- The generally high satisfaction level regarding the nature of the Court's decisions and opinions (i.e., decisions are based on facts and applicable law; opinions clearly state the appropriate rule of law, identify and apply standards of review, and provide instructions on remands; and opinions explain deviations from the principle of *stare decisis* and the adoption of new developments in law) rose between 2008 and 2018.
- Satisfaction levels regarding treatment of judges and attorneys and provision of information about Court roles, procedures, and operations remained very high.

**APPENDIX A**  
**2018 MONTANA SUPREME COURT BENCH & BAR SURVEY**  
**Percentage (& Number) of Respondents Who Strongly Agreed or Agreed\***

Survey Question	Overall	Judges	Attorneys	Faculty
1. The Montana Supreme Court's decisions are based on the facts and applicable law.	85% (324)	87% (26)	84% (271)	100% (10)
2. The Montana Supreme Court's published opinions clearly state the appropriate rule of law, identify and apply standards of review, and provide instructions on remands.	86% (329)	93% (28)	89% (274)	100% (10)
3. The Montana Supreme Court's published opinions explain deviations from the principle of <i>stare decisis</i> and the adoption of new developments in the law.	80% (285)	83% (24)	78% (237)	90% (9)
4. The Montana Supreme Court issues opinions in adversarial cases in a timely manner.	94% (352)	100% (30)	93% (296)	100% (9)
5. The Montana Supreme Court completes its overall workload in a timely manner.	92% (348)	100% (30)	94% (294)	89% (8)
6. The Montana Supreme Court treats trial court judges with courtesy and respect in its opinions.	98% (358)	93% (28)	98% (303)	100% (9)
7. The Montana Supreme Court treats attorneys with courtesy and respect.	93% (348)	96% (27)	92% (294)	100% (8)
8. The Montana Supreme Court provides information about its roles, procedures, and operations.	92% (331)	97% (29)	91% (279)	88% (7)
9. The Montana Supreme Court's attorney disciplinary process is fair.	90% (271)	93% (27)	88% (223)	100% (6)
10. The Montana Supreme Court imposes disciplinary sanctions on attorneys that are proportionate to the attorneys' misconduct.	90% (270)	93% (27)	90% (222)	83% (5)

<b>Average Overall</b>	<b>90.0%</b>
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\* Excludes respondents who answered "Undecided or Unknown". Percentages are rounded.

The Supreme Court conducted an electronic survey between September 10 and September 28, 2018. The survey was sent to 1,027 District Court judges, law school faculty and adjunct faculty, and appellate attorneys involved in cases disposed of by opinion between July 1, 2016 and June 30, 2018. Three hundred and ninety-three people responded including 31 judges, 11 faculty members and 331 attorneys (20 unspecified) for a response rate of 38%.

**Appendix B - MONTANA SUPREME COURT BENCH & BAR SURVEY  
COMPARISON:  
2008, 2010, 2012, 2014, 2016 and 2018**  
**Percentage (& Number) of Respondents Who Strongly Agreed or  
Agreed\***

<b>Survey Question</b>	<b>2008</b>	<b>2010</b>	<b>2012</b>	<b>2014</b>	<b>2016</b>	<b>2018</b>	<b>2008-2018 Percentage Point Change</b>
1. The Montana Supreme Court's decisions are based on the facts and applicable law.	75% (320)	71% (243)	75% (238)	77% (297)	80% (357)	85% (324)	+10
2. The Montana Supreme Court's published opinions clearly state the appropriate rule of law, identify and apply standards of review, and provide instructions on remands.	81% (349)	76% (261)	80% (251)	80% (312)	84% (375)	86% (329)	+5
3. The Montana Supreme Court's published opinions explain deviations from the principle of <i>stare decisis</i> and the adoption of new developments in the law.	67% (277)	63% (208)	69% (206)	69% (257)	74% (318)	80% (285)	+13
4. The Montana Supreme Court issues opinions in adversarial cases in a timely manner.	31% (128)	82% (274)	95% (303)	90% (347)	93% (412)	94% (352)	+63
5. The Montana Supreme Court completes its overall workload in a timely manner.	38% (147)	86% (280)	96% (297)	92% (344)	93% (405)	92% (348)	+54
6. The Montana Supreme Court treats trial court judges with courtesy and respect in its opinions.	90% (373)	92% (305)	93% (273)	92% (344)	95% (419)	98% (358)	+8
7. The Montana Supreme Court treats attorneys with courtesy and respect.	85% (354)	85% (289)	88% (271)	91% (340)	91% (405)	93% (348)	+8
8. The Montana Supreme Court provides information about its roles, procedures, and operations.	92% (388)	92% (297)	96% (289)	92% (344)	94% (403)	92% (331)	0
9. The Montana Supreme Court's attorney disciplinary process is fair.	79% (265)	76% (188)	87% (189)	86% (248)	86% (291)	90% (271)	+13
10. The Montana Supreme Court imposes disciplinary sanctions on attorneys that are proportionate to the attorneys' misconduct.	79% (268)	77% (183)	86% (191)	83% (231)	87% (295)	90% (270)	+11
<b>Average Overall</b>	<b>72%</b>	<b>80%</b>	<b>86%</b>	<b>85%</b>	<b>88%</b>	<b>90%</b>	<b>+18</b>

\* Excludes "Undecided or Unknown".