Commission on
Judicial Performance

The Honorable Ben W. McClelland

2013 Judicial Performance Interim Report

14th Judicial District

RESEARCH & POLLING INC

May 28, 2013

The Honorable Ben W. McClelland
Grand County Courthouse
P.O. Box 192
Hot Sulphur Springs, CO 80451

Dear Judge McClelland:

I am pleased to make available to you the attached copy of your 2013 Judicial Performance Interim Survey Report. This report includes the survey results from two important stakeholder groups: 1) attorneys who have had cases in your court or who are knowledgeable about your judicial performance; and 2) non-attorneys who have observed your performance in court or who have knowledge of your performance as a judge. In addition to this introduction, the report is divided into five main sections:

1. A brief summary of the results of the attorney and non-attorney surveys.
2. The numerical results of the survey of attorneys in both tabular and graphical form. In addition to the numerical results, this section also contains comments attorneys made about your judicial performance. In some instances the comments have been redacted to eliminate respondent identifying information. A copy of the attorney questionnaire is included in the final section of this report.
3. The numerical results of the survey of non-attorneys in both tabular and graphical form. In addition to the numerical results, this section also contains comments these respondents made on the subject of your judicial performance. In few instances the comments have been redacted to eliminate respondent identifying information. A copy of the non-attorney questionnaire is included in the final section of this report.
4. The fourth section of the report discusses the methodology of the surveys.
5. The final section provides copies of the questions or questionnaires that were used for each survey.

If you have any questions about the methodology and how the survey was conducted, please feel free to contact me at 505-821-5454 or by email at *sanderoff@rpinc.com* (please put the words "Judicial Performance" in the subject line), and for any other questions you might have about the survey please call the Executive Director of the Office of Judicial Performance Evaluation, Kent Wagner, at 303-928-7779.

Best regards,

Brian Sanderoff

Brian Sanderoff
President

Summary of Results

Respondents rated judges on various questions using an A to F scale, in which the grades were then converted to numerical scores: A=4, B=3, C=2, D=1 and F=0. An average score of 4.0 is the highest possible score and a 0.0 is the lowest possible score. On average, Judge Ben W. McClelland received an overall combined average grade of 2.97 in the 2013 Judicial Performance Interim Survey Report. This is calculated by adding the overall average grade received from attorney respondents, 2.58, to the overall average grade received from non-attorney respondents, 3.35, divided by two.

The average combined grade for all county judges that are receiving an interim evaluation in 2013 is 3.43 [not shown below].

Judge McClelland Average Grades (All Years)			
	Combined	**Attorney**	**Non-attorney**
Overall Grade	2.97	2.58	3.35
Sample Size	-	44	308

Table 1

The results presented in this report are based on data collected in 2009, 2010, and 2012. (See Methodology section for description of sampling process.) Provisional judges will not have samples for the years prior to their appointment. Table 2 shows Judge McClelland's overall average grades for each year in which survey results are available.

Judge McClelland Average Grades by Year					
	Combined	**Attorney**		**Non-Attorney**	
Year	**Average Score**	**Average Score**	**Sample Size**	**Average Score**	**Sample Size**
2009	2.84	2.40	10	3.28	130
2010	3.06	2.61	20	3.51	47
2012	3.01	2.65	14	3.36	131
Overall	2.97	2.58	44	3.35	308

Table 2

Comparison of Jurors vs. Non-Jurors Among Non-Attorney Population

Among the non-attorney population, jurors tend to grade judges much higher than non-jurors. The juror overall average grade for all county judges that are receiving an interim evaluation in 2013 is 3.84, while the overall average grade given by non-jurors is 3.24. The effect of this is that judges with a higher percentage of jurors in their sample tend to have higher average grades in the non-attorney survey than those judges with a small percentage of jurors. The number of jurors in a judge's sample is, of course, closely related to the number of jury trials the judge presides over.

The table below shows Judge McClelland's non-attorney results broken out by jurors and non-jurors. It also shows the overall average juror and non-juror grades for all county judges that are receiving an interim evaluation in 2013 (see two columns on far right).

Judge McClelland Average Grades for Jurors vs. Non-Jurors (All Years)							
Judge McClelland						All County Judges*	
Jurors			Non-Jurors				
Average Score	Sample		Average Score	Sample		Juror Average	Non-Juror Average
	Size	%		Size	%		
3.76	169	55%	2.85	139	45%	3.84	3.24

Table 3

*Includes only the County judges evaluated during this interim cycle.

Survey of Attorneys Regarding Judge Ben W. McClelland

(Sample Size 44)

Survey of Attorneys Regarding County Judges

Judge Ben W. McClelland Sample Size = 44	A	B	C	D	Fail	DK/NA	Average (0.0 to 4.0 scale) Ben W. McClelland	All County Judges*
1. Case Management:								
1a. Promptly issuing a decision on the case after trial.	43%	25%	11%	5%	2%	14%	3.18	3.50
1b. Maintaining appropriate control over proceedings.	36%	27%	20%	9%	7%	0%	2.77	3.40
1c. Promptly ruling on pre-trial motions.	34%	23%	14%	2%	2%	25%	3.12	3.37
1d. Setting reasonable schedules for cases.	45%	32%	18%	0%	0%	5%	3.29	3.37
						Overall Case Management	3.09	3.41
2. Application and Knowledge of Law:								
2a. Being able to identify and analyze relevant facts.	20%	25%	27%	16%	11%	0%	2.27	3.27
2b. Basing decisions on evidence and arguments.	20%	25%	20%	18%	16%	0%	2.16	3.15
2c. Willing to reconsider error in fact or law.	14%	9%	14%	27%	14%	23%	1.76	3.05
2d. Issuing consistent sentences when the circumstances are similar.	26%	26%	19%	7%	4%	19%	2.77	3.25
						Overall Application and Knowledge of Law	2.24	3.18
3. Communications:								
3a. Making sure all participants understand the proceedings.	30%	30%	27%	9%	5%	0%	2.70	3.51
3b. Providing written communications that are clear, thorough and well reasoned.	27%	23%	20%	11%	14%	5%	2.40	3.31
						Overall Communications	2.55	3.41
4. Demeanor:								
4a. Giving proceedings a sense of dignity.	34%	20%	25%	11%	9%	0%	2.59	3.41
4b. Treating participants with respect.	36%	11%	9%	18%	25%	0%	2.16	3.42
4c. Conducting the courtroom in a neutral manner.	32%	20%	11%	20%	16%	0%	2.32	3.24
4d. Consistently applying laws and rules.	30%	11%	16%	20%	11%	11%	2.31	3.23
						Overall Demeanor	2.35	3.33
5. Diligence:								
5a. Using good judgment in application of relevant law and rules.	23%	23%	20%	18%	16%	0%	2.18	3.17
5b. Doing the necessary "homework" and being prepared for cases.	34%	18%	30%	5%	7%	7%	2.73	3.26
5c. Being willing to handle cases on the docket even when they are complicated and time consuming.	41%	30%	14%	0%	7%	9%	3.08	3.38
						Overall Diligence	2.66	3.27
						Overall Average Grade:	**2.58**	**3.31**

* Includes only the County judges evaluated during this interim cycle.

Note: Respondents rated judges on various questions using an A to F scale, in which the grades were then converted to numerical scores: A=4, B=3, C=2, D=1 and F=0. An average score of 4.0 is the highest possible score and a 0.0 is the lowest possible score. 'DK/NA' = Don't Know / Not Applicable.

Survey of Attorneys Regarding County Judges

Judge Ben W. McClelland

	Percentage	
	Ben W. McClelland	All County Judges*

Would you say the judge is:

Very biased in favor of the prosecution	37%	10%
Somewhat biased in favor of the prosecution	33%	25%
Completely neutral	26%	51%
Somewhat biased in favor of the defense	4%	7%
Very biased in favor of the defense	0%	3%
Don't know or not sure	0%	4%

How strongly do you recommend that the Judge be retained in office, or not be retained in office?

Excluding "don't know" respondents.

Strongly recommend retain	36%	56%
Recommend retain	14%	23%
Neither recommend nor not recommend retain in office	21%	9%
Recommend not retain	14%	6%
Strongly recommend not retain	14%	7%
Total Retain	50%	79%
Neither	21%	9%
Total Not Retain	28%	13%

Including "don't know" respondents.

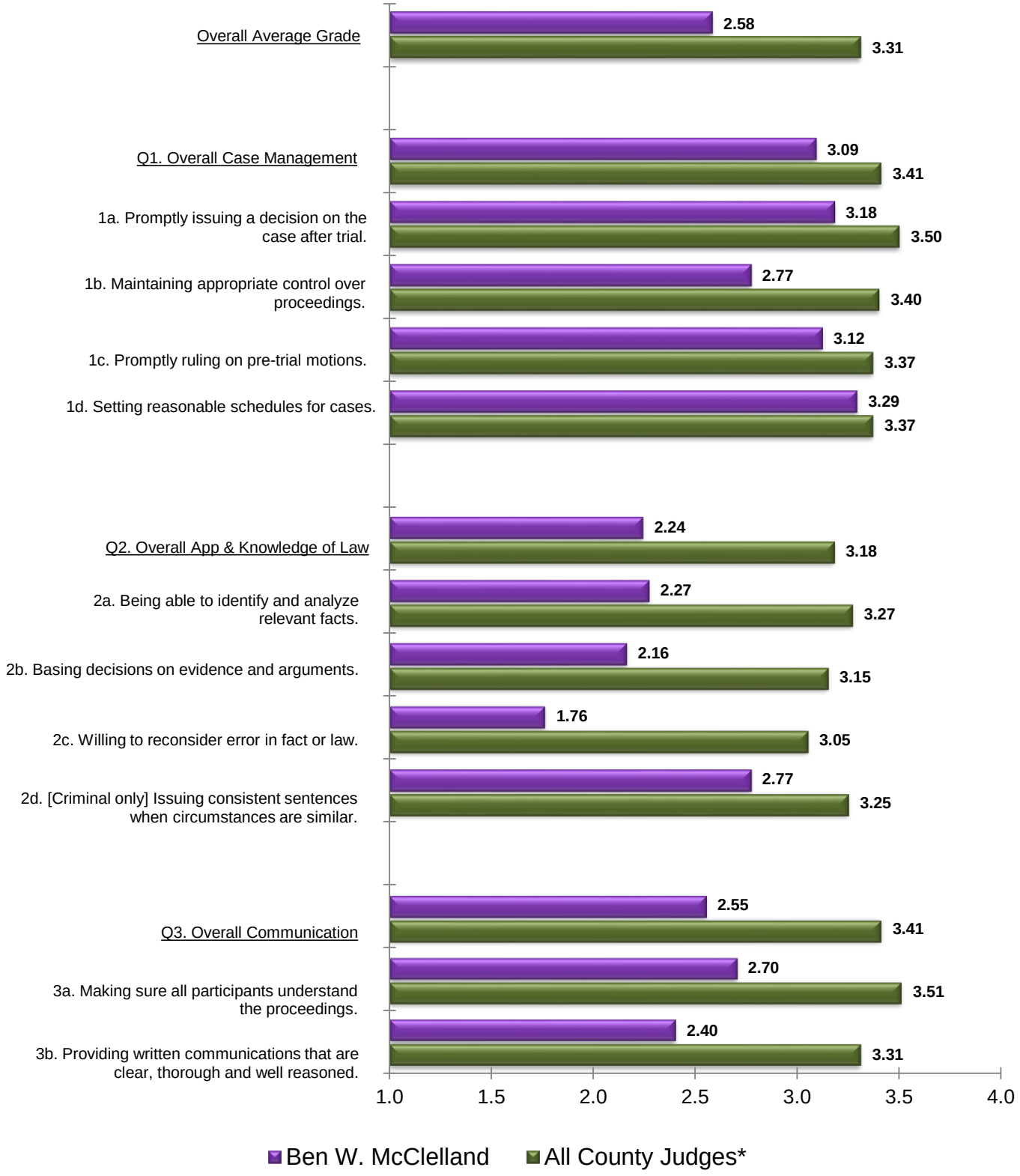
Strongly recommend retain	36%	56%
Recommend retain	14%	22%
Neither recommend nor not recommend retain in office	21%	9%
Recommend not retain	14%	5%
Strongly recommend not retain	14%	7%
Don't know enough to make a recommmendation	0%	0%
Total Retain	50%	78%
Neither	21%	9%
Total Not Retain	28%	12%
Don't Know	0%	0%

* Includes only the County judges evaluated during this interim cycle.

Judge Ben W. McClelland

Survey of Attorneys Regarding County Judges

Average Grades

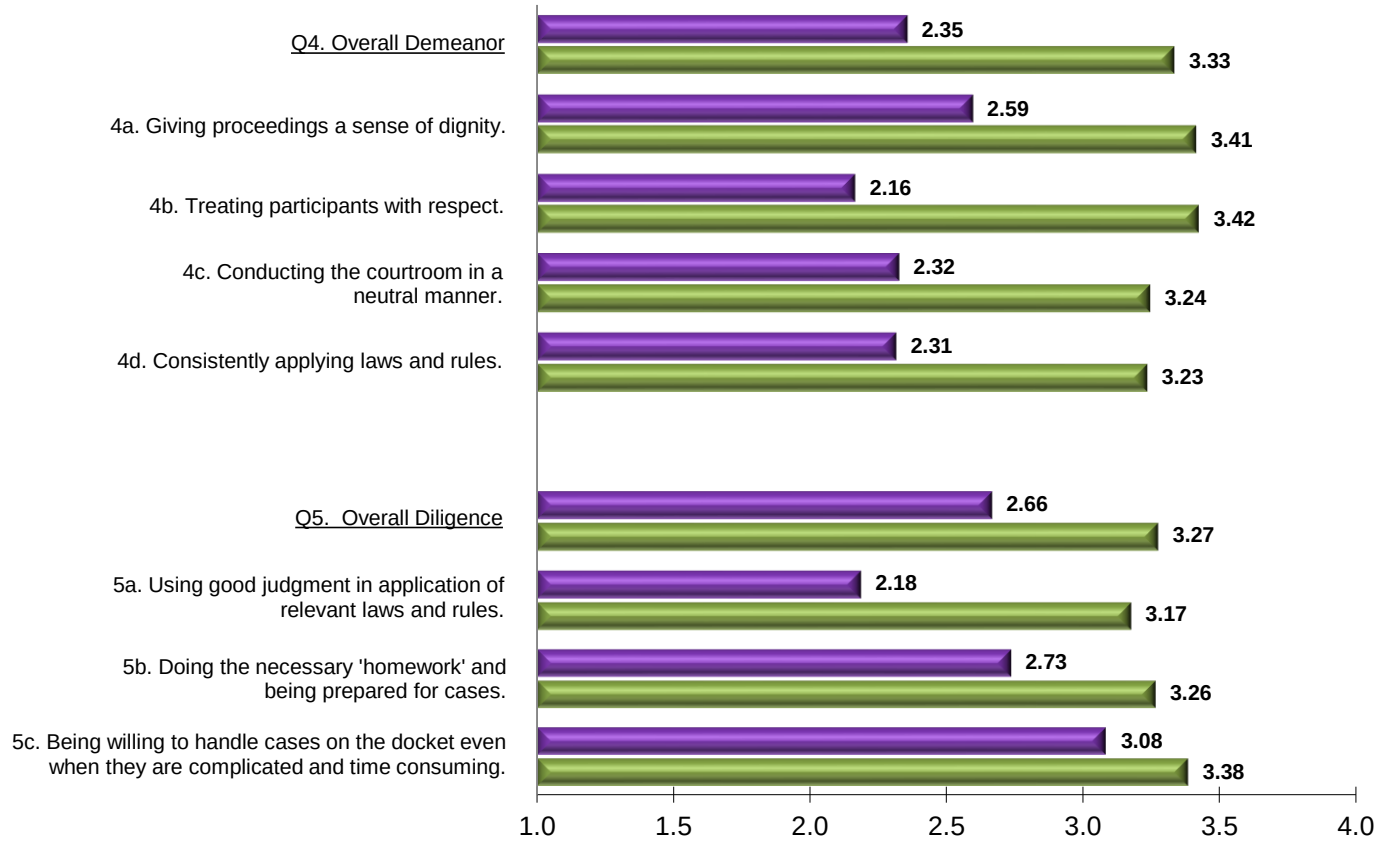


* Includes only the County judges evaluated during this interim cycle.

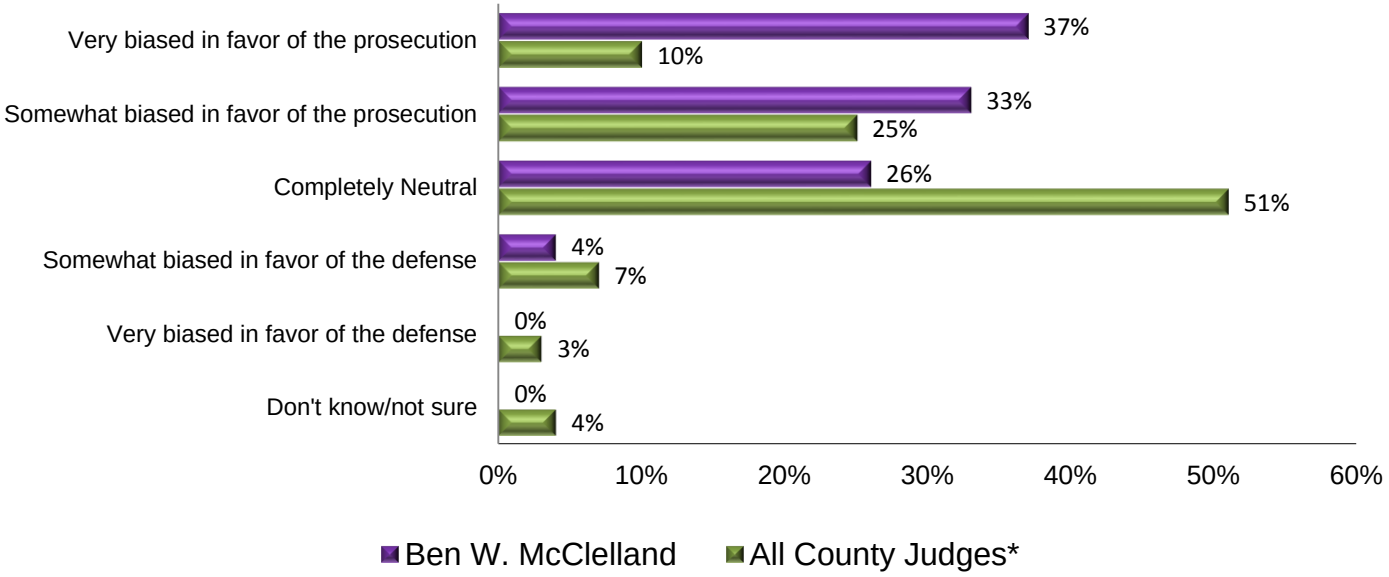
Judge Ben W. McClelland

Survey of Attorneys Regarding County Judges

Average Grades



Biased in favor of prosecution/defense.



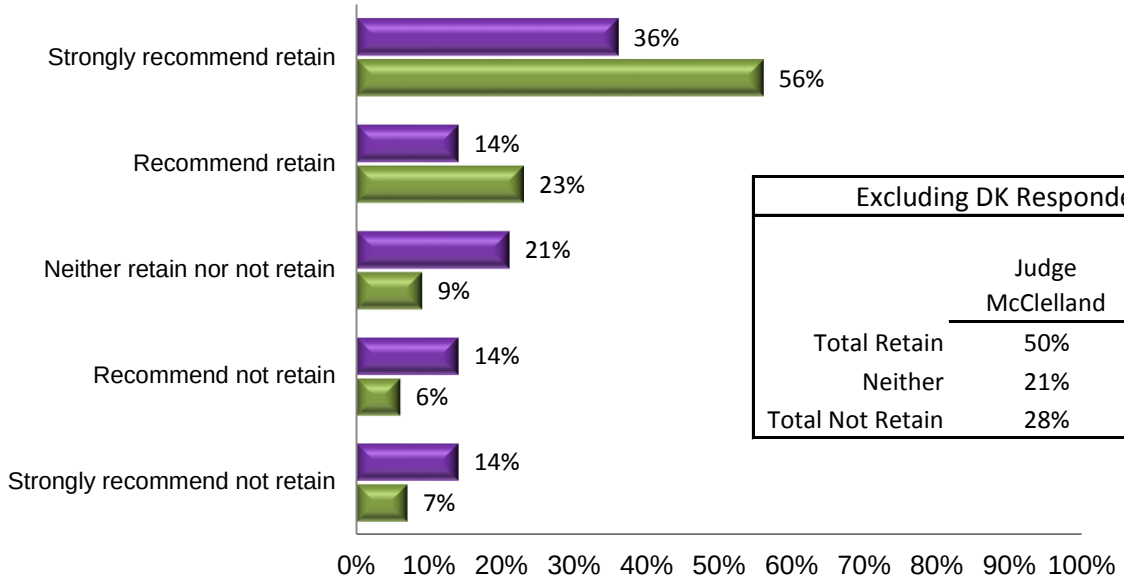
* Includes only the County judges evaluated during this interim cycle.

Judge Ben W. McClelland

Survey of Attorneys Regarding County Judges

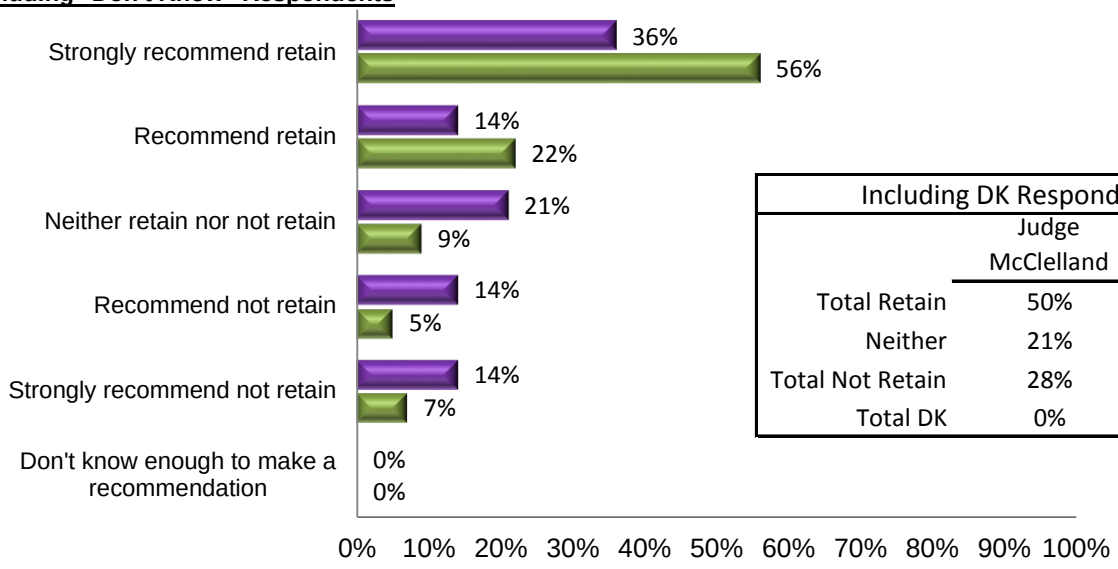
How strongly do you recommend that Judge McClelland be retained or not retained in office?

Excluding "Don't Know" Respondents



Excluding DK Respondents	Judge McClelland	All Cnty Judges*
Total Retain	50%	79%
Neither	21%	9%
Total Not Retain	28%	13%

Including "Don't Know" Respondents



Including DK Respondents	Judge McClelland	All Cnty Judges*
Total Retain	50%	78%
Neither	21%	9%
Total Not Retain	28%	12%
Total DK	0%	0%

Ben W. McClelland All County Judges*

* Includes only the County judges evaluated during this interim cycle.

Survey of Non-Attorneys Regarding Judge Ben W. McClelland

(Sample Size 308)

Survey of Non-Attorneys Regarding County Judges

Judge Ben W. McClelland Sample Size = 308	A	B	C	D	Fail	DK/NA	Average (0.0 to 4.0 scale) Ben W. McClelland	All County Judges*
1. Demeanor:								
1a. Giving court proceedings a sense of dignity.	65%	18%	6%	6%	4%	1%	3.35	3.57
1b. Treating participants in the case politely and with respect.	64%	17%	6%	4%	9%	0%	3.24	3.59
1c. Conducting the courtroom in a neutral manner.	63%	16%	9%	5%	6%	2%	3.27	3.51
1d. Having a sense of compassion and human understanding for those who appear before the judge.	57%	17%	8%	5%	10%	3%	3.11	3.46
						Overall Demeanor	3.24	3.53
2. Fairness:								
2a. Giving participants an opportunity to be heard.	66%	17%	9%	4%	3%	1%	3.40	3.57
2b. Treating those involved in the case without bias.	64%	15%	5%	6%	8%	2%	3.24	3.50
2c. Treating fairly people who represent themselves.	43%	10%	4%	4%	6%	34%	3.22	3.49
2d. Giving each side enough time to present his or her case.	69%	15%	7%	4%	2%	4%	3.49	3.58
						Overall Fairness	3.34	3.54
3. Communications:								
3a. Making sure participants understand the proceedings, and what's going on in the courtroom.	68%	18%	7%	4%	2%	1%	3.46	3.62
3b. Using language that everyone can understand.	65%	21%	7%	5%	2%	0%	3.44	3.65
3c. Speaking clearly so everyone in the courtroom can hear what's being said.	71%	17%	7%	2%	3%	0%	3.51	3.68
						Overall Communications	3.47	3.65
4. Diligence:								
4a. Beginning court on time.	60%	21%	10%	4%	2%	3%	3.37	3.46
4b. Maintaining appropriate control over proceedings.	71%	19%	5%	3%	2%	1%	3.57	3.65
4c. Setting reasonable schedules for cases.	54%	17%	10%	3%	3%	13%	3.34	3.55
4d. Being prepared for cases.	65%	17%	7%	2%	2%	7%	3.50	3.60
4e. Managing court proceedings so that there is little wasted time.	52%	26%	9%	5%	4%	3%	3.23	3.49
						Overall Diligence	3.40	3.55
5. Application of Law:								
5a. Giving reasons for rulings.	60%	21%	7%	4%	4%	4%	3.35	3.47
5b. Willing to make decision without regard to possible outside pressure.	58%	12%	5%	4%	6%	15%	3.32	3.49
5c. Being able to identify and analyze relevant facts.	61%	15%	6%	6%	6%	6%	3.28	3.47
						Overall Application of Law	3.32	3.48
						Overall Average Grade:	**3.35**	**3.55**

* Includes only the County judges evaluated during this interim cycle.

Note: Respondents rated judges on various questions using an A to F scale, in which the grades were then converted to numerical scores: A=4, B=3, C=2, D=1 and F=0. An average score of 4.0 is the highest possible score and a 0.0 is the lowest possible score. 'DK/NA' = Don't Know / Not Applicable.

Survey of Non-Attorneys Regarding County Judges

Judge Ben W. McClelland

	Percentage	
	Ben W. McClelland	All County Judges*

6. Average Bias

[Please see the questionnaire at the end of report for question wording.]

Biased in favor of the prosecution total	21%	13%
Competely neutral	71%	79%
Biased in favor of the defense total	8%	8%
Average	0.38	0.13

[A positive average indicates bias toward prosecution, and a negative average indicates a bias toward the defense.]

7. Average Sentencing

[Please see the questionnaire at the end of report for question wording.]

Harsh sentencing total	19%	12%
Competely neutral	63%	76%
Lenient sentencing total	18%	12%
Average	0.30	0.09

[A positive average indicates sentences are harsh, and a negative average indicates sentences are lenient.]

How strongly do you recommend that the Judge be retained, or not be retained in office?

Excluding "don't know" respondents.

Strongly recommend retain	55%	67%
Recommend retain	22%	18%
Neither recommend nor not recommend retain in office	12%	6%
Recommend not retain	2%	3%
Strongly recommend not retain	10%	6%
Total Retain	77%	85%
Neither	12%	6%
Total Not Retain	12%	9%

Including "don't know" respondents.

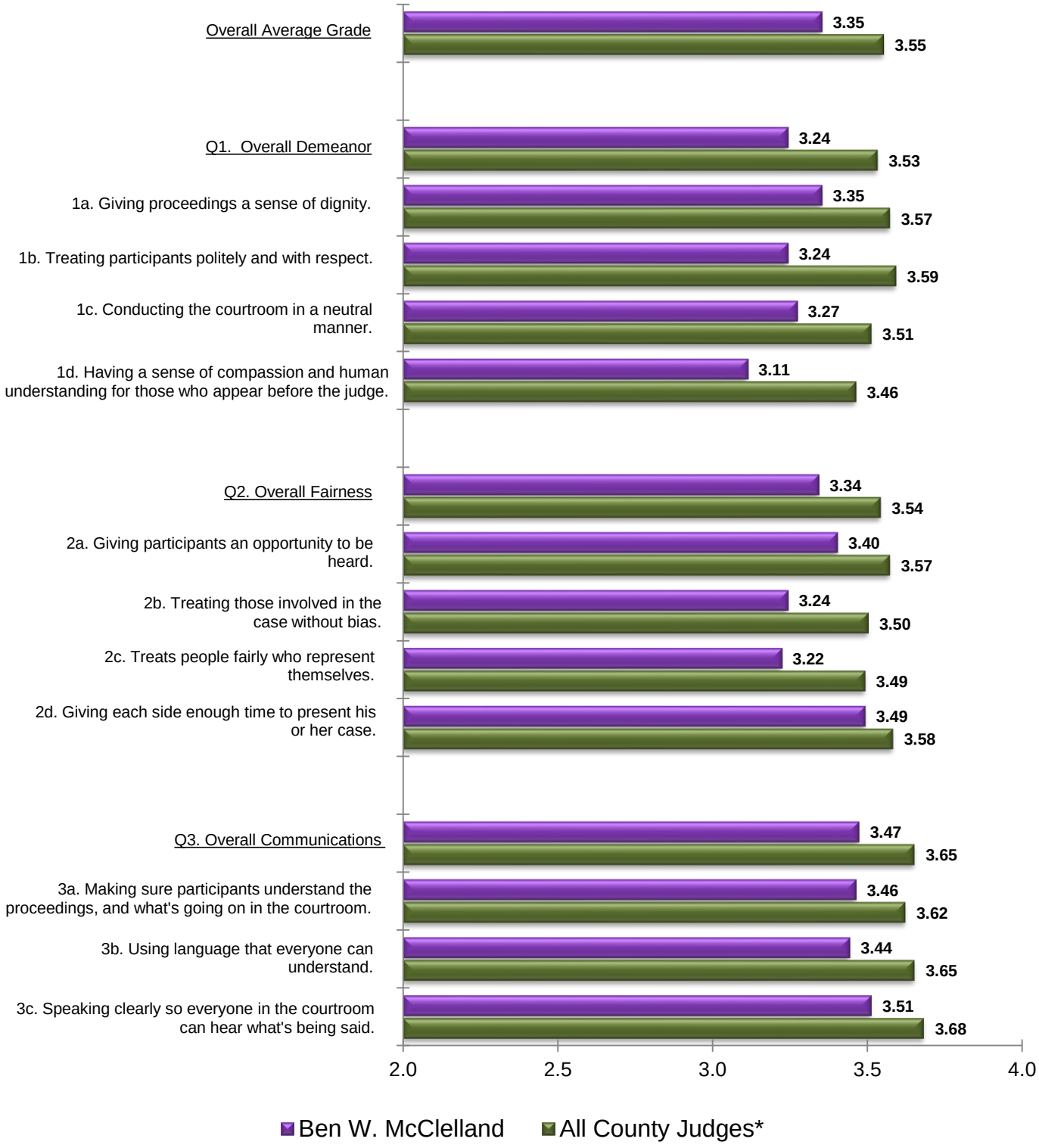
Strongly recommend retain	54%	64%
Recommend retain	22%	17%
Neither recommend nor not recommend retain in office	12%	6%
Recommend not retain	2%	3%
Strongly recommend not retain	9%	6%
Don't know enough to make a recommendation	2%	5%
Total Retain	76%	81%
Neither	12%	6%
Total Not Retain	11%	9%
Don't Know	2%	5%

* Includes only the County judges evaluated during this interim cycle.

Judge Ben W. McClelland

Survey of Non-Attorneys Regarding County Judges

Average Grades

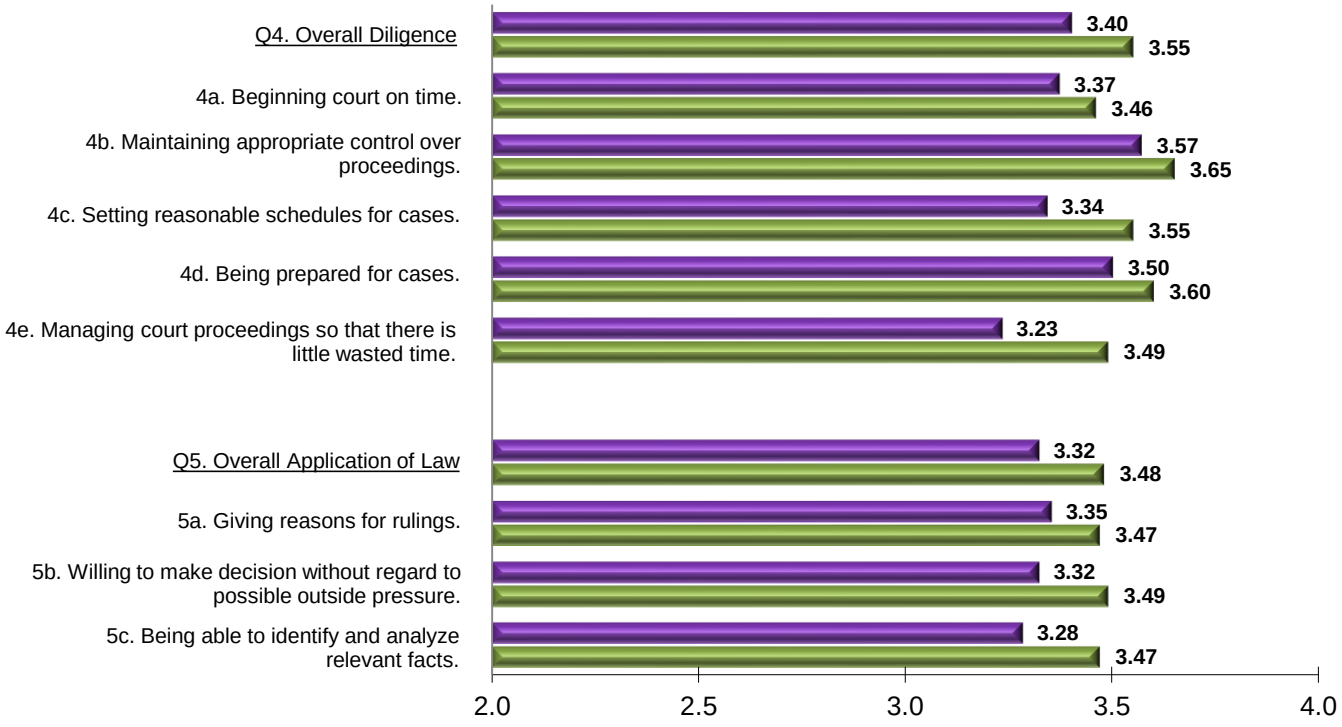


* Includes only the County judges evaluated during this interim cycle.

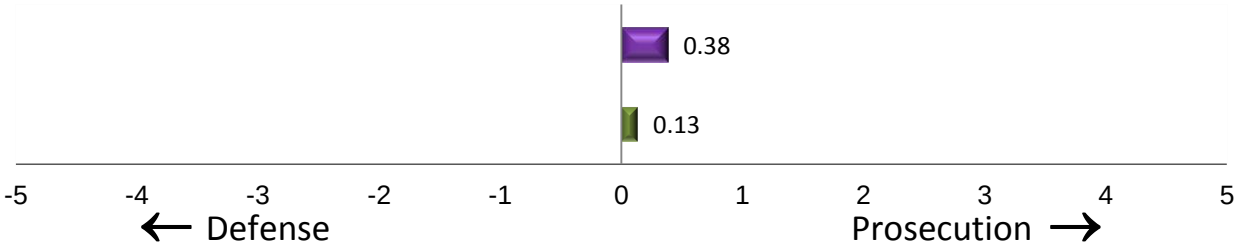
Judge Ben W. McClelland

Survey of Non-Attorneys Regarding County Judges

Average Grades

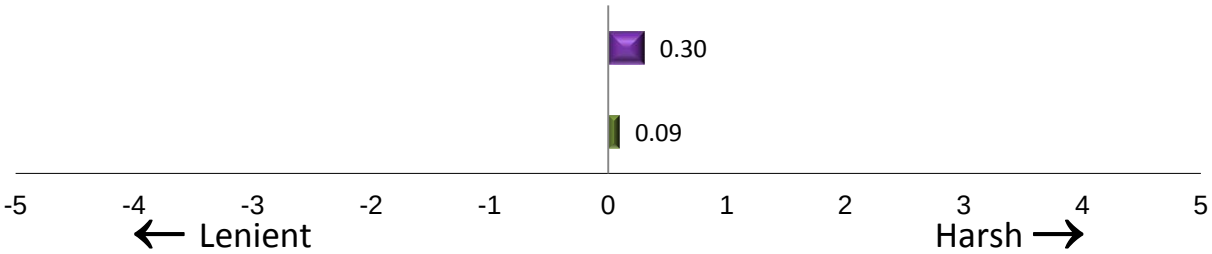


Q6 Biased in favor of prosecution/defense.[1]



1-A negative average score indicates bias toward the defense, and a positive average score indicates bias toward prosecution.

Q7 Lenience or Harshness in Sentencing.[2]



2-A negative average score indicates sentences are lenient, and a positive average score indicates sentences are harsh.

Ben W. McClelland All County Judges*

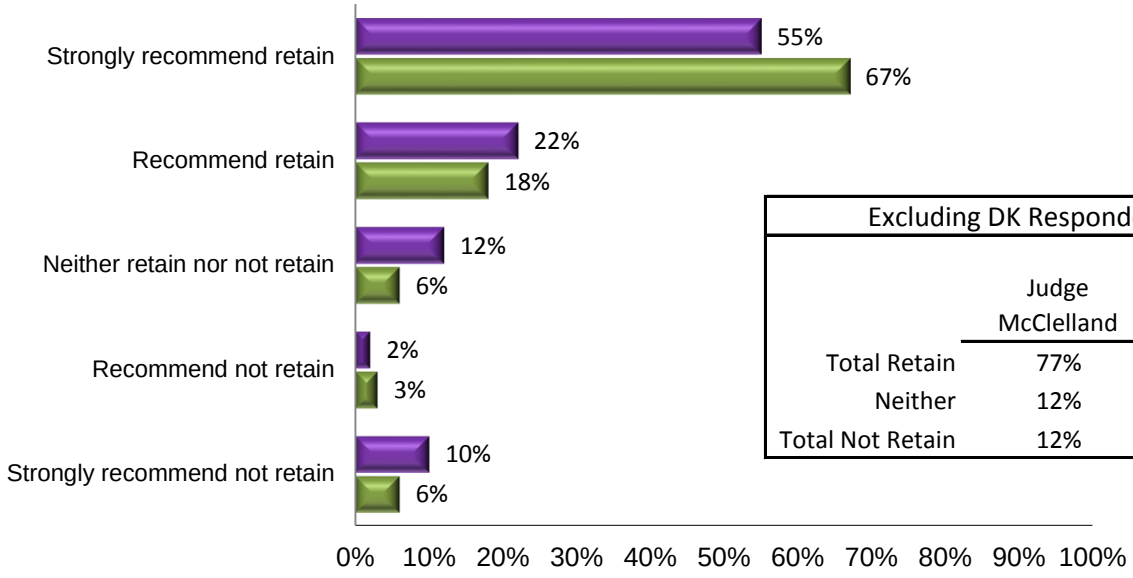
* Includes only the County judges evaluated during this interim cycle.

Judge Ben W. McClelland

Survey of Non-Attorneys Regarding County Judges

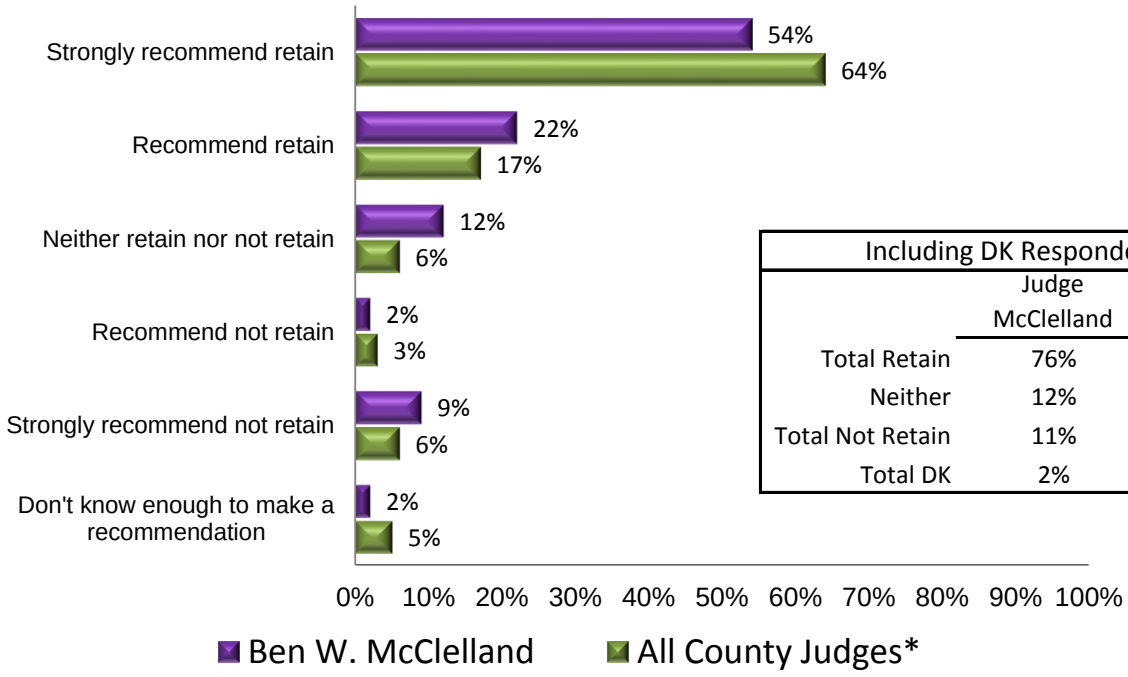
How strongly do you recommend that Judge McClelland be retained or not retained in office?

Excluding "Don't Know" Respondents



Excluding DK Respondents	Judge McClelland	All Cnty Judges*
Total Retain	77%	85%
Neither	12%	6%
Total Not Retain	12%	9%

Including "Don't Know" Respondents



Including DK Respondents	Judge McClelland	All Cnty Judges*
Total Retain	76%	81%
Neither	12%	6%
Total Not Retain	11%	9%
Total DK	2%	5%

* Includes only the County judges evaluated during this interim cycle.

Methodology

Methodology

The results shown in the 2013 Judicial Performance Interim Survey Report are based on two surveys: The Survey of Attorneys Regarding Trial Judges, and the Survey of Non-Attorneys Regarding Trial Judges. Below is a description of the methodology used in the two surveys.

I Attorneys Regarding Trial Judges

a. Sample:

Research & Polling, Inc. received case data with the names of attorneys who had likely been in each judge's courtroom from the following primary sources:

- Colorado Judicial Department
- Colorado District Attorneys' Council
- Colorado Public Defender's Office
- Denver County Courts
- District Attorney's Office, Second Judicial District (Denver)
- District Attorney's Office, Ninth Judicial District

The data from these different sources are combined, duplicates removed, and addresses corrected.

Only judges that are due to receive an interim evaluation in 2013 were evaluated during this reporting cycle. The intent was to increase the number of completed attorney evaluations for each judge by excluding those not due to receive an interim evaluation in 2013. The number of possible judges that attorney respondents could evaluate was 10.

Attorneys are first mailed a letter inviting them to complete the survey online. The letter provides the link to the online survey, as well as a unique password to access the survey. Approximately one week later, attorneys are sent an email invitation to complete the online survey, which also provides the Web address and their unique password. About a week after the first email is sent, a reminder email is sent, providing the same information. Potential respondents who do not complete the survey after the second email are then telephoned and asked to either complete the survey by phone, or to complete it online.

Since 2010, the Judicial Performance Survey reports are based on a moving average, or rolling sample, of data collected over a period of time equal to the justice's or judge's term of office: ten years for a Supreme Court justice, eight years for a COA judge, six years for a district judge, and four years for a county judge. To use a county judge as an example: as survey data is collected it is pooled together for four years. After four years, as new data is added to the judge's survey results, the oldest data in the pool is deleted.

b. Questions:

Respondents evaluated judges on 17 aspects of judicial performance using a grade scale of A, B, C, D, or F. (See Questionnaire section.) These grades were then converted to a numerical score where A = 4, B = 3, C = 2, D = 1 and Fail = 0. The A through F scale was chosen because it is almost universally recognized and understood. This makes it easy for respondents to complete their questionnaire, and for the public to interpret the results.

Respondents were also asked if they considered the judge biased toward the defense or prosecution in criminal cases. In a final question, respondents were asked to indicate how strongly they would recommend that the justice or judge be retained or not retained in office. For this evaluation cycle, the rating scale for the "retention" question was changed to: Strongly recommend retain, Recommend retain, Neither recommend nor not recommend retain, Recommend not retain, Strongly recommend not retain, or Don't know enough to make a recommendation. Due to the changes in the response categories for the retention question, the results to this question have only been compiled among the survey respondents from this year's interim survey.

c. Analysis:

The Attorneys Regarding County Judges section first shows a table of the percentage distribution for each of the A through F questions, including "don't know/not applicable" responses. The next column to the right shows the judge's average grade for each question. For comparison purposes, averages were also computed for all county judges receiving an interim evaluation in 2013 and are shown in the furthest right column on the page. Tables showing the percentage distribution for all questions for all county judges are located at the end of this methodology section.

The overall question averages are calculated by adding up the averages for each question and dividing by the number of questions.

The next table shows the percentage distribution of the responses to the question about recommending retention. The first column of percentages is for the report-judge and the second column displays the percentages for all county judges. The percentages are shown both including and excluding "don't know" responses.

The next page displays the question averages in horizontal bar-graph form. The percentage distribution to the retention question is then presented in the graph on the next page.

The third part of the Attorneys Regarding County Judges section of the report lists the comments the attorneys made about the judge's strengths and weaknesses.

d. Comments:

Respondents were also asked what they considered to be the judge's strengths and weaknesses. By statute, these comments are confidential and only provided to the judge and the District Commission on Judicial Performance. They are not released to the public when the rest of the report is released. Before being given to the judge and the

Commission, an attempt is made to redact all respondent identifying information from the comments.

Since 2005, there have been changes to the number of comment questions asked, though the strengths and weaknesses questions have been posed in every survey.

The number to the left of each comment refers to the same attorney respondent in both the strengths section and the weaknesses section.

Most spelling and typographical errors have been corrected.

e. <u>Cooperation Rate:</u>

The overall cooperation rate for the Attorneys Regarding Trial Judges Survey is calculated as the number of completed survey evaluations divided by the number of possible evaluations resulting in an overall cooperation rate of 44.5% for district judges and 35.3% for county judges. An equivalent cooperation rate for an individual judge is computed in the same manner. Undeliverable surveys have been excluded from the cooperation rates.

II Non-Attorneys Regarding Trial Judges

a. <u>Sample:</u>

Research & Polling, Inc. received case data with the names of non-attorneys who had likely been in each judge's courtroom from the following primary sources:

- Colorado Judicial Department
- Colorado District Attorneys' Council
- Colorado Public Defender's Office
- Denver County Courts
- District Attorney's Office, Second Judicial District (Denver)
- District Attorney's Office, Ninth Judicial District

The data from these different sources are combined, duplicates removed, and addresses corrected.

Only the judges due to receive an interim evaluation in 2013 were evaluated during this reporting cycle. The intent was to increase the number of completed non-attorney evaluations for each judge by excluding those not due to receive an interim evaluation in 2013.

RPI surveyed non-attorneys with courtroom experience, including: law enforcement personnel, witnesses, crime victims, jurors, criminal defendants, and civil litigants.

Non-attorneys were surveyed via standard mail. First, they were mailed an initial postcard informing the recipient that he or she would be receiving a questionnaire. Two to three weeks after the postcard was mailed, the potential respondent was sent a personalized introductory letter and a questionnaire with a postage-paid return

envelope. If the person did not respond, a second questionnaire and letter were sent approximately four weeks later. Questionnaires are barcoded, and if a respondent mailed back two questionnaires, the second one was deleted from the data file.

Since 2010, the non-attorney section of the Judicial Performance Survey reports have been based on a moving average, or rolling sample, of survey results collected over a period of time equal to the judge's term of office: six years for a district judge and four years for a county judge. To use a county judge as an example: as survey data is collected, it is pooled together for four years. After four years, as new data is added to the judge's survey results, the oldest data in the pool is deleted.

b. Questions:

Respondents evaluated judges on 19 aspects of judicial performance using a grade scale of A, B, C, D, or F. (See Questionnaire section.) These grades were then converted to a numerical score where A = 4, B = 3, C = 2, D = 1 and Fail = 0. The A through F scale was chosen because it is almost universally recognized and understood. This makes it easy for respondents to complete their questionnaire, and for the public to interpret the results.

Respondents were also asked if they considered the judge biased toward the defense or prosecution in criminal cases. In a final question, respondents were asked to indicate how strongly they would recommend that the justice or judge be retained or not retained in office. For this evaluation cycle, the rating scale for the "retention" question was changed to: Strongly recommend retain, Recommend retain, Neither recommend nor not recommend retain, Recommend not retain, Strongly recommend not retain, or Don't know enough to make a recommendation. Due to the changes in the response categories for the retention question, the results to this question have only been compiled among the survey respondents from this year's interim survey.

A copy of the questionnaire is included in the last section of this report.

c. Analysis:

The Non-Attorneys Regarding County Judges section first shows a table of the percentage distribution for each of the A through F questions, including "don't know/not applicable" responses. The next column to the right shows the judge's average grade for each question. For comparison purposes, averages were also computed for all county judges receiving an interim evaluation in 2013 and are shown in the furthest right column on the page. Tables showing the percentage distribution for all questions for all county judges are located at the end of this methodology section.

The overall question averages are calculated by adding up the averages for each question and dividing by the number of questions.

The next table shows the percentage distribution of the responses to the questions about prosecution or defense bias and recommending retention. The first column of percentages is for the report-judge and the second column displays the percentages for

all county judges. The percentages for the retention question are shown including and excluding "don't know" responses.

The next page displays the question averages in horizontal bar-graph form. The percentage distribution of the prosecution-defense bias and retention questions are then presented in the graph on the next page.

The third part of the Non-Attorneys Regarding County Judges section of the report lists the comments the non-attorneys made about the judge's strengths and weaknesses.

d. Comments:

In addition to the A through F questions, non-attorney respondents were asked what they considered to be the judge's strengths and weaknesses. By statute, these comments are confidential and only provided to the judge and the District Commission on Judicial Performance. They are not released to the public when the rest of the report is released. Before being given to the judge and the Commission, an attempt is made to redact all respondent identifying information from the comments.

Since 2005 there have been changes to the number of comment questions asked, though the strengths and weaknesses questions have been posed in every survey.

The number to the left of each comment refers to the same non-attorney respondent in both the strengths section and the weaknesses section.

e. Cooperation Rate:

The estimated cooperation rate for the non-attorney survey is calculated as the number of completed questionnaires divided by the number of eligible respondents who actually received a questionnaire. Undeliverable surveys have been excluded from the cooperation rate. The following table shows the total number of questionnaires mailed, completed, non-responses and refusals, undeliverables, and other responses. The table presents the estimated overall cooperation rate as well as the cooperation rate by the different types of respondents. The true cooperation rates are likely higher than shown because of the percentage of people who were mailed questionnaires about judges with whom they may not have had sufficient experience. This is due, in part, to many cases being disposed of without the parties having appeared in court, as well as in the case of law enforcement, the data includes all those who were subpoenaed for a case, not just those who appeared.

A table of the response counts by respondent type for Judge McClelland is shown on the following page, and on the next page is a table of the overall cooperation rates for both the Attorney and Non-Attorney Regarding Trial Judges surveys for all county judges.

Judge Ben W. McClelland

Judge Response Counts by Type of Respondent

Role Type	*Total Sent*	*No Response*	*Undeliverable/ Not Applicable*	*Other Non-Responses*	*Completes*	*Coop Rate*
Attorneys						
Criminal						
District Attorneys	16	9	1	0	6	40.0%
Defense Attorneys	38	24	0	0	14	36.8%
Civil						
Attorneys for Litigants	9	4	0	0	5	55.6%
Other Attorneys Civil	44	23	2	0	19	45.2%
Total Attorneys	107	60	3	0	44	42.3%
Non-attorneys						
Criminal						
Witness	76	27	10	4	35	53.0%
Other	2	1	1	0	0	0.0%
Law Enforcement	3	0	0	0	3	100.0%
Defendant	519	227	218	7	67	22.3%
Civil						
Litigant	125	47	51	2	25	33.8%
Witness	17	2	10	0	5	71.4%
Jurors	304	103	29	3	169	61.5%
Employees, including Interpreters	4	0	0	0	4	100.0%
Total Non-attorneys	1050	407	319	16	308	42.1%
Grand Total:	**1157**	**467**	**322**	**16**	**352**	**42.2%**

Note: “Undeliverable/Not Applicable” surveys are removed from the “Total Sent” prior to calculating the cooperation rate.

Total Response Counts by Type of Respondent for All County Judges*

	Total Sent	No Response	Undeliverable/ Not Applicable	Other Non-Responses	Completes	Cooperation Rate
Attorneys						
Criminal						
District Attorneys	3217	2165	115	0	937	30.2%
Defense Attorneys	12100	7642	409	0	4049	34.6%
Other Attorneys Criminal	55	32	3	0	20	38.5%
Civil						
Attorneys for Litigants	1497	844	77	0	576	40.6%
Other Attorneys Civil	2334	1255	161	0	918	42.2%
GAL	2	0	0	0	2	100.0%
Total Attorneys	19205	11938	765	0	6502	35.3%
Non-attorneys						
Criminal						
Victim	82	44	32	4	2	4.0%
Witness	4366	2226	975	208	957	28.2%
Other	444	277	117	9	41	12.5%
Law Enforcement	3592	2698	289	95	510	15.4%
Defendant	29046	15902	9969	350	2825	14.8%
Civil						
Litigant	10118	5508	2998	217	1395	19.6%
Witness	901	481	209	17	194	28.0%
Other	21	10	3	1	7	38.9%
Jurors	14815	6796	1173	363	6483	47.5%
Employees, including Interpreters	222	74	29	25	94	48.7%
Probation Officers	61	18	5	2	36	64.3%
Total Non-attorneys	63668	34034	15799	1291	12544	26.2%
Grand Total:	**82873**	**45972**	**16564**	**1291**	**19046**	**28.7%**

* Includes only the County judges evaluated during this interim cycle.

Note: “Undeliverable/Not Applicable” surveys are removed from the “Total Sent” prior to calculating the cooperation rate.

Survey of Attorneys Regarding Trial Judges

All County Judges* Sample Size = 6502	A	B	C	D	Fail	DK/NA	Average Grade (0.0 to 4.0 scale)
1. Case Management:							
1a. Promptly issuing a decision on the case after trial.	52%	19%	5%	2%	1%	21%	3.50
1b. Maintaining appropriate control over proceedings.	61%	23%	9%	3%	2%	1%	3.40
1c. Promptly ruling on pre-trial motions.	49%	22%	8%	3%	1%	17%	3.37
1d. Setting reasonable schedules for cases.	58%	24%	8%	4%	2%	4%	3.37
					Overall Case Management		3.41
2. Application and Knowledge of Law:							
2a. Being able to identify and analyze relevant facts.	55%	25%	10%	5%	3%	3%	3.27
2b. Basing decisions on evidence and arguments.	52%	24%	11%	6%	4%	3%	3.15
2c. Willing to reconsider error in fact or law.	41%	18%	10%	6%	5%	20%	3.05
2d. Issuing consistent sentences when the circumstances are similar.	51%	24%	9%	4%	4%	8%	3.25
					Overall Application and Knowledge of Law		3.18
3. Communications:							
3a. Making sure all participants understand the proceedings.	66%	22%	7%	2%	1%	1%	3.51
3b. Providing written communications that are clear, thorough and well reasoned.	44%	19%	8%	3%	2%	24%	3.31
					Overall Communications		3.41
4. Demeanor:							
4a. Giving proceedings a sense of dignity.	63%	22%	8%	3%	3%	1%	3.41
4b. Treating participants with respect.	67%	18%	7%	4%	3%	1%	3.42
4c. Conducting the courtroom in a neutral manner.	59%	19%	10%	6%	5%	1%	3.24
4d. Consistently applying laws and rules.	55%	22%	9%	5%	4%	4%	3.23
					Overall Demeanor		3.33
5. Diligence:							
5a. Using good judgment in application of relevant law and rules.	53%	24%	10%	5%	5%	2%	3.17
5b. Doing the necessary "homework" and being prepared for cases.	52%	23%	9%	4%	3%	8%	3.26
5c. Being willing to handle cases on the docket even when they are complicated and time consuming.	54%	19%	7%	3%	3%	14%	3.38
					Overall Diligence		3.27
					Overall Average Grade:		**3.31**

* Includes only the County judges evaluated during this interim cycle.

Note: Respondents rated judges on various questions using an A to F scale, in which the grades were then converted to numerical scores: A= 4, B=3, C=2, D=1 and F=0. An average score of 4.0 is the highest possible score and a 0.0 is the lowest possible score. 'DK/NA' = Don't Know / Not Applicable.

Survey of Attorneys Regarding Trial Judges

All County Judges*	Average Grade (0.0 to 4.0 scale)

Would you say the judge is:

Very biased in favor of the prosecution	10%
Somewhat biased in favor of the prosecution	25%
Completely neutral	51%
Somewhat biased in favor of the defense	7%
Very biased in favor of the defense	3%
Don't know or not sure	4%

How strongly do you recommend that the Judge be retained in office, or not be retained in office?

Excluding "don't know" respondents.

Strongly recommend retain	56%
Recommend retain	23%
Neither recommend nor not recommend retain in office	9%
Recommend not retain	6%
Strongly recommend not retain	7%
Total Retain	79%
Neither	9%
Total Not Retain	13%

Including "don't know" respondents.

Strongly recommend retain	56%
Recommend retain	22%
Neither recommend nor not recommend retain in office	9%
Recommend not retain	5%
Strongly recommend not retain	7%
Don't know enough to make a recommmendation	0%
Total Retain	78%
Neither	9%
Total Not Retain	12%
Don't Know	0%

* Includes only the County judges evaluated during this interim cycle.

Survey of Non-Attorneys Regarding Trial Judges

All County Judges* Sample Size = 12544	A	B	C	D	Fail	DK/NA	Average Grade (0.0 to 4.0 scale)
1. Demeanor:							
1a. Giving court proceedings a sense of dignity.	73%	17%	5%	2%	2%	1%	3.57
1b. Treating participants in the case politely and with respect.	76%	14%	4%	2%	3%	1%	3.59
1c. Conducting the courtroom in a neutral manner.	73%	15%	5%	3%	4%	1%	3.51
1d. Having a sense of compassion and human understanding for those who appear before the judge.	69%	17%	5%	3%	5%	2%	3.46
					Overall Demeanor		3.53
2. Fairness:							
2a. Giving participants an opportunity to be heard.	75%	14%	4%	2%	3%	1%	3.57
2b. Treating those involved in the case without bias.	72%	14%	5%	3%	5%	2%	3.50
2c. Treating fairly people who represent themselves.	52%	10%	3%	2%	4%	29%	3.49
2d. Giving each side enough time to present his or her case.	73%	13%	4%	2%	3%	4%	3.58
					Overall Fairness		3.54
3. Communications:							
3a. Making sure participants understand the proceedings, and what's going on in the courtroom.	77%	14%	5%	2%	2%	1%	3.62
3b. Using language that everyone can understand.	76%	16%	4%	1%	1%	1%	3.65
3c. Speaking clearly so everyone in the courtroom can hear what's being said.	78%	14%	4%	1%	1%	1%	3.68
					Overall Communications		3.65
4. Diligence:							
4a. Beginning court on time.	66%	19%	7%	3%	3%	3%	3.46
4b. Maintaining appropriate control over proceedings.	77%	14%	4%	2%	2%	1%	3.65
4c. Setting reasonable schedules for cases.	64%	15%	5%	2%	2%	12%	3.55
4d. Being prepared for cases.	72%	14%	4%	2%	3%	6%	3.60
4e. Managing court proceedings so that there is little wasted time.	68%	18%	6%	2%	3%	2%	3.49
					Overall Diligence		3.55
5. Application of Law:							
5a. Giving reasons for rulings.	66%	15%	6%	3%	4%	7%	3.47
5b. Willing to make decision without regard to possible outside pressure.	61%	12%	4%	2%	4%	17%	3.49
5c. Being able to identify and analyze relevant facts.	67%	14%	5%	3%	4%	7%	3.47
					Overall Application of Law		3.48
					Overall Average Grade:		**3.55**

* Includes only the County judges evaluated during this interim cycle.
Note: Respondents rated judges on various questions using an A to F scale, in which the grades were then converted to numerical scores: A= 4, B=3, C=2, D=1 and F=0. An average score of 4.0 is the highest possible score and a 0.0 is the lowest possible score. 'DK/NA' = Don't Know / Not Applicable.

Survey of Non-Attorneys Regarding Trial Judges

All County Judges*	Average Grade (0.0 to 4.0 scale)

6. How biased do you think the Judge is toward the defense or prosecution?

[Please see the questionnaire at the end of report for question wording.]

Biased in favor of the prosecution total	13%
Competely neutral	79%
Biased in favor of the defense total	8%
Average	0.13

7. How lenient or harsh do you think the sentences generally handed down by Judge are?

[Please see the questionnaire at the end of report for question wording.]

Harsh sentencing total	12%
Competely neutral	76%
Lenient sentencing total	12%
Average	0.09

How strongly do you recommend that the Judge be retained, or not be retained in office?

Excluding "don't know" respondents.

Strongly recommend retain	67%
Recommend retain	18%
Neither recommend nor not recommend retain in office	6%
Recommend not retain	3%
Strongly recommend not retain	6%
Total Retain	85%
Neither	6%
Total Not Retain	9%

Including "don't know" respondents.

Strongly recommend retain	64%
Recommend retain	17%
Neither recommend nor not recommend retain in office	6%
Recommend not retain	3%
Strongly recommend not retain	6%
Don't know enough to make a recommendation	5%
Total Retain	81%
Neither	6%
Total Not Retain	9%
Don't Know	5%

* Includes only the County judges evaluated during this interim cycle.

Questionnaires

Colorado Judicial Performance
Attorneys Regarding Trial Judges Survey Questions

_ Which of the following types of cases have you observed Judge (Last Name)'s performance? Please circle all that apply. *(Only respondents who indicate they have observed the judge in "criminal other than traffic" cases will be asked question 2d and the "bias" question between 5 and 6.)*

Civil 1
Criminal other than traffic 2
Traffic 3
Domestic 4
Juvenile 5
Probate 6
Other 9

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge ***[Last Name]*** on the following. If, for a specific question you feel that you do not have enough information to grade the judge, please check DK/NA for Don't Know/Not Applicable.

1. Case Management:

a.	Promptly issuing a decision on the case after trial.	A	B	C	D	F	DK/NA
b.	Maintaining appropriate control over proceedings.	A	B	C	D	F	DK/NA
c.	Promptly ruling on pre-trial motions.	A	B	C	D	F	DK/NA
d.	Setting reasonable schedules for cases.	A	B	C	D	F	DK/NA

2. Application and Knowledge of Law:

a.	Being able to identify and analyze relevant facts.	A	B	C	D	F	DK/NA
b.	Basing decisions on evidence and arguments.	A	B	C	D	F	DK/NA
c.	Willing to reconsider error in fact or law.	A	B	C	D	F	DK/NA
d.	*[Criminal only]* Issuing consistent sentences when the circumstances are similar.	A	B	C	D	F	DK/NA

3. Communications:

a.	Making sure all participants understand the proceedings.	A	B	C	D	F	DK/NA
b.	Providing written communications that are clear, thorough and well reasoned.	A	B	C	D	F	DK/NA

4. Demeanor:

a.	Giving proceedings a sense of dignity.	A	B	C	D	F	DK/NA
b.	Treating participants with respect.	A	B	C	D	F	DK/NA
c.	Conducting his/her courtroom in a neutral manner.	A	B	C	D	F	DK/NA
d.	Consistently applying laws and rules.	A	B	C	D	F	DK/NA

5. Diligence:

a.	Using good judgment in application of relevant law and rules.	A	B	C	D	F	DK/NA
b.	Doing the necessary "homework" and being prepared for his/her cases.	A	B	C	D	F	DK/NA
c.	Being willing to handle cases on the docket even when they are complicated and time consuming.	A	B	C	D	F	DK/NA

Having observed Judge (Last Name) in a criminal case, would you say the judge is: *(This question is asked only if respondent indicated at the beginning of the survey he/she observed the judge in a criminal case.)*

Very biased in favor of the prosecution 1
Somewhat biased in favor of the prosecution 2
Completely Neutral 3
Somewhat biased in favor of the defense..... 4
Very biased in favor of the defense..... 5
Don't Know/Not Sure..... 9

6. What would you say are Judge (*Last Name*)'s strengths?

_____
_____
_____

7. What would you say are Judge (*Last Name*)'s weaknesses?

_____
_____
_____

8. Keeping in mind your responses to each of the previous questions, how strongly do you recommend that Judge (Last Name) be retained in office, or not be retained in office?

Strongly recommend retain in office..... 5
Recommend retain in office 4
Neither recommend nor not recommend retain in office..... 3
Recommend not retain in office 2
Strongly recommend not retain in office 1

Don't know enough to make a recommendation 6

9. And what would you say are Judge ***[Last Name]***'s weaknesses?

_____
_____
_____
_____
_____
_____

10. Keeping in mind your responses to each of the previous questions, how strongly do you recommend that Judge ***[Last Name]*** be retained in office, or not retained in office?

Strongly recommend he/she be retained in office	5
Recommend he/she be retained in office	4
Neither recommend nor not recommend h/s be retained in office	3
Recommend he/she not be retained in office	2
Strongly recommend he/she not be retained in office	1
Don't know enough to make a recommendation	6

Thank you for taking the time to complete this questionnaire. Please place it in the self-addressed, postage-paid envelope provided and place it in the mail. Your participation in this survey is very much appreciated.

Barcode

Commission on Judicial Performance

Evaluation of
JUDGE [FULL NAME]

If we have made a mistake and you either were not in Judge *[Last Name]*'s courtroom or you feel that you do not have sufficient experience with Judge *[Last Name]* to have an opinion on the judge's judicial performance, please just return this questionnaire, unanswered, in the enclosed postage-paid envelope, to stop any further requests to evaluate Judge *[Last Name]*.

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade the judge on the following. (If you feel that you don't have experience with the judge in a specific area, or just don't know, please circle the number corresponding to "Don't Know/Not Applicable"—DK/NA).

1. Demeanor:	**A**	**B**	**C**	**D**	**F**	**DK N/A**
a. Giving court proceedings a sense of dignity.	4	3	2	1	0	9
b. Treating participants in the case politely and with respect.	4	3	2	1	0	9
c. Conducting his/her courtroom in a neutral manner.	4	3	2	1	0	9
d. Having a sense of compassion and human understanding for those who appear before him/her.	4	3	2	1	0	9

2. Fairness:	A	B	C	D	F	DK N/A
a. Giving participants an opportunity to be heard.	4	3	2	1	0	9
b. Treating those involved in the case without bias.	4	3	2	1	0	9
c. Treating fairly people who represent themselves.	4	3	2	1	0	9
d. Giving each side enough time to present his or her case.	4	3	2	1	0	9

3. Communications:	A	B	C	D	F	DK N/A
a. Makings sure participants understand the proceedings, and what's going on in the courtroom.	4	3	2	1	0	9
b. Using language that everyone can understand.	4	3	2	1	0	9
c. Speaking clearly so everyone in the courtroom can hear what's being said.	4	3	2	1	0	9

4. Diligence:	A	B	C	D	F	DK N/A
a. Beginning court on time.	4	3	2	1	0	9
b. Maintaining appropriate control over proceedings.	4	3	2	1	0	9
c. Setting reasonable schedules for cases.	4	3	2	1	0	9
d. Being prepared for his/her cases.	4	3	2	1	0	9
e. Managing court proceedings so that there is little wasted time.	4	3	2	1	0	9

5. Application of Law:	A	B	C	D	F	DK N/A
a. Giving reasons for rulings.	4	3	2	1	0	9
b. Willing to make decision without regard to possible outside pressure.	4	3	2	1	0	9
c. Being able to identify and analyze relevant facts.	4	3	2	1	0	9

6. ***[If you were in [Last Name]'s courtroom during a criminal case or cases please answer this question, otherwise skip to the next question.]*** On the scale below, please indicate by circling the appropriate number how biased you think Judge ***[Last Name]*** is toward the defense or the prosecution. If you feel Judge ***[Last Name]*** is completely unbiased, circle "0."

Bias toward Defense — **Completely Neutral** — **Bias toward Prosecution**

5 4 3 2 1 0 1 2 3 4 5

7. ***[If you were in [Last Name]'s courtroom during a criminal case or cases please answer this question, otherwise skip to the next question.]*** On the scale below, please indicate by circling the appropriate number how lenient or how harsh you think the sentences generally handed down by ***[Last Name]*** are. If you feel Judge ***[Last Name]*** generally hands down appropriate sentences, circle "0."

Sentences Too Light — **Appropriate Sentences** — **Sentences Too Harsh**

5 4 3 2 1 0 1 2 3 4 5

Though your name will never be associated with your answers, because the judge will see a typed transcript of the comments that you and others write, it is important that you do not include information in the comments below that would unintentionally identify you as the author.

8. What would you say are Judge ***[Last Name]***'s strengths?

_____
_____
_____
_____
_____
_____

Continued on Back Page