Commission on
Judicial Performance

The Honorable Ben W. McClelland

2011 Interim Judicial Performance Survey

14th Judicial District

Talmey-Drake
research & strategy, inc.

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May 6, 2011

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 2011 Interim Judicial Performance Survey Report. The report is based on two surveys relating to how you are seen carrying out the performance of your office: One of attorneys who have had cases in your court or who are knowledgeable about your judicial performance, second a survey of non-attorneys who have observed your performance in court or who have otherwise been affected by 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 two 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 respondent 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.

100 Arapahoe, Suite One, Boulder, CO 80302
Phone 303.443.5300 Fax 303.200.7385

If you have any questions about the methodology and how the survey was conducted, please feel free to contact me at 303-443-5300 ext 1 or by email at *talmey@talmeyresearch.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, Jane Howell, at 303-866-6465.

Best regards,

Paul A. Talmey
President

enc:

Summary of Results by Year and Juror/Non-Juror

On average, county judges received an overall combined average grade in the 2011 Interim Judicial Performance Survey of 3.45--the overall average grade received from attorney respondents, 3.33, to the survey plus the overall average grade received from non-attorney respondents, 3.56, divided by two.

Based on an average attorney grade of 2.61, and an average non-attorney grade of 3.44, Judge Ben W. McClelland's combined grade for the 2011 Interim Judicial Performance Survey of 3.03.

Judge McClelland Average Grade			
	Combined	Attorney	Non-attorney
Overall Grade	3.03	2.61	3.44
Sample Size	-	39	274

Table 1

The results presented in this report are based on data from cases heard and closed by Judge McClelland from 2007 through 2010. (See Methodology section for description of sampling process.) Table 2 shows Judge McClelland's overall average grades for each of these years.

Judge McClelland Average Grades by Year					
	Combined	Attorney		Non-Attorney	
Year	Average Score	Average Score	Sample Size	Average Score	Sample Size
2007				3.60	34
2008	3.28	2.94	9	3.61	63
2009	2.84	2.40	10	3.28	130
2010	3.06	2.61	20	3.51	47
Overall	3.03	2.61	39	3.44	274

Table 2

Due to sending questionnaires to all jurors—not just a sample—and their much higher response rate than other non-attorneys surveyed, the percentage of jurors in the county judge sample of the non-attorney survey is 54%. Moreover, jurors tend to grade judges much higher than non-jurors. The juror overall average grade for county judges was 3.83, while the overall average grade awarded by non-jurors was 3.26. 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 for each year from 2007 to 2010. It also shows the overall average juror and non-juror grades for all county judges.

Judge McClelland Average Grades by Year								
	Jurors			Non-Jurors			All County Judges	
	Average	Sample		Average	Sample		Juror	Non-Juror
Year	Score	Size	%	Score	Size	%	Average	Average
2007	3.68	31	91%	2.82	3	9%	3.82	3.30
2008	3.86	41	65%	3.17	22	35%	3.82	3.26
2009	3.79	68	52%	2.71	62	48%	3.83	3.22
2010	3.86	32	68%	2.80	15	32%	3.85	3.25
All Yrs.	3.80	172	63%	2.83	102	37%	3.83	3.26

Table 3

Table 3 allows one to compare Judge McClelland's juror and non-juror grades with the all county judge averages to better ascertain if the judge is seen as performing relatively well or relatively poorly among these two subgroups.

Survey of Attorneys Regarding Judge Ben W. McClelland

(Sample Size 39)

Survey of Attorneys Regarding Trial Judges

Judge Ben W. McClelland Sample Size = 39	A	B	C	D	Fail	DK/NA	Average: Ben W. McClelland	Average: All County Judges
1. Case Management:								
1a. Promptly issuing a decision on the case after trial.	41%	15%	15%	5%	3%	21%	3.10	3.52
1b. Maintaining appropriate control over proceedings.	36%	31%	18%	8%	5%	3%	2.87	3.44
1c. Promptly ruling on pre-trial motions.	33%	18%	18%	3%	3%	26%	3.03	3.39
1d. Setting reasonable schedules for cases.	46%	26%	21%	0%	0%	8%	3.28	3.39
Overall Case Management							3.07	3.44
2. Application and Knowledge of Law:								
2a. Being able to identify and analyze relevant facts.	13%	33%	26%	18%	8%	3%	2.26	3.29
2b. Basing decisions on evidence and arguments.	18%	33%	18%	15%	13%	3%	2.29	3.16
2c. Willing to reconsider error in fact or law.	8%	8%	13%	18%	13%	41%	1.65	3.07
2d. Issuing consistent sentences when the circumstances are similar.	19%	24%	29%	10%	0%	19%	2.65	3.27
Overall Application and Knowledge of Law							2.21	3.20
3. Communications:								
3a. Making sure all participants understand the proceedings.	28%	31%	21%	13%	5%	3%	2.66	3.53
3b. Providing written communications that are clear, thorough and well reasoned.	24%	21%	18%	12%	15%	12%	2.30	3.30
Overall Communications							2.48	3.42
4. Demeanor:								
4a. Giving proceedings a sense of dignity.	33%	23%	23%	10%	8%	3%	2.66	3.43
4b. Treating parties with respect.	41%	15%	8%	21%	13%	3%	2.53	3.43
4c. Conducting his/her courtroom in a neutral manner.	38%	21%	13%	18%	8%	3%	2.66	3.26
4d. Consistently applying laws and rules.	28%	18%	10%	18%	10%	15%	2.42	3.27
Overall Demeanor							2.57	3.35
5. Diligence:								
5a. Using good judgment in application of relevant law and rules.	23%	28%	18%	15%	13%	3%	2.34	3.20
5b. Doing the necessary homework and being prepared for his/her cases.	28%	23%	26%	5%	5%	13%	2.74	3.28
5c. Being willing to handle cases on the docket even when they are complicated and time consuming.	38%	23%	15%	0%	8%	15%	3.00	3.39
Overall Diligence							2.69	3.29
Overall Average Grade:							**2.61**	**3.33**

Survey of Attorneys Regarding Trial Judges

Judge Ben W. McClelland

Sample Size = 39

	Percentage	
	Ben W. McClelland	All County Judges

Would you say the judge is:

Very biased in favor of the prosecution	29%	9%
Somewhat biased in favor of the prosecution	41%	28%
Completely neutral	24%	50%
Somewhat biased in favor of the defense	6%	6%
Very biased in favor of the defense	0%	2%
Don't know or not sure	0%	5%

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

[Percentages excluding undecided responses.]

Strongly recommend retain	42%	71%
Somewhat recommend retain	28%	17%
Somewhat recommend not retain	17%	6%
Strongly recommend not retain	14%	7%
Total Retain	70%	88%
Total Not Retain	31%	13%

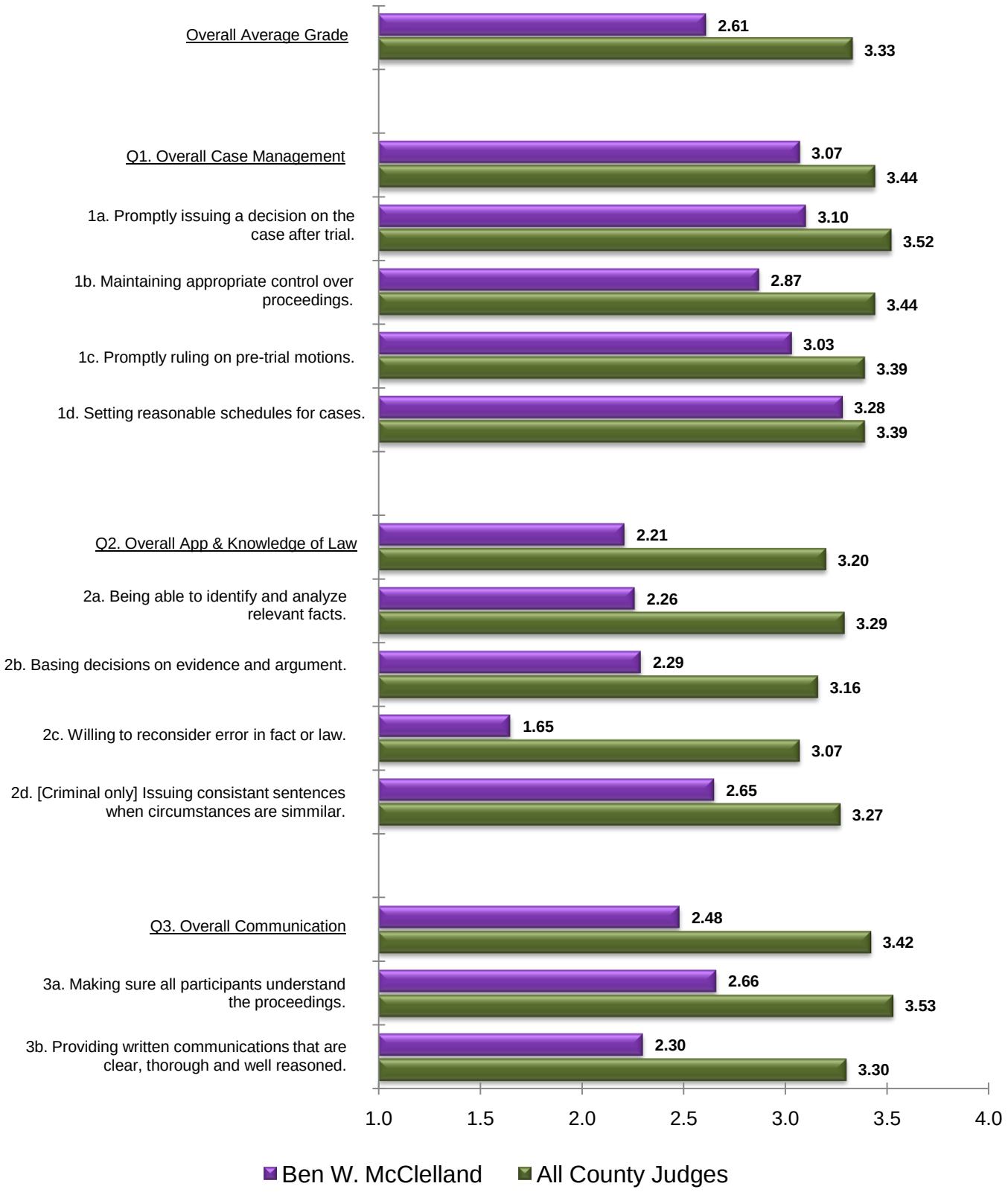
[Percentages including undecided responses.]

Strongly recommend retain	38%	68%
Somewhat recommend retain	26%	16%
Undecided or Don't Know	8%	5%
Somewhat recommend not retain	15%	6%
Strongly recommend not retain	13%	6%
Total Retain	64%	84%
Undecided/Don't Know	8%	5%
Total Not Retain	28%	12%

Judge Ben W. McClelland

Survey of Attorneys Regarding Trial Judges

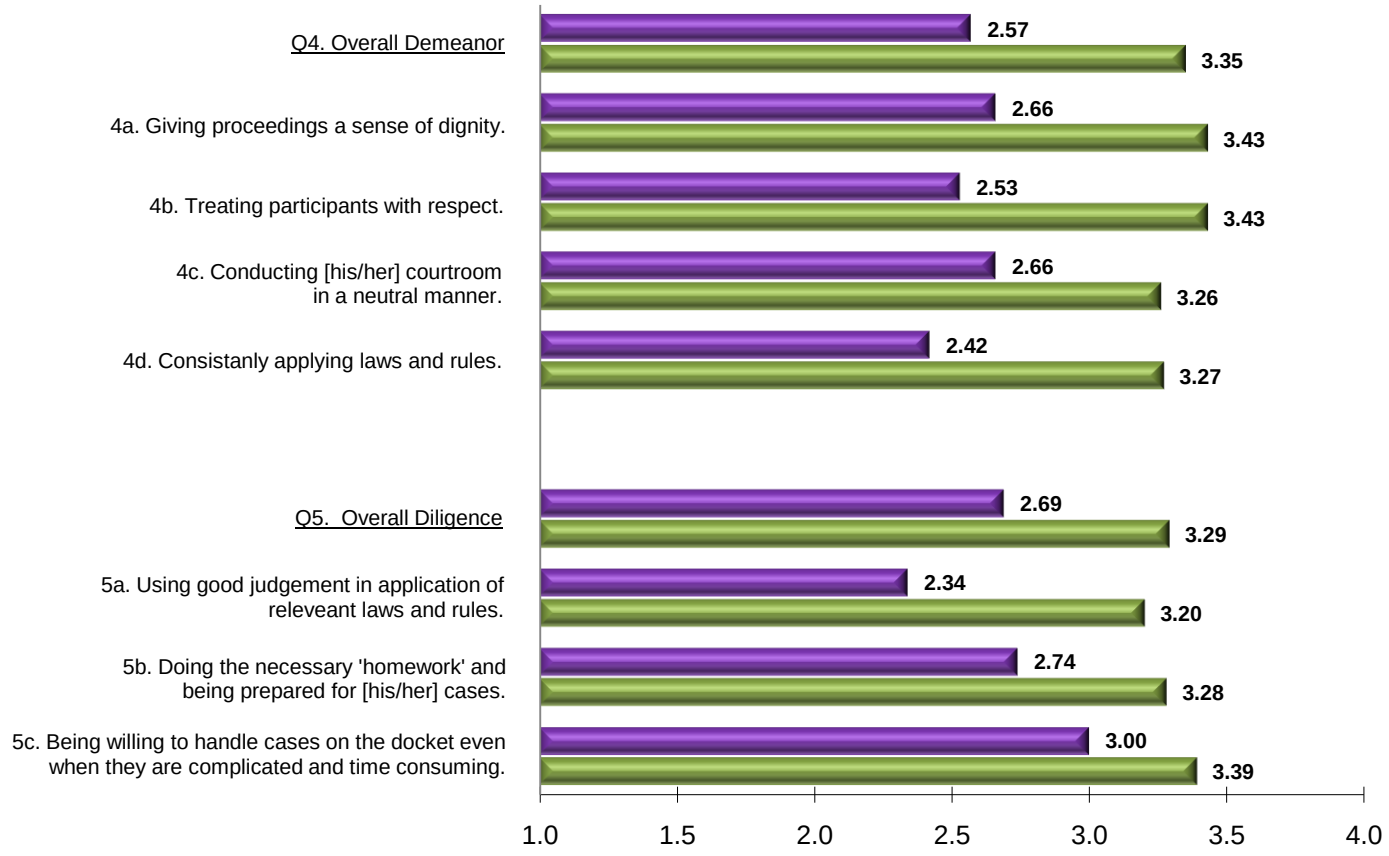
Average Grades



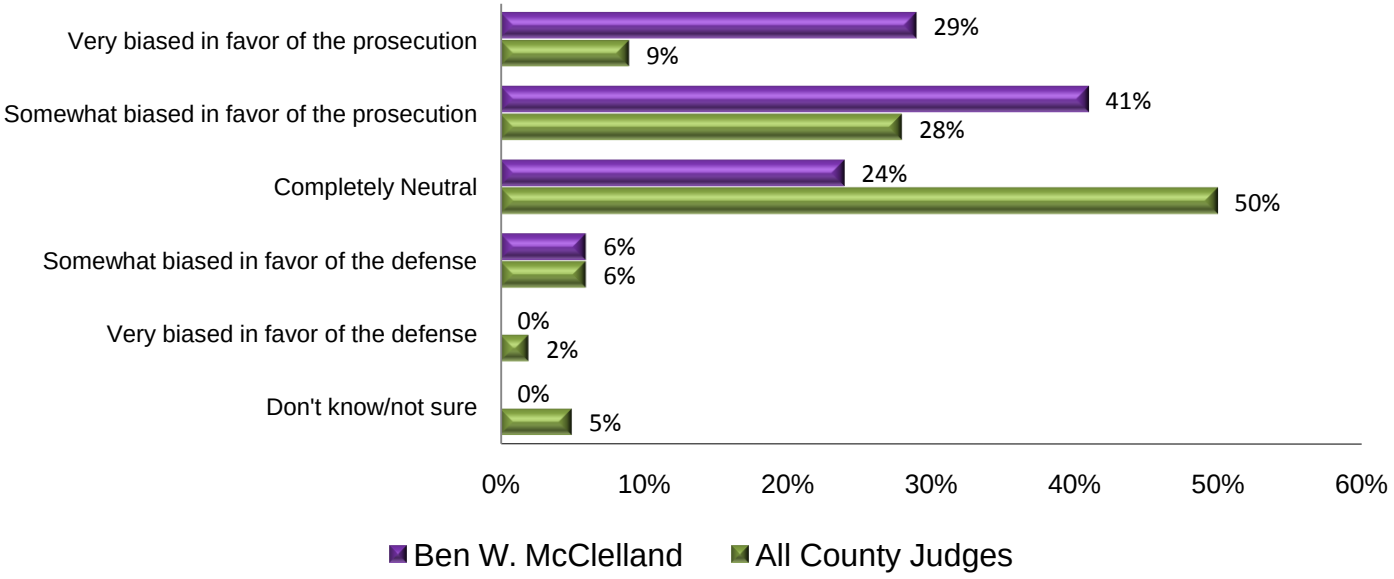
Judge Ben W. McClelland

Survey of Attorneys Regarding Trial Judges

Average Grades



Biased in favor of prosecution/defense.

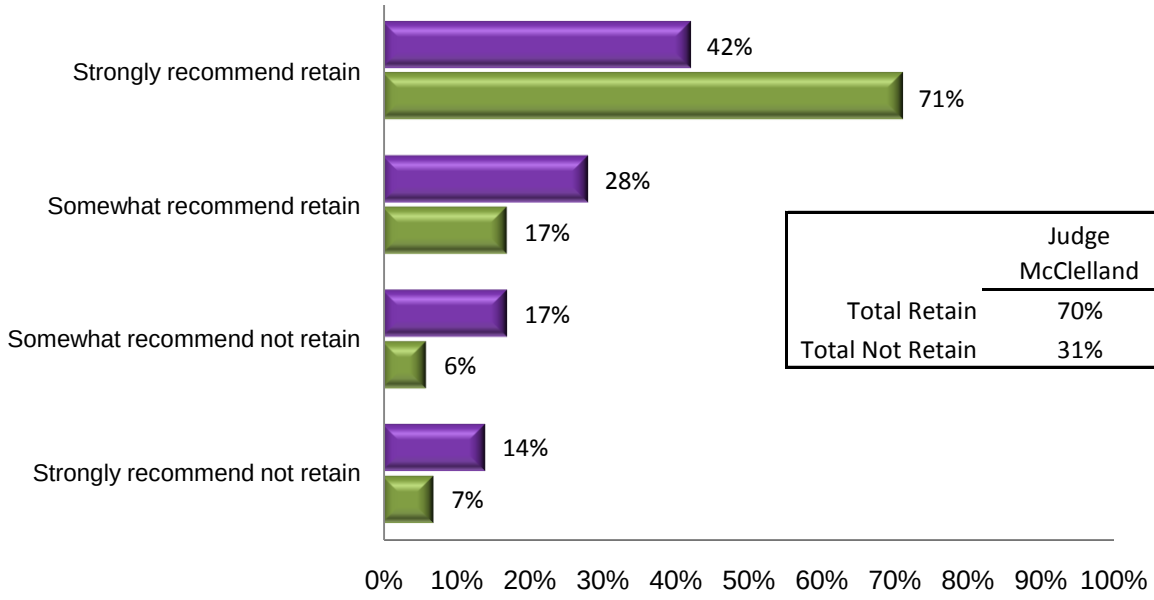


Judge Ben W. McClelland

Survey of Attorneys Regarding Trial Judges

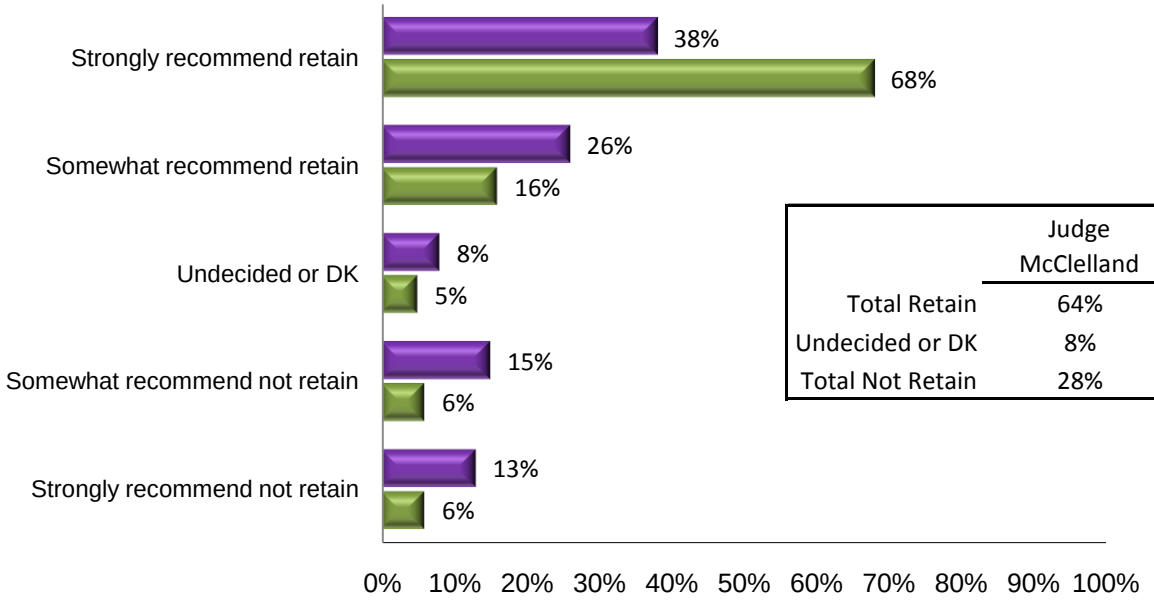
Q8. How strongly do you recommend that Judge McClelland be retained or not retained in office?

Excluding Undecided Respondents



	Judge McClelland	All Cnty Judges
Total Retain	70%	88%
Total Not Retain	31%	13%

Including Undecided Respondents



	Judge McClelland	All Cnty Judges
Total Retain	64%	84%
Undecided or DK	8%	5%
Total Not Retain	28%	12%

Ben W. McClelland All County Judges

Survey of Non-Attorneys Regarding Judge Ben W. McClelland

(Sample Size 274)

Survey of Non-Attorneys Regarding Trial Judges

Judge Ben W. McClelland Sample Size = 274	A	B	C	D	Fail	DK/NA	Average: Ben W. McClelland	Average: All County Judges
1. Demeanor:								
1a. Giving court proceedings a sense of dignity.	68%	18%	5%	4%	3%	1%	3.46	3.59
1b. Treating participants in the case politely and with respect.	69%	17%	5%	3%	6%	0%	3.38	3.61
1c. Conducting court in a neutral manner.	67%	17%	6%	4%	5%	1%	3.39	3.55
1d. Having a sense of compassion and human understanding for those who appear before the court.	58%	21%	6%	5%	7%	3%	3.22	3.47
						Overall Demeanor	3.36	3.56
2. Fairness:								
2a. Giving participants an opportunity to be heard.	69%	17%	7%	3%	3%	0%	3.48	3.59
2b. Treating those involved in the case without bias.	67%	16%	4%	4%	7%	1%	3.33	3.52
2c. Treating fairly people who represent themselves.	46%	10%	3%	4%	4%	33%	3.36	3.51
2d. Giving each side enough time to present his or her case.	69%	15%	6%	3%	2%	5%	3.54	3.59
						Overall Fairness	3.43	3.55
3. Communications:								
3a. Making sure participants understand the proceedings, and what is going on in the courtroom.	71%	18%	6%	3%	2%	1%	3.55	3.64
3b. Using language that everyone can understand.	68%	22%	5%	4%	1%	0%	3.50	3.66
3c. Speaking clearly so everyone in the courtroom can hear what is being said.	75%	16%	6%	2%	1%	0%	3.60	3.69
						Overall Communications	3.55	3.66
4. Diligence:								
4a. Beginning court on time	61%	22%	9%	3%	1%	4%	3.44	3.45
4b. Maintaining appropriate control over proceedings.	72%	19%	5%	3%	1%	0%	3.58	3.67
4c. Setting reasonable schedules for cases.	55%	17%	9%	3%	3%	14%	3.38	3.56
4d. Being prepared for cases.	65%	17%	6%	2%	3%	7%	3.50	3.61
4e. Managing court proceedings so that there is little wasted time.	56%	28%	8%	3%	3%	1%	3.33	3.50
						Overall Diligence	3.45	3.56
5. Application of Law:								
5a. Giving reasons for rulings.	64%	18%	4%	3%	3%	7%	3.48	3.50
5b. Willing to make decisions without regard to possible outside pressure.	59%	11%	4%	3%	6%	17%	3.38	3.52
5c. Being able to identify and analyze relevant facts.	65%	15%	4%	4%	5%	6%	3.39	3.50
						Overall Application of Law	3.42	3.51
						Overall Average Grade:	**3.44**	**3.56**

Survey of Non-Attorneys Regarding Trial Judges

Judge Ben W. McClelland

Sample Size = 274

	Percentage	
	Ben W. McClelland	All County Judges

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	19%	12%
Competely neutral	75%	81%
Biased in favor of the defense total	7%	7%
Average	0.28	0.12

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

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	19%	12%
Competely neutral	69%	77%
Lenient sentencing total	12%	11%
Average	0.36	0.06

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

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

[Percentages excluding undecided responses.]

Strongly recommend retain	81%	84%
Somewhat recommend retain	7%	8%
Somewhat recommend not retain	4%	2%
Strongly recommend not retain	9%	6%
Total Retain	88%	92%
Total Not Retain	13%	8%

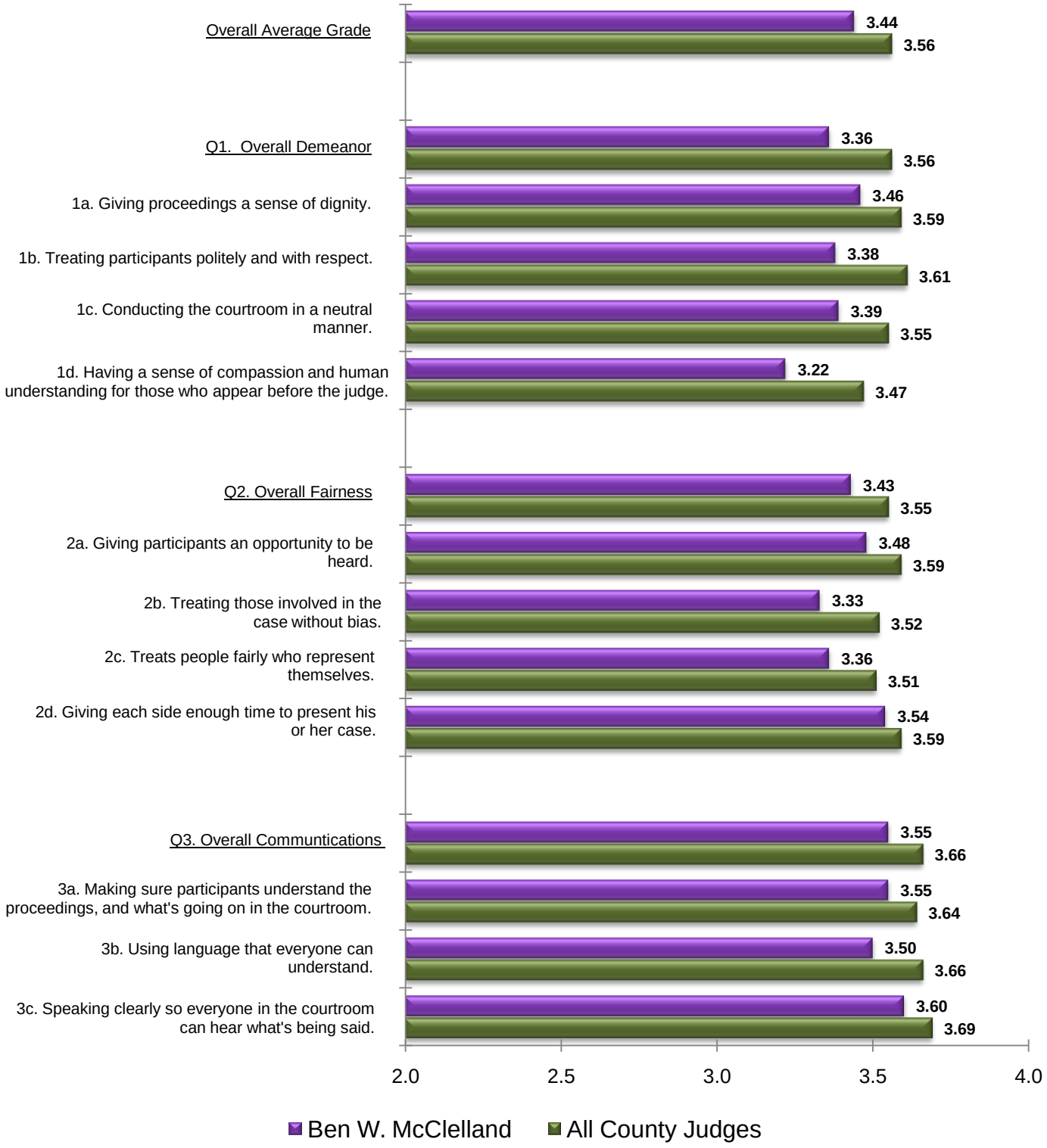
[Percentages including undecided responses.]

Strongly recommend retain	73%	77%
Somewhat recommend retain	6%	8%
Undecided or Don't Know	10%	8%
Somewhat recommend not retain	4%	2%
Strongly recommend not retain	8%	5%
Total Retain	79%	85%
Undecided/Don't Know	10%	8%
Total Not Retain	12%	7%

Judge Ben W. McClelland

Survey of Non-Attorneys Regarding Trial Judges

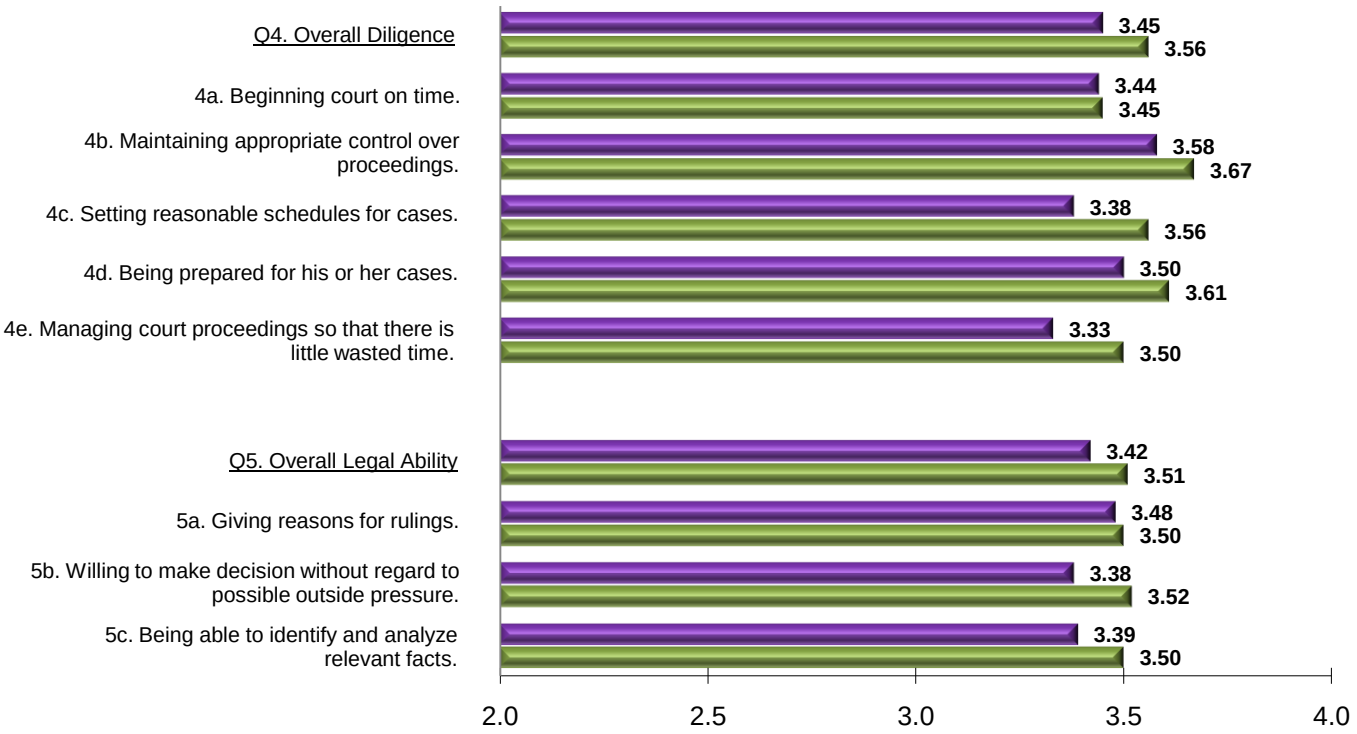
Average Grades



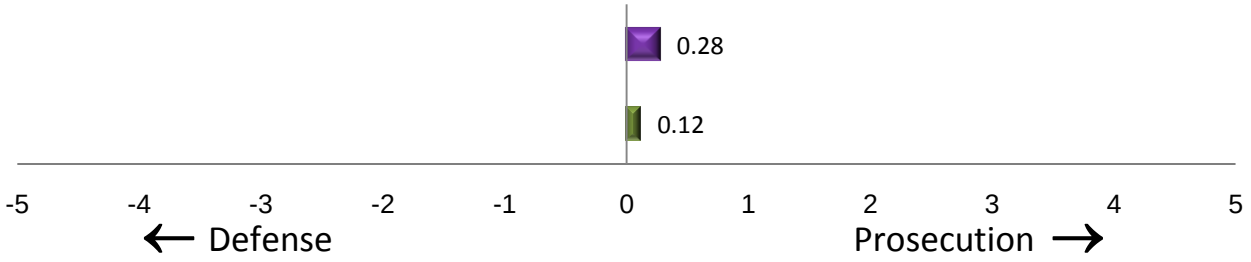
Judge Ben W. McClelland

Survey of Non-Attorneys Regarding Trial Judges

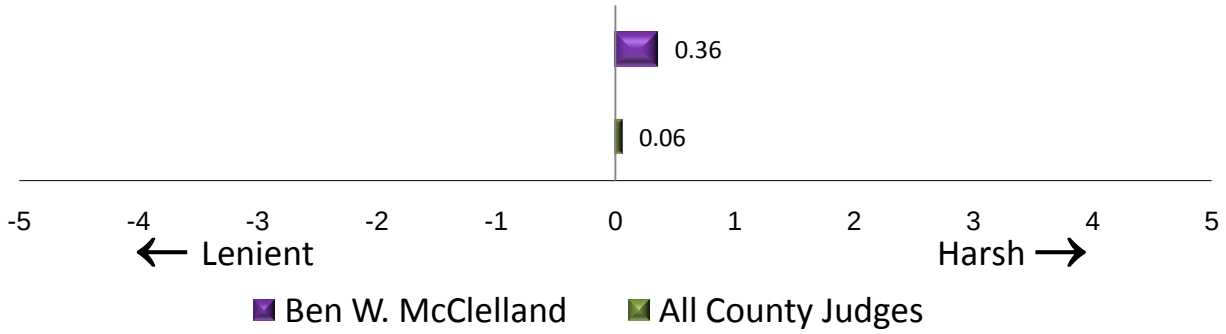
Average Grades



Q6 Biased in favor of prosecution/defense.



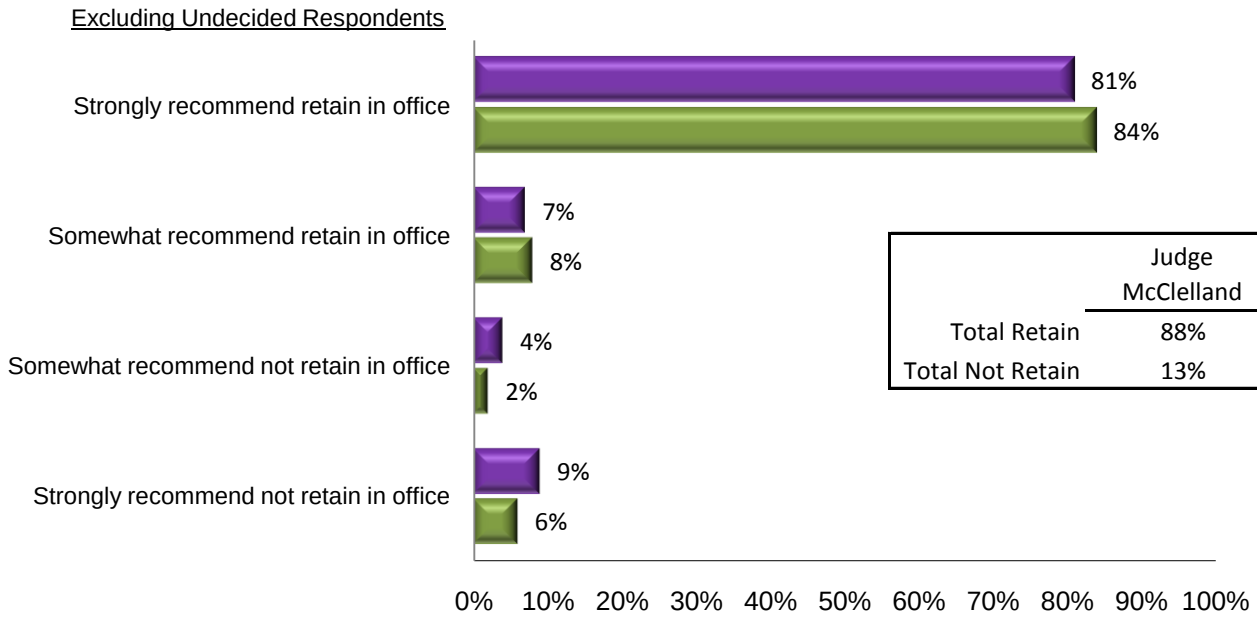
Q7 Lenience or Harshness in Sentencing.



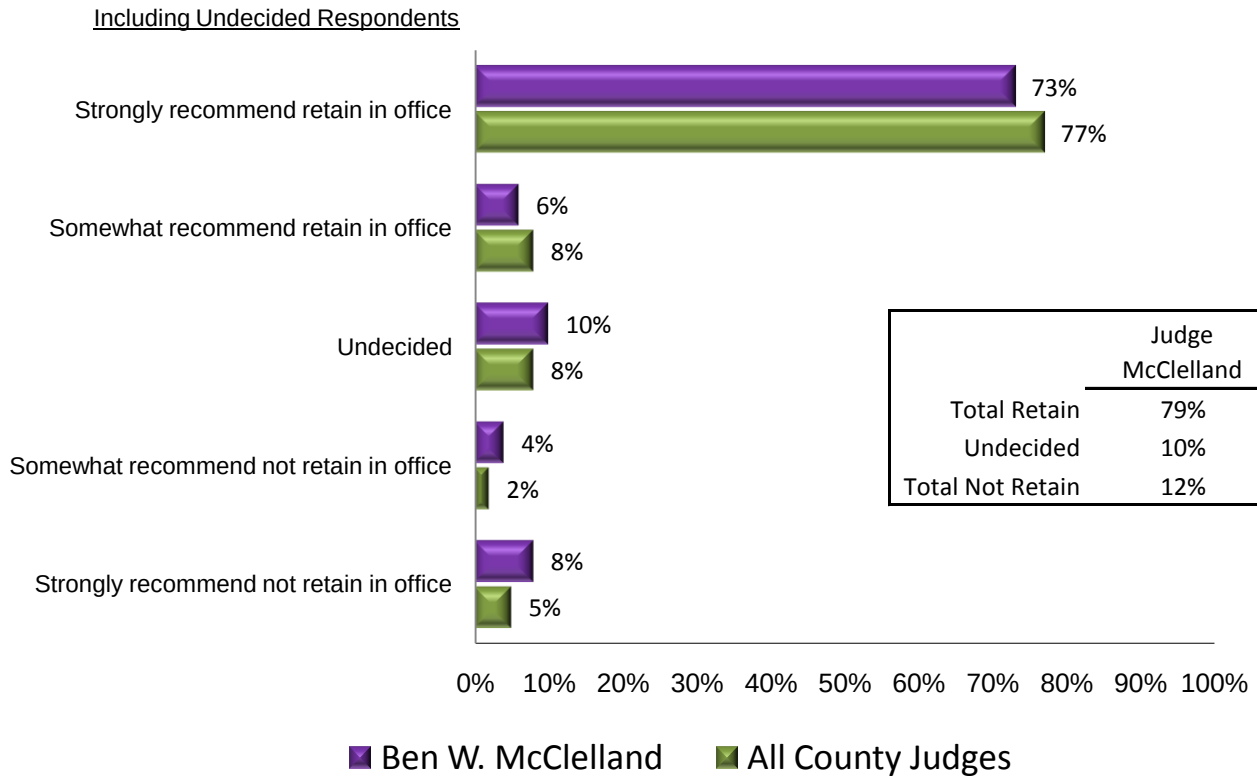
Judge Ben W. McClelland

Survey of Non-Attorneys Regarding Trial Judges

Q10. How strongly do you recommend that Judge McClelland be retained or not retained in office?



	Judge McClelland	All Cnty Judges
Total Retain	88%	92%
Total Not Retain	13%	8%



	Judge McClelland	All Cnty Judges
Total Retain	79%	85%
Undecided	10%	8%
Total Not Retain	12%	7%

Methodology

Methodology

The results shown in the 2011 Interim Judicial Performance 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:

Talmey-Drake Research & Strategy received case data with the names of people who had likely been in each judge's courtroom from five primary sources:

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

Additional information was provided by the State Public Defender's Office and the courts in the 1st and 18th Judicial Districts.

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

i. **Prior to 2009**, the survey of Attorneys Regarding Trial Judges was conducted using paper questionnaires mailed to the attorneys' offices. A sample of attorneys drawn from the case data were assigned to evaluate judges subject to the following rules applied in the order shown.

1. No attorney would be asked to evaluate the same judge in a 24-month period.
2. If an attorney was eligible to evaluate both a trial judge and an appellate judge, the attorney was assigned to evaluate the appellate judge.
3. If there were several judges the attorney could potentially evaluate, the attorney was assigned the judge with whom he or she had had the most cases during the sampling time frame, or the judge with the smallest sample in order to even out sample sizes among judges.

Attorneys were mailed a questionnaire, and if they did not respond they were sent a reminder postcard followed by a second questionnaire and in some cases a second reminder postcard. Questionnaires were barcoded, and if an attorney mailed back two questionnaires, the second one was deleted from the data file. Attorneys who did not complete the survey after the second request were then telephoned and asked to complete the survey by phone.

ii. **In 2009** the Attorneys Regarding Trial Judges Survey moved from being a paper survey mailed to potential respondents to an online survey. Moving the survey to online permitted asking individual attorneys to evaluate up to five trial judges, and with the exception of the effects of the modified assignment rules 1 through 3 below, it became a survey of all attorneys who had cases before trial judges. Allowing an attorney to evaluate up to five judges, entailed slightly modifying the assignment rules:

1. No attorney would be asked to evaluate the same justice or judge in a 24-month period.
2. If an attorney was eligible to evaluate both a trial judge and an appellate judge, the attorney was assigned to evaluate the appellate judge.
3. If there were more than five judges who could be assigned to the attorney, the attorney was assigned the judges with whom he or she had had the most cases during the sampling time frame, or the judges with the smallest samples in order to even out sample sizes among judges.

Attorneys were first mailed a letter about the online survey to let them know that they would soon receive an email with a link to the survey. The Web address of the survey and a password were included in the letter if the attorney wanted to complete the survey immediately. A week after the first email was sent, a follow-up email was sent. Potential respondents who did not complete the survey after the second email were then telephoned and asked to either complete the survey then by phone, or to please complete it online.

iii. **In 2010**, and going forward, rule #2 above was changed so that an attorney could be asked to evaluate a combination of up to seven trial judges or Court of Appeals judges, if the attorney had had a case before the COA. Attorneys who had cases before the both the Supreme Court and trial judges during the sample time frame were asked to evaluate all seven Supreme Court justices, and not asked to evaluate the trial judges.

The results shown in the 2011 Interim Judicial Performance Survey Report for the Attorneys Regarding Trial Judges survey are based on the combined survey results collected from January 2005 through March 30, 2011[1] for those questions that have been consistently asked during that time period.

Since 2010, 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 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 district judge as an example: as survey data is collected it is pooled together for six years. After six years, as new data is added to the judge's survey results in the first quarter of the seventh year, the oldest quarter of data in the pool is deleted.

The current data for all judges only goes back as far as 2005—or the year the judge took the bench—therefore the rolling of the survey results only affects the county judge sample in the 2011 Interim reports.

[1] The State Commission on Judicial Performance authorized continuous surveying in 2007. Prior to 2007 data was only collected in the odd numbered years before the retention reports were issued. Therefore, while data was gathered in 2005 and 2007 through the 1st quarter of 2011, and used in this report, there was no data collected in 2006.

b. Questions:

The survey questions asked respondents to use a grade of A, B, C, D, or F to assess the justice or judge's performance on twelve aspects of judicial performance. (See Questionnaire section.) These grades were then converted to a numerical scores 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.

c. Comments:

In addition to the A through F questions, respondents were also asked what they considered to be the judge's strengths and what they considered to be the judge's 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 fixed, but where the respondent entered a comment in all upper or all lower case, or without punctuation, the comment was not corrected.

d. Analysis:

The Attorneys Regarding Trial Judges section first shows a table of the percentage distribution for each of the A through F questions, including "don't know" 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 district judges and are shown in the furthest right column on the page. Tables showing the percentage distribution for all questions for all district 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 district judges. The percentages are shown both including and excluding "don't know/undecided" 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 Trial Judges section of the report lists the comments the attorney made about the judge's strengths and weaknesses.

e. Cooperation Rate:

The overall response rate for the Attorneys Regarding Trial Judges Survey is calculated as the number of completed survey-evaluations (the number of judges an attorney chose to evaluate) divided by the number of possible evaluations **(**the number of judges the attorney could have evaluated) resulting in an overall response rate of 43.3% for district judges and 33.4% for county judges. An equivalent response rate for an individual judge is computed as the number of completed survey-evaluations for that judge divided by the number of possible evaluations that could have been completed for the judge.

Since 2009 attorneys have generally been asked to evaluate multiple judges per survey cycle, which affects the way cooperation rates are calculated and results in what appear to be lower overall cooperation rates. However, comparing the percentage of unique attorneys who responded to the mail surveys conducted from 2005 to 2008 to the percentage of unique attorneys who responded to the online surveys conducted from 2009 to the first quarter of 2011 yields very similar percentages. From 2005 to 2008 6,347 unique attorneys were asked to participate in the Judicial Performance mail surveys. Four thousand three (3,984), or 62.8%, responded with a completed questionnaire. Similarly, from 2009 through the first quarter 2011 Talmey-Drake asked 7,589 unique attorneys to participate in the Judicial Performance online survey, of which an almost identical percentage, 62.9% (4,777 attorneys) responded with one or more completed survey-evaluations of a judge. On average each attorney responding to the online survey request evaluated 3.7 judges. [2]

[2] Because Talmey-Drake deletes survey results associated with judges who are no longer on the bench, the counts used in this paragraph refer only to data collected regarding trial judges who are active at this writing.

II Non-Attorneys Regarding Trial Judges

a. Sample:

Talmey-Drake Research & Strategy received case data with the names of non-attorneys who had likely been in each judge's courtroom from five primary sources:

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

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

Depending on the number of names available to be sampled for each judge, a random sample was drawn if the quantity of potential respondents was large. On the other hand, if the count of possible respondents was small, all potential respondents were included in the sample. Where a person had been in more than one judge's courtroom, the selection criteria for which judge he or she would be sent a questionnaire was generally for the judge in whose courtroom the potential respondent had been in most often.

Each person whose name was sampled for the Non-Attorney Survey was mailed an initial postcard informing the recipient that he or she would be receiving a questionnaire. Two to three weeks after the post card 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 in 2010, 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 district judge as an example: as survey data is collected it is pooled together for six years. After six years, as new data is added to the judge's survey results in the first quarter of the seventh year, the oldest quarter of data in the pool is deleted.

The current data for all judges only goes back as far as 2005—or the year the judge took the bench—therefore the rolling of the survey results only affects the county judge sample in the 2011 Interim reports. [3]

[3] The State Commission on Judicial Performance authorized continuous surveying in 2007. Prior to 2007 data was only collected in the odd numbered years before the retention reports were issued. Therefore, while data was gathered in 2005 and 2007 through the 1st quarter of 2011, and used in this report, there was no data collected in 2006.

b. Questions:

The survey questions asked respondents to use a grade of A, B, C, D, or F to assess the justice or judge's performance on twelve aspects of judicial performance (See Questionnaire section.) These grades were then converted to a numerical scores 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.

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

c. Analysis:

The Non-Attorneys Regarding Trial Judges section first shows a table of the percentage distribution for each of the A through F questions, including "don't know" 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 district judges and are shown in the furthest right column on the page. Tables showing the percentage distribution for all questions for all district 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 district judges. The percentages for the retention question are shown including and excluding "don't know/undecided" 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 Trial Judges section of the report lists the comments the attorney 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 what they considered to be the judge's 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.

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. 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 who they had not observed. 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 below, 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 district 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	7	5	0	0	2	28.6%
Defense Attorneys	35	21	2	0	12	36.4%
Civil						
Attorneys for Litigants	18	9	0	0	9	50.0%
Other Attorneys Civil	32	16	0	0	16	50.0%
Total Attorneys	92	51	2	0	39	43.3%
Non-attorneys						
Criminal						
Witness	15	6	1	1	7	50.0%
Other	4	2	2	0	0	0.0%
Law Enforcement	1	0	0	0	1	100.0%
Defendant	420	241	105	7	67	21.3%
Civil						
Litigant	108	38	50	2	18	31.0%
Witness	17	2	10	0	5	71.4%
Jurors	292	96	19	5	172	63.0%
Employees	4	0	0	0	4	100.0%
Total Non-attorneys	861	385	187	15	274	40.7%
Grand Total:	**953**	**436**	**189**	**15**	**313**	**41.0%**

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	4156	2811	74	4	1267	31.0%
Defense Attorneys	17291	11594	196	12	5489	32.1%
Other Attorneys Criminal	160	82	25	0	53	39.3%
Civil						
Attorneys for Litigants	2387	1332	95	5	955	41.7%
Other Attorneys Civil	2728	1654	69	1	1004	37.8%
GAL	2	0	0	0	2	100.0%
Attorneys, Unknown Role Type	50	17	13	1	19	51.4%
Total Attorneys	26774	17490	472	23	8789	33.4%
Non-attorneys						
Criminal						
Victim	687	473	180	14	20	3.9%
Witness	5666	3174	1559	223	709	17.3%
Other	3497	2198	941	46	312	12.2%
Law Enforcement	10881	6925	1772	150	2030	22.3%
Defendant	45129	24420	16000	487	4214	14.5%
Civil						
Litigant	12946	6956	3594	202	2193	23.4%
Witness	1892	1039	433	35	383	26.3%
Other	110	64	27	2	17	20.5%
Jurors	25631	11551	1871	542	11609	48.9%
Employees	403	132	59	43	169	49.1%
Total Non-attorneys	106842	56932	26436	1744	21656	26.9%
Grand Total:	**133616**	**74422**	**26908**	**1767**	**30445**	**28.5%**

Projectability

Most surveys seen by the public are surveys that are intended to be projectable, that is the results from the sample of people surveyed can be used to estimate a percentage or value of the population sampled with a known probability of error. For example, a pre-election poll of 500 likely Colorado voters is used to estimate the percentage of voters who will vote for Candidate A versus Candidate B on election day, plus or minus some number of percentage points. The plus or minus amount is usually what is known as the 95%-confidence interval (the known probability of error), or what the media often refers to as the margin-of-error.

Neither of the two surveys that make up this report, Attorneys Regarding Trial Judges and the Non-Attorneys Regarding Trial Judges, are projectable with a known probability of error because the results are calculated from a self-selecting sample that is self-selecting based on the content and subject matter of the survey. In other words, the potential respondent knows the purpose and content of the survey, and based on that, decides whether to respond to the survey.

While projectability within a known probability of error is a highly desirable attribute of a survey, it is often not feasible to achieve. Commercial market research often uses nonprojectable (and small) samples-the most well known of which are for focus groups. Moreover, the federal courts have long accepted, and do not expect, projectable samples for market confusion surveys used in trademark litigation. In other words, one can still use the results of the Judicial Performance Evaluation Survey to estimate how everyone who has observed a justice or judge in the courtroom would grade him or her, just not with a known probability of error.

The Judicial Performance Evaluation Survey is a valuable means, perhaps the only practical means, for the Judicial Performance Commissions to have a summary of structured interviews with a number of people who have courtroom familiarity with the judge being evaluated, and who most often—albeit not always—are responding out of a desire to improve the performance of our state's judicial system.

Survey of Attorneys Regarding Trial Judges

All County Judges Sample Size = 8789	A	B	C	D	Fail	DK/NA	Average Grade
1. Case Management:							
1a. Promptly issuing a decision on the case after trial.	50%	18%	6%	1%	1%	24%	3.52
1b. Maintaining appropriate control over proceedings.	62%	24%	9%	3%	1%	1%	3.44
1c. Promptly ruling on pre-trial motions.	47%	21%	7%	2%	1%	21%	3.39
1d. Setting reasonable schedules for cases.	57%	24%	9%	3%	2%	6%	3.39
						Overall Case Management	3.44
2. Application and Knowledge of Law:							
2a. Being able to identify and analyze relevant facts.	54%	25%	10%	4%	3%	3%	3.29
2b. Basing decisions on evidence and arguments.	49%	23%	12%	6%	4%	7%	3.16
2c. Willing to reconsider error in fact or law.	40%	18%	10%	6%	4%	22%	3.07
2d. Issuing consistent sentences when the circumstances are similar.	48%	23%	9%	4%	3%	14%	3.27
						Overall Application and Knowledge of Law	3.20
3. Communications:							
3a. Making sure all participants understand the proceedings.	66%	22%	7%	2%	1%	2%	3.53
3b. Providing written communications that are clear, thorough and well reasoned.	41%	18%	8%	3%	2%	28%	3.30
						Overall Communications	3.42
4. Demeanor:							
4a. Giving proceedings a sense of dignity.	64%	21%	8%	3%	2%	1%	3.43
4b. Treating parties with respect.	67%	18%	8%	4%	3%	1%	3.43
4c. Conducting his/her courtroom in a neutral manner.	59%	20%	10%	6%	4%	1%	3.26
4d. Consistently applying laws and rules.	55%	22%	9%	5%	3%	5%	3.27
						Overall Demeanor	3.35
5. Diligence:							
5a. Using good judgment in application of relevant law and rules.	52%	24%	11%	5%	4%	3%	3.20
5b. Doing the necessary homework and being prepared for his/her cases.	51%	23%	9%	4%	3%	10%	3.28
5c. Being willing to handle cases on the docket even when they are complicated and time consuming.	52%	18%	7%	3%	2%	18%	3.39
						Overall Diligence	3.29
						Overall Average Grade:	**3.33**

Survey of Attorneys Regarding Trial Judges

All County Judges **Sample Size = 8789**	Average Grade

Would you say the judge is:

Very biased in favor of the prosecution	9%
Somewhat biased in favor of the prosecution	28%
Completely neutral	50%
Somewhat biased in favor of the defense	6%
Very biased in favor of the defense	2%
Don't know or not sure	5%

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

[Percentages excluding undecided responses.]

Strongly recommend retain	71%
Somewhat recommend retain	17%
Somewhat recommend not retain	6%
Strongly recommend not retain	7%
Total Retain	88%
Total Not Retain	13%

[Percentages including undecided responses.]

Strongly recommend retain	68%
Somewhat recommend retain	16%
Undecided or Don't Know	5%
Somewhat recommend not retain	6%
Strongly recommend not retain	6%
Total Retain	84%
Undecided/Don't Know	5%
Total Not Retain	12%

Survey of Non-Attorneys Regarding Trial Judges

All County Judges Sample Size = 21656	A	B	C	D	Fail	DK/NA	Average Grade
1. Demeanor:							
1a. Giving court proceedings a sense of dignity.	72%	18%	5%	2%	2%	1%	3.59
1b. Treating participants in the case politely and with respect.	76%	15%	4%	2%	3%	1%	3.61
1c. Conducting court in a neutral manner.	74%	15%	5%	2%	3%	1%	3.55
1d. Having a sense of compassion and human understanding for those who appear before the court.	68%	18%	5%	3%	4%	2%	3.47
					Overall Demeanor		3.56
2. Fairness:							
2a. Giving participants an opportunity to be heard.	75%	15%	4%	2%	3%	1%	3.59
2b. Treating those involved in the case without bias.	73%	14%	4%	3%	4%	2%	3.52
2c. Treating fairly people who represent themselves.	52%	10%	3%	2%	3%	29%	3.51
2d. Giving each side enough time to present his or her case.	72%	14%	4%	2%	3%	5%	3.59
					Overall Fairness		3.55
3. Communications:							
3a. Making sure participants understand the proceedings, and what is going on in the courtroom.	76%	14%	5%	2%	2%	1%	3.64
3b. Using language that everyone can understand.	76%	16%	4%	1%	1%	1%	3.66
3c. Speaking clearly so everyone in the courtroom can hear what is being said.	79%	14%	4%	1%	1%	1%	3.69
					Overall Communications		3.66
4. Diligence:							
4a. Beginning court on time	64%	21%	7%	3%	3%	3%	3.45
4b. Maintaining appropriate control over proceedings.	77%	15%	4%	1%	1%	1%	3.67
4c. Setting reasonable schedules for cases.	63%	16%	5%	2%	2%	13%	3.56
4d. Being prepared for cases.	71%	15%	4%	2%	2%	7%	3.61
4e. Managing court proceedings so that there is little wasted time.	67%	20%	6%	2%	2%	2%	3.50
					Overall Diligence		3.56
5. Application of Law:							
5a. Giving reasons for rulings.	65%	16%	5%	2%	3%	8%	3.50
5b. Willing to make decisions without regard to possible outside pressure.	60%	12%	4%	2%	3%	19%	3.52
5c. Being able to identify and analyze relevant facts.	67%	14%	4%	2%	4%	8%	3.50
					Overall Application of Law		3.51
					Overall Average Grade:		**3.56**

Survey of Non-Attorneys Regarding Trial Judges

All County Judges **Sample Size = 21656**	Average Grade

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	12%
Competely neutral	81%
Biased in favor of the defense total	7%
Average	0.12

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	77%
Lenient sentencing total	11%
Average	0.06

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 2c and question 6.)*

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

1. Case Management:

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

2. Application and Knowledge of Law:

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

3. Communications:

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

4. Demeanor:

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

5. Diligence:

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

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 retained in office?

Strongly recommend he be retained in office..... 5
Somewhat recommend he be retained in office..... 4
Undecided or don't know enough to make recommendation..... 3
Somewhat recommend he not be retained in office..... 2
Strongly recommend he not be retained in office 1

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
Somewhat recommend he/she be retained in office	4
Undecided or don't know enough to make recommendation	3
Somewhat recommend he/she not be retained in office	2
Strongly recommend he/she not be retained in office	1

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.

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 in the past 18 months, or you feel that you do not have sufficient experience with Judge *[Last Name]* to have an opinion 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	DK F	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