



**COLORADO**

**Office of Judicial  
Performance Evaluation**

Judicial Branch

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The Honorable Erin Fernandez-Ely  
2018 Judicial Performance Survey Report  
County Court

Conducted by:



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# Summary of Results

For Judge Erin Fernandez-Ely, 42 qualified survey respondents submitted surveys. Of those who responded, 35 agreed they had worked with Judge Fernandez-Ely enough to evaluate her performance. This report reflects these 35 responses.

Respondents rated judges on various questions using an A to F scale, in which the grades were then converted to the following numerical scores: A= 4, B=3, C=2, D=1 and Fail=0. An average score of 4.0 is the highest possible score and a 0.0 is the lowest possible score.

## Overall Score

Figure 1

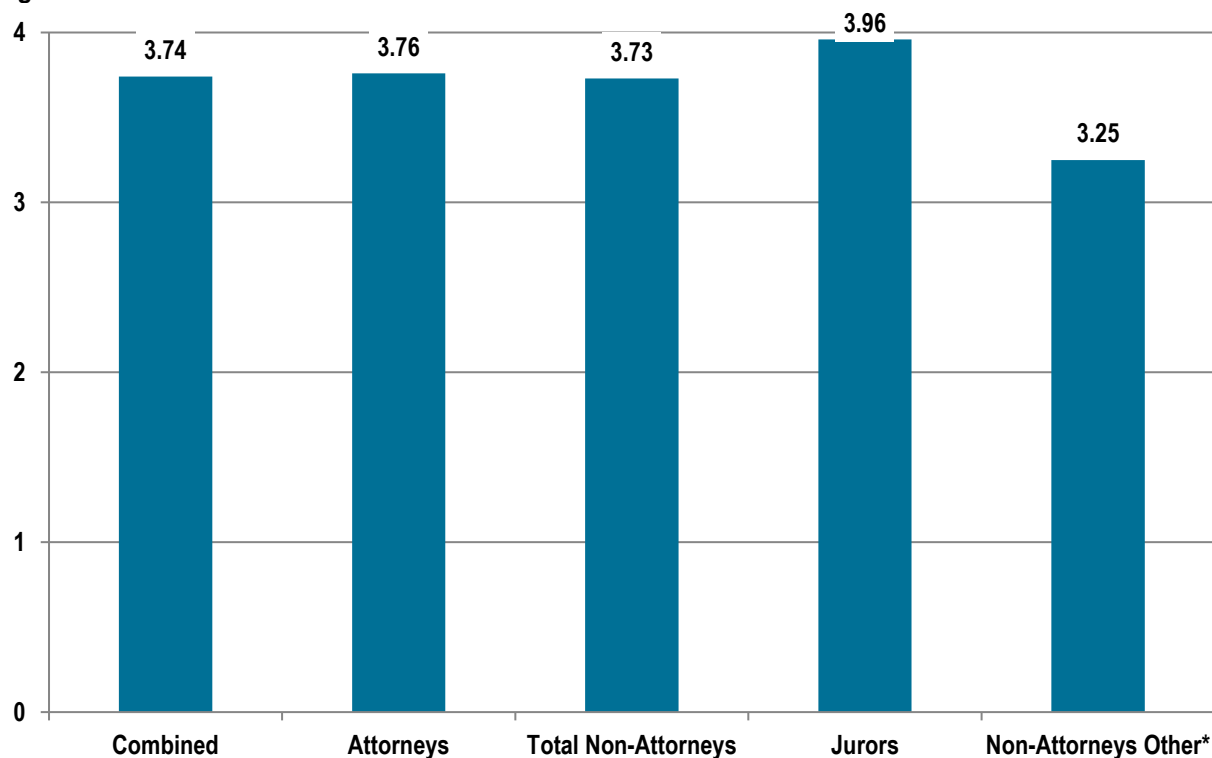


Table 1

| Judge Erin Fernandez-Ely Overall Scores |          |           |                     |        |                      |
|---|----------|-----------|---------------------|--------|----------------------|
|   |          |           | Non-Attorneys       |        |                      |
|   | Combined | Attorneys | Total Non-Attorneys | Jurors | Non-Attorneys Other* |
| Overall Grade                           | 3.74     | 3.76      | 3.73                | 3.96   | 3.25                 |

\* The Non-Attorney Other category includes law enforcement personnel, defendants, litigants, and witnesses.

## Performance Scores

Figure 2

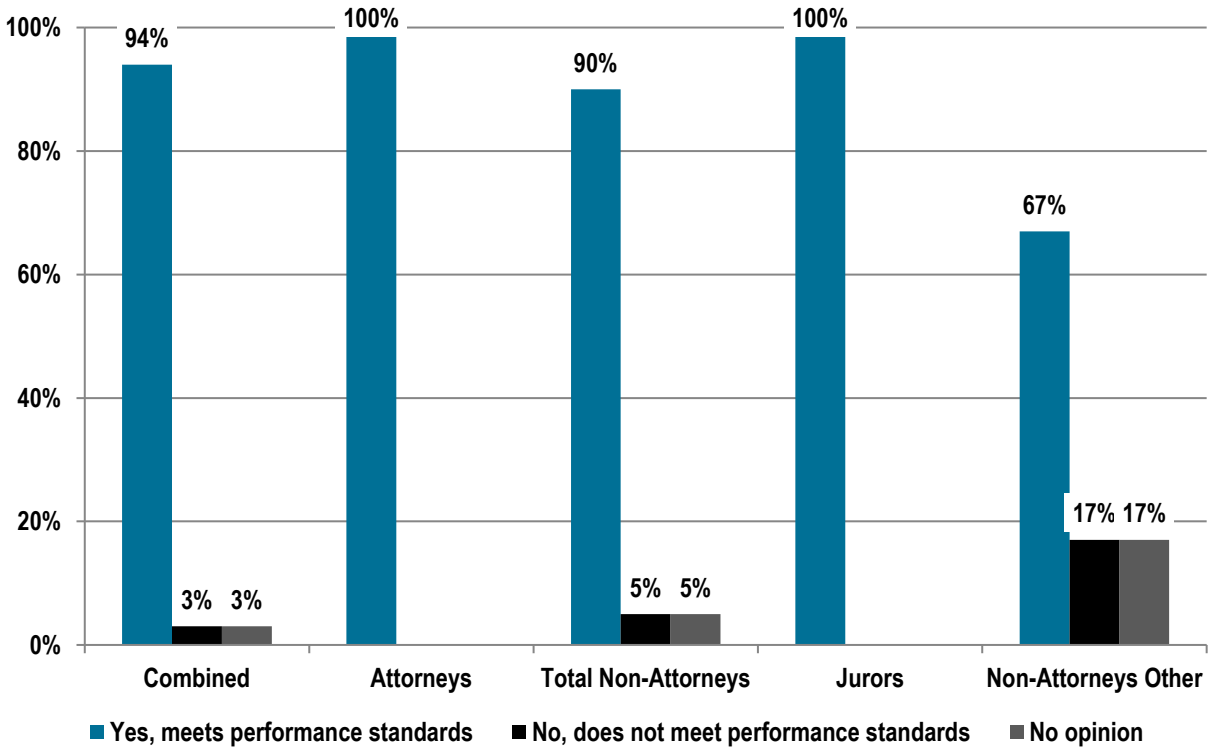


Table 2

| Judge Erin Fernandez-Ely Overall Retention Scores |          |           |                     |        |                     |
|---|----------|-----------|---------------------|--------|---------------------|
|   |          |           | Non-Attorneys       |        |                     |
|   | Combined | Attorneys | Total Non-Attorneys | Jurors | Non-Attorneys Other |
| Yes, meets performance standards                  | 94%      | 100%      | 90%                 | 100%   | 67%                 |
| No, does not meet performance standards           | 3%       | 0%        | 5%                  | 0%     | 17%                 |
| No opinion  | 3%       | 0%        | 5%                  | 0%     | 17%                 |

## Individual Category Scores

Table 3

| Judge Erin Fernandez-Ely Overall Category Scores |           |               |        |                     |
|--|-----------|---------------|--------|---------------------|
| Area   | Attorneys | Non-Attorneys |        |                     |
|  |           | Total         | Jurors | Non-Attorneys Other |
| Case Management                                  | 3.65      | N/A           | N/A    | N/A                 |
| Application and Knowledge of Law                 | 3.63      | 3.58          | 3.88   | 2.75                |
| Communications                                   | 3.89      | 3.81          | 4.00   | 3.50                |
| Diligence  | 3.67      | 3.69          | 4.00   | 3.20                |
| Demeanor   | 3.98      | 3.82          | 3.91   | 3.54                |
| Fairness   | N/A       | 3.76          | 4.00   | 3.25                |

## Summary of Responses

**Table 4: Response Rates**

| Group               | Total Sent | Undeliverable or Not Applicable* | Complete | Response Rate | % Without sufficient knowledge** |
|---------------------|------------|----------------------------------|----------|---------------|----------------------------------|
| Attorneys           | 45         | 0                                | 18       | 40%           | 22%                              |
| Total Non-Attorneys | 205        | 53                               | 24       | 16%           | 13%                              |
| Staff               | 10         | 0                                | 8        | 80%           | 13%                              |
| Jurors              | 27         | 0                                | 9        | 33%           | 11%                              |
| Other Non-Attorneys | 168        | 53                               | 7        | 6%            | 14%                              |

\*Undeliverable or Not Applicable surveys are those that were returned as undeliverable, the person no longer works at the address provided, or the respondent is deceased.

\*\*The percent without sufficient knowledge are those that said they had insufficient experience to evaluate the judge or justice.

# Survey of Attorneys

## Methodology and How to Read Results

For Judge Fernandez-Ely, 18 qualified survey respondents submitted surveys. Of those who responded, 14 agreed they had worked with Judge Fernandez-Ely enough to evaluate her performance. This report reflects these 14 responses. The survey results are divided into nine sections: Retention, Case Management, Application and Knowledge of Law, Communications, Demeanor, Diligence, Bias, Strengths, and Weaknesses.

The results are shown in both graphs and tables. Each judge's scores are shown along with a comparison to other judges who serve at the same court level. The comparison group is called "County Judges" on the charts.

### a. Response rates

During the 2017 administration, a total of 20,283 survey invitations were sent to 6,391 attorneys inviting them to evaluate judges and justices standing for retention in 2018. On average, each attorney was asked to evaluate 3.2 judges. In total 3,983 surveys were completed with an additional 1,943 responses where the attorney indicated that they did not have enough experience with the judge to be comfortable evaluating him or her. The response rate for the survey was 29% and the survey completion rate (the number of those familiar enough to evaluate the judge divided by the total number of attorney responses including those indicating they did not have sufficient familiarity to evaluate the judge) was 67%.

### b. Methodology

The 2017 attorney survey was conducted online beginning on August 8<sup>th</sup>, 2017. Attorneys with appearances in front of judges during the first and second quarters of 2017 were first mailed a pre-notification letter on August 8<sup>th</sup>, 2017 informing them about the survey and providing a link and login information to access the survey online. Next, a series of three email invitations were sent on August 10<sup>th</sup>, August 29<sup>th</sup>, and September 21<sup>st</sup>.

This process was repeated among attorneys with appearances in the third quarter of 2017 beginning with a pre-notification letter sent on November 10<sup>th</sup>, 2017. The letter was followed up by email invitations sent on November 20<sup>th</sup>, December 4<sup>th</sup>, and December 12<sup>th</sup>.

To further increase the amount of data collected, an additional cycle of data collection took place in February 2018. Invitations were emailed to attorneys with appearances during the 4<sup>th</sup> quarter of 2017. This cycle included a pre-notification letter sent on February 12<sup>th</sup>, followed up by email invitations sent on February 15<sup>th</sup>, and February 19<sup>th</sup>. Additional invitations and reminders were sent out on request throughout the data collection process.

Appellate staff attorneys received the same survey as other attorneys, but were invited separately with a series of email invitations starting with the initial invite on December 14<sup>th</sup> and followed by a reminder on January 10<sup>th</sup>, 2018.

**c. Questions**

In the core of the survey, attorneys evaluated district and county judges on 17 aspects of judicial performance and appellate judges on 12 aspects of judicial performance using a grade scale of A, B, C, D, or F. These aspects were grouped by topic into different categories, five for district and county judges and two for appellate judges. The district and county categories were: Case Management, Application and Knowledge of Law, Communications, Demeanor, and Diligence. Questions regarding appellate judges were divided into two categories, one for general questions and one specific to their writing (only asked of those who indicated they had experience with the judge or justice’s written opinions).

In a final question, respondents were asked if they thought whether the judge met judicial performance standards. This question was re-worded from previous survey administrations when respondents were asked how strongly they would or would not recommend a judge for retention.

The question wording for the core of the survey was carried over from the 2016 administration with only minor changes to make the survey gender neutral. The questions were originally developed in 1998 to meet the criteria outlined in statute 13-5.5-101 et seq.

**Question Category Areas\***

|                                   | Trial Judge:<br>Attorney Survey | Appellate<br>Judge/Justice<br>Attorney Survey |
|-----------------------------------|---------------------------------|---|
| <b>Question Categories</b>        |                                 |   |
| Appellate Judge General Questions |                                 | 6   |
| Application and Knowledge of Law  | 5                               |   |
| Case Management                   | 4                               |   |
| Communications                    | 2                               |   |
| Demeanor                          | 3                               |   |
| Diligence                         | 3                               |   |
| Writing                           |                                 | 6   |
| <b>Individual Questions</b>       |                                 |   |
| Meets Performance Standards       | 1                               | 1   |

*\*The numbers in the table refer to the number of questions asked in each category by survey group.*

**d. Analysis and Reporting**

Letter grades were converted to a numerical score where A = 4, B = 3, C = 2, D = 1 and Fail = 0 for analysis. The results include an overall grade, a grade for each category, as well as a grade for each question. The overall score is calculated by averaging the responses to all questions answered by the attorneys. This score will have the same numerical range as the individual questions from zero to four.



Each category score is calculated by averaging the responses to all questions answered by the attorney within each category. This score will have the same zero to four numerical range as the individual questions. Similarly, an average score is calculated for each individual question with the exception of the final question on meeting performance standards.

The overall average and category scores will be reported for each judge along with the average scores for the judge's peers. The average score (with the exception noted above) will also be reported for each question along with the peer group score. In addition, the report will include the distribution of responses for each question, i.e. the percentage of attorneys that assigned a rating of A, B, C, D, and F. The distribution of responses is also reported for the questions on bias and retention.

#### **e. Comments**

At the end of each group of questions respondents had the option of leaving comments about the judge's performance in that area. 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.

## Case Management

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge Fernandez-Ely 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.

Figure 3

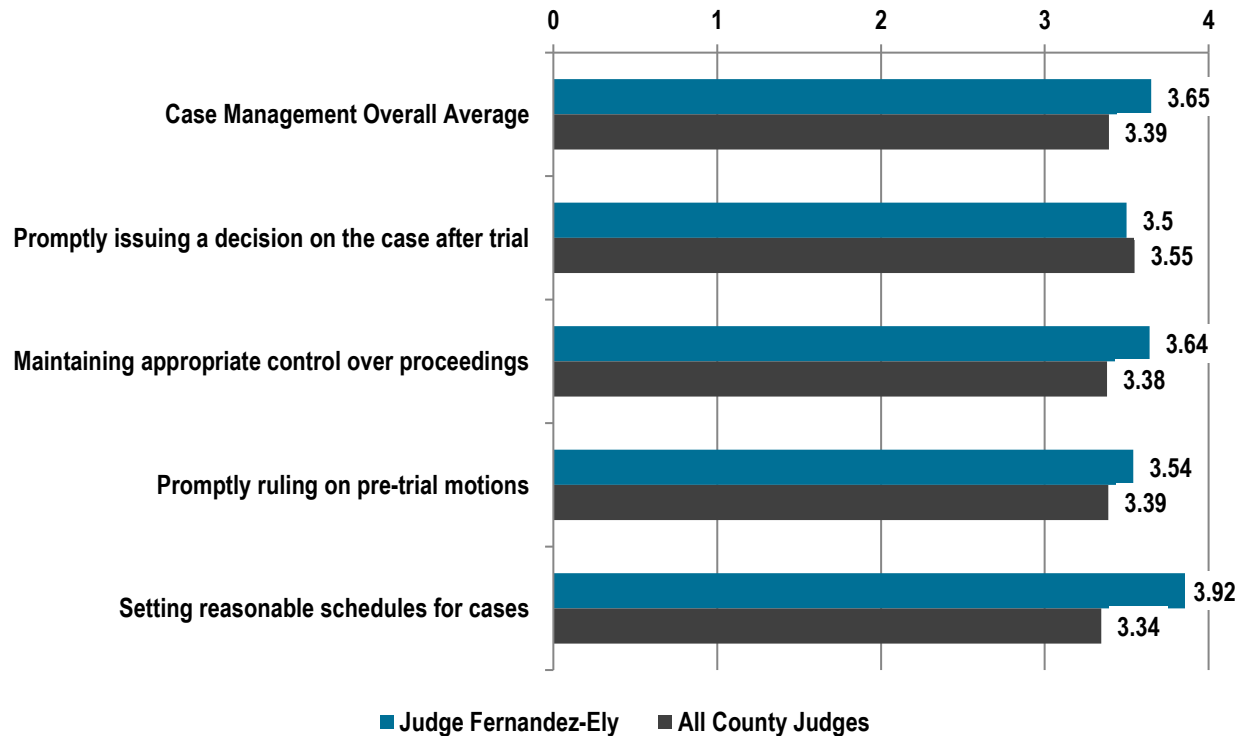


Table 5

| Case Management                                     |    |   |    |    |      |       |       |
|---|----|---|----|----|------|-------|-------|
| Judge Erin Fernandez-Ely                            | A  | B | C  | D  | Fail | DK/NA | Total |
| Promptly issuing a decision on the case after trial | 6  | 3 | 1  | -- | --   | 4     | 14    |
| Maintaining appropriate control over proceedings    | 9  | 5 | -- | -- | --   | --    | 14    |
| Promptly ruling on pre-trial motions                | 8  | 4 | 1  | -- | --   | 1     | 14    |
| Setting reasonable schedules for cases              | 12 | 1 | -- | -- | --   | 1     | 14    |

\*Respondents were not required to answer every question. The sum of those giving letter grades may not match the total due to questions being left blank.

## Application and Knowledge of Law

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge Fernandez-Ely 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.

Figure 4

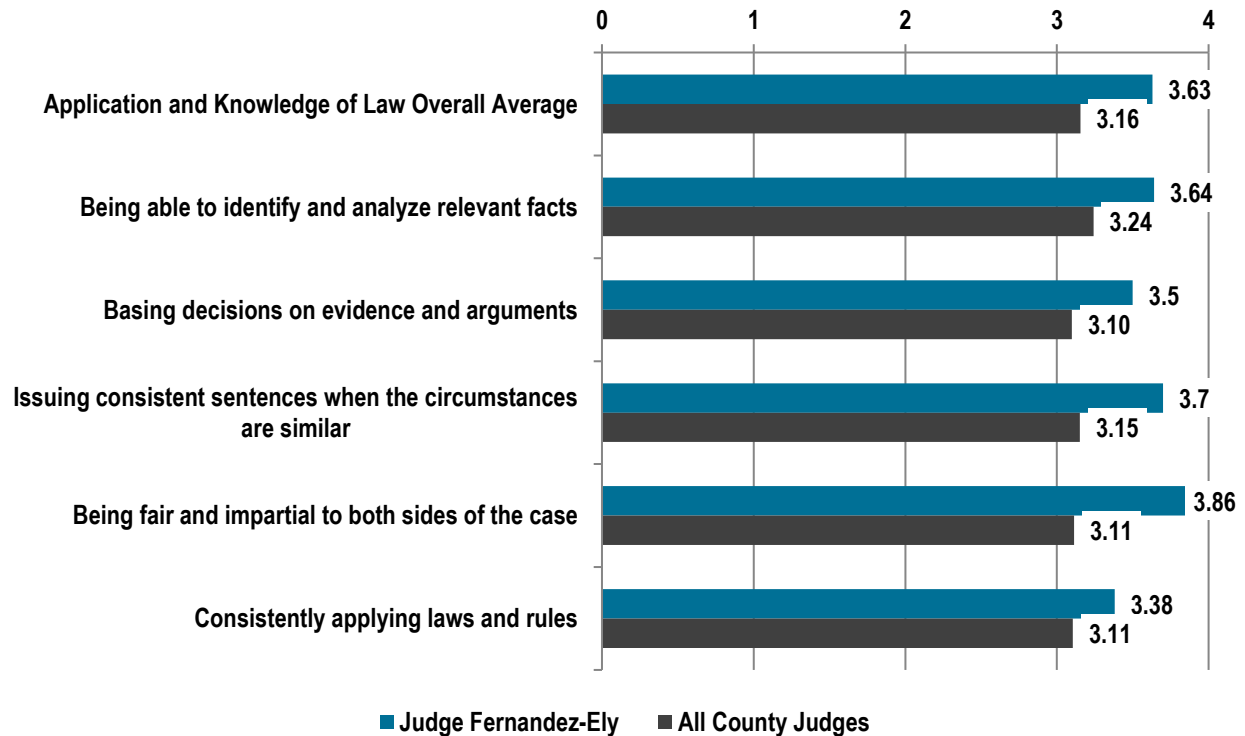


Table 6

| Application and Knowledge of Law                                |    |   |    |    |      |       |       |
|---|----|---|----|----|------|-------|-------|
| Judge Erin Fernandez-Ely  | A  | B | C  | D  | Fail | DK/NA | Total |
| Being able to identify and analyze relevant facts               | 10 | 3 | 1  | -- | --   | --    | 14    |
| Basing decisions on evidence and arguments                      | 9  | 3 | 2  | -- | --   | --    | 14    |
| Issuing consistent sentences when the circumstances are similar | 7  | 3 | -- | -- | --   | 1     | 11    |
| Being fair and impartial to both sides of the case              | 12 | 2 | -- | -- | --   | --    | 14    |
| Consistently applying laws and rules                            | 7  | 4 | 2  | -- | --   | 1     | 14    |

\*Respondents were not required to answer every question. The sum of those giving letter grades may not match the total due to questions being left blank.

## Communications

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge Fernandez-Ely 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.

Figure 5

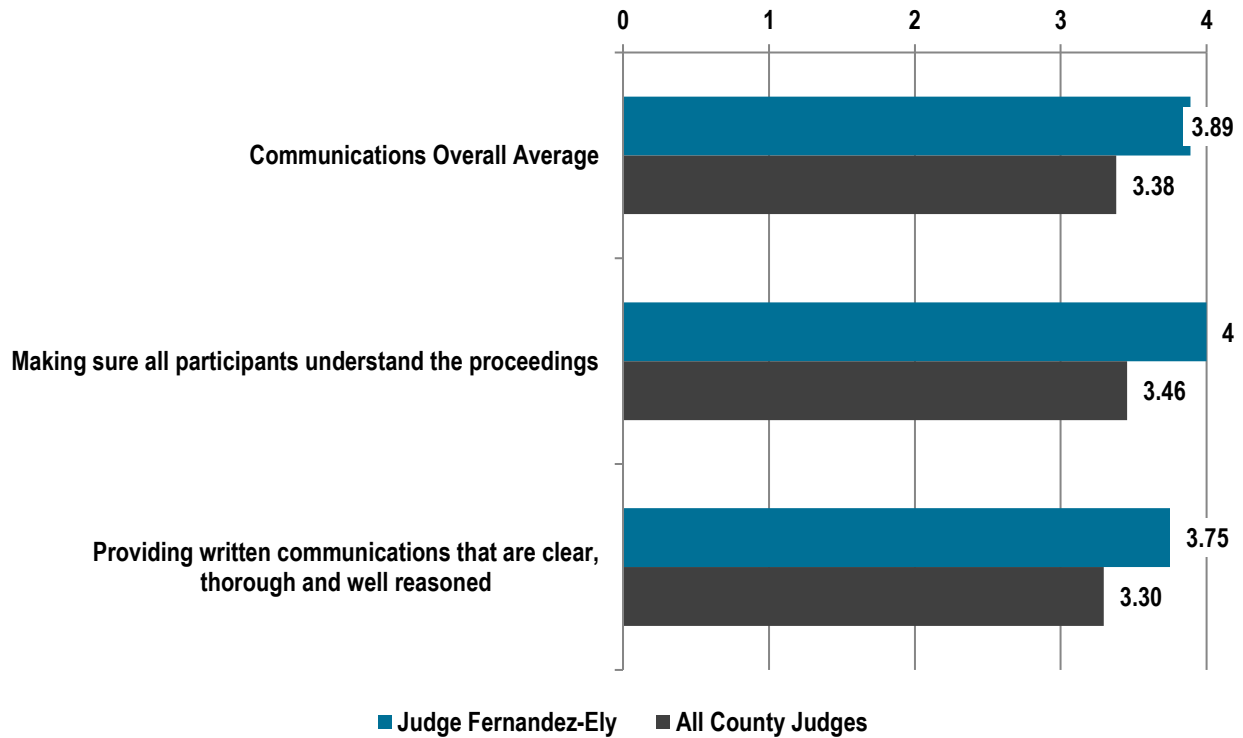


Table 7

| Communications  |    |    |    |    |      |       |       |
|---|----|----|----|----|------|-------|-------|
| Judge Erin Fernandez-Ely  | A  | B  | C  | D  | Fail | DK/NA | Total |
| Making sure all participants understand the proceedings                     | 14 | -- | -- | -- | --   | --    | 14    |
| Providing written communications that are clear, thorough and well reasoned | 10 | 1  | 1  | -- | --   | 2     | 14    |

\*Respondents were not required to answer every question. The sum of those giving letter grades may not match the total due to questions being left blank.

## Demeanor

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge Fernandez-Ely 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.

Figure 6

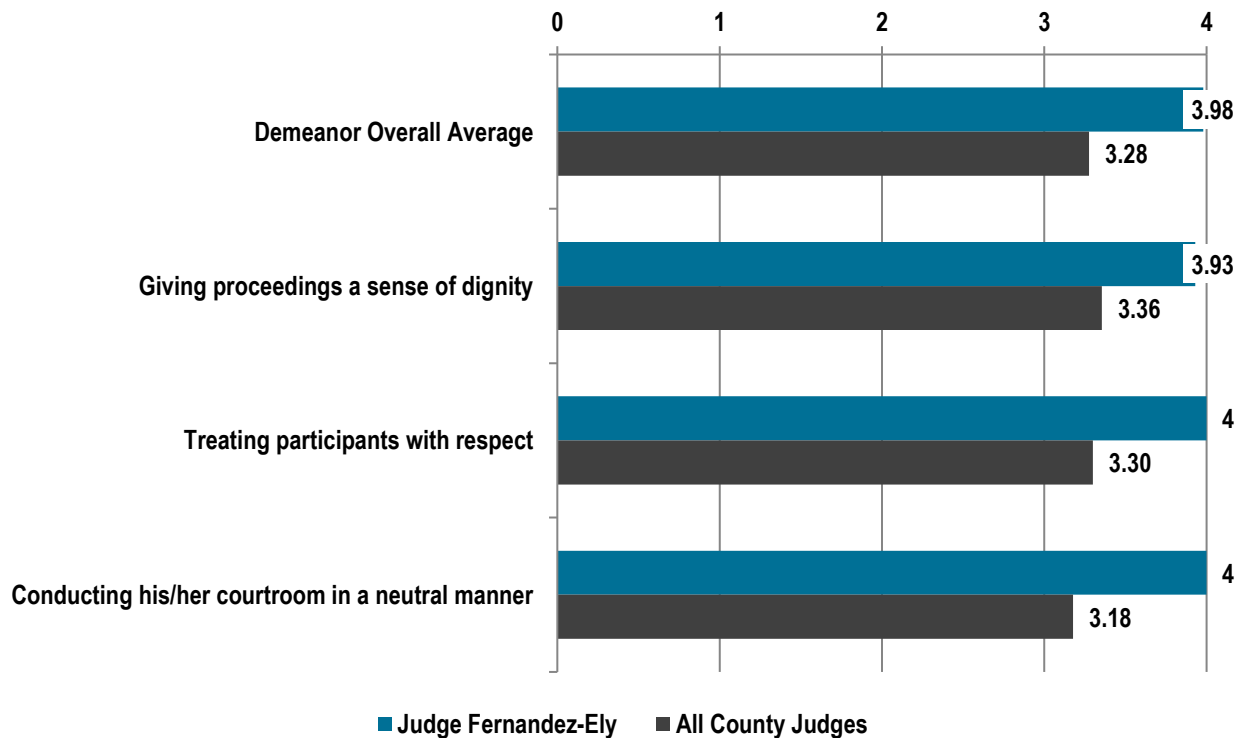


Table 8

| Demeanor   |    |    |    |    |      |       |       |
|--|----|----|----|----|------|-------|-------|
| Judge Erin Fernandez-Ely                         | A  | B  | C  | D  | Fail | DK/NA | Total |
| Giving proceedings a sense of dignity            | 13 | 1  | -- | -- | --   | --    | 14    |
| Treating participants with respect               | 14 | -- | -- | -- | --   | --    | 14    |
| Conducting his/her courtroom in a neutral manner | 14 | -- | -- | -- | --   | --    | 14    |

\*Respondents were not required to answer every question. The sum of those giving letter grades may not match the total due to questions being left blank.

## Diligence

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge Fernandez-Ely 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.

Figure 7

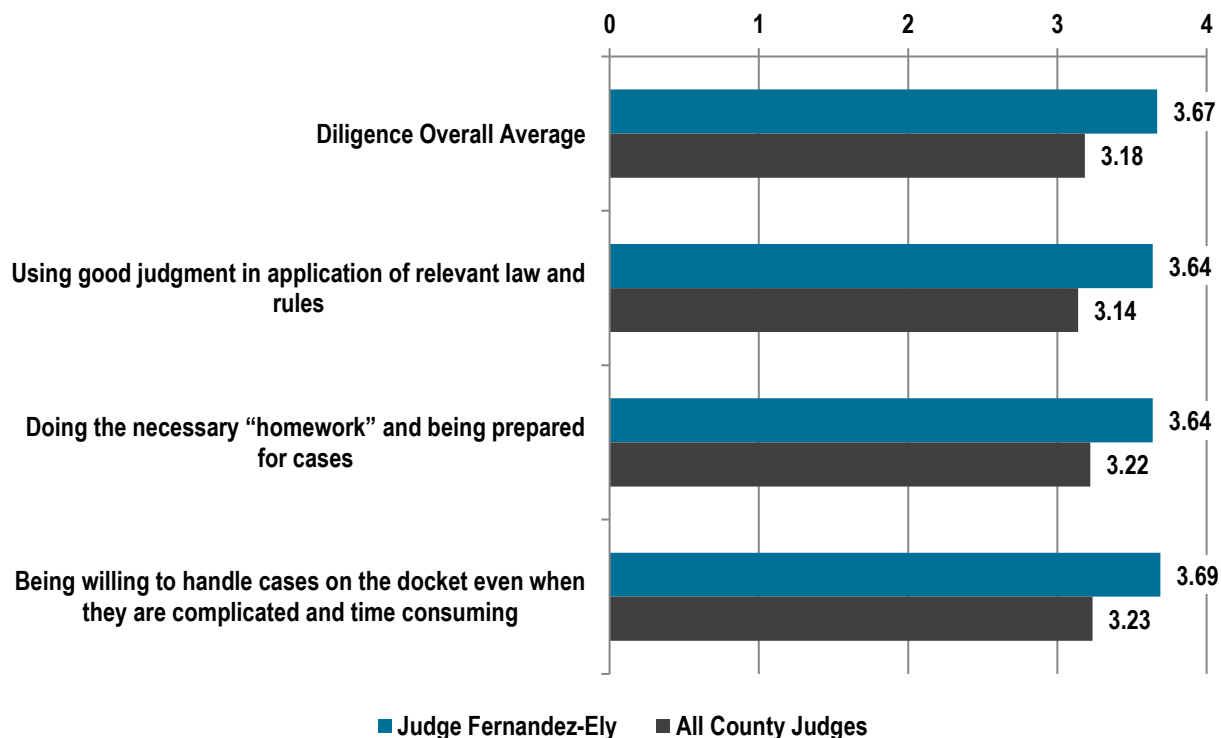


Table 9

| Diligence   |    |   |    |    |      |       |       |
|---|----|---|----|----|------|-------|-------|
| Judge Erin Fernandez-Ely  | A  | B | C  | D  | Fail | DK/NA | Total |
| Using good judgment in application of relevant law and rules                                  | 9  | 5 | -- | -- | --   | --    | 14    |
| Doing the necessary "homework" and being prepared for cases                                   | 10 | 3 | 1  | -- | --   | --    | 14    |
| Being willing to handle cases on the docket even when they are complicated and time consuming | 10 | 2 | 1  | -- | --   | 1     | 14    |

\*Respondents were not required to answer every question. The sum of those giving letter grades may not match the total due to questions being left blank.

## Performance Score

Based on your responses to the previous questions related to the performance evaluation criteria, do you think Judge Fernandez-Ely meets judicial performance standards?

Table 10

| Judge Erin Fernandez-Ely                |      |
|---|------|
| Yes, meets performance standards        | 100% |
| No, does not meet performance standards | 0%   |
| No opinion                              | 0%   |

# Survey of Non Attorneys

## Methodology and How to Read Results

For Judge Erin Fernandez-Ely, 24 qualified survey respondents submitted surveys. Of those who responded, 21 agreed they had worked with Judge Fernandez-Ely enough to evaluate their performance. This report reflects these 21 responses.

### a. Response rates

During the 2017 administration, 5,130 survey invitations have been sent to court staff members and 100,869 to other non-attorneys. Among court staff, 1,334 complete surveys have been received and an additional 569 indicated that they did not have enough experience to evaluate the judge. The response rate among court staff is 30% and the completion rate is 70%.

Among other non-attorneys, 2,824 complete surveys have been received and an additional 1,549 indicated that they did not have enough experience to evaluate the judge. The response rate among other non-attorneys was 6% and the completion rate was 74%.

### b. Methodology

The 2017 non-attorney survey was conducted via a mixed mode online and mail survey beginning August 17<sup>th</sup>, 2017 and ending on February 20<sup>th</sup>, 2018. Due to the ability to contact court staff via email, respondents were split into two groups for data collection: court staff and other non-attorneys. The court staff group includes staff members, interpreters and probation officers. The other non-attorney group includes jurors, defendants, witnesses, litigants, and law enforcement personnel.

Court staff members were invited via emailed invitations sent on December 5<sup>th</sup> and a reminder sent on December 13<sup>th</sup>.

Other non-attorneys with court experiences in the first and second quarters of 2017 where no email addresses were available were first mailed a pre-notification letter sent on August 17<sup>th</sup> informing them about the survey and providing a link and login information to access the survey online. This was followed up with a second mailing that also included the information to access the survey online, as well as a full printed survey booklet and postage-paid return envelope. This second mailing was sent on September 18<sup>th</sup>, 2017. This process for other non-attorneys was repeated for those who had experience with judges during the third quarter of 2017. For this cycle the pre-notification letter was sent on November 14<sup>th</sup>, and the survey booklet on December 13<sup>th</sup>.

For respondents with court experiences during the 4<sup>th</sup> quarter of 2017, the order of the mailings was switched due to the constraints of the reporting schedule. The first mailing, sent on January 29<sup>th</sup>, included the full survey booklet and a return mailing envelope as well as instructions to access the survey online. The second mailing, sent on February 14<sup>th</sup>, included only a letter with instructions to complete the survey online and reminded them of the survey closing on February 20<sup>th</sup>.



In addition to the main non-attorney survey where respondents were invited to participate, there was also a citizen feedback survey available to all citizens on the OJPE website. This survey opened on August 20<sup>th</sup>, 2017 and data was downloaded for analysis on February 20<sup>th</sup>, 2018. During this period 54 valid responses were received. The survey remained open and any responses received after February 20<sup>th</sup> or for judges not standing for retention in 2018 were held over to be included in the 2019 evaluation cycle.

The core questions of this survey matched the regular non-attorney survey with additional demographic questions to identify both the judge and the respondent leaving feedback. When leaving feedback, respondents were required to leave their name and contact information as well as pass a captcha verification check to prevent automated responses. During analysis, these responses were screened so that each respondent could only evaluate each judge or justice once during the cycle and to remove responses for those that provided false or incomplete contact information.

### c. Questions

Respondents evaluated judges on 19 aspects of judicial performance using a grade scale of A, B, C, D, or Fail. In a final question, respondents were asked if they thought whether the judge met judicial performance standards. This question was re-worded from previous survey administrations when respondents were asked how strongly they would or would not recommend a judge for retention.

#### Question Category Areas\*

|                            | Court Staff | Other Non-attorneys |
|----------------------------|-------------|---------------------|
| <b>Question Categories</b> |             |                     |
| Application of Law         | 3           | 3                   |
| Communications             | 3           | 3                   |
| Demeanor                   | 4           | 4                   |
| Diligence                  | 5           | 5                   |
| Fairness                   | 4           | 4                   |

|                             |   |   |
|-----------------------------|---|---|
| <b>Individual Questions</b> |   |   |
| Meets Performance Standards | 1 | 1 |

*\*The numbers in the table refer to the number of questions asked in each category by survey group.*

### d. Analysis and Reporting

Letter grades were then converted to a numerical score where A = 4, B = 3, C = 2, D = 1 and Fail = 0 for analysis. The results include an overall grade, a grade for each category, as well as a grade for each question. The overall score is calculated by averaging the responses to all questions answered. This score will have the same numerical range as the individual questions from zero to four.

Each category score is calculated by averaging the responses to all questions answered by the respondent with each category. This score will have the same numerical range as the individual questions from zero to four. Similarly, an average score is calculated for each individual question with the exception of the meets performance standards question.

The overall average and category scores will be reported for each judge along with the average scores for the judge's peers. The average score (with exception noted above) will also be reported for each question, along with the peer group score. In addition, the report will include the distribution of responses for each question. That is, the percentage of respondents that assigned a rating of A, B, C, D, and F.

#### **e. Comments**

At the end of each group of questions, respondents had the option of leaving comments about the judge's performance in that area. Respondents were also asked what they considered to be the judge's strengths and weaknesses and allowed to leave open ended responses to each. 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.

## Demeanor

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 mark “Don’t Know/Not Applicable”—DK/NA.

Figure 8

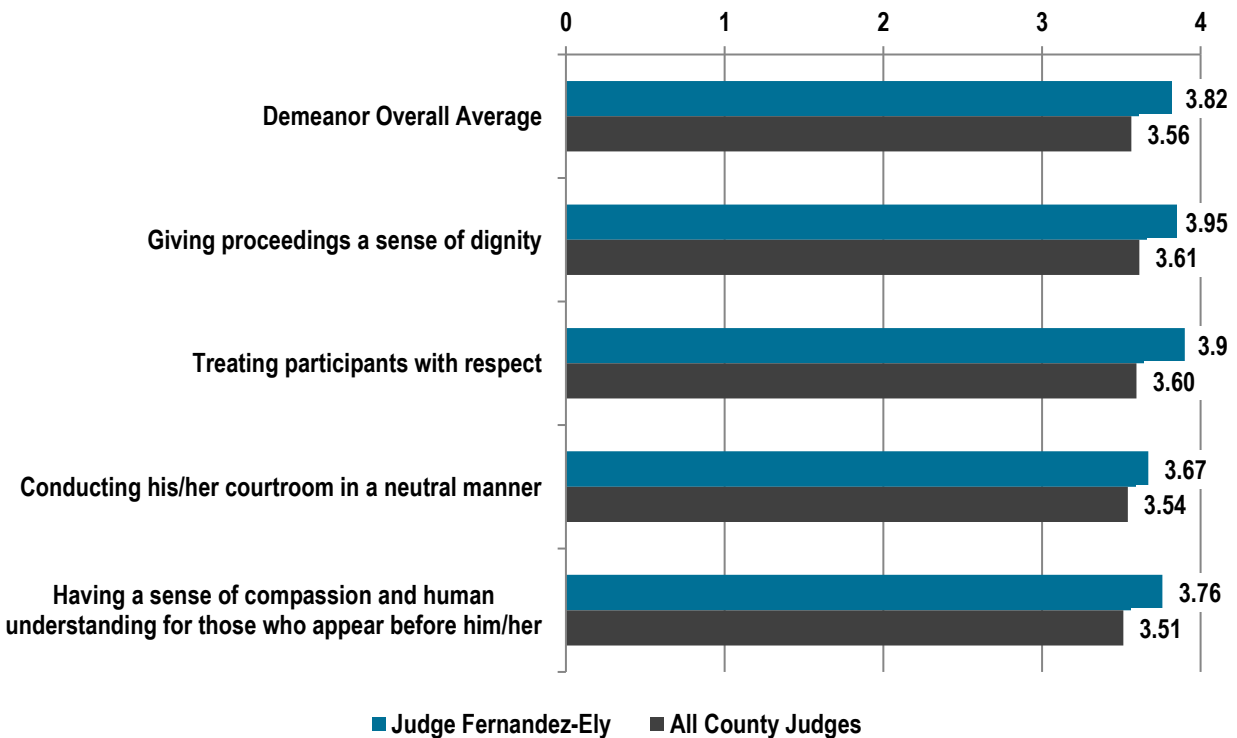


Table 11

| Demeanor   |    |   |    |    |      |       |       |
|--|----|---|----|----|------|-------|-------|
| Judge Erin Fernandez-Ely   | A  | B | C  | D  | Fail | DK/NA | Total |
| Giving proceedings a sense of dignity  | 20 | 1 | -- | -- | --   | --    | 21    |
| Treating participants with respect   | 19 | 2 | -- | -- | --   | --    | 21    |
| Conducting his/her courtroom in a neutral manner   | 17 | 2 | 1  | 1  | --   | --    | 21    |
| Having a sense of compassion and human understanding for those who appear before him/her | 16 | 5 | -- | -- | --   | --    | 21    |

\*Respondents were not required to answer every question. The sum of those giving letter grades may not match the total due to questions being left blank.

## Fairness

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 mark “Don’t Know/Not Applicable”—DK/NA.

Figure 9

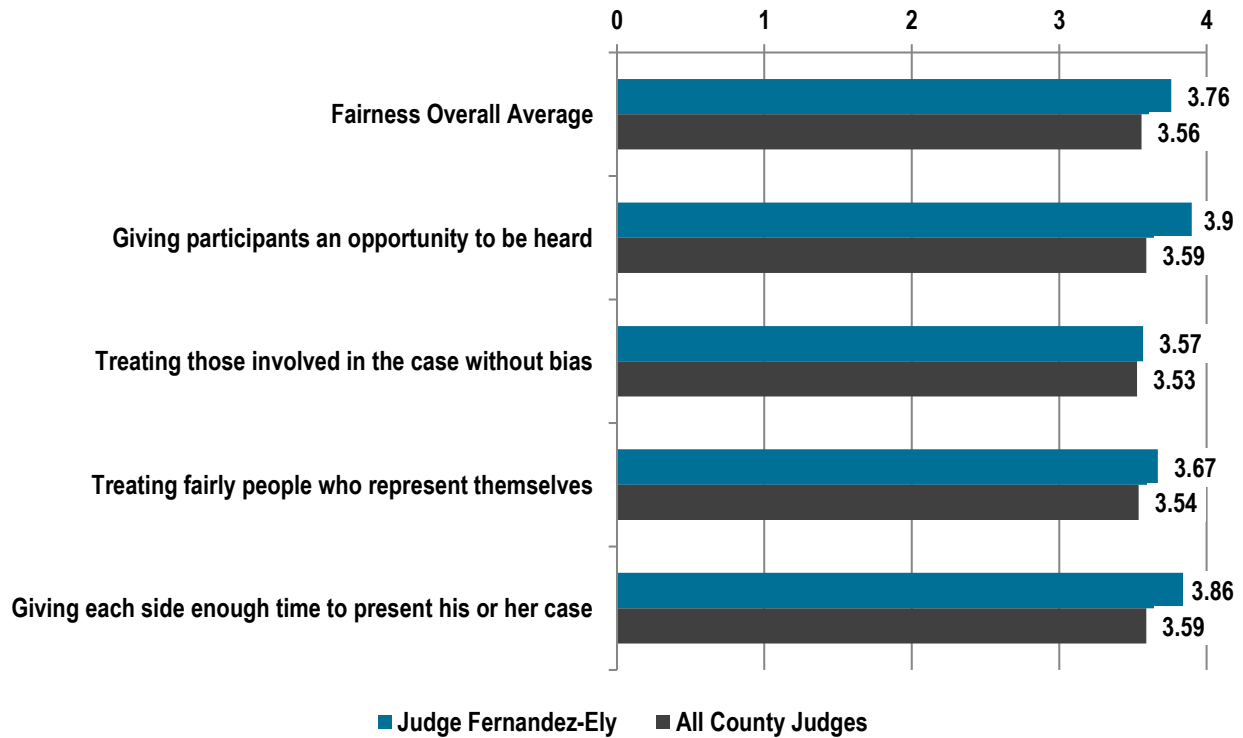


Table 12

| Fairness  |    |   |    |    |      |       |       |
|---|----|---|----|----|------|-------|-------|
| Judge Erin Fernandez-Ely                                | A  | B | C  | D  | Fail | DK/NA | Total |
| Giving participants an opportunity to be heard          | 19 | 2 | -- | -- | --   | --    | 21    |
| Treating those involved in the case without bias        | 16 | 2 | 2  | 1  | --   | --    | 21    |
| Treating fairly people who represent themselves         | 15 | 1 | 1  | 1  | --   | 3     | 21    |
| Giving each side enough time to present his or her case | 19 | 1 | 1  | -- | --   | --    | 21    |

\*Respondents were not required to answer every question. The sum of those giving letter grades may not match the total due to questions being left blank.

## Communications

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 mark “Don’t Know/Not Applicable”—DK/NA.

Figure 10

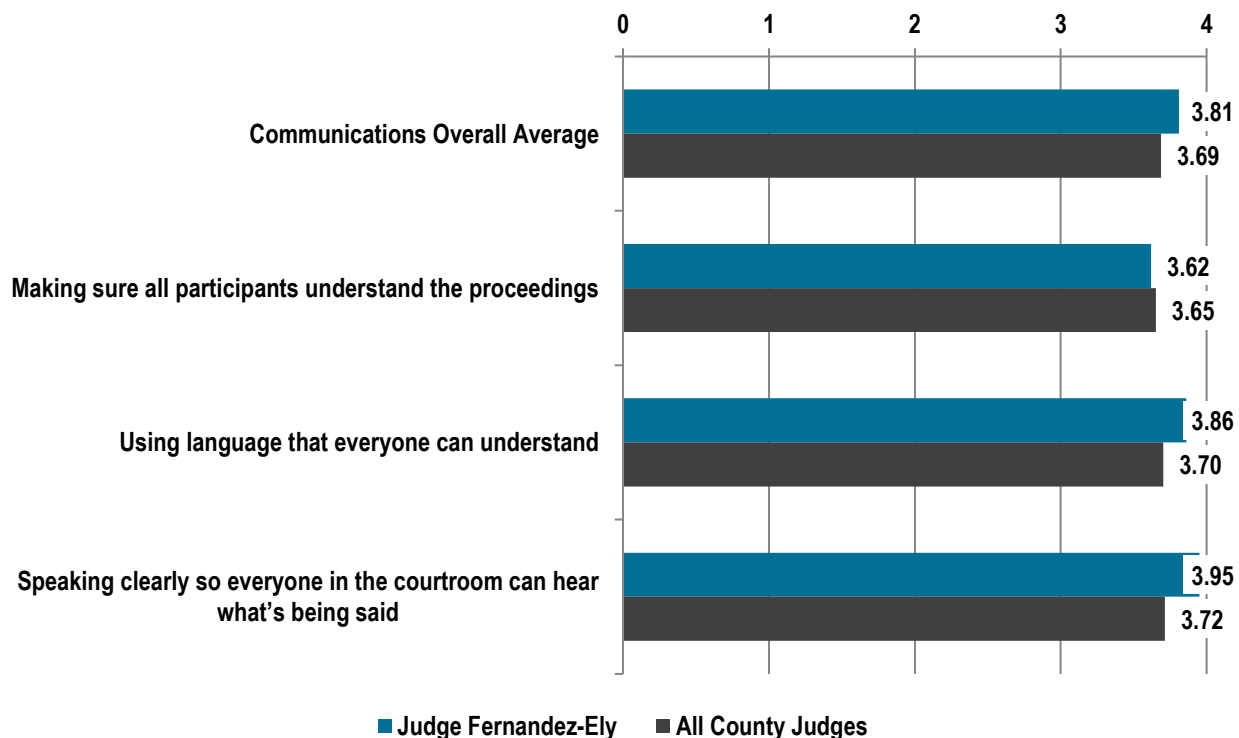


Table 13

| Communications   |    |   |    |    |      |       |       |
|--|----|---|----|----|------|-------|-------|
| Judge Erin Fernandez-Ely   | A  | B | C  | D  | Fail | DK/NA | Total |
| Making sure all participants understand the proceedings                  | 16 | 3 | 1  | 1  | --   | --    | 21    |
| Using language that everyone can understand                              | 18 | 3 | -- | -- | --   | --    | 21    |
| Speaking clearly so everyone in the courtroom can hear what's being said | 20 | 1 | -- | -- | --   | --    | 21    |

\*Respondents were not required to answer every question. The sum of those giving letter grades may not match the total due to questions being left blank.

## Diligence

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 mark “Don’t Know/Not Applicable”—DK/NA.

Figure 11

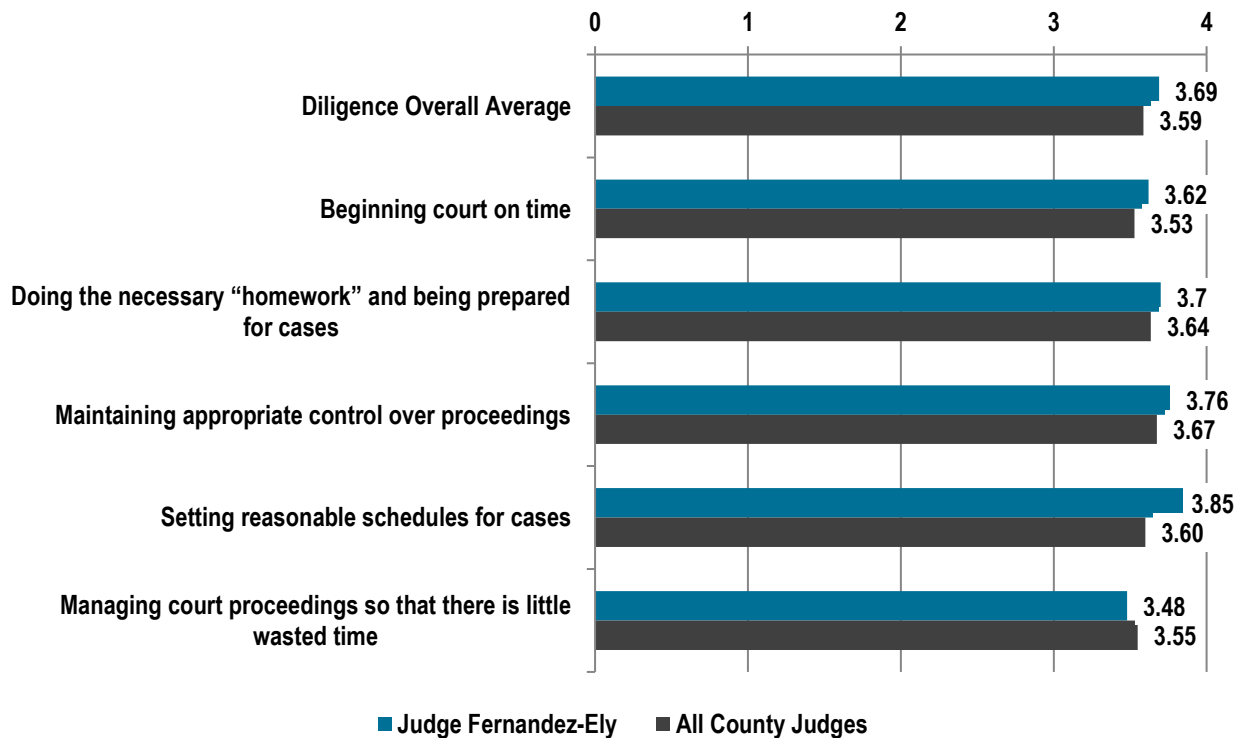


Table 14

| Diligence  |    |    |    |    |      |       |       |
|--|----|----|----|----|------|-------|-------|
| Judge Erin Fernandez-Ely                                       | A  | B  | C  | D  | Fail | DK/NA | Total |
| Beginning court on time  | 16 | 4  | -- | -- | 1    | --    | 21    |
| Doing the necessary “homework” and being prepared for cases    | 18 | -- | 1  | -- | 1    | --    | 20    |
| Maintaining appropriate control over proceedings               | 17 | 3  | 1  | -- | --   | --    | 21    |
| Setting reasonable schedules for cases                         | 18 | 1  | 1  | -- | --   | 1     | 21    |
| Managing court proceedings so that there is little wasted time | 15 | 3  | 2  | -- | 1    | --    | 21    |

\*Respondents were not required to answer every question. The sum of those giving letter grades may not match the total due to questions being left blank.

## Application of Law

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 mark “Don’t Know/Not Applicable”—DK/NA.

Figure 12

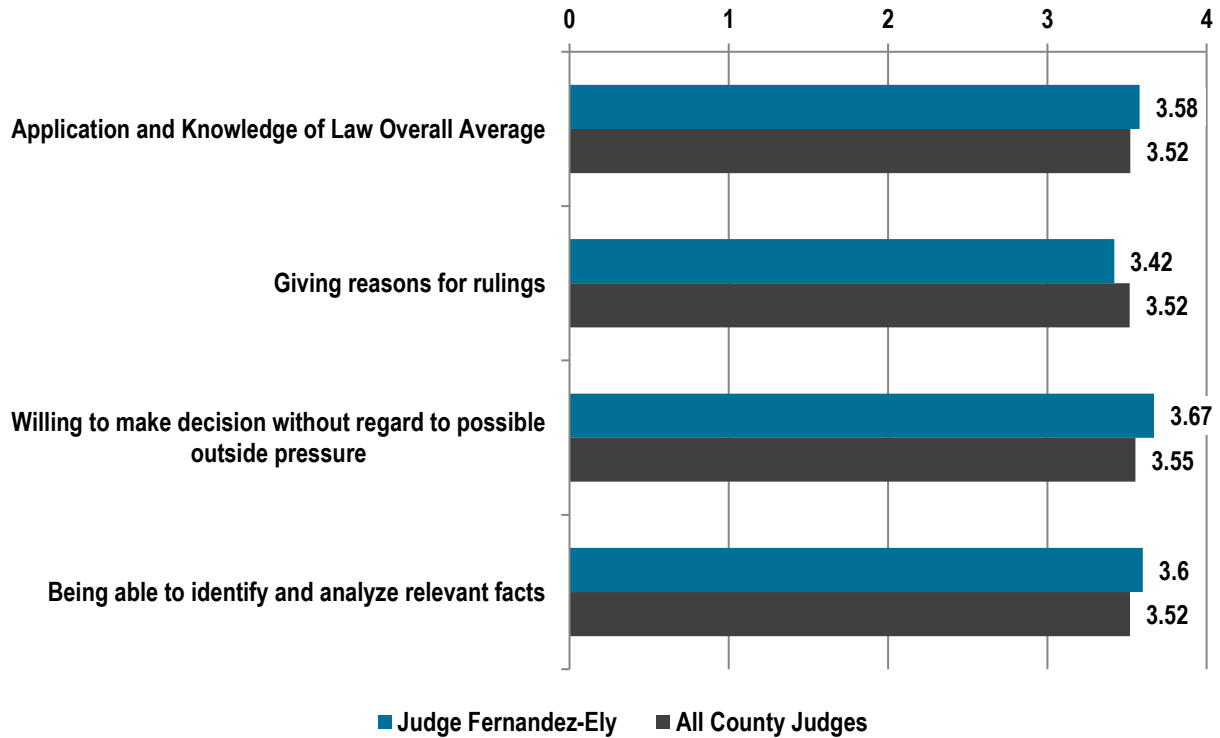


Table 15

| Application and Knowledge of Law                                     |    |   |    |    |      |       |       |
|--|----|---|----|----|------|-------|-------|
| Judge Erin Fernandez-Ely   | A  | B | C  | D  | Fail | DK/NA | Total |
| Giving reasons for rulings   | 13 | 3 | 1  | 2  | --   | 2     | 21    |
| Willing to make decision without regard to possible outside pressure | 14 | 3 | -- | 1  | --   | 3     | 21    |
| Being able to identify and analyze relevant facts                    | 15 | 2 | 3  | -- | --   | 1     | 21    |

\*Respondents were not required to answer every question. The sum of those giving letter grades may not match the total due to questions being left blank.

## Performance Score

Based on your responses to the previous questions related to the performance evaluation criteria, do you think Judge Fernandez-Ely meets judicial performance standards?

Table 16

| Judge Erin Fernandez-Ely                |     |
|---|-----|
| Yes, meets performance standards        | 90% |
| No, does not meet performance standards | 5%  |
| No opinion                              | 5%  |