



Commission on Judicial Performance

The Honorable Steve L. Bernard
2013 Judicial Performance Interim Survey
Court of Appeals





May 28, 2013

The Honorable Steve L. Bernard
Colorado Court of Appeals
101 West Colfax Avenue, Suite 800
Denver, CO 80202

Dear Judge Bernard:

I am pleased to make available to you the attached copy of your 2013 Judicial Performance Interim Survey Report. This report is based on a survey of attorneys who have had cases heard before a Court of Appeals panel of which you authored an opinion, concurrence, or dissent.

In addition to this introduction, the report is divided into four main sections:

1. A brief summary of the results of the attorney survey.
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.
3. The third section of the report discusses the methodology of the surveys.
4. The final section provides a copy of the questionnaire that was used for attorneys.

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,

A handwritten signature in black ink that reads "Brian Sanderoff".

Brian Sanderoff
President

Summary of Results

Attorneys 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. Attorneys assigned Judge Steve L. Bernard an overall average grade of 3.07.

Judge Bernard Average Attorney Grades by Year		
Year	Judge Bernard	
	Average Score	Sample Size
2005		
2006	3.72	9
2007	3.32	26
2008	3.30	39
2009	3.07	40
2010	2.91	48
2012	2.84	71
All Years	3.07	233

Table 1

The results presented in this report are based on data collected from 2005 through 2012. (See Methodology section for description of sampling process.) Provisional judges will not have samples for the years prior to their appointment.

**Survey of Attorneys Regarding
Judge Steve L. Bernard
(Sample Size 233)**

Survey of Attorneys Regarding Court of Appeals Judges

Judge Steve L. Bernard Sample Size = 233							Average (0.0 to 4.0 scale)	
							Judge Bernard	All COA Judges*
	A	B	C	D	Fail	DK/NA		

Question 2:

2a. Being fair and impartial toward each side of the case.	52%	13%	9%	8%	13%	4%	2.88	3.14
2b. Allowing parties to present their arguments and answer questions.	49%	16%	8%	6%	3%	17%	3.21	3.35
2c. Treating parties equally regardless of race, sex or economic status.	51%	10%	6%	2%	7%	24%	3.28	3.48
2d. Being courteous toward attorneys.	55%	12%	9%	4%	3%	17%	3.34	3.42
2e. Not engaging in ex parte communications.	42%	4%	2%	0%	1%	52%	3.77	3.77
2f. Being prepared for oral argument.	48%	15%	8%	3%	3%	24%	3.33	3.36
Question 2 Average Grade							3.30	3.42

Question 3:

3a. Writing opinions that are clear.	37%	26%	18%	10%	4%	5%	2.86	3.11
3b. Writing opinions that adequately explain the basis of the Court's decision.	37%	21%	19%	13%	5%	6%	2.77	3.02
3c. Issuing opinions in a timely manner.	41%	26%	16%	2%	1%	13%	3.20	3.29
3d. Making decisions without regard to possible criticism.	43%	13%	10%	6%	7%	21%	3.01	3.18
3e. Making reasoned decisions based upon the law and facts.	39%	16%	12%	13%	18%	2%	2.46	2.83
3f. Refraining from reaching issues that need not be decided.	38%	18%	12%	7%	13%	12%	2.70	3.07
Question 3 Average Grade							2.83	3.08

Overall Average Grade:	3.07	3.25
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* Includes only the Court of Appeals 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 Court of Appeals Judges

Judge Steve L. Bernard	Percentage	
	Judge Bernard	All COA Judges*

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

Excluding "don't know" respondents.

Strongly recommend retain	35%	43%
Recommend retain	19%	26%
Neither recommend nor not recommend retain in office	12%	13%
Recommend not retain	10%	8%
Strongly recommend not retain	25%	9%
Total Retain	54%	69%
Neither	12%	13%
Total Not Retain	35%	17%

Including "don't know" respondents.

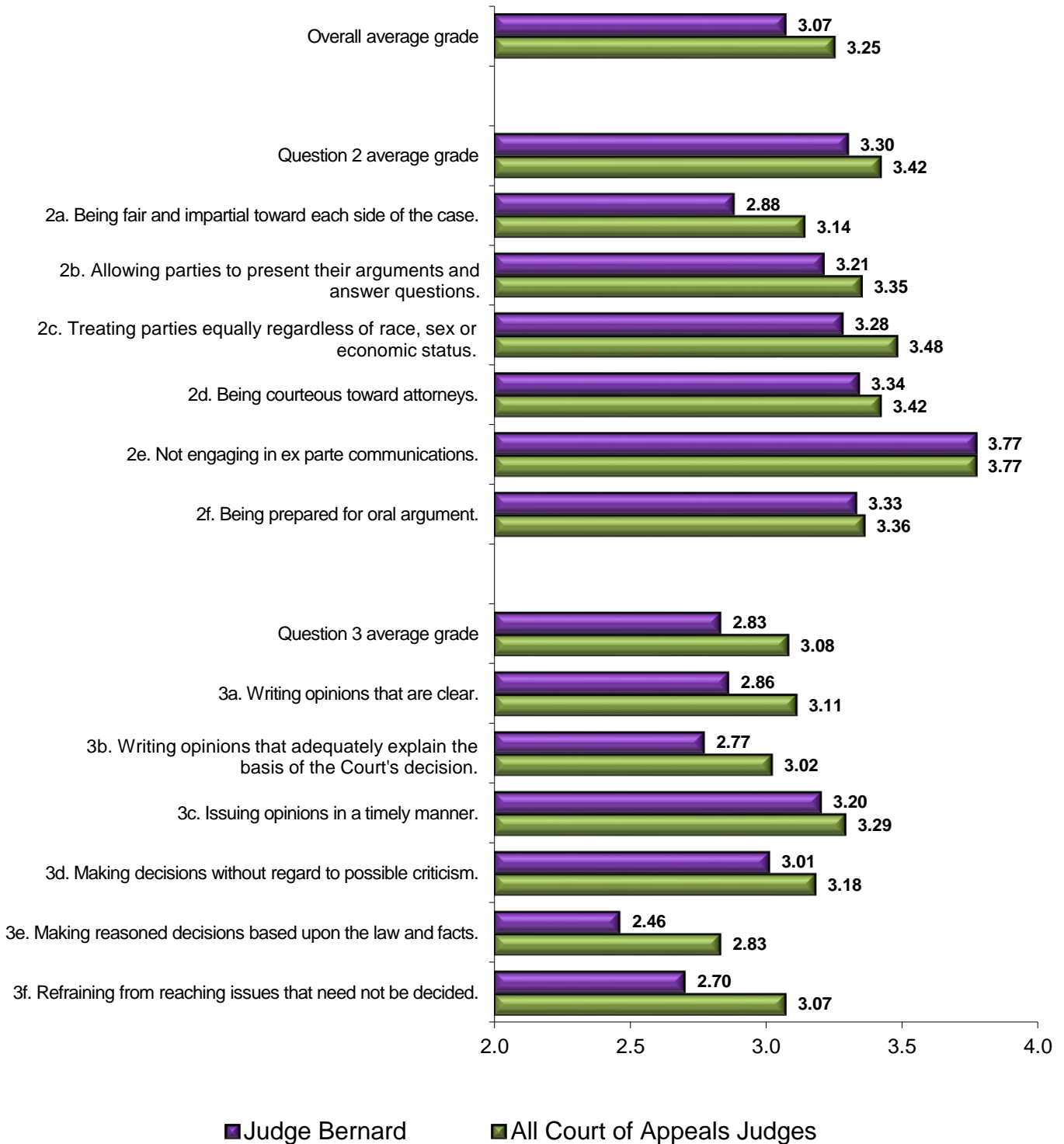
Strongly recommend retain	35%	42%
Recommend retain	19%	26%
Neither recommend nor not recommend retain in office	12%	13%
Recommend not retain	10%	8%
Strongly recommend not retain	25%	9%
Don't know enough to make a recommendation	0%	1%
Total Retain	54%	68%
Neither	12%	13%
Total Not Retain	35%	17%
Don't Know	0%	1%

* Includes only the Court of Appeals judges evaluated during this interim cycle.

Judge Steve L. Bernard

Survey of Attorneys Regarding Court of Appeals Judges

Average Grades



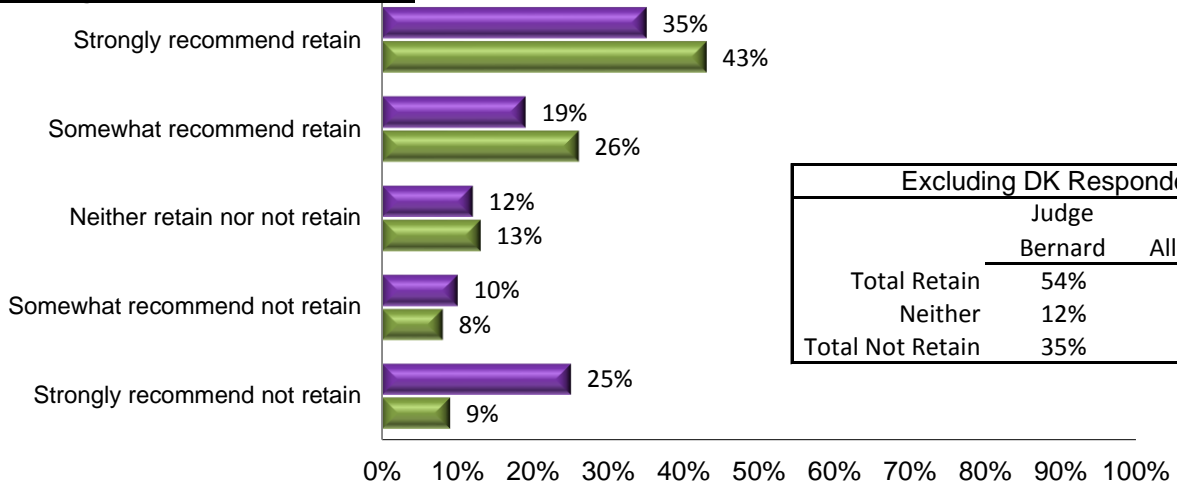
* Includes only the Court of Appeals Judges evaluated during this interim cycle.

Judge Steve L. Bernard

Survey of Attorneys Regarding Court of Appeals Judges

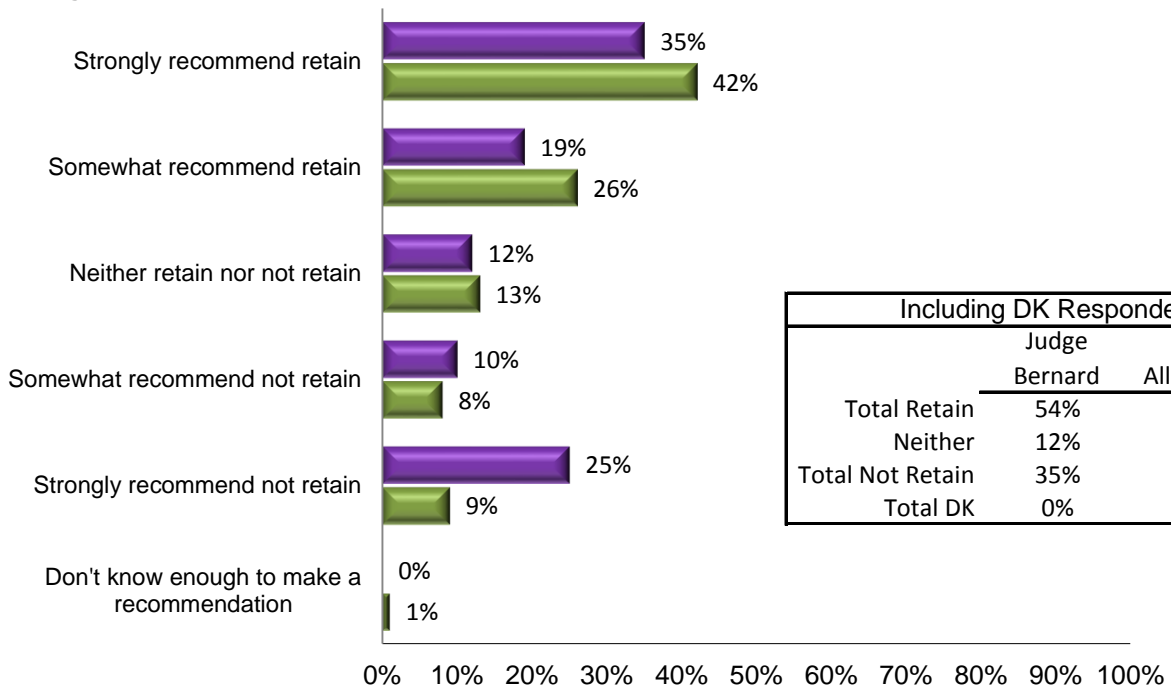
How strongly do you recommend that Judge Bernard be retained or not retained in office?

Excluding "Don't Know" Respondents



Excluding DK Respondents		
	Judge	
	Bernard	All COA Judges*
Total Retain	54%	69%
Neither	12%	13%
Total Not Retain	35%	17%

Including "Don't Know" Respondents



Including DK Respondents		
	Judge	
	Bernard	All COA Judges*
Total Retain	54%	68%
Neither	12%	13%
Total Not Retain	35%	17%
Total DK	0%	1%

■ Judge Bernard
 ■ All Court of Appeals Judges

* Includes only the Court of Appeals Judges evaluated during this interim cycle.

Methodology

Methodology

The results shown in the 2013 Judicial Performance Interim Survey Report are based on the survey of Attorneys Regarding Appellate Judges. Below is a description of the methodology used for this survey.

Attorneys Regarding Appellate Judges

a. Sample:

The Attorneys Regarding Court of Appeals Judges sample comes from a list of Court of Appeals opinions provided by the Clerk of the Court of Appeals. The list included the names of the attorneys associated with the cases and the names of the judges who authored opinions, concurrences or dissents for those cases.

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 and eight years for a COA judge. To use a COA judge as an example: as survey data is collected it is pooled together for eight years. After eight years, as new data is added to the judge's survey results, the oldest data in the pool will be deleted.

b. Questions:

Respondents evaluated justices and judges on 12 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 to indicate how strongly they would recommend that the 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 Court of Appeals 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 Court of Appeals 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 Court of Appeals 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 Court of Appeals 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 Court of Appeals 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 State 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.

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. Cooperation Rate:

From 2005 through 2012, the overall cooperation rate for the Attorneys Regarding Appellate 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 17.5% for Judge Bernard and 17.7% for all Court of Appeals judges. Undeliverable surveys have been excluded from the cooperation rates.

Looking at only the 2012 results, the cooperation rate for Judge Bernard is 25.9% and the cooperation rate for all Court of Appeals judges is 21.7%.

The table below shows the overall cooperation rate for all Court of Appeals judges receiving an interim evaluation in 2013 and the cooperation rate for Judge Bernard. These cooperation rates are based on data collected from 2005 to 2012.

	Requested Evaluations	No Response	Undeliv- erable/Not Applicable	Completed Evaluations	Cooperation Rate
Judge Bernard	1471	1093	140	233	17.5%
All Court of Appeals Judges*	13724	10173	1333	2199	17.7%

* Includes only the Court of Appeals judges evaluated during this interim cycle.

Survey of Attorneys Regarding Court of Appeals Judges

All Court of Appeals Judges* Sample Size = 2199							Average Grade (0.0 to 4.0 scale)
	A	B	C	D	Fail	DK/NA	

Question 2:

2a. Being fair and impartial toward each side of the case.	54%	18%	10%	6%	7%	6%	3.14
2b. Allowing parties to present their arguments and answer questions.	54%	17%	8%	4%	3%	15%	3.35
2c. Treating parties equally regardless of race, sex or economic status.	57%	10%	6%	3%	3%	21%	3.48
2d. Being courteous toward attorneys.	58%	14%	7%	4%	3%	14%	3.42
2e. Not engaging in ex parte communications.	49%	4%	2%	0%	1%	44%	3.77
2f. Being prepared for oral argument.	52%	15%	8%	3%	3%	20%	3.36
Question 2 Average Grade							3.42

Question 3:

3a. Writing opinions that are clear.	46%	25%	13%	6%	4%	6%	3.11
3b. Writing opinions that adequately explain the basis of the Court's decision.	45%	24%	12%	8%	5%	6%	3.02
3c. Issuing opinions in a timely manner.	50%	24%	12%	3%	2%	10%	3.29
3d. Making decisions without regard to possible criticism.	47%	16%	8%	5%	4%	19%	3.18
3e. Making reasoned decisions based upon the law and facts.	47%	18%	12%	11%	10%	2%	2.83
3f. Refraining from reaching issues that need not be decided.	46%	18%	10%	5%	6%	14%	3.07
Question 3 Average Grade							3.08

Overall Average Grade: 3.25

* Includes only the Court of Appeals 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.

Survey of Attorneys Regarding Court of Appeals Judges

All Court of Appeals Judges*

Average
Grade
(0.0 to 4.0 scale)

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	43%
Recommend retain	26%
Neither recommend nor not recommend retain in office	13%
Recommend not retain	8%
Strongly recommend not retain	9%
Total Retain	69%
Neither	13%
Total Not Retain	17%

Including "don't know" respondents.

Strongly recommend retain	42%
Recommend retain	26%
Neither recommend nor not recommend retain in office	13%
Recommend not retain	8%
Strongly recommend not retain	9%
Don't know enough to make a recommendation	1%
Total Retain	68%
Neither	13%
Total Not Retain	17%
Don't Know	1%

* Includes only the Court of Appeals judges evaluated during this interim cycle.

Questionnaires

Colorado Judicial Performance Attorneys Regarding Appellate Judges Survey Questions

1. *[This question asked for each judge evaluated.]* Which of the following types of cases have you appealed to the **[Court of Appeals/Supreme Court]** in which **[Judge/Justice Last Name]** authored the decision, concurred or dissented? *(Please check all that apply.)*

Civil	1
Criminal	2
Domestic	3
Juvenile	4
Other.....	5

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

- a. Being fair and impartial toward each side of the case.
- b. Allowing parties to present their arguments and answer questions.
- c. Treating parties equally regardless of race, sex or economic status.
- d. Being courteous toward attorneys.
- e. Not engaging in ex parte communications.
- f. Being prepared for oral argument.

Would you say you are sufficiently knowledgeable about **[Judge/Justice Last Name]'s** legal writings to have formed an opinion about them?

- Yes (Ask Q3a to Q3f)
- No (Skip to Q4)
- Don't know (Skip to Q4)

3. Please evaluate **[Judge/Justice Last Name]** on the following topics.

- a. Writing opinions that are clear.
- b. Writing opinions that adequately explain the basis of the Court's decision.
- c. Issuing opinions in a timely manner.
- d. Making decisions without regard to possible criticism.
- e. Making reasoned decisions based upon the law and facts.
- f. Refraining from reaching issues that need not be decided.

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

5. What would you say are *[[Judge/Justice Last Name]]*'s weaknesses?

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