

## Honorable Constandinos (Deno) Himonas – District Court Judge

Serving Salt Lake, Summit and Tooele counties

Commission Recommendation: **RETAIN**

(vote count: 12-0 for retention)

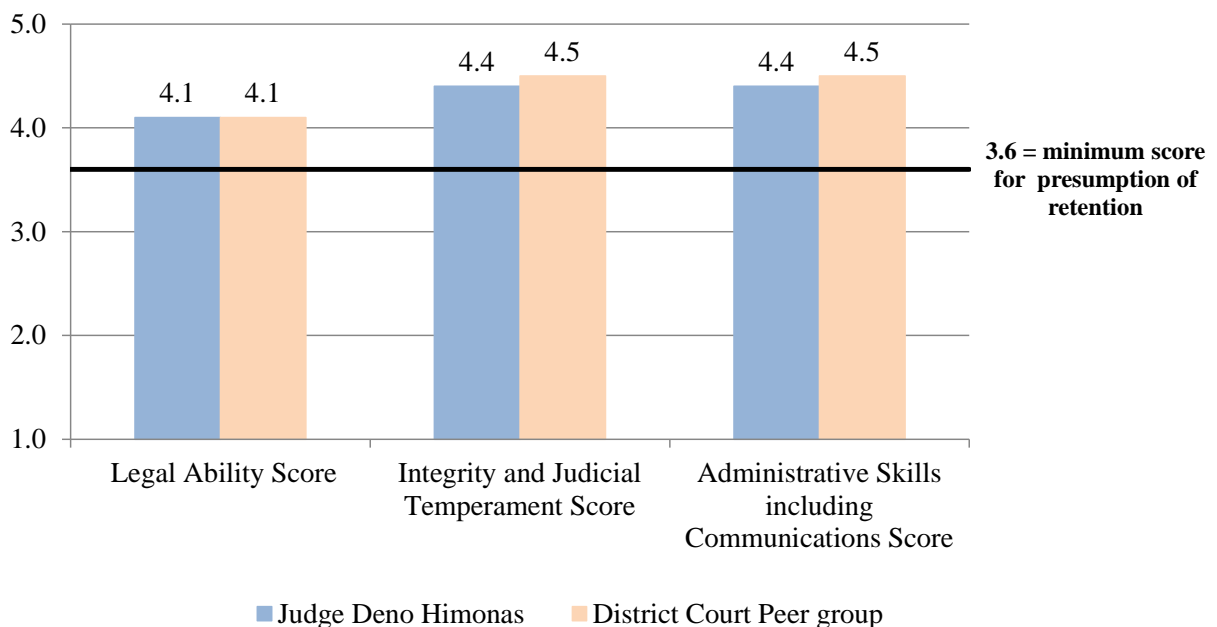


With a decade of judicial experience, Judge Deno Himonas is widely viewed as a decisive, thorough, and extremely well-prepared judge. Survey respondents most frequently described him as intelligent, knowledgeable and attentive. Many also characterized him as respectful, both of all participants in his courtroom and of the legal process itself. Some perceived his demeanor as arrogant. Courtroom observers praised Judge Himonas, citing a gracious and patient demeanor and a thoughtful yet decisive approach to cases and decisions. Of survey respondents who answered the retention question, 82% recommended that Judge Himonas be retained.

The commission reviewed surveys and courtroom observation reports in addition to verifying that Judge Himonas has met all time standards, judicial education requirements, and discipline standards established by the judicial branch.

Governor Olene Walker appointed Judge Constandinos (Deno) Himonas to the Third District Court in 2004. Judge Himonas currently serves as the Associate Presiding Judge for the Third District, co-chairs the District's pro bono program and sits on the Judicial Conduct Commission. He has also served for a number of years as an Adjunct Professor at the University of Utah's S.J. Quinney School of Law. Prior to taking the bench, Judge Himonas practiced law with the firm of Jones, Waldo, Holbrook & McDonough; his emphasis was in complex commercial litigation. Judge Himonas graduated Magna Cum Laude from the University of Utah in 1986 with a degree in Economics and from the University of Chicago School of Law in 1989. He is married with two children.

**This judge has met all minimum performance standards established by law.**



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# **The Honorable Deno Himonas**

**Judicial Performance Evaluation Commission Report**

**Retention 2014**

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### II. Courtroom Observation Report

# I. Survey Report

## Survey Results

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### A. How to Read the Results

For Judge Deno Himonas, 63% of qualified survey respondents submitted surveys. Of those who responded, 136 agreed they had worked with Judge Deno Himonas enough to evaluate his performance. This report reflects the 136 responses. The survey results are divided into five sections:

- Statutory category scores
- Procedural fairness survey score
- Responses to individual survey questions
- Summary of adjectives
- Retention question

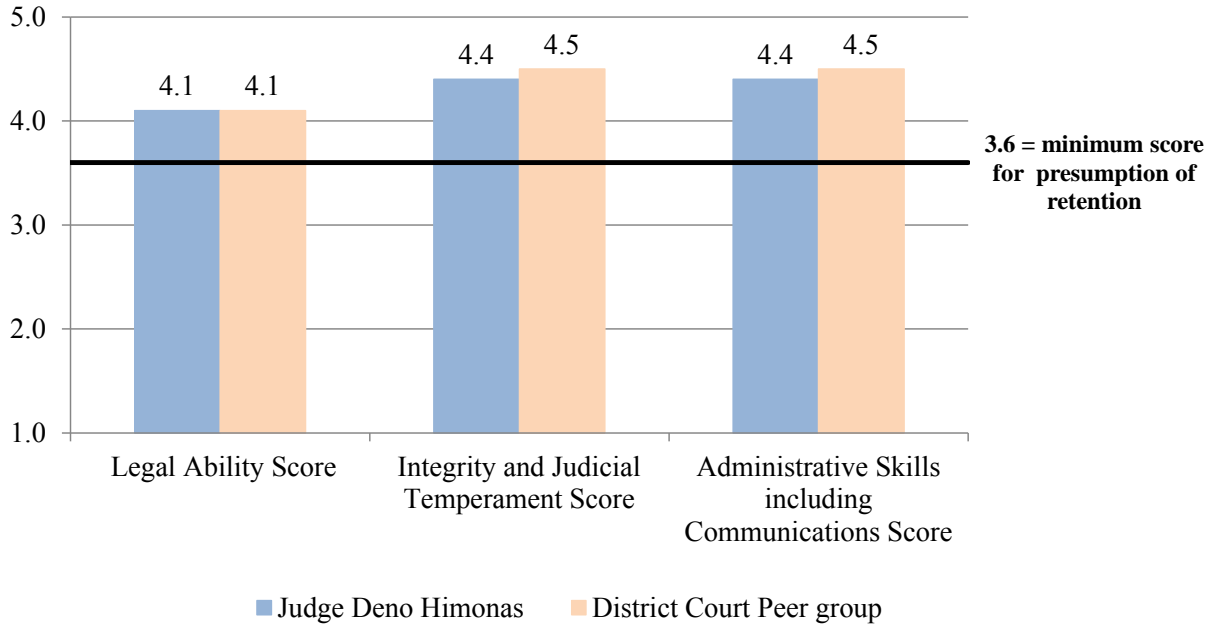
The results are shown in both graphs and tables. Each judge's scores are shown along with a comparison to other judges who serve at the same court level. The comparison group is called "District Court" on the charts.

The statutory category scores and the procedural fairness survey score represent average scores on a scale of 1 (inadequate) to 5 (outstanding). Responses from all survey respondent groups contribute to the average score shown for each category, with the exception of Legal Ability. Only attorneys answer these questions.

What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to recommend retention unless it can articulate a substantial reason for overcoming the presumption in favor of retention. Similarly, if a judge fails to get a 3.6 in a category, the commission will vote against retention unless it can articulate a substantial reason for overcoming the presumption against retention.

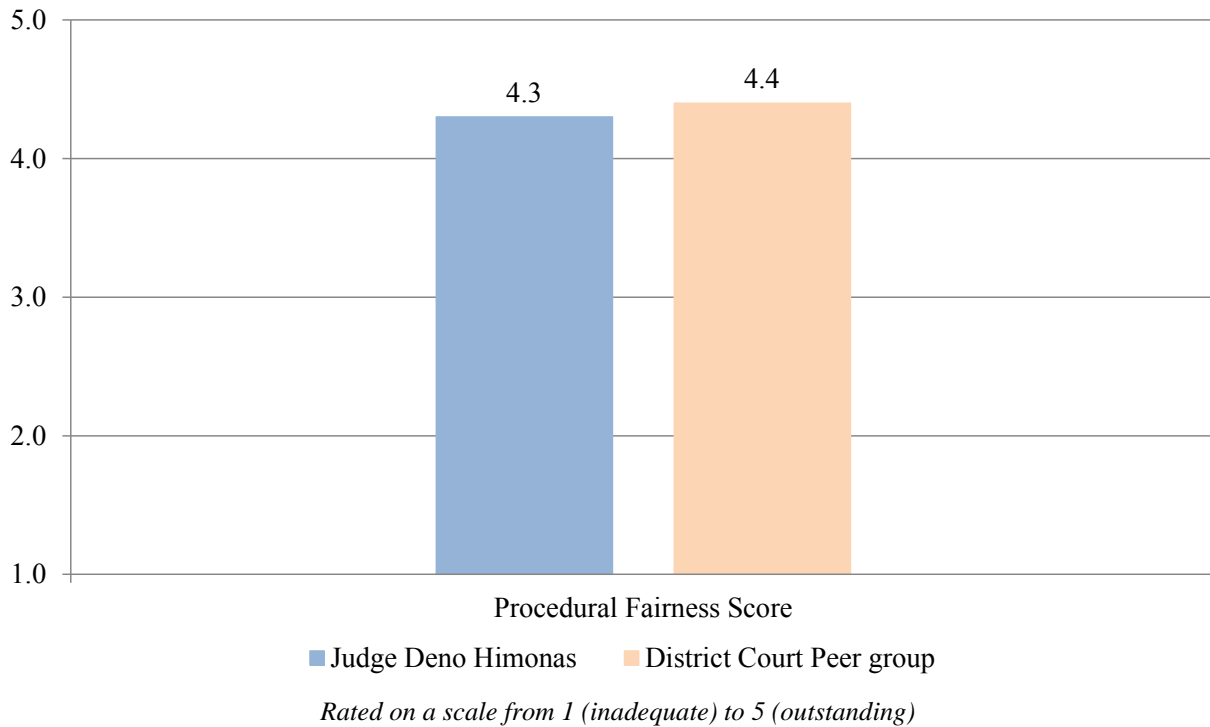
For procedural fairness, the judge must demonstrate that it is more likely than not, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants. Judges will receive either a Pass or Fail in procedural fairness, and this determination will be made by the commission only during the retention cycle.

## B. Statutory Category Scores



*Rated on a scale from 1 (inadequate) to 5 (outstanding)*

### C. Procedural Fairness Survey Score



For procedural fairness, the judge must demonstrate by a preponderance of the evidence that the judge’s conduct in court promotes procedural fairness for court participants. This determination is based on courtroom observations and relevant survey responses.

#### Overall Procedural Fairness Determination

Category	Judge Deno Himonas
Procedural Fairness	PASS

## D. Responses to Individual Survey Questions

Category	Question	Judge Deno Himonas	District Court
Legal Ability	The judge follows the applicable legal rules (e.g. civil procedure, criminal procedure, evidence, juvenile, appellate) that apply to the case at issue.	4.1	4.2
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.1	4.1
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.1	4.1
Legal Ability	The judge only considers evidence in the record.	4.1	4.2
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.1	4.1
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.4	4.5
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.5	4.5
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.2	4.3
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.1	4.3
Integrity & Judicial Temperament	The judge promotes access to the justice system for people who speak a language other than English, or for people who have a physical or mental limitation.	4.6	4.6

*Rated on a scale from 1 (inadequate) to 5 (outstanding)*

Category	Question	Judge Deno Himonas	District Court
Administrative Skills	The judge is prepared for court proceedings.	4.5	4.4
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.3	4.5
Administrative Skills	The judge is an effective manager.	4.2	4.3
Administrative Skills	The judge convenes court without undue delay.	4.4	4.5
Administrative Skills	The judge rules in a timely fashion.	4.3	4.4
Administrative Skills	The judge maintains diligent work habits.	4.5	4.5
Administrative Skills	The judge's oral communications are clear.	4.4	4.5
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.1	4.3
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.3	4.5
Procedural Fairness	The judge is fair and impartial.	4.2	4.4
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.2	4.3
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.3	4.4

*Rated on a scale from 1 (inadequate) to 5 (outstanding)*



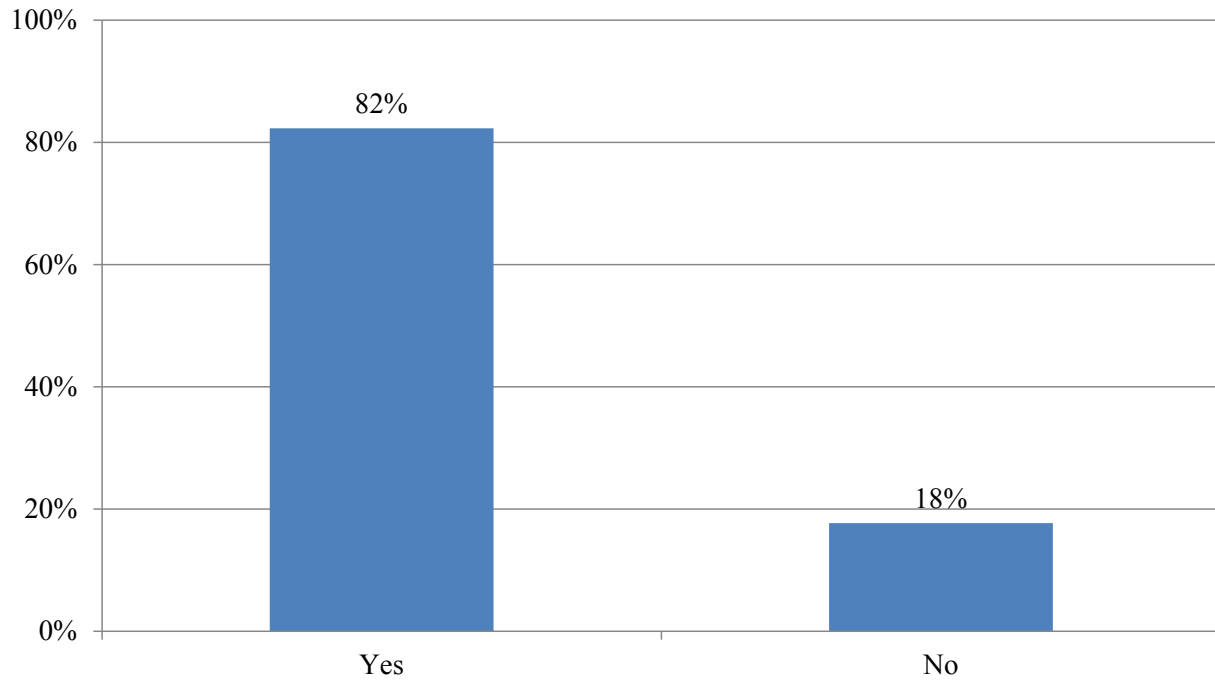
## E. Adjective Question Summary

	Number of Times Mentioned*
Attentive	54
Calm	18
Confident	49
Considerate	32
Consistent	16
Intelligent	70
Knowledgeable	55
Patient	30
Polite	38
Receptive	23
Arrogant	28
Cantankerous	5
Defensive	7
Dismissive	14
Disrespectful	5
Flippant	7
Impatient	13
Indecisive	8
Rude	4
<b>Total Positive Adjectives</b>	<b>385</b>
<b>Total Negative Adjectives</b>	<b>91</b>
<b>Percent of Positive Adjectives</b>	<b>81%</b>

Respondents were asked to select adjectives from a list that best described the judge. The number shown is the total number of times an adjective was selected by respondents. The percent of positive adjectives shows the percent of *all* selected adjectives that were positive.

## F. Retention Question

Would you recommend that Judge Deno Himonas be retained?



## G. Attorney Demographics

### What are your primary areas of practice?

Collections	2%
Domestic	6%
Criminal	57%
Civil	46%
Other	2%

### How many trials or hearings have you had with this judge over the past year?

5 or fewer	46%
6 - 10	21%
11 - 15	5%
16 - 20	8%
More than 20	20%

# Survey Background and Methods

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This report presents the results from the 2013 survey process, conducted by Market Decisions, LLC. A detailed description of the survey methodology is available separately on the Utah Judicial Performance Evaluation website.

## A. Survey Overview

### 1. Description of Sample

The following groups are invited to participate in the survey process:

- Attorneys with appearances before the judge
- Court staff who work with the judge
- Juvenile court professionals who work in the judge's courtroom on a regular and continuing basis to provide substantive input to the judge (juvenile court judges only)
- Jurors who participate in jury deliberation (district and justice court judges only)

With the exception of the attorney survey, the survey contractor attempts to survey all court staff and juvenile court professionals who work with judge and all jurors who reach the point of jury deliberation. The lists of court staff and juvenile court professionals are provided by the courts and by the Division of Child and Family Services and Juvenile Justice Services. A list of jurors is created after each trial. All lists are forwarded to the surveyor, Market Decisions, LLC.

For the attorney survey, a representative sample of attorneys is drawn to evaluate each judge based on appearances over a designated two-year period. The sample is weighted to select those with the greatest experience before the judge, assuming that these people will have a better knowledge base about the judge than those with less experience. Attorneys are first stratified into three groups; those with one or more trial appearances, those with 3 or more non-trial appearances, and those with 1-2 non-trial appearances. Attorneys within each sample are then randomized prior to selection. Selection begins with attorneys who have trial experience, then those with a greater number of non-trial appearances (if needed), and finally those with fewer non-trial appearances (if needed).

### 2. Summary of Survey Methods

Surveys are conducted online, using web-based survey software. Each respondent receives an initial email invitation requesting participation in the survey. A separate email is sent for each judge that a respondent is asked to evaluate. A reminder email is sent one week later to those who did not respond by completing and submitting a survey. This is followed by three additional reminder emails sent to respondents over the next three weeks. If a respondent completes only part of the survey, he or she is able to finish the survey at a later time. Once a respondent has completed the survey for a specific judge, the survey is locked and cannot be accessed again.

The number of questions included in the survey varies, ranging from 9 (jurors) to 24 (attorneys with an appearance before an appellate court judge). Each question is evaluated on a sliding scale ranging from 1 (inadequate) to 5 (outstanding).

Responses to individual questions are used to calculate averaged scores in three statutory categories: Legal Ability, Integrity & Judicial Temperament, and Administrative Skills. Judges also receive an averaged score in Procedural Fairness.

## **B. Evaluation Period**

The retention evaluation period for judges standing for election in 2014 began on June 1, 2012 and ended on June 30, 2013.

## II. Courtroom Observation Report

### REPORT OF COURTROOM OBSERVATIONS FOR JUDGE DENO HIMONAS

Four observers wrote 72 codable units that were relevant to 13 of the 17 criteria. Two observers reported that the judge was not aware that JPEC observers were present, and two did not know if the judge was aware.

#### Overview

WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none"> <li>All observers were positive about Judge Himonas.</li> <li>All observers variously reported that Judge Himonas was very mindful of time, apologized for unavoidable waiting, and accommodated all parties' needs when scheduling. He greeted each participant by name and was quick to encourage and compliment progress. He consistently treated everyone graciously and was calm, polite and patient. He was very experienced, his demeanor authoritative and decisive, and one observer noted with approval that nothing got past him. He was also compassionate, easy-going and somewhat informal, with a flair for the dramatic and the humorous, although one observer noted that humor may be inappropriate if it is the worst day in a defendant's life.</li> <li>Judge Himonas treated all parties alike and always discussed his position with both sides before making a judgment. He acted with great concern for the best interests of defendants and took every opportunity to instruct both attorneys and defendants. He encouraged all participants to speak and ask questions about their case, and he never rushed or dismissed any questions. He was very concerned that all defendants clearly understood what was happening and what he was saying, especially regarding their rights, and he gave clear and careful explanations and repeatedly asked questions to ensure their understanding.</li> <li>All observers reported that they would feel comfortable appearing before Judge Himonas.</li> </ul>
MINORITY OBSERVATIONS	<ul style="list-style-type: none"> <li>None</li> </ul>
ANOMALOUS COMMENTS	<ul style="list-style-type: none"> <li>None</li> </ul>

#### Summary and *exemplar language* of four observers' comments

<i>RESPECTFUL BEHAVIORS</i>	
Well-prepared & efficient	Two observers reported that Judge Himonas was <i>familiar with the cases</i> and runs the courtroom in an <i>orderly fashion</i> .
Respect for others' time	All observers reported that court started <i>on time</i> . When there was <i>only one public defender and the proceedings took a long time</i> , Judge Himonas was very <i>mindful of the time</i> , saying, " <i>Thank you everyone for your patience, I know it is trying [and] you all have lives with jobs and children – I'm trying everything to hurry this along.</i> " On another occasion he <i>apologized</i> to the last defendant of the session for the long wait. He <i>regularly accommodated</i> the needs of both attorneys and defendants when setting schedules.
Respectful behavior generally	Three observers reported that Judge Himonas <i>greeted each defendant by name</i> and told them <i>why they were in court</i> . He <i>always thanked</i> participants and referred to them as " <i>Sir</i> " or " <i>Ms.</i> " He was <i>quick to encourage and compliment progress and positive changes</i> . He said, " <i>I'm open for advice. If you know something I could have done better, please tell me.</i> "

Respectful behavior generally continued	<p>When Judge Himonas <i>apologized</i> to one attorney after the proceedings that <i>the case had not gone well for him</i>, and the attorney <i>quickly responded</i>, “<i>I understand</i>,” the observer found this to be <i>gracious</i> of the judge. When the prosecutor mentioned that he was hungry and <i>felt sorry for inmates in court because they would have to wait until dinner time when they returned to their cells</i>, the judge would not allow this delay in providing meals, but the bailiff assured him that they would be fed downstairs.</p> <p>When he asked participants “<i>How are you today?</i>” and they replied, “<i>Fine. How are you?</i>” Judge Himonas would reply, “<i>I’m fine thanks - thank you for asking.</i>” While one observer commented favorably that this <i>demonstrated the general attitude</i> of this court, another found it <i>a bit patronizing</i> that the judge emphasized that participants <i>should ask how the judge was after he asked them, but speculated that he may be using this as a teaching moment.</i></p>
<b>RESPECTFUL TONE</b>	
Courtesy, politeness and patience	Two observers reported that Judge Himonas was <i>consistently polite, attentive, and patient</i> , and his <i>calm demeanor</i> put participants <i>at ease</i> .
Courtroom tone & atmosphere	<p>Three observers reported that Judge Himonas was <i>very experienced, professional, authoritative, decisive, organized, and able to see to the heart of a matter</i>. One observer commented favorably that he <i>kept the state and public defender on their toes, drilling down when they made a comment, and nothing got past him: THAT is what a judge is for</i>. He was “<i>in charge</i>” <i>at all times</i> and <i>very firm</i> when necessary.</p> <p>Judge Himonas was also <i>compassionate and somewhat easy-going, relaxed, and informal</i>, stating, “<i>If you want coffee, juice, water, please do...I always say if I can have it up here, you can have it down there. I try to make this as informal as possible.</i>” He was <i>innovative with a flair for the dramatic and quite an entertainer</i>, considering down time as <i>story time</i>. He was <i>humorous when appropriate</i>, but one observer reported that <i>while humor can be good, it can be inappropriate if it is the worst day in a person’s life</i>.</p>
Voice quality	Two observers reported that Judge Himonas spoke in a <i>clear, amicable</i> voice while <i>looking intently</i> at whom he was speaking. When a defendant told the judge that he was hard of hearing, Judge Himonas <i>immediately raised his voice and spoke more slowly, and when he was finished asked the defendant if he had understood everything</i> . The judge seemed to <i>do this effortlessly</i> .
<b>NEUTRALITY</b>	
Consistent and equal treatment	<p>Two observers reported that Judge Himonas <i>treated attorneys and defendants alike</i>. When striving to find the correct decision <i>based on the rules of law</i>, he <i>discussed his position</i> with both prosecutor and defense attorneys <i>before making a judgment</i>.</p> <p>After <i>chastising a belligerent defendant</i> and assigning her to a judge, he <i>realized the judge was in the audience and could be biased against the defendant</i>. He called the defendant back to <i>assign a different judge</i>.</p>
Acts with concern for individual needs	Three observers reported that Judge Himonas was concerned with the interests of each defendant. In one case he was <i>adamant that the right information had been sent</i> to a no-show defendant and required the State to <i>show that the summons showed the proper date, time and place to appear</i> . When a defendant <i>wanted to plead guilty and the prosecutor did not have the factual basis for the charges, he declined to hear the case without knowing the factual charges</i> .
Expresses concern for the individual	One observer reported that Judge Himonas took <i>every opportunity to instruct the defendant or attorney</i> and made the proceedings <i>interesting and educational for all those in attendance</i> .
Unhurried and careful	Two observers reported that Judge Himonas <i>never rushed and never hurried any explanations or dismissed any questions</i> .

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*VOICE*

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Considered voice	Three observers reported that Judge Himonas <i>asked and encouraged</i> all defendants in an <i>amicable and interested voice</i> if they had anything to say or any questions regarding their case, saying, “ <i>Any question whatsoever with anything you’ve read or we’ve discussed?</i> ” or, “ <i>Anything you want to say, Sir, before I sentence you?</i> ” He <i>truly listened</i> with interest.
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*COMMUNICATION*

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Ensures information understood	All observers reported that Judge Himonas was <i>very aware of the impact of his decisions</i> , and he <i>made sure people understood what was going on</i> and that <i>he was representing their best interest under the law</i> , saying, “ <i>You can walk out of here pissed at me or happy with me. But I don’t want anyone to walk out of here not knowing what I’m doing or saying.</i> ”
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If a defendant *questioned the charges* he was accused of, the judge *restated them slowly and with different words* so the defendant was *clear why he was there*. He always asked if participants *understood what he was saying* and if they had any *questions regarding what their sentences required* of them. When signing away rights by requesting a waiver, he *always asked if they had questions about what they were signing*.

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Provides adequate explanations	Two observers reported that Judge Himonas <i>carefully explained</i> the consequences of rights given up with guilty, no-contest or plea-in-abeyance pleas. He was <i>very thorough</i> when reading their rights, <i>looking them in the eye</i> with the <i>dialogue totally memorized</i> , going through each one <i>very clearly with “spot on” eye contact</i> . He <i>clearly explained</i> the <i>conditions</i> to accept Early Case Resolution.
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