

## **Honorable Scott N. Johansen – Juvenile Court Judge**

Serving Carbon, Emery, Grand and San Juan counties



### **Commission Recommendation: **RETAIN****

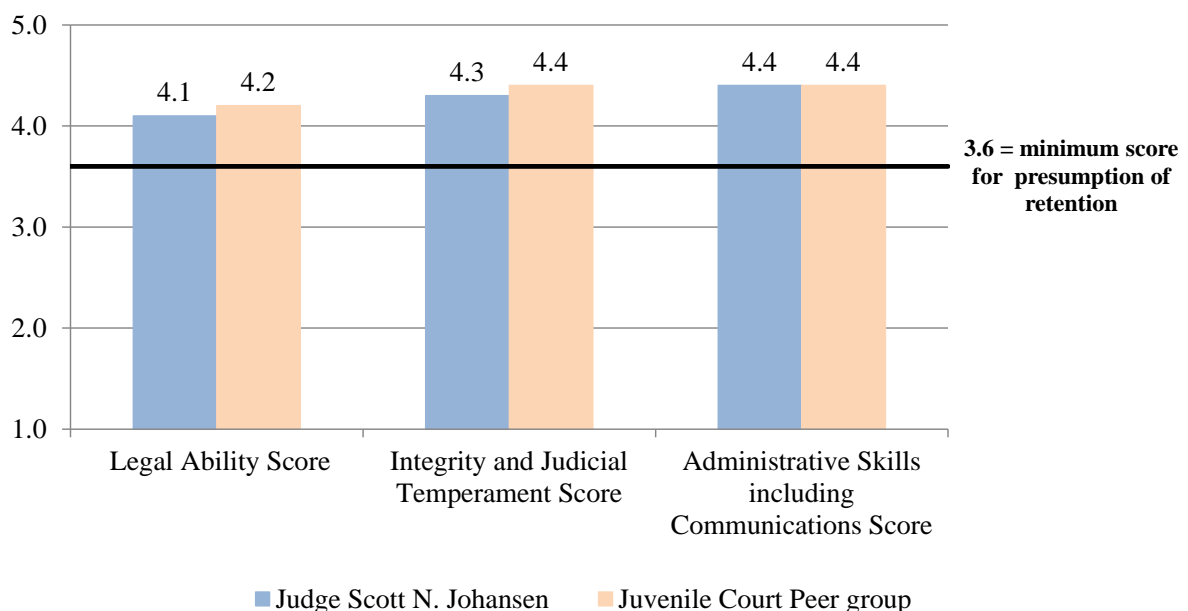
(vote count: 12-0 for retention)

With more than two decades of judicial experience, Judge Scott Johansen has a bold, no-nonsense style that prompted mixed reviews from survey respondents. While respondents most frequently described Judge Johansen as knowledgeable, confident, and intelligent, a minority perceived him as arrogant and impatient. Judge Johansen received lower than average survey scores for procedural fairness, separation of his personal beliefs from his legal rulings, and fair and respectful treatment of courtroom participants. Respondents, however, also praised Judge Johansen for his understanding, helpfulness, preparedness, and punctuality. Courtroom observers expressed more consistency in their views of Judge Johansen, with all stating they would feel comfortable appearing before him. Observers cited Judge Johansen’s personable, caring approach to courtroom participants and his serious but empathetic demeanor. Of survey respondents who answered the retention question, 88% recommended that Judge Johansen be retained.

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

Judge Scott N. Johansen was appointed to the Seventh District Juvenile Court in January 1992 by Gov. Norman H. Bangerter after serving as Emery County attorney since 1979. He earned a law degree in 1977 from the J. Reuben Clark College of Law at Brigham Young University and practiced with the Price law firm of Frandsen, Keller & Jensen from 1977 to 1979. He served as city attorney for several cities and towns in Carbon, Emery, and Sanpete counties and is a former president of the Utah Association of Counties. Judge Johansen is a past chair of the Board of Juvenile Court Judges, past chair of the Judicial Council's Policy and Planning Committee, and past member of the Sentencing Commission and the Judicial Council.

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



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# **The Honorable Scott N. Johansen**

**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 Scott N. Johansen, 62% of qualified survey respondents submitted surveys. Of those who responded, 72 agreed they had worked with Judge Scott N. Johansen enough to evaluate his performance. This report reflects the 72 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

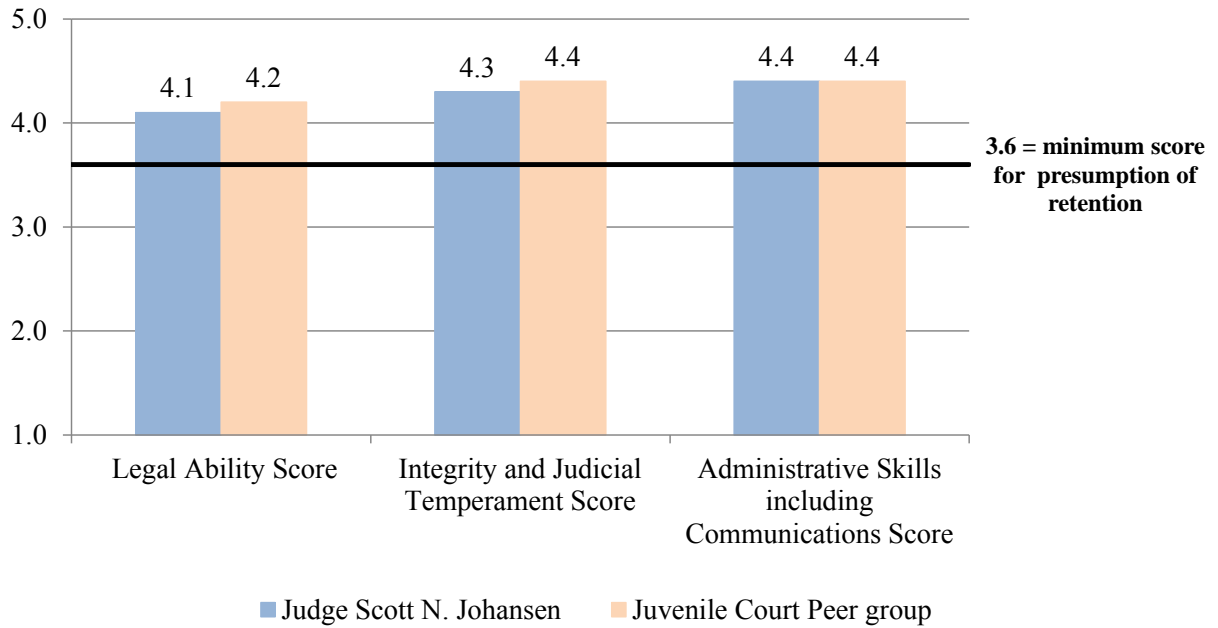
The results are shown in both graphs and tables. Each judge's scores are shown along with a comparison to other judges who serve at the same court level. The comparison group is called "Juvenile Court" on the charts.

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.

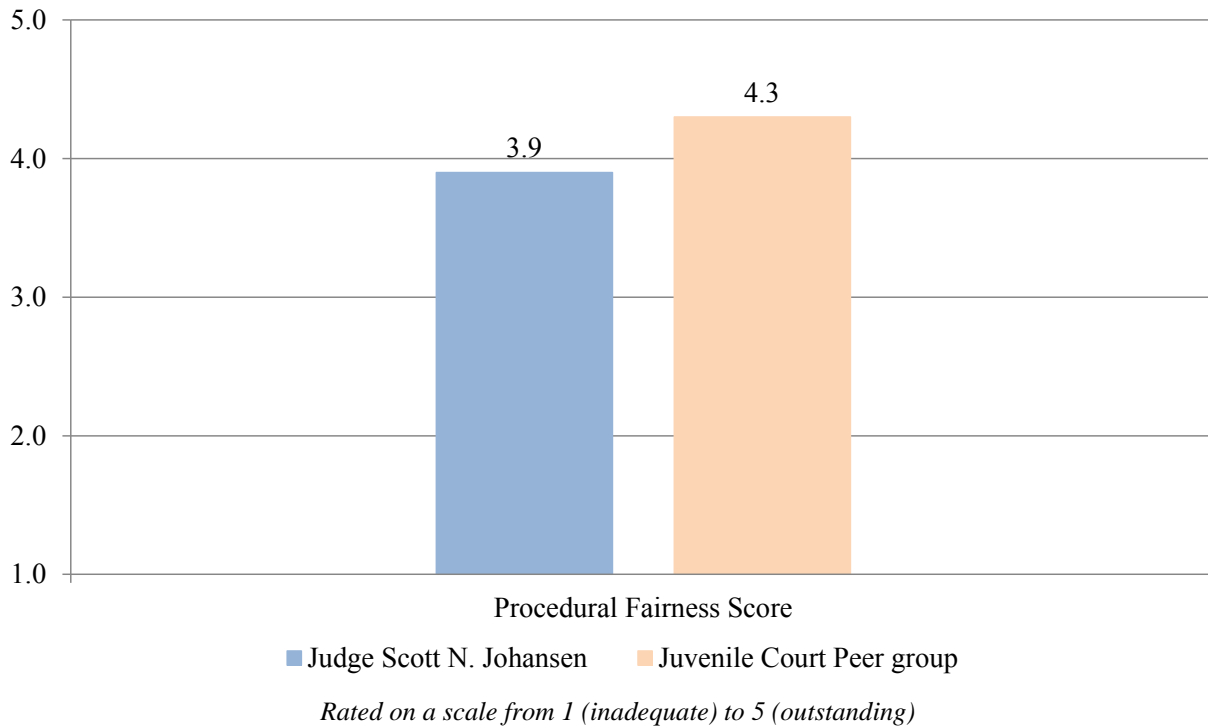
For procedural fairness, the judge must demonstrate that it is more likely than not, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants. Judges will receive either a Pass or Fail in procedural fairness, 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 Scott N. Johansen
Procedural Fairness	PASS

## D. Responses to Individual Survey Questions

Category	Question	Judge Scott N. Johansen	Juvenile 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.	4.2	4.2
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.2	4.2
Legal Ability	The judge only considers evidence in the record.	4.0	4.1
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.1	4.2
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.6	4.4
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.	3.7	4.2
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.2	4.2
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.	4.5	4.7

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

<b>Category</b>	<b>Question</b>	<b>Judge Scott N. Johansen</b>	<b>Juvenile Court</b>
Administrative Skills	The judge is prepared for court proceedings.	4.5	4.5
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.1	4.3
Administrative Skills	The judge is an effective manager.	4.4	4.3
Administrative Skills	The judge convenes court without undue delay.	4.5	4.2
Administrative Skills	The judge rules in a timely fashion.	4.6	4.5
Administrative Skills	The judge maintains diligent work habits.	4.5	4.5
Administrative Skills	The judge's oral communications are clear.	4.5	4.4
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.3	4.4
Procedural Fairness	The judge treats all courtroom participants with equal respect.	3.8	4.3
Procedural Fairness	The judge is fair and impartial.	3.8	4.2
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	3.9	4.2
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.2	4.4

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



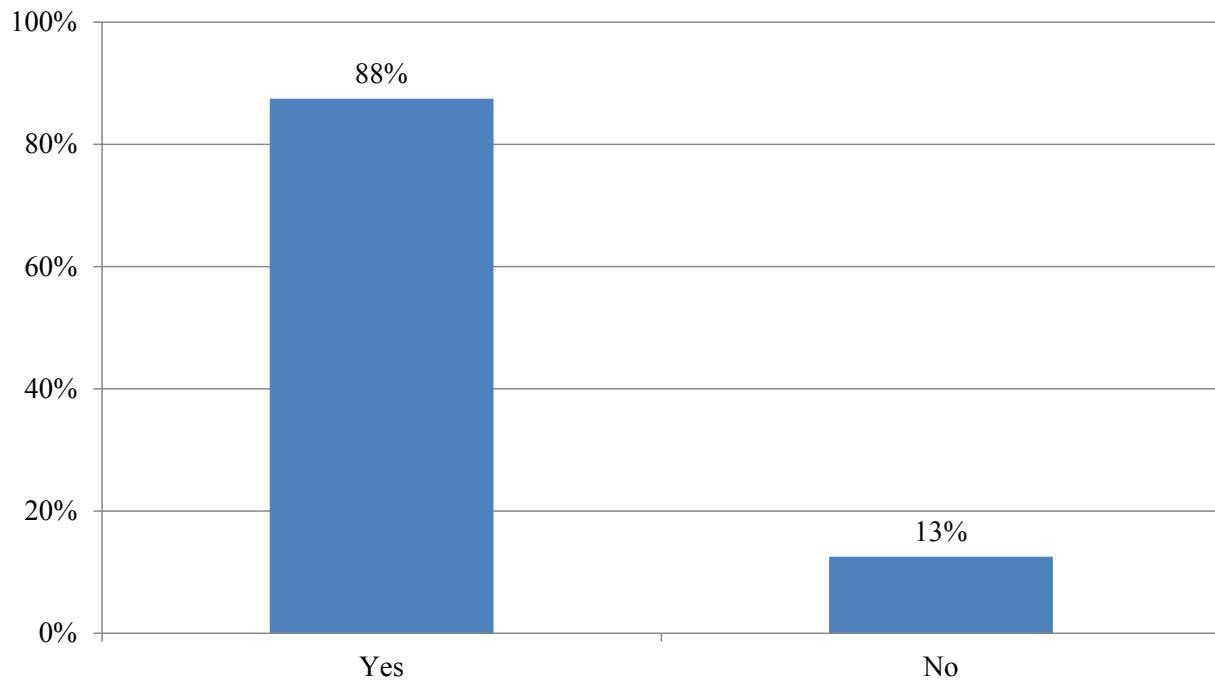
## E. Adjective Question Summary

	Number of Times Mentioned*
Attentive	19
Calm	13
Confident	39
Considerate	16
Consistent	33
Intelligent	41
Knowledgeable	45
Patient	5
Polite	8
Receptive	8
Arrogant	14
Cantankerous	8
Defensive	5
Dismissive	6
Disrespectful	10
Flippant	5
Impatient	13
Indecisive	0
Rude	7
<b>Total Positive Adjectives</b>	<b>227</b>
<b>Total Negative Adjectives</b>	<b>68</b>
<b>Percent of Positive Adjectives</b>	<b>77%</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 Scott N. Johansen be retained?**



## G. Attorney Demographics

### What are your primary areas of practice?

Collections	7%
Domestic	43%
Criminal	61%
Civil	39%
Other	39%

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

5 or fewer	29%
6 - 10	25%
11 - 15	7%
16 - 20	4%
More than 20	36%

# 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 SCOTT N. JOHANSEN

Four observers wrote 92 codable units that were relevant to 15 of the 17 criteria. All observers reported that the judge was aware that JPEC observers were present.

### Overview

#### WIDELY AGREED-UPON THEMES

- All observers were positive about Judge Johansen.
- All observers variously reported that Judge Johansen listened carefully with his sole attention focused on the case at hand, and he was well-prepared and informed about each case. He started on time, apologized for any delays, and was unhurried and patient. He greeted participants by name and interacted intimately and personably with each one. He commended and encouraged the juveniles as appropriate without being judgmental and showed particular respect for the efforts of grandparents. His demeanor was poised, sincere, and non-threatening, but also serious, strict, no-nonsense, and forceful when necessary. He showed his empathy and genuine caring through his body language, continuous eye contact, and interested facial expression. Judge Johansen treated each participant and member of court with the same respect and interacted in a consistent way in each case. He gave every participant an opportunity to speak, and he engaged defendants in a conversational style that led to a continuing dialogue rather than a question and answer exchange. He was clear and concise when carefully explaining defendants' rights and responsibilities, and he helped participants understand his decisions by consistently summarizing his orders.
- All observers reported that they would feel comfortable appearing before Judge Johansen.

#### MINORITY OBSERVATIONS

- None

#### ANOMALOUS COMMENTS

- One observer mentioned one case of misplaced humor (see "Courtroom tone & atmosphere").

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

#### *RESPECTFUL BEHAVIORS*

Listening & focus	All observers reported that Judge Johansen <i>listened carefully, sitting forward and asking many questions</i> with his <i>sole attention focused on the case at hand</i> . He did not look at the computer screen <i>even once</i> or look through papers, and there were <i>no interruptions from anyone in court</i> .
Well-prepared & efficient	Three observers reported that Judge Johansen was <i>well prepared</i> and <i>informed</i> on each case, remembering details such as that <i>one individual's father had had a debilitating heart attack</i> . He <i>utilized time between cases to review files</i> .
Respect for others' time	One observer reported that Judge Johansen started the sessions at <i>8:30 a.m. and 1:00 p.m. sharp</i> and <i>apologized for any delays</i> to the defendants <i>and their families</i> . Respect for everyone's time was <i>his priority</i> , and in one case when a <i>family and two children were scheduled at different times</i> he <i>took them out of order to make it easier on the families</i> .
Respectful behavior generally	Three observers reported that Judge Johansen <i>greeted each participant by name</i> and interacted <i>intimately and personably</i> with each one. In drug court he asked how many days they had been "clean," remarking that they <i>had made great strides</i> and telling them to " <i>keep it up</i> ." He <i>commended successes</i> and <i>led everyone in applause when justified</i> . When a girl progressed from phase I to II in a <i>very short time period</i> , he said, " <i>You're not doing well, you are doing REALLY well</i> ." He was <i>careful not to be judgmental</i> but <i>encouraged and urged</i> defendants to <i>continue their positive outlook</i> . Participants were <i>smiling and obviously proud</i> as they returned to the gallery.

Respectful behavior generally continued	Judge Johansen was <i>respectful to everyone in court</i> but showed <i>ultimate respect for grandparents</i> , saying, “ <i>When she is 16 you will be 87. Thank God for people like you. We see grandparents like you again and again come along and pick up the pieces. We are so grateful...</i> ”
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**RESPECTFUL TONE**

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Courtroom tone & atmosphere	<p>Two observers reported that Judge Johansen was <i>personable, poised, caring, non-threatening</i> and <i>genuinely sincere</i>, but also <i>serious, strict</i>, and <i>capable with a no no-nonsense approach</i> that was <i>authoritative and forceful when necessary</i>. He was able to <i>keep everyone engaged with a conversational style</i> that was <i>almost paternal but not patronizing</i>.</p> <p>One observer felt that it was <i>misplaced humor</i> when Judge Johansen said to a girl who was <i>crying and sobbing while explaining her side of the story</i>, “<i>I wish I could make everybody cry</i>,” and he <i>kind of laughed</i>. The observer assumed the judge meant, “<i>I wish everyone would feel remorseful</i>,” but the observer felt that it <i>sounded unkind</i>.</p> <p>One observer with a <i>personal distaste of gum chewing</i> in courtrooms noted that the <i>only lack of decorum was a number of gum chewers on both sides of the bar</i>.</p>
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Body language	All observers reported that Judge Johansen <i>expressed his interest and caring in a subtle way</i> through his body language of <i>sitting up and leaning forward with arms folded as each participant approached the bench</i> , showing that <i>they had his attention</i> . He maintained <i>continuous eye contact</i> and an <i>interested facial expression</i> .
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Voice quality	One observer reported that Judge Johansen spoke in a <i>cordial and friendly tone of voice</i>
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**NEUTRALITY**

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Consistent and equal treatment	Three observers reported that Judge Johansen treated each person in <i>the same neutral fashion with the same amount of respect</i> , including <i>defendants in handcuffs</i> as well as attorneys and all other members of the court. He <i>interacted in a consistent way</i> by asking a <i>series of similar questions</i> in each case and <i>engaging participants in a non-judgmental manner</i> .
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Acts with concern for individual needs	Three observers reported that Judge Johansen <i>showed that he was there to assist and make a difference in bettering the juveniles’ lives</i> by <i>supporting them through his advice and encouragement</i> . He showed that he <i>wanted to do what would be best</i> for each juvenile and that he was <i>acting specifically in their interest</i> by <i>consistently asking a series of questions</i> , for example, “ <i>How have you been?...Do you have anything you would like to talk to me about?...How is work?</i> ” In one case he made a <i>concession to an out of town spouse</i> by <i>giving permission for a telephone conversation with a mediator</i> .
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Expresses concern for the individual	Two observers reported that Judge Johansen <i>genuinely cared</i> for the juveniles and showed <i>empathy for the difficulties</i> that the drug program imposed. He <i>reassured</i> them that both he and the court understood that each <i>individual was unique and that each was doing their best according to their capabilities</i> .
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Unhurried and careful	Two observers reported that Judge Johansen was <i>unhurried and patient</i> in <i>ascertaining all the information that would lead to a correct assessment of the situation</i> .
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**VOICE**

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Considered voice	Three observers reported that Judge Johansen gave participants every opportunity to talk, carefully laying out the plan by saying, “ <i>First we’ll hear from X, then we’ll hear from Y, and finally Z will get their turn</i> .” He always asked if participants had anything else to say or add, and even when he knew ahead of time if there was a violation he gave each person the chance to “ <i>come clean</i> ” and tell their story, and if they did not he confronted them with the issue and asked what was the plan to “ <i>learn from their mistakes</i> .” In drug court he asked each person, “ <i>Need to talk about anything? Anything else I should know to help me understand?</i> ”
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Considered voice <i>continued</i>	Judge Johansen had an ability to engage the defendants by making his interactions more of a conversation than a question and answer exchange, resulting in a continuing dialogue. He asked for clarification of what was said in order to get defendants' feelings, explanations, and concerns.
<i>COMMUNICATION</i>	
Communicates clearly	One observer reported that Judge Johansen was <i>clear and concise</i> when <i>clarification was needed</i> or <i>counseling appropriate</i> . He displayed a <i>unique capability of hearing what people say</i> and then <i>communicating his understanding of the law as it applied in a clear and useful way</i> .
Ensures information understood	Two observers reported that Judge Johansen <i>helped participants understand his decisions</i> . He <i>consistently summarized</i> his orders in very clear language, saying, " <i>Let's make sure we're straight,</i> " or, " <i>Let me explain what this means.</i> " When a mother <i>did not understand what had been said</i> and <i>looked to her 14 year-old daughter to explain it</i> , the judge was <i>patient</i> but said <i>he was the person who could explain the steps, and she ultimately did listen to his explanations</i> .  One observer noted approvingly that Judge Johansen ensured <i>consequences were productive</i> by explaining <i>exactly WHY they are getting the consequence</i> . In one case in which a young defendant " <i>came up with a different story</i> " the judge said, " <i>...the most troubling part [is]The LIE! When you lie you destroy trust, then everything goes downhill from there.</i> "
Provides adequate explanations	Three observers reported that Judge Johansen <i>carefully and fully explained</i> defendants' rights and the choices they could make. He <i>clearly articulated responsibilities</i> during a plea in abeyance and explained to a defendant that a <i>jury trial was not available to juveniles, but if he pleaded not guilty he could have a bench trial with evidence presented by the prosecutor for the judge's decision</i> . He <i>explained multiple times in multiple ways</i> to an interrupting mother that a daughter could not stay with the mother's friend because the friend was not an official foster home.