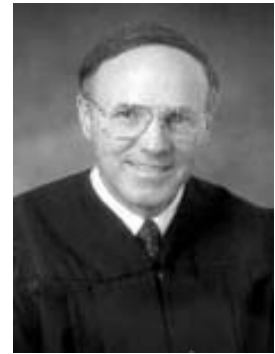


Honorable Thomas L. Kay – District Court Judge

Serving Davis, Weber and Morgan counties



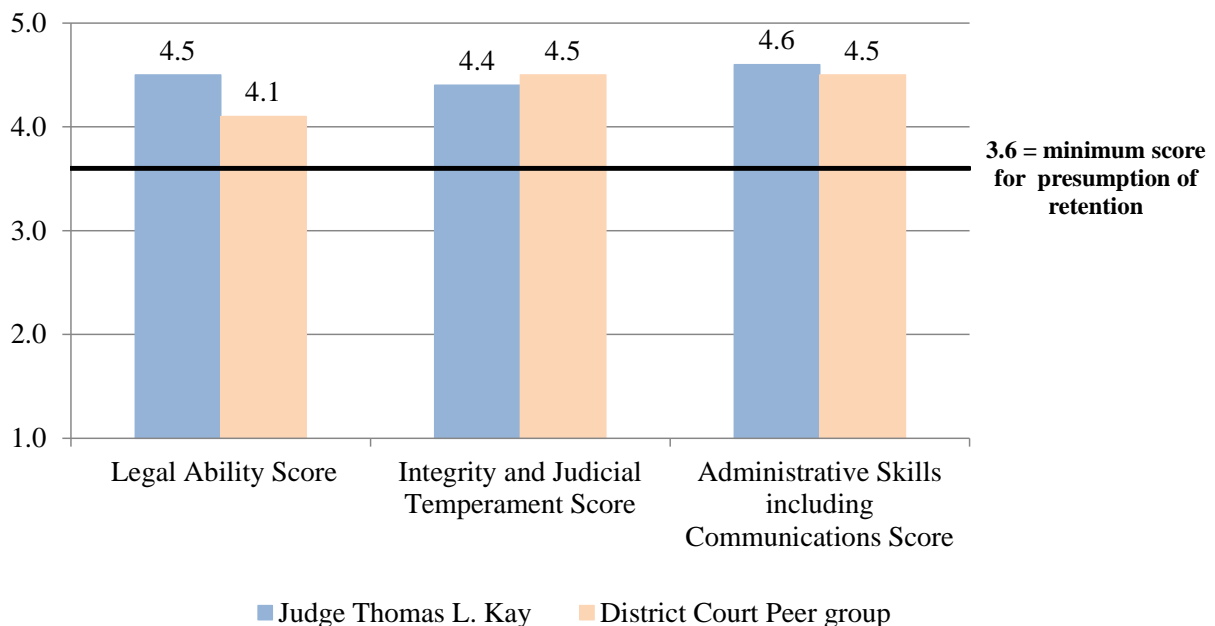
Commission Recommendation: **RETAIN**
(vote count: 12-0 for retention)

Judge Thomas Kay, appointed in 1998, is an experienced, no-nonsense judge, characterized by attorneys as intelligent and knowledgeable. Attorneys appreciated his clear and logical decisions. Survey respondents, including attorneys, jurors, and court staff, described him as attentive, well-prepared and diligent. Some respondents noted that Judge Kay has a tendency towards impatience. Courtroom observers gave Judge Kay favorable reviews, emphasizing his calm and professional demeanor, his efficiently-run courtroom, and his consistent composure with argumentative courtroom participants. All observers agreed they would feel comfortable appearing before him. Of survey respondents who answered the retention question, 91% recommended that Judge Kay be retained.

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

Judge Thomas L. Kay was appointed by Governor Michael Leavitt in 1998. He received his law degree from BYU in 1979, where he served as a Note and Comment Editor for the BYU Law Review. Following a clerkship with U.S. District Judge David K. Winder, he worked as a trial attorney at Ray, Quinney & Nebeker and Snell & Wilmer. Judge Kay has served as the Presiding Judge of the Second District, Chair of the Board of District Judges, and President of the Rex E. Lee Inn of Court. He is the Chair of Bountiful Communities That Care, a frequent presenter to school and youth groups, and a member of the Rules of Evidence Committee. He also implemented the first paperless Utah state court.

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



The Honorable Thomas L. Kay

Judicial Performance Evaluation Commission Report

Retention 2014

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II. Courtroom Observation Report

I. Survey Report

Survey Results

A. How to Read the Results

For Judge Thomas L. Kay, 54% of qualified survey respondents submitted surveys. Of those who responded, 78 agreed they had worked with Judge Thomas L. Kay enough to evaluate his performance. This report reflects the 78 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

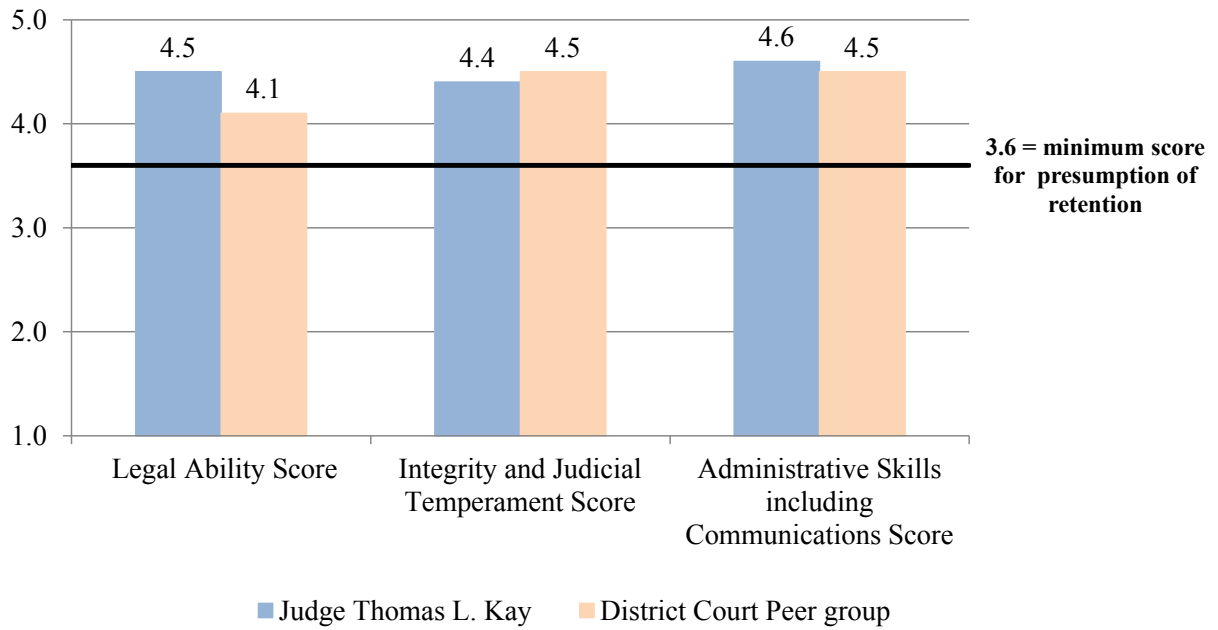
The results are shown in both graphs and tables. Each judge's scores are shown along with a comparison to other judges who serve at the same court level. The comparison group is called "District Court" on the charts.

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.

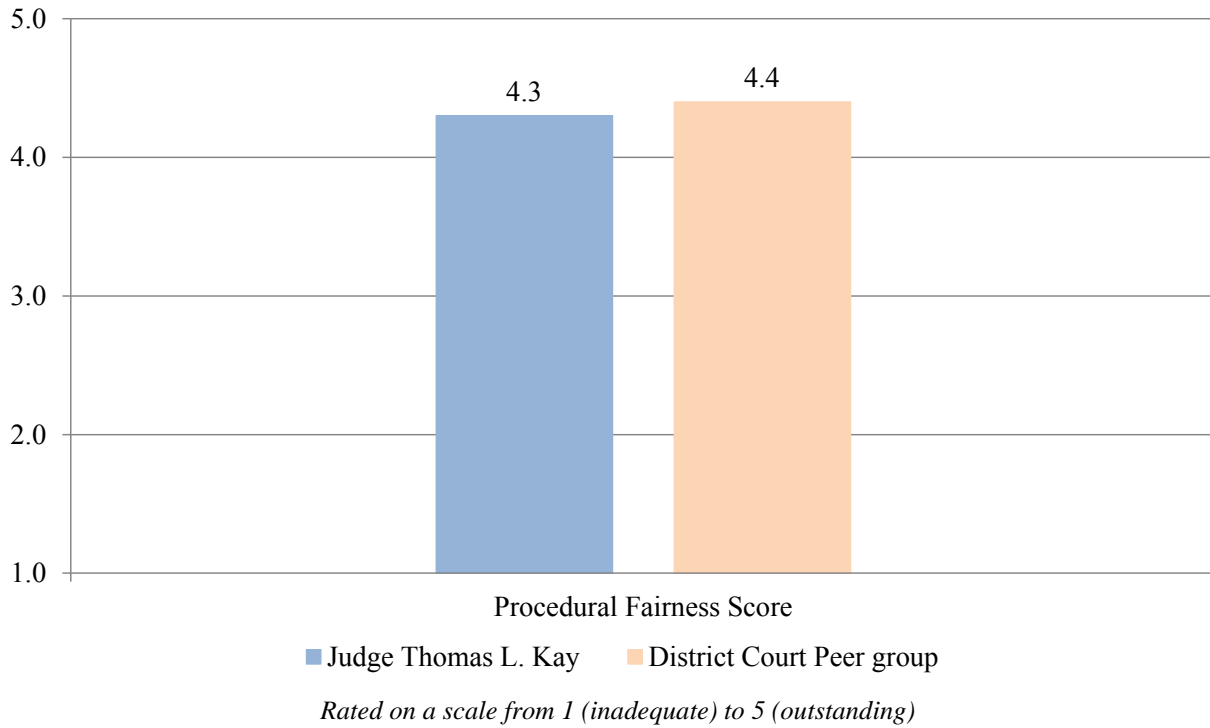
For procedural fairness, the judge must demonstrate that it is more likely than not, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants. Judges will receive either a Pass or Fail in procedural fairness,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

D. Responses to Individual Survey Questions

Category	Question	Judge Thomas L. Kay	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.	4.5	4.2
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.4	4.1
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.5	4.1
Legal Ability	The judge only considers evidence in the record.	4.3	4.2
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.4	4.1
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.5	4.5
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.6	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.	4.3	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 Thomas L. Kay	District Court
Administrative Skills	The judge is prepared for court proceedings.	4.6	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.	4.6	4.3
Administrative Skills	The judge convenes court without undue delay.	4.7	4.5
Administrative Skills	The judge rules in a timely fashion.	4.7	4.4
Administrative Skills	The judge maintains diligent work habits.	4.7	4.5
Administrative Skills	The judge's oral communications are clear.	4.6	4.5
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.4	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.	4.3	4.4
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.3	4.3
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.4	4.4

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

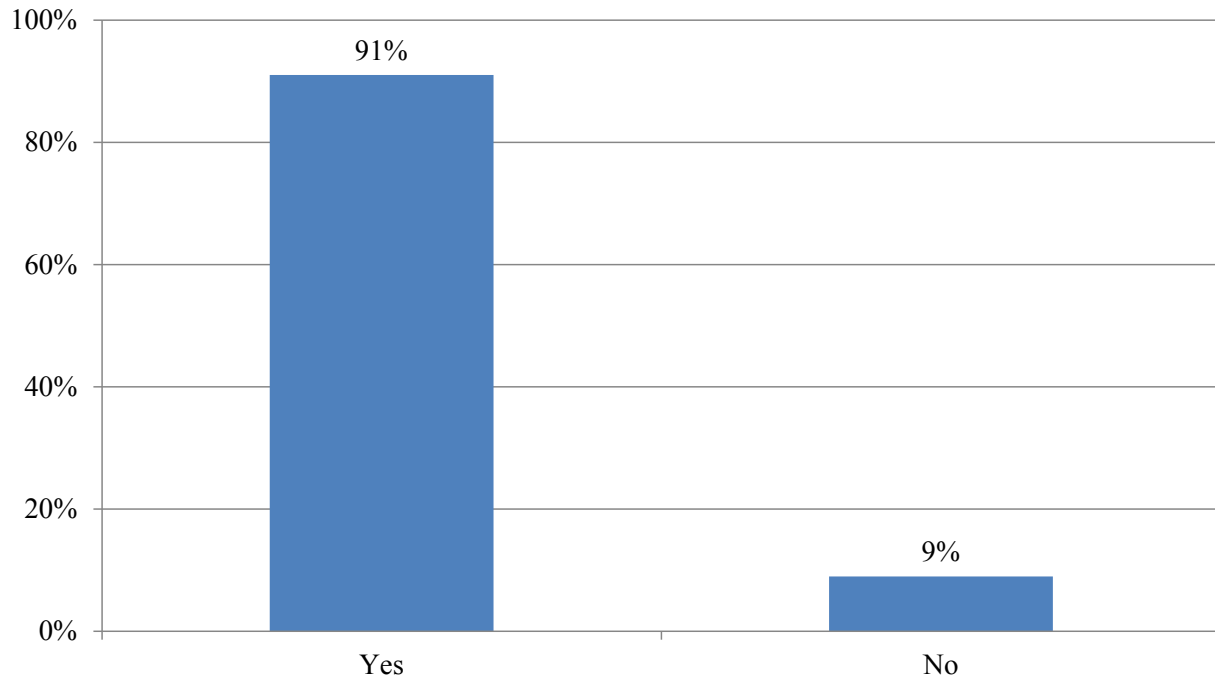
E. Adjective Question Summary

	Number of Times Mentioned*
Attentive	31
Calm	13
Confident	31
Considerate	11
Consistent	36
Intelligent	49
Knowledgeable	43
Patient	15
Polite	13
Receptive	10
Arrogant	4
Cantankerous	7
Defensive	6
Dismissive	3
Disrespectful	4
Flippant	4
Impatient	14
Indecisive	0
Rude	5
Total Positive Adjectives	252
Total Negative Adjectives	47
Percent of Positive Adjectives	84%

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 Thomas L. Kay be retained?



G. Attorney Demographics

What are your primary areas of practice?

Collections	26%
Domestic	40%
Criminal	32%
Civil	47%
Other	11%

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

5 or fewer	52%
6 - 10	23%
11 - 15	8%
16 - 20	3%
More than 20	14%

Survey Background and Methods

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 THOMAS L. KAY

Four observers wrote 76 codable units that were relevant to 12 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">• All observers were positive about Judge Kay.• All observers variously reported that Judge Kay was knowledgeable, prepared, unhurried, and well-organized. He addressed participants by name, complimented successful defendants, and thanked all participants at the end of cases. He was polite, courteous, and had a calming effect. His demeanor was calm, professional, and open minded, and he was gentle but firm. Judge Kay treated defendants in the same manner regardless of gender, whether they were in custody, or of a minority group, but he also adapted his style to the type of hearing and the circumstances of each case. He gave all parties time to speak and asked all participants repeatedly if they had input or comments, and he listened thoughtfully and with interest to what he heard. He took time to calmly articulate the law and was transparent and clear when explaining his sentences. Observers particularly emphasized the beneficial effect of Judge Kay’s undeviating patience, particularly with disrespectful and belligerent participants.• All observers reported that they would feel comfortable appearing before Judge Kay.
MINORITY OBSERVATIONS	<ul style="list-style-type: none">• None
ANOMALOUS COMMENTS	<ul style="list-style-type: none">• One observer reported that Judge Kay’s continual body movements were distracting, but he looked up and made eye contact when participants were speaking. (see “Body language”).

Summary and *exemplar language* of four observers’ comments

RESPECTFUL BEHAVIORS

Well-prepared & efficient	All observers reported that Judge Kay was <i>prepared, knowledgeable, and extremely organized and efficient, setting court appearance himself</i> and thereby <i>bypassing the usual interaction</i> between the judge and clerk, and <i>giving attorneys latitude</i> to negotiate between debtors and creditors so that <i>numerous cases were processed in a short period of time</i> .
Respect for others’ time	Three observers reported that Judge Kay <i>started on time</i> and <i>consistently asked both sides if his calendar dates were satisfactory</i> .
Respectful behavior generally	Three observers reported that Judge Kay <i>started by reading the names of the defendants and addressed each person by title and name</i> . He <i>spoke directly to defendants</i> when he had questions, and he <i>carefully asked each defendant</i> about recommended resolution by a creditor’s attorney, saying, <i>“Is this acceptable to you?”</i> Judge Kay <i>complimented</i> some defendants who had made progress, saying, <i>“Keep up the good work and stay out of trouble,”</i> and he usually <i>thanked</i> all participants at the end of each case. One observer concluded that Judge Kay <i>firmly felt that if a defendant made the effort to show up their case should be heard</i> , for example, when a defendant was present but the state’s attorney was not, they <i>waited until the end and went back to the judge’s chambers and heard the case by phone</i> .

RESPECTFUL TONE

Courtesy, politeness and patience Three observers reported that Judge Kay was *polite, courteous*, and had a *calming effect* on litigants, *consistently asking* “*What is it you want?*” and the resulting agreements between parties led the observer to find this *a masterful example of mediation*. When defendants were *disrespectful or belligerent*, Judge Kay was patient in explaining the law, and when a defendant *repeatedly interrupted a creditor’s attorney*, he *calmly and patiently explained*, “*Sir, the way this is done, you must not interrupt. You must wait. He did not interrupt you. You must not interrupt him.*”

Courtroom tone & atmosphere Three observers reported that Judge Kay was *calm, professional, open minded, in charge* and *showed displeasure* and *demanding proper decorum* when dealing with *antagonistic and disrespectful* litigants. He was *gentle but firm, reprimanding* some litigants by saying, “*When I ask you folks to go out and talk that’s not to yell or scream. Knock it off.*”

Judge Kay *injected a bit of humor* when denying an attorney’s request for a reduced transportation fee for a client, stating, “*Maybe you’d like to drive him,*” but the observer felt *a bit uncomfortable with the comment*.

Body language Two observers reported that Judge Kay *referred to his monitor often*, but *looked up at whomever was speaking*. However, one observer reported that Judge Kay’s *continual, quick body movements* when moving around in his chair and at the desk, and while *moving papers and looking from side to side and up and down* were *distracting* and gave the impression that he was distracted. However, this observer also reported that *he looked up and made eye contact with speakers*, and *when listening he was still*, showing that he was *paying strict attention*, although *sometimes his eye contact drifted back to his desk*.

NEUTRALITY

Consistent and equal treatment Three observers reported that Judge Kay treated all participants in the *same manner* whether or not they were *in custody, female or male, or of a minority group*. He *listened attentively* and *took into account information from* all parties in each case, and his *demeanor* indicated that his decisions *were not personal opinions* but the *consistent application of rules and laws with careful deliberation*.

While one observer reported that Judge Kay *addressed defendants as individuals and not just as a number*, another reported that while he was *absolutely consistent in his speech, he spoke quickly in the same rote and impersonal way each time* and *did not seem to be talking to people as individuals*.

Acts with concern for individual needs Two observers noted that Judge Kay *adapted his style to the situation, appropriately individualizing* his behavior. In a parole violation the judge’s voice was *flat and firm indicating that he was serious and strict* about the violation. To a defendant who *successfully completed probation*, his *voice and body language were softer, gentler and lighter*.

Similarly, in the collections court, he *spoke rapidly and seemed detached from the process*, which *followed a formula*, and asked *only an occasional question*, whereas in civil and criminal cases Judge Kay was *interactive*, speaking more *slowly with measured deliberation*, and trying to help *individuals recognize it was in their best interest to settle*, asking, “*The real issue is, have you been mistreated? I suggest while you are here, try to resolve this. Save attorney fees and time.*”

Unhurried and careful Two observers reported that Judge Kay worked in an orderly manner and never interrupted or hurried a speaker.

VOICE

Considered voice	<p>All observers reported that Judge Kay gave all parties, including victims, <i>time to speak and add as much information as they desired</i>. He <i>not only spoke to attorneys but often addressed defendants and questioned them himself</i>. He specifically asked a defendant to <i>respond to allegations</i> and <i>consistently asked defendants if they were “alright” with what they heard from their attorney</i>. He asked, <i>“Is that what you want to do?”</i> and, <i>“Is there anything you wish to say?”</i> and he also asked, <i>“Is that okay with the state?”</i> He listened <i>thoughtfully, carefully, and with interest</i> to what he heard, and he <i>courteously gave everyone a last chance to weigh in prior to each sentencing, asking, “Have I missed anything?”</i></p> <p>In one case a litigant debtor representing himself went on for a <i>relatively long time</i>, showing <i>disrespect</i> to the court and to the creditor’s attorney, but the judge <i>listened carefully to every word and responded calmly and patiently and then he would listen more</i>. He <i>never deviated from his calm and respectful manner</i>, and after about thirty minutes he <i>denied the motion to dismiss the judgment</i>. The observer believed that the disrespectful litigant <i>accepted the judgment due to Judge Kay’s patience and his articulate and easily understood discussions with the debtor</i>.</p>
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COMMUNICATION

Ensures information understood	<p>One observer reported that Judge Kay <i>frequently repeated or rephrased what he had heard</i> to make it <i>clear and transparent to everyone</i> and to ensure that he <i>understood what was being said</i>.</p>
Provides adequate explanations	<p>Three observers reported that Judge Kay was <i>calm and articulate</i> when <i>taking the time</i> to explain the law <i>in detail to confused defendants</i>. He was also <i>transparent and clear</i> when sentencing, and one observer felt as if she was <i>listening to Judge Kay’s whole thought process as he spoke</i>. In one case he had to <i>repeatedly explain the details of what was occurring to assure the defendant that his rights were being respected</i>.</p>
