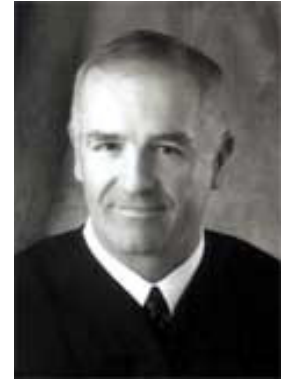


## Honorable Samuel D. McVey – District Court Judge

Serving Juab, Millard, Utah and Wasatch counties



### Commission Recommendation: **RETAIN**

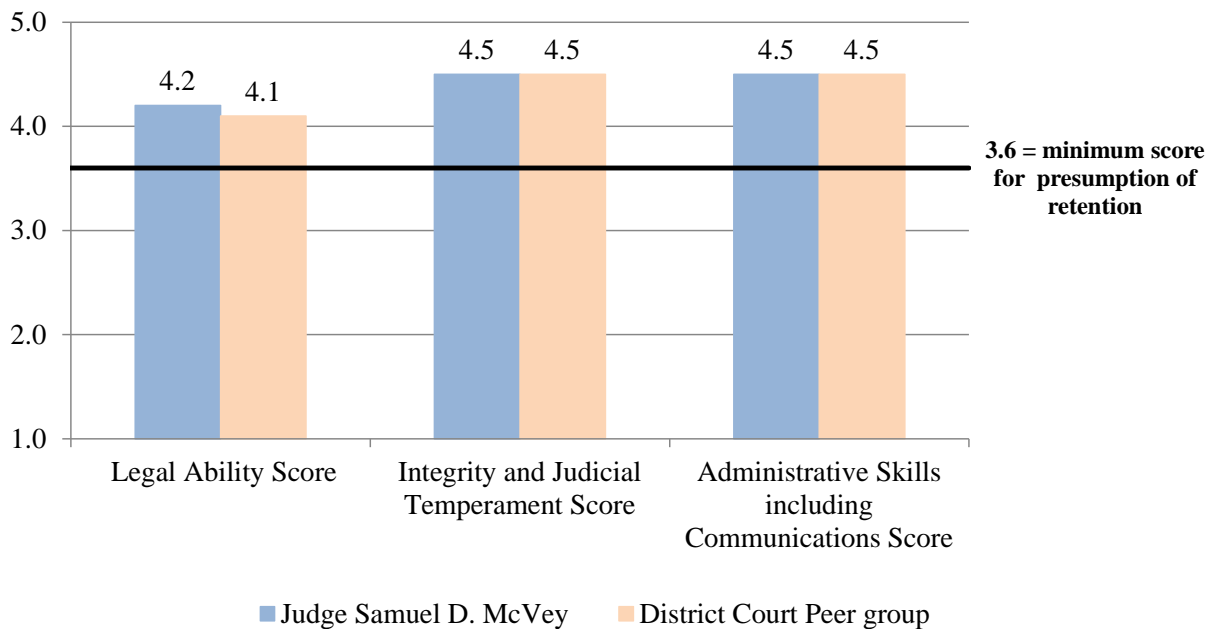
(vote count: 12-0 for retention)

Appointed in 2004, Judge Samuel D. McVey was recognized by survey respondents for his excellent preparation and thoroughness, as well as his patience and efficiency. Respondents most frequently characterized him as intelligent, knowledgeable and attentive, selecting 90% positive adjectives from a list to describe him. Courtroom observers described Judge McVey as highly competent and consistent, while at the same time voicing concern that some hearings felt rushed. Of survey respondents who answered the retention question, 87% recommended retention.

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

Appointed to the Fourth District Court by Gov. Olene Walker. Graduated “with distinction” from the U.S. Naval Academy, U.S. Naval War College and Brigham Young University Law School. Order of the Coif and law review note and comment editor. Past partner in Kirton McConkie law firm. Retired Marine Colonel. Received the Outstanding Young Military Lawyer Award from the American Bar Association and Legion of Merit from the Marines. Served on various Utah State Bar committees, including chair of the Section on Energy, Natural Resources and Environmental Law; 2006 Distinguished Service Award recipient. Was chair of the Standing Committee on Judicial Outreach and presiding judge of the Fourth District. Long time Boy Scout Volunteer. Married 37 years with nine children.

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



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# **The Honorable Samuel D. McVey**

**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 Samuel D. McVey, 49% of qualified survey respondents submitted surveys. Of those who responded, 96 agreed they had worked with Judge Samuel D. McVey enough to evaluate his performance. This report reflects the 96 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

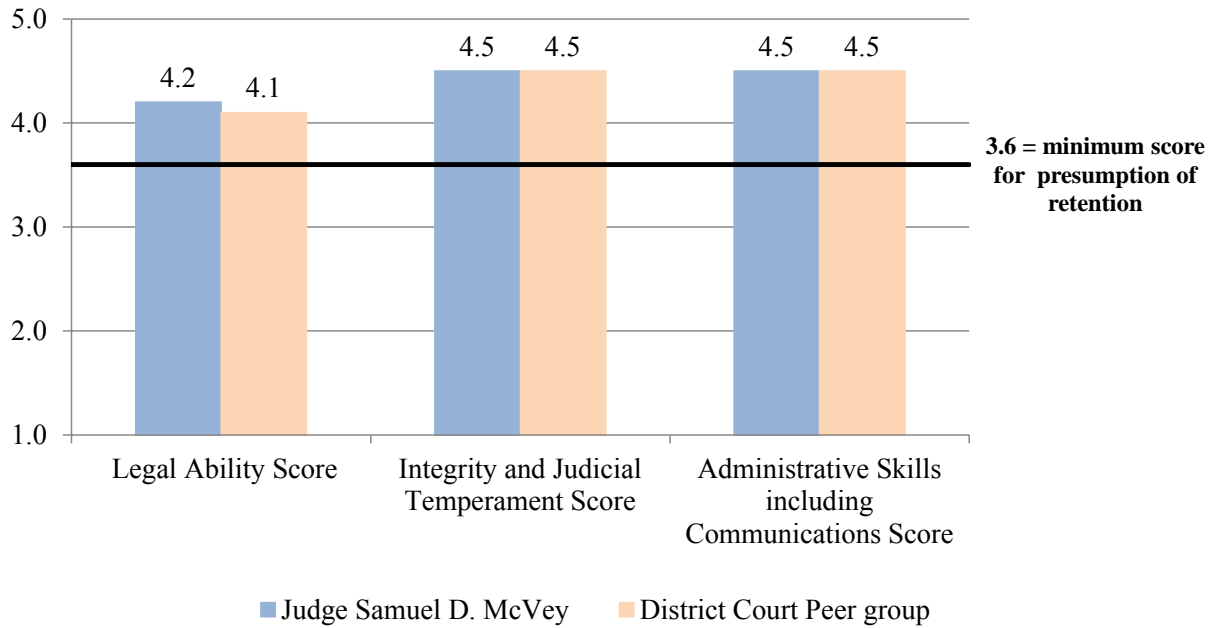
The results are shown in both graphs and tables. Each judge's scores are shown along with a comparison to other judges who serve at the same court level. The comparison group is called "District Court" on the charts.

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.

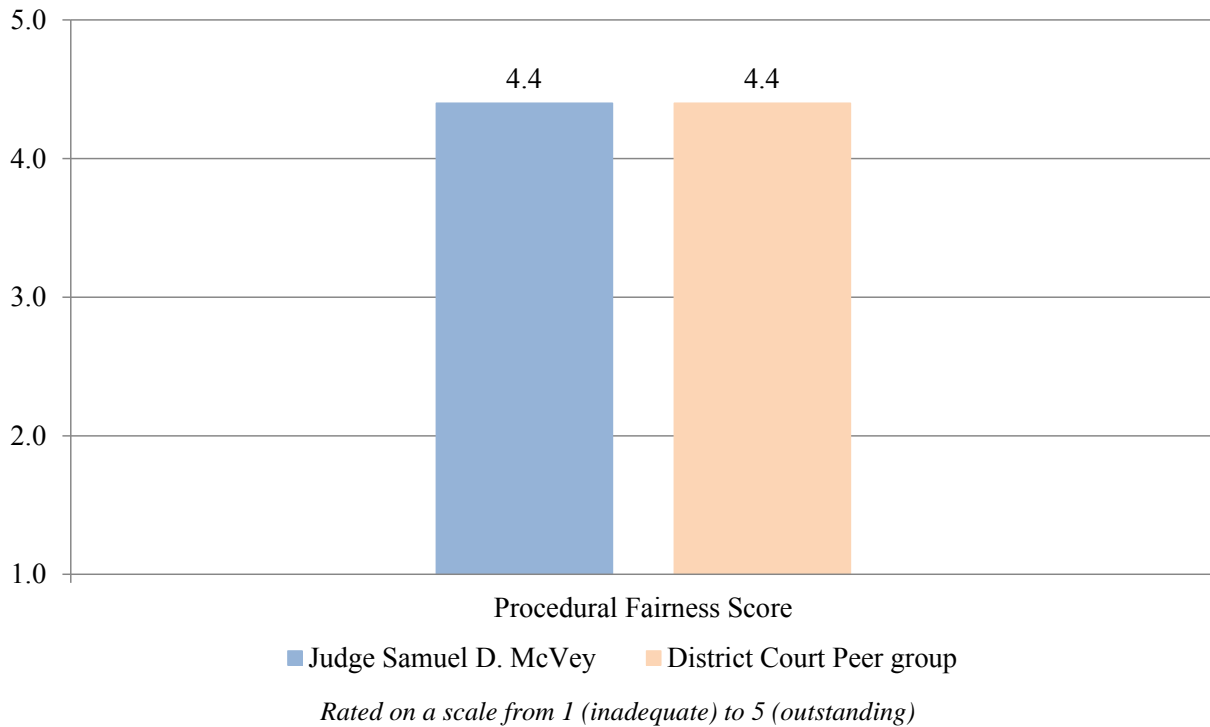
For procedural fairness, the judge must demonstrate that it is more likely than not, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants. Judges will receive either a Pass or Fail in procedural fairness,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

## D. Responses to Individual Survey Questions

Category	Question	Judge Samuel D. McVey	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.	4.3	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.	4.0	4.1
Legal Ability	The judge only considers evidence in the record.	4.2	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.	4.5	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.	4.3	4.3
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.5	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)*

<b>Category</b>	<b>Question</b>	<b>Judge Samuel D. McVey</b>	<b>District Court</b>
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.	4.5	4.5
Administrative Skills	The judge is an effective manager.	4.5	4.3
Administrative Skills	The judge convenes court without undue delay.	4.6	4.5
Administrative Skills	The judge rules in a timely fashion.	4.6	4.4
Administrative Skills	The judge maintains diligent work habits.	4.6	4.5
Administrative Skills	The judge's oral communications are clear.	4.5	4.5
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.2	4.3
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.4	4.5
Procedural Fairness	The judge is fair and impartial.	4.4	4.4
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.4	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)*



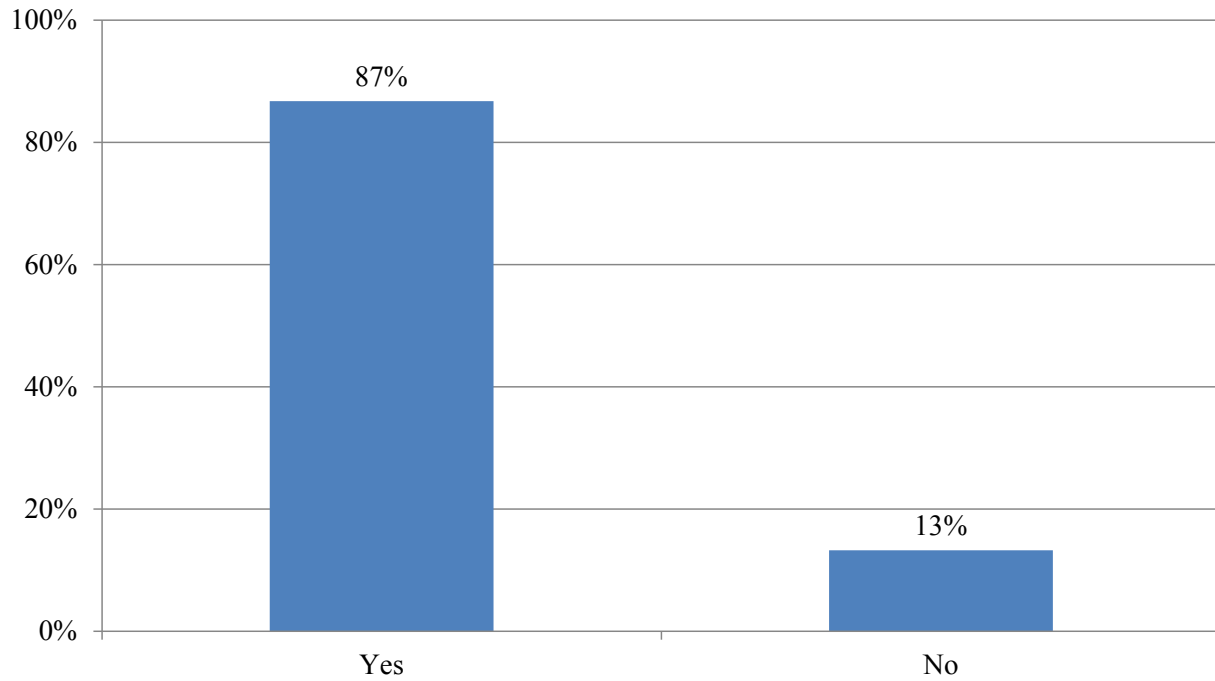
## E. Adjective Question Summary

	Number of Times Mentioned*
Attentive	37
Calm	30
Confident	27
Considerate	20
Consistent	22
Intelligent	39
Knowledgeable	37
Patient	23
Polite	31
Receptive	17
Arrogant	6
Cantankerous	0
Defensive	3
Dismissive	12
Disrespectful	2
Flippant	3
Impatient	5
Indecisive	1
Rude	1
<b>Total Positive Adjectives</b>	<b>283</b>
<b>Total Negative Adjectives</b>	<b>33</b>
<b>Percent of Positive Adjectives</b>	<b>90%</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 Samuel D. McVey be retained?**



## G. Attorney Demographics

### What are your primary areas of practice?

Collections	4%
Domestic	14%
Criminal	36%
Civil	62%
Other	8%

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

5 or fewer	51%
6 - 10	30%
11 - 15	6%
16 - 20	3%
More than 20	10%

# 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 SAMUEL McVEY

Four observers wrote 102 codable units that were relevant to all 17 criteria. Three observers reported that the judge was not aware that JPEC observers were present, and one 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 McVey, but Observer A also expressed some reservations (see “Anomalous comments”).</li> <li>All observers variously reported that Judge McVey listened intently and was prepared, highly competent, and knowledgeable. He addressed participants by name, and in mental health court he acknowledged progress and congratulated and complimented participants. He was patient, calm, professional, decisive, and authoritative. Judge McVey was successful in gaining the cooperation of the audience in keeping the crowded courtroom quiet and orderly, which was imperative as his soft spoken voice was sometimes difficult to hear. He treated all participants equally and acted in their best interests, always working with defendants when they expressed individual needs and considerations. He invited all participants to speak and allowed them appropriate time. He used clear language to explain rights and procedures, he delivered rulings in a concise, logical way, and he ensured that defendants understood their rights before proceeding with their case. In mental health court he created a caring and supportive environment and exhibited impressive coaching skills.</li> <li>All observers variously noted Judge McVey’s speed and efficiency. While he moved cases along and the proceedings felt rushed on occasion, particularly in mental health court, three observers also noted that Judge McVey never hurried or interrupted speakers, he accommodated all participants’ needs, and he took time for mental health court graduations.</li> <li>Two observers reported that they would feel comfortable appearing before Judge McVey. The other two observers were confident they would be treated fairly but were concerned they would feel rushed in the very rapid proceedings.</li> </ul>
MINORITY OBSERVATIONS	<ul style="list-style-type: none"> <li>None</li> </ul>
ANOMALOUS COMMENTS	<ul style="list-style-type: none"> <li>Observer A felt that the fast pace of mental health court led to only brief encounters that did not allow participants to be dealt with as individuals (see “Unhurried and careful”).</li> <li>Observer A reported that on occasion Judge McVey’s body language did not indicate his concern for defendants (see “Body language” and “Formal voice”).</li> <li>Observer A reported that Judge McVey did not always ask defendants if they understood complex sentences (see “Ensures information understood”).</li> </ul>

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

#### *RESPECTFUL BEHAVIORS*

Listening & focus	All observers reported that Judge McVey <i>listened intently and impartially to all before him</i> and often <i>asked for clarification of a statement</i> . His <i>focus did not waiver except to take a few notes</i> .
Well-prepared & efficient	All observers reported that Judge McVey was <i>highly competent and knowledgeable</i> . He was <i>prepared for each case and had read reports on each participant before the hearings</i> . The court was <i>professional, orderly, and efficient and moved quite quickly</i> . One observer noted Judge McVey’s efficient style, in which he would <i>cut through lengthy rhetoric</i> , saying, “ <i>Let’s cut to the chase. What is left?</i> ” He then <i>spent about five minutes reviewing his notes and the statutes and made a ruling that was a real compromise for both sides</i> .

Respect for others' time	Three observers reported that Judge McVey <i>made every effort to keep the proceedings moving along</i> . He <i>routinely</i> asked participants if future court dates <i>would work for them</i> , and he scheduled one appearance <i>ahead of time to accommodate a defendant's work schedule</i> . One observer noted that sessions <i>started on time</i> , but another noted one <i>unexplained thirty minute late start</i> .
Respectful behavior generally	All observers reported that Judge McVey <i>greeted</i> the court and addressed participants <i>by name with a "Mr." or "Ms."</i> In mental health court he <i>acknowledged good reports with compliments</i> , saying, " <i>Good job, your case managers are impressed with your progress, great attitude, good leadership, you are setting an example.</i> " He <i>thanked</i> each defendant at the end of cases. During graduation he <i>came down from the bench and made a big deal about it, introducing one person at a time and asking them to share some thoughts</i> , which were <i>tearful, appropriate, and impressive</i> . One girl said, " <i>You can't choose your beginnings, but this program has taught me you can choose your ending.</i> " Then he <i>asked the audience to share some thoughts about this individual</i> .

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*RESPECTFUL TONE*

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Courtesy, politeness and patience	Two observers reported that Judge McVey was <i>patient and remained patient when listening to requests and testimony</i> .
Courtroom tone & atmosphere	Three observers reported that Judge McVey was <i>calm, professional, direct, decisive, authoritative, serious and thoughtful, low-key and not as extroverted as some</i> . He was <i>encouraging</i> in mental health court when <i>appropriate</i> , but he was also <i>clear when there was a problem to address</i> , saying with a <i>little exasperation but with the attitude of a mentor who was trying to help</i> , " <i>Didn't I tell you to take someone with you when you went shopping?</i> "  The courtroom was <i>formal, structured, and orderly, even though very crowded</i> . He maintained a <i>wonderfully quiet court, which was imperative</i> in view of Judge McVey's quiet voice. He consistently explained that <i>attorneys needed to make a small amount of noise to confer with clients</i> but asked for the <i>cooperation</i> of the audience in either going outside to talk, or keeping all <i>conversation to whispers so that people could hear what was going on</i> .
Body language	One observer reported that Judge McVey <i>spoke rapidly but cordially while looking directly at participants</i> , but another reported that he <i>did not use a lot of eye contact</i> .  Observer A reported that Judge McVey <i>did not look directly at defendants when pronouncing sentences</i> but seemed to <i>read from the sentencing recommendations</i> , and this <i>did not strongly indicate to defendants that these sentences were the consequence of their actions and testimony</i> .
Voice quality	Two observers reported that Judge McVey was <i>soft spoken, spoke very quickly in a monotone style, and rarely changed his tone of voice</i> , which was consistently <i>authoritative</i> . One observer reported that he was <i>easy to hear, but another reported that he was difficult to hear at times</i> .

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*NEUTRALITY*

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Consistent and equal treatment	Two observers reported that Judge McVey treated participants with <i>equal consideration and gave his attention to all sides</i> .
Acts with concern for individual needs	All observers reported that Judge McVey was concerned for participants' <i>best interests when making his decisions</i> . He allowed defendants <i>where possible to set their own payment schedules</i> . He was <i>compassionate</i> towards a disabled woman, <i>reducing and extending her payments and suggesting she search out community service that would allow her to work from home</i> . He asked one man, " <i>Have your circumstances changed since last time, is that why you are not paying your fine? How much can you pay?</i> " and he <i>accepted the amount suggested</i> .  In mental health court, he created a <i>strong bond of support and caring</i> among the participants, and exhibited <i>impressive "coaching" skills</i> , for example in <i>making participants feel responsible for each other</i> . He took <i>extra time to make an impact on a girl with a history of being late</i> , saying, " <i>You have to be on time. You are here to be supportive of each other. If you are not here, you're letting other people down,</i> " and he <i>gave a sanction of community service until she was ON TIME</i> .

Expresses concern for the individual	Three observers reported that Judge McVey expressed concern for defendants' interests. He <i>explained to a man how he could get his college degree while in prison and acknowledged a victim's intense feelings</i> when a defendant <i>set a fire in his neighborhood</i> . In a divorce case, he asked for <i>one last stab to settle</i> , noting that any <i>effort</i> by the attorneys to " <i>reduce hostility among their clients</i> " by <i>having them communicate by email</i> would be advantageous for their clients.
Unhurried and careful	All observers reported that Judge McVey <i>moved proceedings along very quickly</i> and on occasion <i>felt rushed</i> , yet he was <i>attentive to each detail, accommodated participants' needs, and never hurried or interrupted a speaker</i> . Observers noted a contrast between regular sessions conducted in a <i>calm and unhurried manner with a patient, careful approach</i> , and mental health court, in which Judge McVey <i>seemed a different person, racing through the calendar by talking very fast</i> .  In contrast to the positive reports of Judge McVey's concern and caring for mental health participants described above and below, Observer A reported that the fast pace of mental health court led to <i>brief and hurried encounters with quick questions</i> , such as, " <i>Everything OK?... Anything you want to say?... How are you doing?</i> " which <i>precluded a chance for anyone to ask questions or tell him about their problems</i> and which indicated that the <i>priority was getting all the cases attended to</i> rather than dealing with <i>individuals with feelings and concerns</i> .

VOICE

Considered voice	Three observers reported that Judge McVey <i>always invited defendants to speak, consistently asking, "Is there anything you would like to say?"</i> Even though the <i>pace of cases felt rushed</i> , he did allow <i>appropriate time for all to speak</i> . In one case he <i>allowed time for a mother to present her concern for her son being incarcerated for setting fires and acknowledged that he had read the submitted letters about her son and had considered them</i> . One observer noted that <i>during mental health court he wanted THEM to tell their story, he wanted THEM to praise each other, and he wanted the case workers to have a voice</i> .
Formal voice	Observer A gained the <i>impression</i> from Judge McVey's <i>facial expression</i> that he allowed a defendant and her husband to speak <i>only as a politeness</i> and without <i>interest in what they had to say</i> and was <i>not necessarily considering it in the sentencing decision</i> .

COMMUNICATION

Communicates clearly	Two observers reported that Judge McVey delivered his rulings in a <i>concise, very logical way</i> and used <i>clear language when explaining rights and procedures</i> .
Ensures information understood	Two observers reported that Judge McVey <i>consistently ensured that defendants understood their rights before proceeding with a case</i> and was <i>careful to ensure they understood court procedures and the choices they needed to make</i> .  In contrast, Observer A reported that some sentences were <i>very complex</i> with many orders. The observer, who was <i>not as stressed as the defendant</i> , still found these <i>a lot to comprehend</i> , yet the judge <i>did not always question the defendant regarding his or her understanding of the reason for or details of those sentences</i> .
Provides adequate explanations	One observer reported that Judge McVey always gave detailed reasons for his rulings, <i>telling one young man that he would not reduce jail time because he felt the man had potential and needed to get his GED and learn a skill so he could take care of his daughter</i> . He told another, " <i>Those are excellent programs you are working on, but I am not going to change bail, as you still need more time to get this drug problem in hand.</i> "