

Honorable Mark S. Kouris – District Court Judge

Serving Salt Lake, Summit, and Tooele counties



Commission Recommendation: **RETAIN**

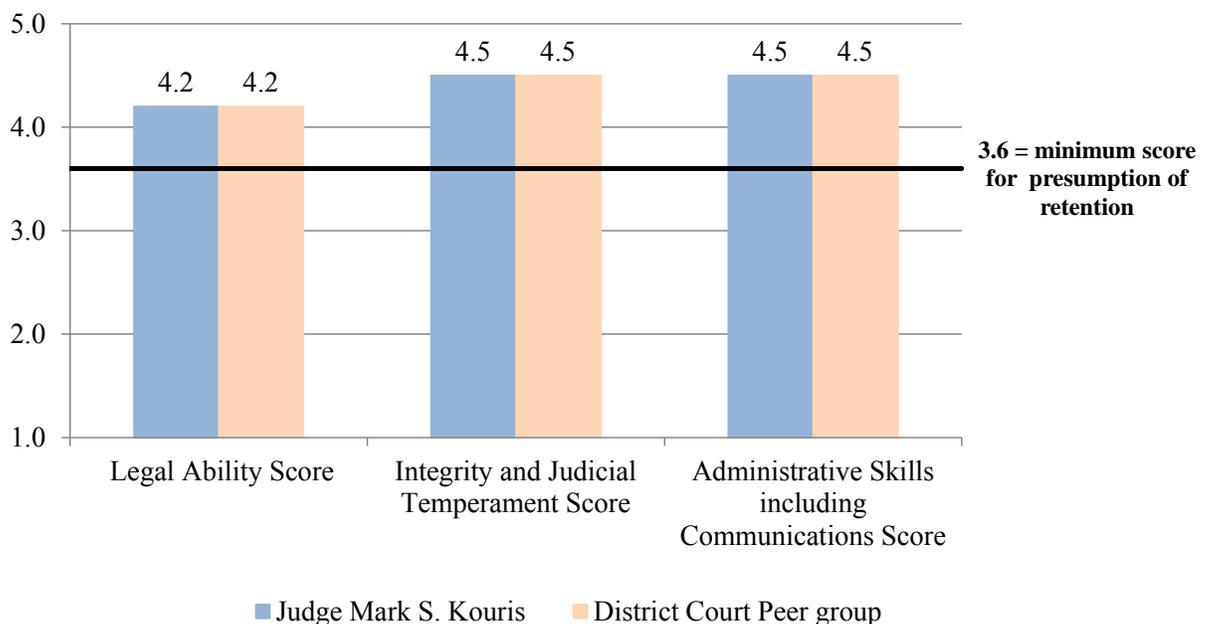
(vote count: 12-0 for retention)

Appointed in 2006, Judge Mark Kouris scores consistent with average of his district court peers in all survey categories. Most survey respondents praise Judge Kouris as hardworking, well-prepared, confident, and intelligent. The majority of survey respondents and courtroom observers agree that Judge Kouris efficiently manages a heavy daily court schedule. Some respondents and observers, however, view him as impatient, noting that he moves through his calendar so quickly that he can be difficult to understand. Nonetheless, all courtroom observers conclude that they would feel comfortable appearing before him in court. Of 69 survey respondents answering the retention question, 60 (87%) recommend that Judge Kouris be retained.

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

Judge Mark S. Kouris was appointed to the Third District Court in 2006 by Gov. Jon M. Huntsman, Jr. Judge Kouris earned a Bachelor's Degree, a Masters Degree, and a Juris Doctor degree, all from the University of Utah. After running his own business, he worked as an Assistant Utah Attorney General and then as a Deputy District Attorney, where he prosecuted gang felonies. Judge Kouris then joined the Utah Federal Defender's Office until his appointment to the bench. Judge Kouris is an adjunct professor at the University of Utah College of Law and at Salt Lake Community College. He has been serving on the Board of District Court Judges since 2011 and served as a Third District Drug Court judge from 2006-2015.

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



The Honorable Mark S. Kouris

Judicial Performance Evaluation Commission Report

Retention 2016

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II. Courtroom Observation Report

I. Survey Report

Survey Results

A. How to Read the Results

For Judge Mark S. Kouris, 46% of qualified survey respondents submitted surveys. Of those who responded, 95 agreed they had worked with Judge Mark S. Kouris enough to evaluate his performance. This report reflects these 95 responses. The survey results are divided into five sections:

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

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 the Legal Ability questions.

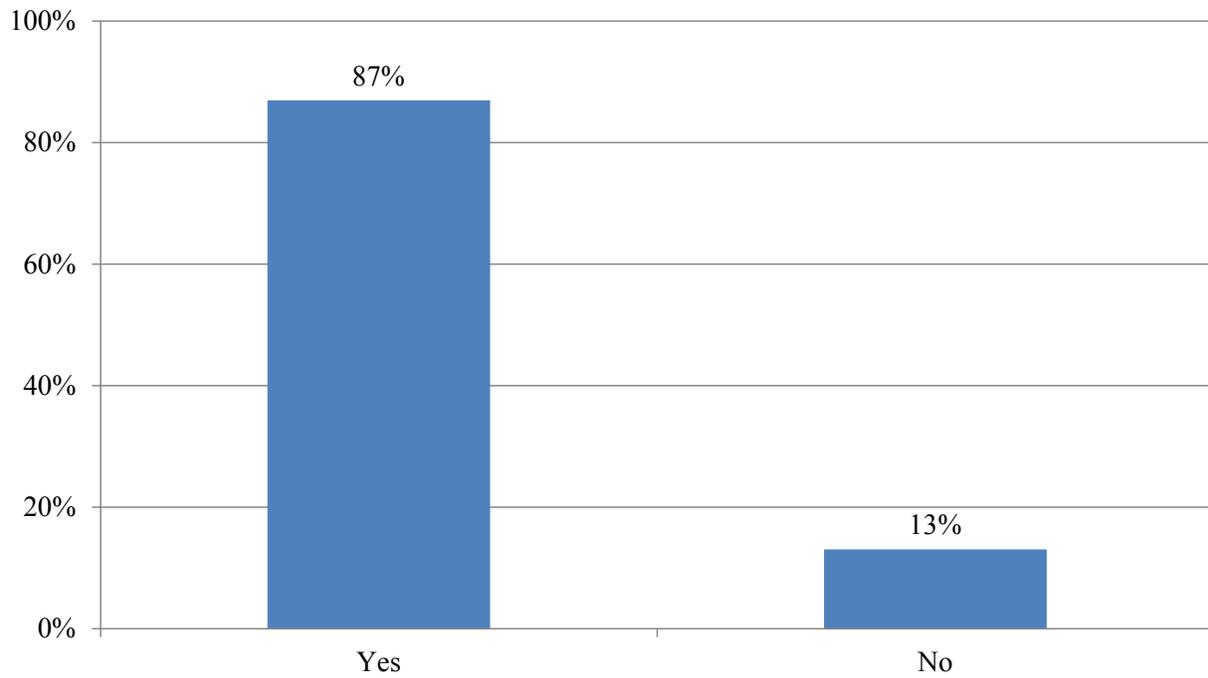
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to 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.

Respondents are asked whether or not they think the judge should be recommended for retention only during the retention cycle.

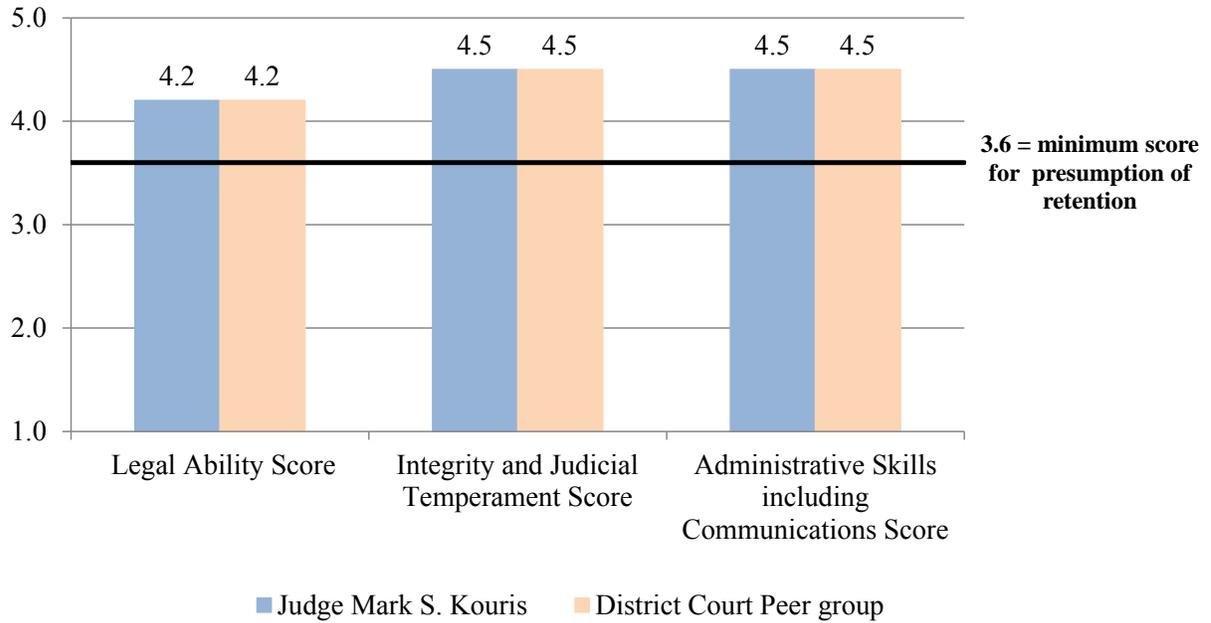
B. Retention Question

Figure A. Would you recommend that Judge Mark S. Kouris be retained?



C. Statutory Category Scores

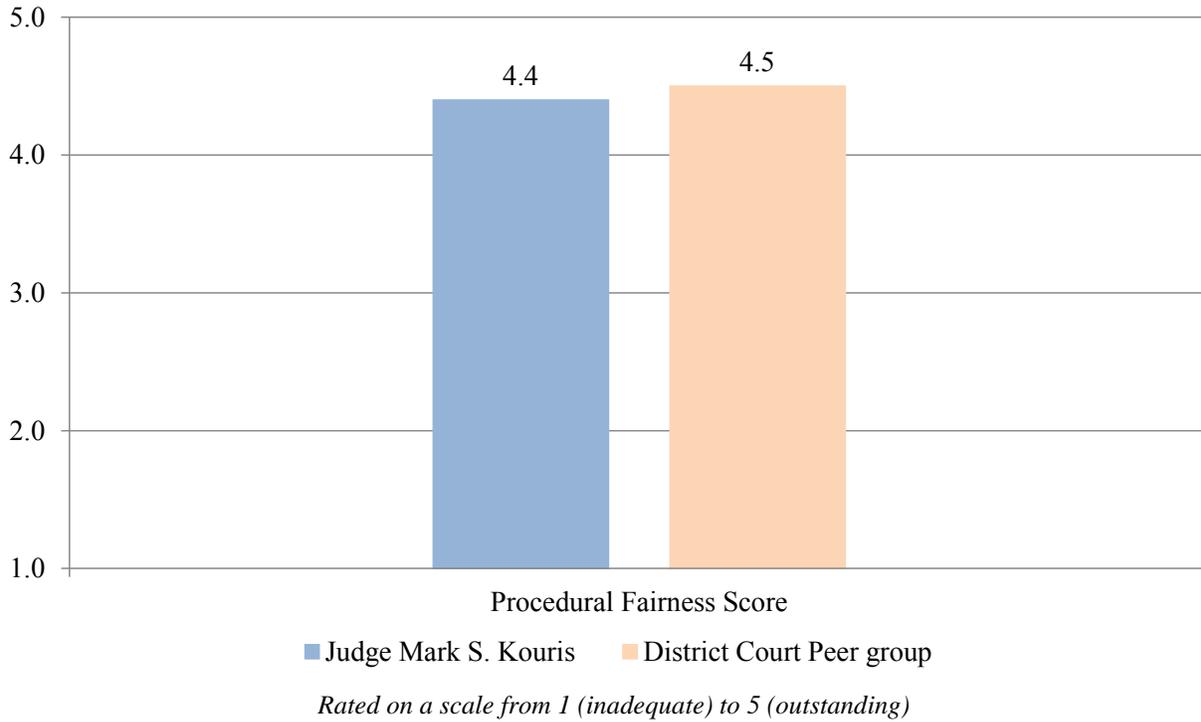
Figure B. Statutory Category Scores



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

D. Procedural Fairness Score

Figure C. Procedural Fairness 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.

Table A. Overall Procedural Fairness Determination (for Retention Only)

Category	Judge Mark S. Kouris
Procedural Fairness	Pass

E. Responses to Individual Survey Questions

Table B. Responses to Survey Questions

Category	Question	Judge Mark S. Kouris	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.	4.2	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.	4.1	4.2
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	4.2
Legal Ability	The judge's written opinions contain a readily understandable, concise ruling	4.2	4.2
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.5	4.6
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.4	4.6
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.1	4.3
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.4	4.4
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	4.6

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

Table C. Responses to Survey Questions (continued)

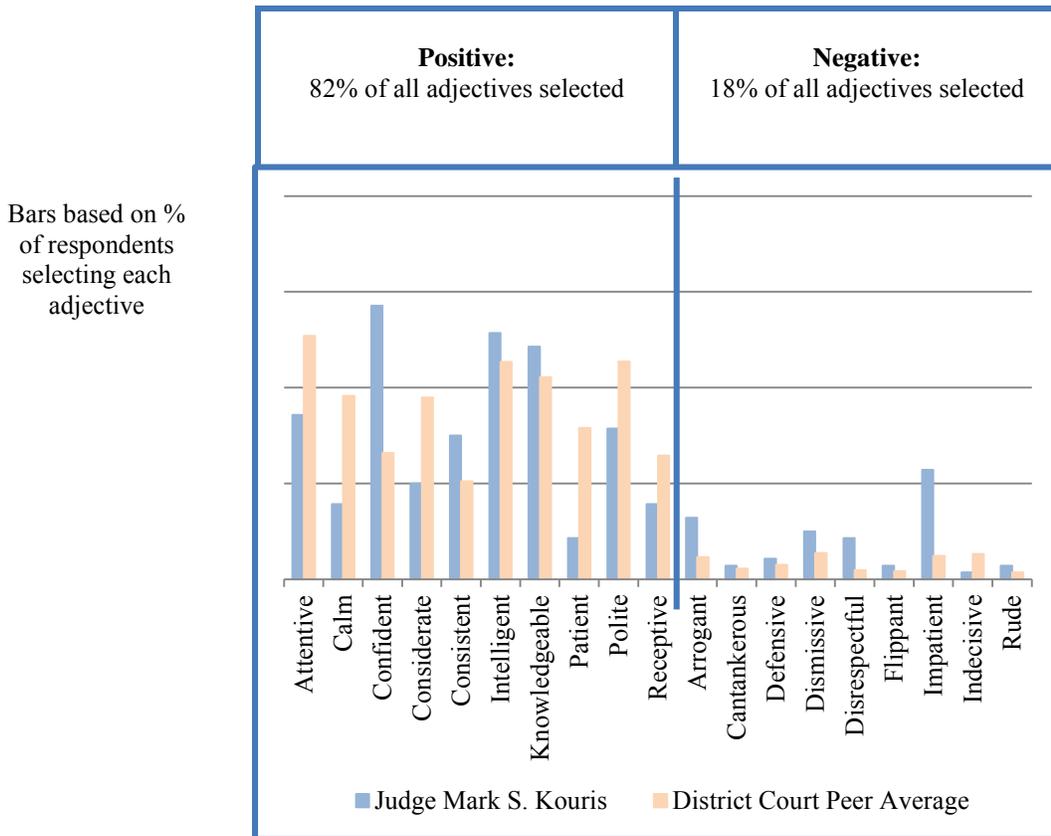
Category	Question	Judge Mark S. Kouris	District Court
Administrative Skills	The judge is prepared for court proceedings.	4.3	4.4
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.3	4.6
Administrative Skills	The judge is an effective manager.	4.5	4.5
Administrative Skills	The judge convenes court without undue delay.	4.6	4.6
Administrative Skills	The judge rules in a timely fashion.	4.5	4.5
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.	4.3	4.3
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.3	4.6
Procedural Fairness	The judge is fair and impartial.	4.4	4.5
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.4	4.5
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)

F. Adjective Question Summary

From a provided list, survey respondents selected multiple adjectives to best describe the judge. The “positive” and “negative” labels at the top of the graph refer to the percent of all adjectives selected by all respondents that were either positive or negative. Each bar is based on the percent of respondents who selected that adjective. The adjacent bar shows a comparison to the other evaluated judges who serve on the same court level.

Figure D. Adjective Responses



G. Attorney Demographics

Table D: What are your primary areas of practice?

Collections	9%
Domestic	14%
Criminal	59%
Civil	31%
Other	3%

Because many attorneys practice in multiple areas, totals may not equal 100%

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

5 or fewer	46%
6 - 10	20%
11 - 15	6%
16 - 20	11%
More than 20	17%

Survey Background and Methods

This report presents the results from the 2015 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 the 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 time 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 three or more non-trial appearances, and those with one to two 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 qualified respondent receives an initial email notification signed by the Governor, Chief Justice, President of the Senate, and Speaker of the House, requesting participation in the survey. Next, an email invitation, signed by JPEC's Executive Director and the Utah State Bar President, contains links to all the individual surveys each respondent is invited to complete. A reminder email is sent one week later to those who did not respond by completing and submitting a survey. This is followed by two 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, that 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 2016 began on January 1, 2014 and ended on June 30, 2015.

REPORT OF COURTROOM OBSERVATIONS FOR JUDGE MARK KOURIS

Four observers wrote 84 codable units that were relevant to 11 of the 15 criteria. One observer reported that the judge was not aware that JPEC observers were present, and three did not know if the judge was aware.

Overview

OVERALL ASSESSMENT	<ul style="list-style-type: none"> All observers were positive about Judge Kouris. All observers particularly emphasized the judge's skill in several areas, but two observers also expressed some discomfort at his different treatment of some defendants (see "Minority observations"). All observers reported that they would feel comfortable appearing before Judge Kouris.
WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none"> All observers variously reported that Judge Kouris was efficient, well-prepared, and informed. He courteously greeted and thanked defendants by name, he projected enthusiasm and interest in an egalitarian atmosphere, and he encouraged and supported drug court participants. Judge Kouris established strong eye contact, spoke in a deep, strong voice, and showed empathy, sensitivity, and caring to drug court participants' needs. He frequently asked if there were questions and asked for confirmation of defendants' understanding. All observers particularly emphasized Judge Kouris's skill in encouraging participants to speak and in uncovering issues he wanted to discuss, his genuine interest in what participants had to say, and his restraint in not cutting off participants providing irrelevant information. All observers also particularly emphasized the judge's thorough, detailed, and reassuring explanations of his sentences, his reasoning, and his instructions on defendants' next steps (see "Considered voice" and "Provides adequate explanations"). Three observers reported that Judge Kouris did a remarkable job with his extremely full calendar, showing patience as well as moving cases along as quickly as he could. The fast pace of interactions made it seem like the judge was in a hurry, but there was no sense of rushing individuals. However, his rapid, staccato style of speech could often not be understood. The noisy courtroom contributed to the difficulty in hearing, and one observer recommended a different location for the rights video that played in the courtroom (see "Voice quality," "Courtroom tone & atmosphere," and "Unhurried and careful").
MINORITY OBSERVATIONS	<ul style="list-style-type: none"> Two observers reported that Judge Kouris treated everyone without bias. However, two observers reported discomfort at Judge Kouris' surprisingly different treatment of some defendants (see "Consistent and equal treatment").
ANOMALOUS COMMENTS	<ul style="list-style-type: none"> None

Summary and *exemplar language* of four observers' comments

<i>RESPECT</i>	
Well-prepared & efficient	Three observers reported that Judge Kouris was <i>efficient, orderly, well prepared and informed</i> . He had <i>read and discussed issues with his staff prior to court</i> , saying "I checked this last night."
Courtesy, politeness, and general demeanor	All observers reported that Judge Kouris <i>courteously greeted every defendant by name in a pleasant, genuine, and matter-of-fact manner that projected enthusiasm and interest</i> , saying, "Good morning, Mr. S, how are you today?" and "Thank you" at the end of each case. He <i>thanked the staff during and after court sessions and complimented his assistants on keeping so many cases straight</i> . He respectfully told a nervous woman, "Ma'am if you wouldn't mind, come up to the podium. Take a deep breath. This will be recorded." He <i>complimented participants who were succeeding</i> , and he expressed <i>support and encouragement</i> , saying, "I know you don't want to continue down this path and I believe you're ready to make a change, so we'll just leave things as they are and have you come back in. Good luck to you Mr. S."

Courtesy, politeness, and general demeanor <i>continued</i>	Judge Kouris was <i>animated, alert, and actively engaged</i> . He <i>laughed at himself for mistakes and admitted when he forgot something</i> . He created an <i>egalitarian atmosphere</i> , saying, “ <i>You Bet!</i> ” or “ <i>No worries!</i> ” which <i>seemed genuine</i> . When he asked a prosecutor for agreement by saying, “ <i>Ah, come on,</i> ” he later <i>apologized</i> , saying, “ <i>you know I was just kidding, right?</i> ” The observer noted that while the judge apologized and was <i>well-intentioned</i> , he <i>may not consider the consequences of offhand remarks</i> .
Body language	Two observers reported that Judge Kouris <i>established strong eye contact with whomever was speaking, nodding and shaking his head</i> while either <i>affirming or denying a request</i> .
Voice quality	Three observers reported that Judge Kouris spoke in a <i>deep, strong, audible voice</i> , but in a <i>very rapid, staccato style</i> that one observer described as a <i>spinning playground merry-go-round</i> , and another as like <i>the cautionary warnings on TV listing drug side effects when you can understand the words but have little time to process what they mean</i> . One observer could not understand what he was saying <i>about 25% of the time</i> , and confused participants asked, “ <i>Pardon, your honor,</i> ” or asked the judge to <i>clarify what he had said</i> . He did slow his speech when there was an interpreter.
Courtroom tone & atmosphere	Two observers reported that the courtroom was <i>noisy enough to make it hard to hear at times due to a chatty bailiff talking with attorneys</i> . There was also <i>significant talking and casual conversation</i> while defendants were attempting to view the rights video, and the observer recommended a <i>more suitable space like a conference room to watch and understand this video</i> .

NEUTRALITY

Consistent and equal treatment	Two observers reported that Judge Kouris treated everyone <i>without bias regardless of circumstance, type of offense or whether represented</i> . When an attorney <i>tried to make a case based on emotion and belief rather than facts</i> , he <i>allowed her to present what she had prepared</i> , but was <i>very astute</i> , and it was <i>obvious that facts and the law were more relevant in his decision</i> . In contrast, one observer was <i>surprised and felt discomfort</i> when Judge Kouris told a man <i>he was imposing a particular sentence because the man was represented by “one of the best attorneys in the state,”</i> and the observer felt that others <i>would feel disadvantaged without that same representation</i> . Another felt <i>uncomfortable</i> that Judge Kouris <i>seemed almost unbelievably inconsistent</i> in several cases, <i>not for the harshness of the sentence but the noticeable and abrupt change from his usual carefully considered and well-explained ruling</i> . While he generally asked <i>about ability to pay fines</i> and adjusted payment schedules <i>in response to hardship declarations</i> , with one <i>older, overweight defendant on oxygen who tried to explain that he had lost his job and couldn’t work for health reasons</i> , the judge <i>did not acknowledge this and set a short pay off period starting the next month, contrary to his responsiveness to hardship in every other case</i> .
Demonstrates concern for individual needs	Three observers reported that Judge Kouris showed <i>empathy and respect for what defendants were going through due to their addictions</i> , and he was <i>sensitive and willing to accommodate individual needs</i> . He <i>genuinely wanted to know about progress or lack of progress towards graduation</i> , asking, “ <i>What is going on?</i> ” and “ <i>Is everything OK?</i> ” His decisions often allowed <i>another chance to do things better, as he told one man, “I could lock you up but I’m going to give you another chance.”</i> He <i>acknowledged and said he would deal with drug court participants’ relapses with toleration, concern, and care rather than punishment</i> , but he would <i>not tolerate lying about a relapse</i> , and participants who lied were taken into custody as an example to others. One observer was <i>impressed</i> with the <i>decisive yet caring treatment</i> of a relapsed drug court participant. The defendant said <i>his wife had been arrested in Washington State and he asked for permission to leave Utah to pick up his daughter and postpone the jail sentence</i> . The judge said, “ <i>I trust this defendant, we can postpone the jail sentence until after the defendant gets back.</i> ”

Unhurried and careful	Three observers reported that the <i>extremely full calendar</i> in the <i>packed courtroom</i> seemed <i>impossible to complete</i> . However, Judge Kouris did a <i>remarkable job of being patient</i> and yet <i>moved things along as quickly as he could without appearing to rush individuals</i> . His <i>personalized greeting</i> was often given as the defendant was making their way to the podium, and the judge began talking with the attorney before the defendant reached the podium. This made it seem like the judge was in a hurry, yet once the case was being discussed there was not a sense that the judge was hurrying to move on to the next case. Because of the <i>pace of his interactions</i> , some defendants must have registered confusion by their expressions, and Judge Kouris was able to tell that the defendant wasn't following and often repeated more slowly what he had just said.
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VOICE

Considered voice	<p>All observers reported that Judge Kouris was <i>excellent</i> at asking <i>probing questions to uncover issues he wanted to discuss</i>, and participants <i>did over 70% of the talking</i>. He was <i>empathetic and listened</i> to drug court participants' perspectives, <i>going the extra mile to try and help them overcome their addictions</i>. When a relapsed defendant explained he was having a difficult time balancing his new depression medications, the judge agreed that depression is a terrible thing and encouraged him to reach out to the people who would support him, saying, "I don't want you to think you are in trouble again, you have support here, we will do everything to help you ... Hang in there and we will bring you back in 10 days and sentence you then."</p> <p>Judge Kouris was <i>genuinely interested</i> in what participants had to say, <i>repeatedly asking if there was anything they wanted to add or wanted him to consider</i>, and he <i>listened patiently without interrupting and acknowledged</i> he heard them. He consistently asked if people had questions.</p> <p>One observer was <i>particularly impressed</i> with Judge Kouris's <i>skill and restraint</i> in allowing participants the <i>dignity and satisfaction of potentially contributing to the conduct of their case</i> even when the information was not relevant. He <i>patiently heard out</i> a defendant who started reading about a case heard in Wyoming, saying, "Well, I don't think that helps us now, but you can discuss it with your lawyer and it may be useful in the future," rather than <i>cutting the defendant off and making him feel like a fool or worse</i>. He <i>patiently allowed</i> an attorney to go on and on about the perceived unfairness of a statute before the judge finally asking asked for clarification of the few facts that referred to the client's case, <i>ruled strictly on those</i>, and wished them luck.</p>
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COMMUNICATION

Ensures information understood	Three observers reported that Judge Kouris <i>delivered his recitation of rights in a quick, rote fashion</i> , but <i>looked directly at the defendant while speaking</i> and <i>frequently asked for confirmation of understanding and if it was clear</i> . He asked if there are any questions after sentencing.
Provides adequate explanations	All observers reported that Judge Kouris told defendants <i>the reasons for his decisions</i> , and if the sentence was <i>unusual he explained his reasoning</i> in a way that <i>suggested compassion and support</i> . One observer was <i>reassured</i> once the judge explained his reasoning when the observer thought the judge had been <i>surprisingly lenient or tough</i> . Observers emphasized the judge's <i>great explanations of what was going on in court</i> , his <i>detailed instructions</i> regarding sentences or probations, how the monitoring and alerting devices worked, their <i>specific next steps</i> , and <i>what he would try to accomplish in preparation for their next meeting and what they should work on</i> .
