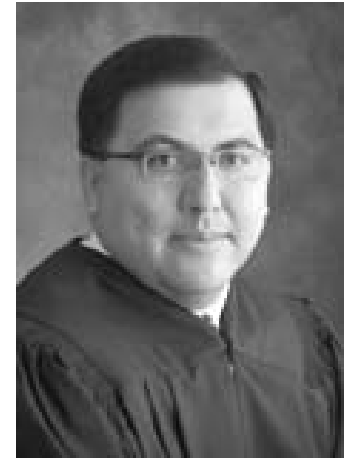


Honorable Darold J. McDade – District Court Judge

Serving Juab, Millard, Utah, and Wasatch counties



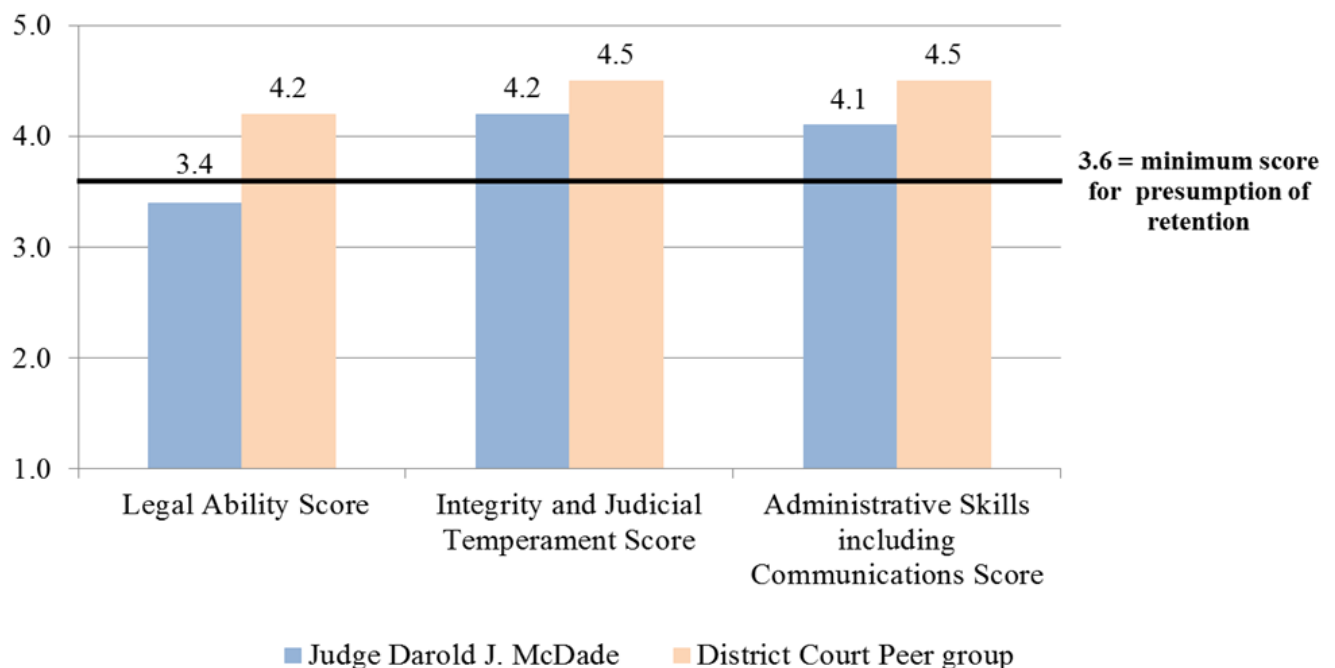
Commission Recommendation: **RETAIN**

(vote count: 7-5 for retention)

Appointed to the bench in 2007, Judge Darold McDade fails to meet the minimum performance standard for legal ability and scores below the average of his district court peers in all other survey categories. Survey respondents express doubt about the depth of Judge McDade's legal knowledge and his ability to properly adjudicate complex matters. They question the clarity and reasoning of his oral and written rulings. Respondents, however, also acknowledge that Judge McDade is consistently respectful, kind, and polite. They characterize him as humble, calm, and a good listener. Courtroom observers similarly praise Judge McDade's judicial demeanor, with all reporting they would feel comfortable appearing before him. Of survey respondents answering the retention question, 71% recommend that Judge McDade be retained. Based on the mixed nature of the data, the Judicial Performance Evaluation Commission gave Judge McDade a 7-5 vote for retention.

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

Appointed to the Fourth District Court in 2007 by Gov. Jon M. Huntsman, Jr., Judge Darold J. McDade graduated from BYU's J. Reuben Clark Law School in 1990. Prior to his appointment, he worked in the Utah Attorney General's Office as a section chief in the Child and Family Support Division, representing the Office of Recovery Services. He volunteered as a judge pro tem in the Fourth District small claims court from 2004-2007. Judge McDade was an elected member of the Pleasant Grove City Council from 2000-2007 and is a member of the Navajo Nation Bar Association. He currently sits on the Supreme Court Advisory Committee on the Rules of Professional Conduct and serves as Associate Presiding Judge of the Fourth District.



The Honorable Darold J. McDade

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 Darold J. McDade, 54% of qualified survey respondents submitted surveys. Of those who responded, 98 agreed they had worked with Judge Darold J. McDade enough to evaluate his performance. This report reflects these 98 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.

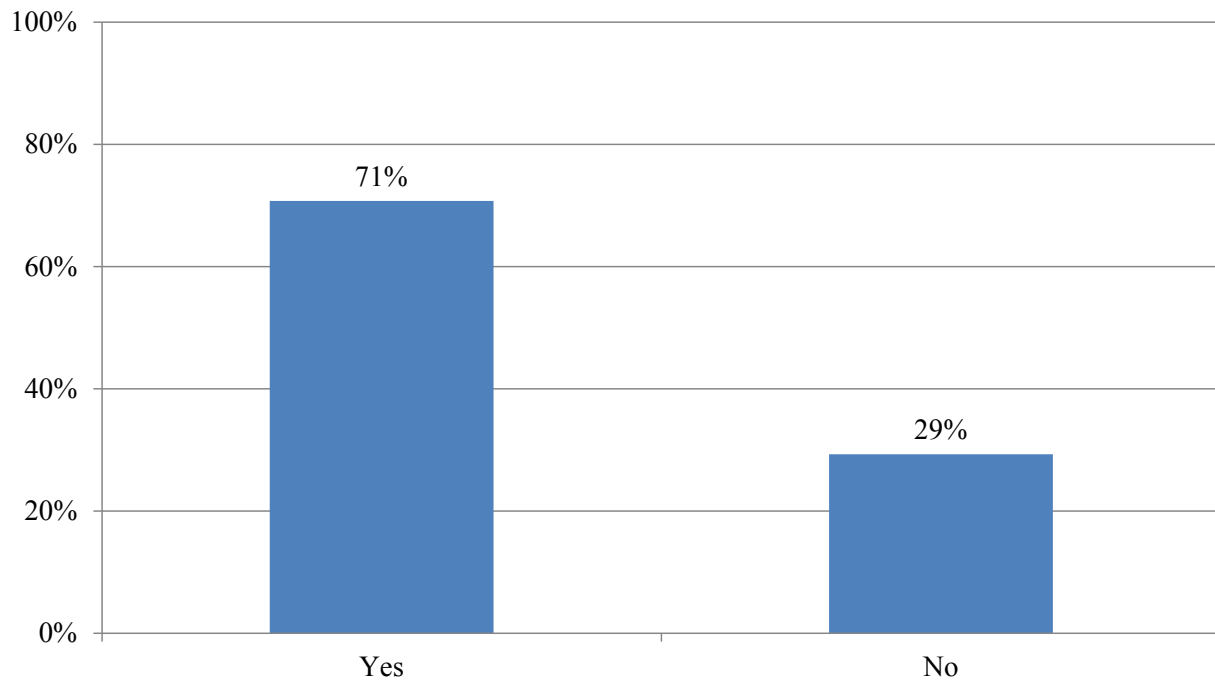
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to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

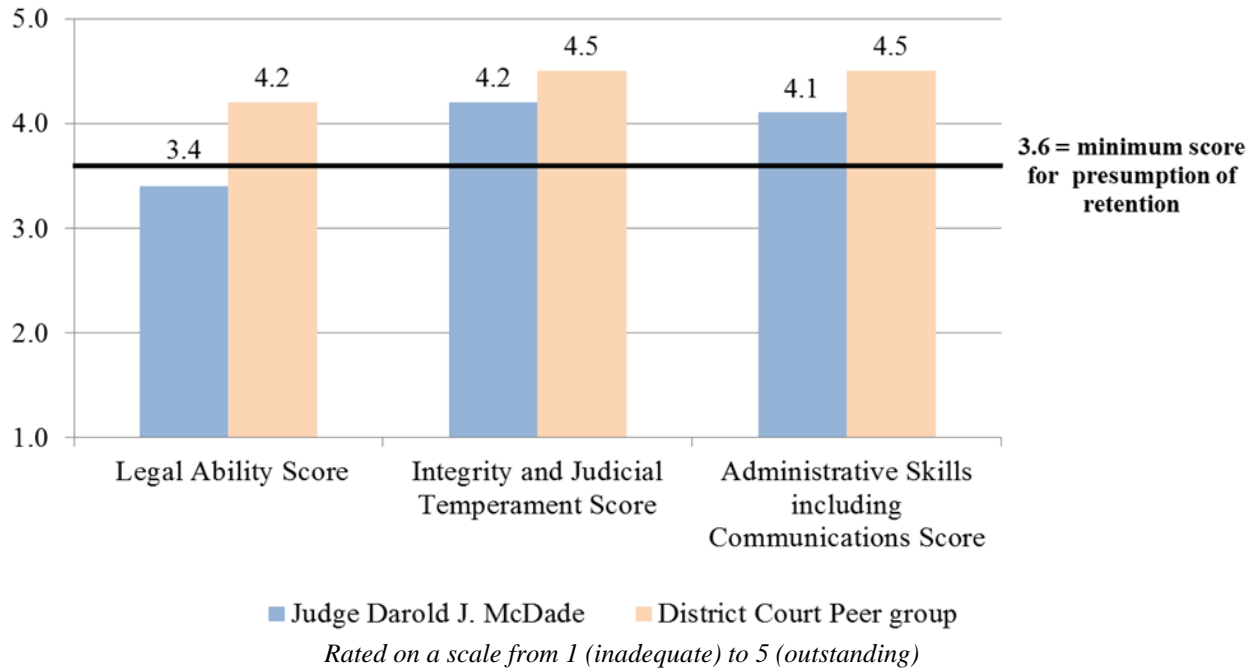
B. Retention Question

Figure A. Would you recommend that Judge Darold J. McDade be retained?



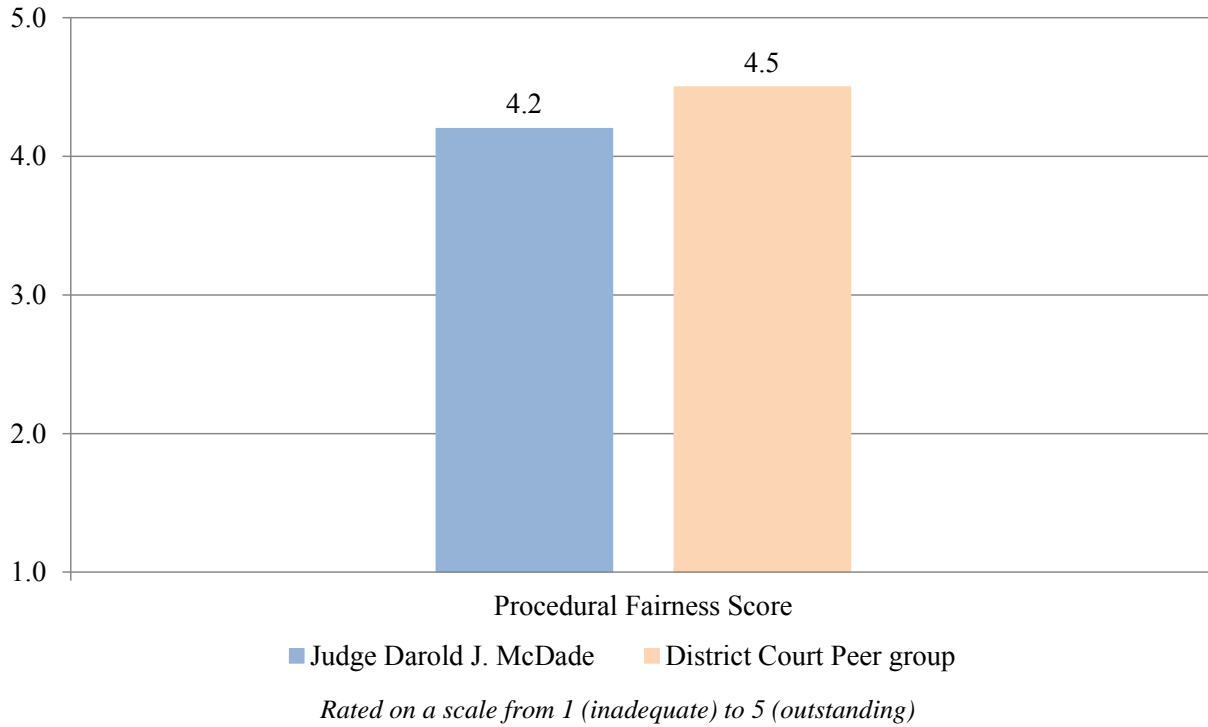
C. Statutory Category Scores

Figure B. Statutory Category Scores



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 Darold J. McDade
Procedural Fairness	Pass

E. Responses to Individual Survey Questions

Table B. Responses to Survey Questions

Category	Question	Judge Darold J. McDade	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.	3.4	4.2
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	3.3	4.2
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	3.3	4.2
Legal Ability	The judge only considers evidence in the record.	3.5	4.2
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	3.2	4.2
Legal Ability	The judge's written opinions contain a readily understandable, concise ruling	3.3	4.2
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.2	4.6
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.3	4.6
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.0	4.3
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.1	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)

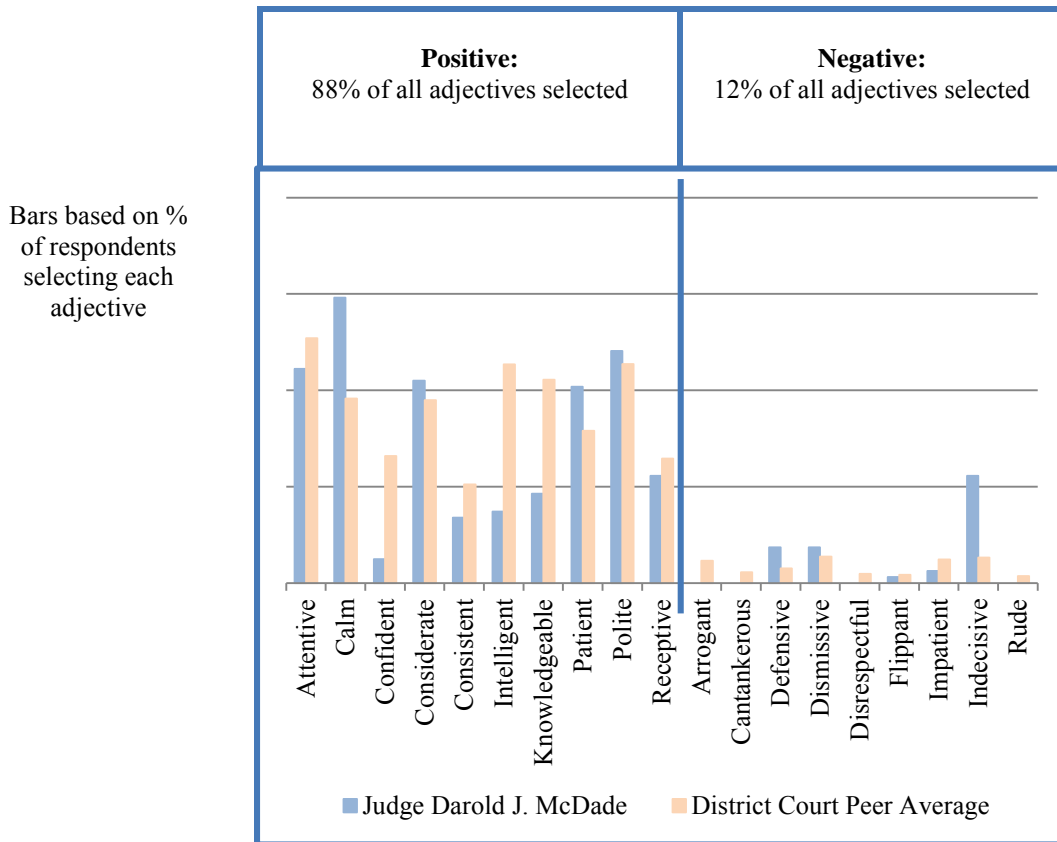
Category	Question	Judge Darold J. McDade	District Court
Administrative Skills	The judge is prepared for court proceedings.	3.8	4.4
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.3	4.6
Administrative Skills	The judge is an effective manager.	4.0	4.5
Administrative Skills	The judge convenes court without undue delay.	4.2	4.6
Administrative Skills	The judge rules in a timely fashion.	4.2	4.5
Administrative Skills	The judge maintains diligent work habits.	4.0	4.5
Administrative Skills	The judge's oral communications are clear.	3.9	4.5
Administrative Skills	The judge's written opinions/decisions are clear and logical.	3.6	4.3
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.5	4.6
Procedural Fairness	The judge is fair and impartial.	4.1	4.5
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	3.9	4.5
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)

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	4%
Domestic	26%
Criminal	36%
Civil	60%
Other	7%

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	56%
6 - 10	19%
11 - 15	7%
16 - 20	1%
More than 20	16%

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 DAROLD McDADDE

Four observers wrote 69 codable units that were relevant to 13 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 McDade. Observers noted a difference in the judge's demeanor in basic or more serious cases. All observers reported that they would feel comfortable appearing before Judge McDade.
WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none"> All observers variously reported that Judge McDade listened carefully, was well prepared and informed, extremely professional and efficient, and worked tirelessly with no breaks or wasted time. He greeted everyone politely, and he thanked, encouraged, and wished defendants good luck. He was business-like and effective, and he moved the large docket along rapidly without slighting anyone. The busy courtroom was quiet, reflecting the judge's tone of respect that "rubbed off" on others. He consistently applied the same sentences for similar offenses, and he ensured that every person had ample opportunity to tell their story, asking effective questions, listening carefully, and occasionally asking for clarification. He checked defendants' understanding of their rights and the charges, and he asked if there were any questions. He gave clear explanations of his rulings and specific instructions about where to go next and what defendants needed to do. Three observers variously reported that Judge McDade's demeanor was different in basic and more serious cases. In more serious and complicated cases he was very involved, worked with defendants and asked good questions, showed he was knowledgeable, compassionate, and flexible, and took time making his decision and clearly explaining why he made the decision. In basic cases the court procedures seemed routine, his questions were perfunctory, and he did not really explain his decisions. He felt to one observer like a bored bureaucrat, and while never disrespectful, he was not the warmest or most welcoming judge (see "Courtesy, politeness, and general demeanor," "Demonstrates concern for individual needs," and "Provides adequate explanations"). Three observers reported that Judge McDade's voice was strong and clear, but he spoke so rapidly that observers wondered if the defendants could understand or absorb all he said or would think him impatient (see "Voice quality").
MINORITY OBSERVATIONS	<ul style="list-style-type: none"> While one observer reported that Judge McDade made good eye contact, two observers reported that while the judge frequently made eye contact when speaking to others, he seldom made eye contact with the person speaking to him (see "Body language").
ANOMALOUS COMMENTS	<ul style="list-style-type: none"> None

Summary and *exemplar language* of four observers' comments

<i>RESPECT</i>	
Listening & focus	Two observers reported that Judge McDade <i>listened carefully when anyone was speaking.</i>

Well-prepared & efficient	All observers reported that Judge McDade was <i>well prepared</i> and <i>informed</i> about cases and <i>thoughtful with his rulings</i> , especially in the <i>major and more complicated</i> cases. He <i>very carefully reviewed documents</i> and showed <i>attention to detail</i> . He was <i>extremely professional and efficient</i> , with <i>absolutely NO wasted time</i> . He <i>never took a break from 8:30 until 1:00</i> as <i>defendants, lawyers, and witnesses came and went</i> , while Judge McDade <i>continued on and on seemingly tirelessly</i> . Although he was <i>courteous to everyone the proceedings were “lean” with no “fluff” anywhere</i> . One observer felt that he <i>could give other judges lessons in how to be more efficient</i> .
Respect for others' time	Two observers reported that Judge McDade <i>skipped around the calendar to ensure very little down time</i> , saying, <i>“Matters that are ready... Others that are ready to go... Any other matters?”</i> One observer noted it might have been <i>considerate to explain why he was 10 minutes late</i> .
Courtesy, politeness, and general demeanor	All observers reported that Judge McDade <i>greeted everyone politely</i> with <i>“Good morning.”</i> He was <i>careful to learn and correctly pronounce each defendant's name</i> and ended with <i>“Good luck.”</i> He <i>thanked defendants</i> , saying, <i>“This probation time is earlier than it should have been, thank you for complying with the orders of the court.”</i> He also encouraged defendants, for example, <i>“You are frustrated, but have not given up totally. It sounds like you don't want this [addiction] to beat you. Not a lot of people in your situation would be honest. I think that you can find a way to build on your honesty. I hope you will find a way out. Thank you. Good luck.”</i> While Judge McDade was <i>very effective and consistently business-like</i> as well as <i>non-threatening</i> , three observers reported that his demeanor was different in basic and complicated cases. In basic cases he was <i>never disrespectful or impatient</i> but was not the <i>warmest or most welcoming judge</i> , and felt, by one observer, like a <i>bored bureaucrat</i> . One observer wondered if he was <i>tired of the court procedures felt routine</i> . But in more serious and complicated cases he asked <i>good questions</i> , <i>took his time in making a decision</i> , demonstrated that he was <i>knowledgeable, compassionate and flexible</i> , and in one <i>intense case “broke stride” by counseling a crying defendant</i> .
Body language	One observer reported that Judge McDade made <i>good eye contact with lawyers, defendants and representatives</i> . In contrast, two observers reported that while the judge <i>frequently made eye contact when he was speaking to others</i> , he <i>seldom made direct eye contact with the person speaking to him</i> but instead <i>looked at his computer and paperwork</i> , and <i>participants might feel that the judge was not listening to them</i> .
Voice quality	Three observers reported that McDade's spoke <i>clearly in a strong and interested tone of voice that was neither disparaging nor threatening</i> and that <i>encouraged defendant participation</i> . However, he <i>spoke rapidly</i> except when a <i>defendant had a language translator and he slowed down</i> . One observer wondered if defendants <i>might have difficulty understanding his rapid speech and absorbing all that the judge said</i> or whether he <i>sounded impatient to some people</i> .
Courtroom tone & atmosphere	Two observers reported that despite <i>nine to twelve attorneys in court</i> , the <i>courtroom was quiet</i> . Judge McDade's <i>tone of respect “rubbed off” on all the other participants who seemed to follow his example by being respectful of one another</i> .

NEUTRALITY

Consistent and equal treatment	Three observers reported that Judge McDade said <i>the same words with the same inflection every single time he stated the rights defendants would be losing if they pled guilty</i> . He applied the <i>same sentencing for similar offenses</i> and was not <i>predisposed toward certain offenses or defendants</i> . Though he <i>commented on the seriousness</i> of some cases and their <i>potential to affect the defendant's future</i> , the <i>rulings were very similar</i> .
Demonstrates concern for individual needs	Two observers reported that Judge McDade was <i>very involved and could not be second-guessed</i> . He was <i>willing to work with defendants to give them the benefit of the doubt, giving them options to help change their lives for the better</i> . In one case when the <i>probation report claimed that the defendant was a “judicial gamer,”</i> he explained that the defendant <i>needed drug treatment, and while the prison would provide good treatment he would not be there long enough, and saying “I want to help you, but you need to help yourself. I'll give you a chance [to get outside treatment].”</i>

Demonstrates concern for individual needs <i>continued</i>	In contrast, one observer reported that Judge McDade dealt with <i>routine, drug related</i> cases in a <i>somewhat perfunctory manner</i> , asking <i>basic questions regarding participants' understanding their rights</i> . But with the more <i>intense and complicated cases</i> , the judge gave <i>more attention or was more fully involved, hearing from each individual</i> and then <i>lecturing about the impact on family members of their fraud or scams or selling drugs</i> .
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Unhurried and careful	Two observers reported that Judge McDade moved the <i>very large docket along rapidly</i> , but <i>without anyone being slighted or left out or any impatience to keep up the momentum</i> .
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VOICE

Considered voice	Three observers reported that Judge McDade ensured that <i>each person in a case got to tell his story, giving ample opportunity</i> for defendants to speak, asking, " <i>Do you wish to say anything else today? Mr. R., it's your turn to say something, if you'd like. Mr. B. you heard from counsel and the state, now we can hear from you.</i> " He then asked <i>if there was anyone else in the courtroom who would like to contribute</i> . One observer thought his question, " <i>What would you like me to know?</i> " was an <i>effective question in encouraging speakers to tell their stories directly to him and emphasize relevant points without long, rambling narrations. Occasionally he asked for clarification, showing his careful listening and desire to understand their points of view.</i>
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COMMUNICATION

Ensures information understood	Two observers reported that Judge McDade <i>checked defendants' understanding and asked if they had questions</i> , and if they did <i>he answered carefully and clearly</i> . He <i>went the extra step to ensure a defendant understood the charge and gave him the opportunity to speak</i> , saying, " <i>Do you understand? Is that what happened? Participants have made recommendations but the court is not bound by those recommendations. The sentence will be my decision alone. Do you have any thoughts or hesitations [about pleading guilty]?</i> "
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Provides adequate explanations	Three observers reported that Judge McDade gave <i>specific directions</i> about where to go next and what defendants needed to do, for example, " <i>You need to report to the jail tonight before 7pm for monitoring GPS or you will do straight time in the jail.</i> " He explained <i>consecutive time and ensured that defendants understood their sentences</i> . His clear explanations of <i>his rulings left little room for the defendant to question his reasoning</i> .
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One observer reported that in "*basic*" cases that did not have complicated issues, Judge McDade *did not really explain his decisions*. But with *more intense cases he took quite a bit of time listening and making a decision*. In one case of *child endangerment and selling drugs*, he was *struggling with either the information or his decision*, and *after at least 2-3 minutes of silence while he was thinking he made his decision and was very clear why he was making the decision*.
