

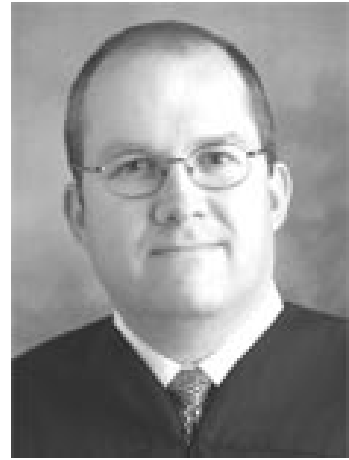
Honorable David N. Mortensen – District Court Judge

Serving Juab, Millard, Utah, and Wasatch counties

Commission Recommendation: RETAIN

(vote count: 12-0 for retention)

JPEC Notice: Judge David Mortensen was appointed to the Utah Court of Appeals, effective June 15, 2016. Because of his appointment, he will not be standing for re-election to retain his seat as a district court judge in November 2016.

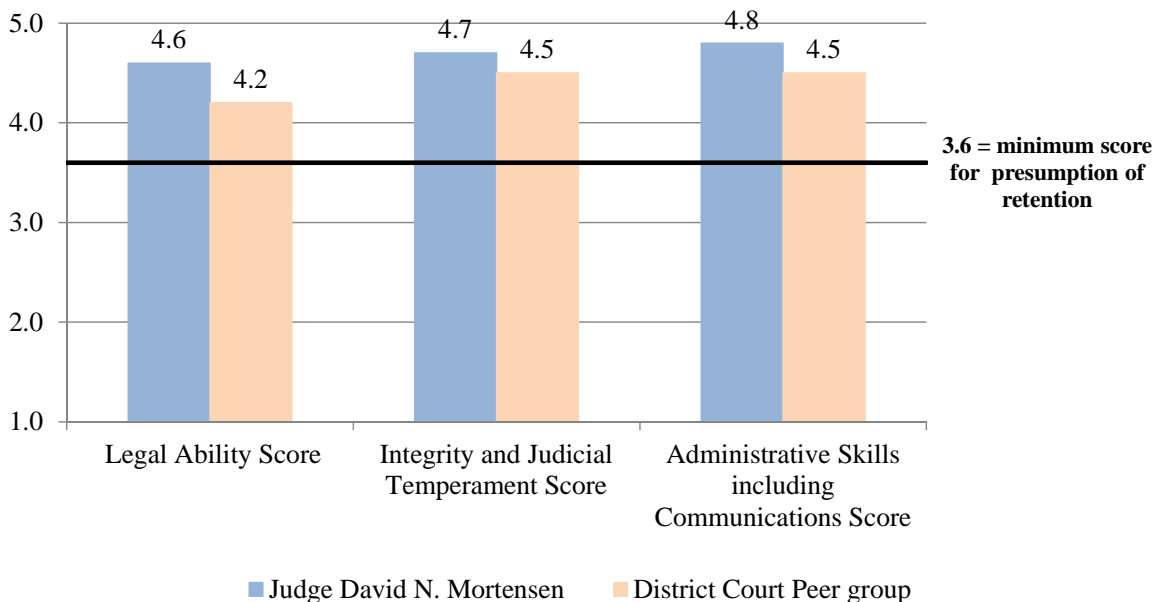


Appointed in 2006, Judge David Mortensen receives outstanding evaluations from survey respondents, earning scores well above the average of his district court peers in all statutory survey categories. Survey respondents praise Judge Mortensen’s intelligence and preparation, with many calling him a model judge. They report that Judge Mortensen attentively listens to all participants while efficiently managing his courtroom schedule. Most respondents view him as fair and impartial even when he decides against them. From a list of adjectives, survey respondents select 96% positive words to describe him. All courtroom observers report that they would expect fair treatment in Judge Mortensen’s court. Of 94 survey respondents answering the retention question, 90 (97%) recommend that Judge Mortensen be retained.

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

Judge David N. Mortensen was appointed to the Fourth District Court in 2006 by Gov. Jon M. Huntsman, Jr. Judge Mortensen graduated from the J. Reuben Clark Law School at Brigham Young University in 1993. He currently serves on the Utah Supreme Court Advisory Committee on the Rules of Evidence and on the Utah Judicial Council, with previous service as a member of the Board of District Court Judges. Judge Mortensen received the 2015 Judicial Excellence Award from the Litigation Section of the Utah State Bar. Currently, Judge Mortensen serves as the Presiding Judge of the Fourth District.

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



For more information about this judge, go to www.judges.utah.gov

The Honorable David N. Mortensen

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 David N. Mortensen, 61% of qualified survey respondents submitted surveys. Of those who responded, 152 agreed they had worked with Judge David N. Mortensen enough to evaluate his performance. This report reflects these 152 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.

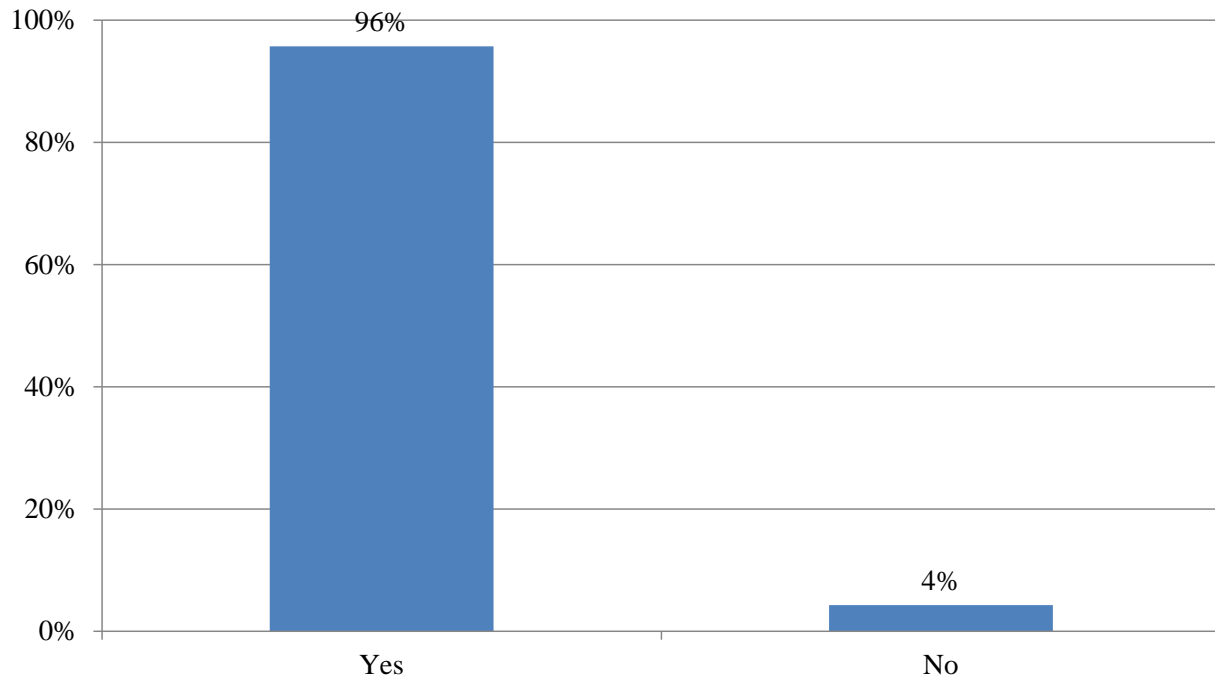
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to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

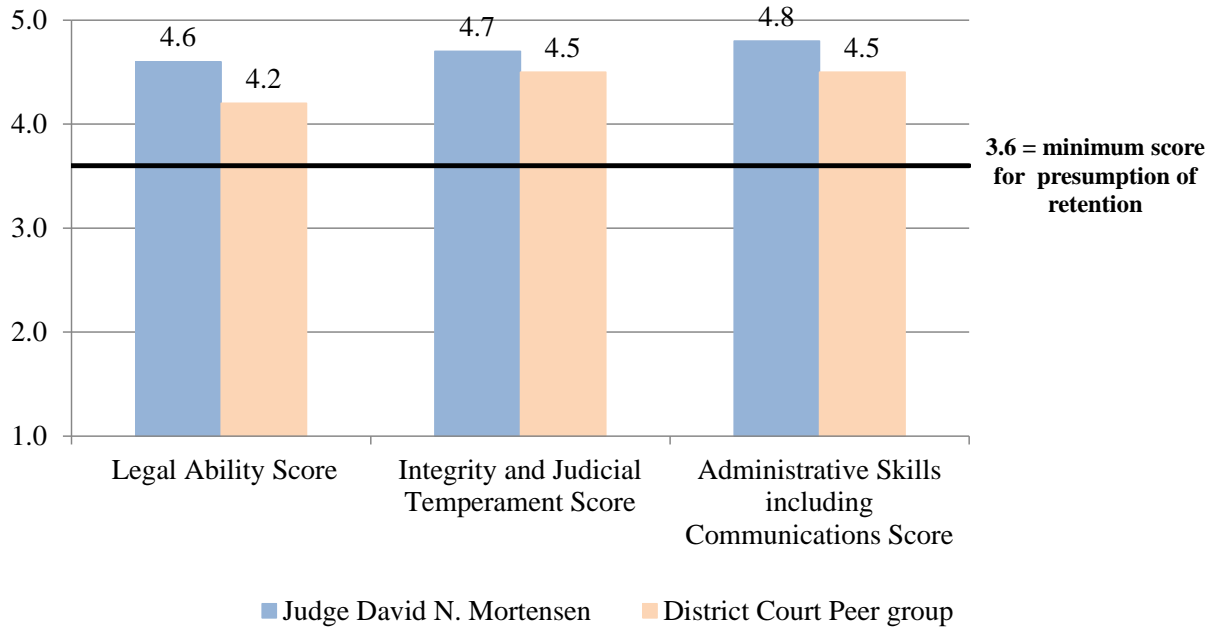
B. Retention Question

Figure A. Would you recommend that Judge David N. Mortensen be retained?



C. Statutory Category Scores

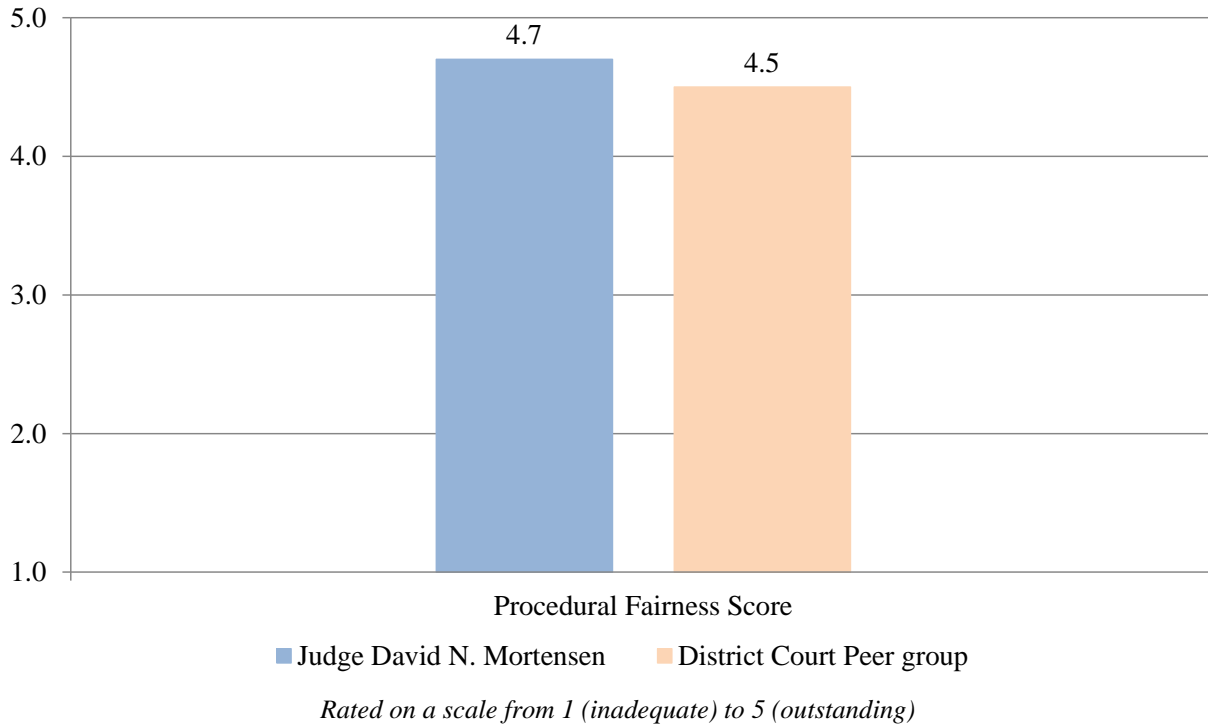
Figure B. Statutory Category Scores



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 David N. Mortensen
Procedural Fairness	Pass

E. Responses to Individual Survey Questions

Table B. Responses to Survey Questions

Category	Question	Judge David N. Mortensen	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.	4.6	4.2
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.5	4.2
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.5	4.2
Legal Ability	The judge only considers evidence in the record.	4.5	4.2
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.6	4.2
Legal Ability	The judge's written opinions contain a readily understandable, concise ruling	4.7	4.2
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.7	4.6
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.8	4.6
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.4	4.3
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.6	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.	4.7	4.6

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

Table C. Responses to Survey Questions (continued)

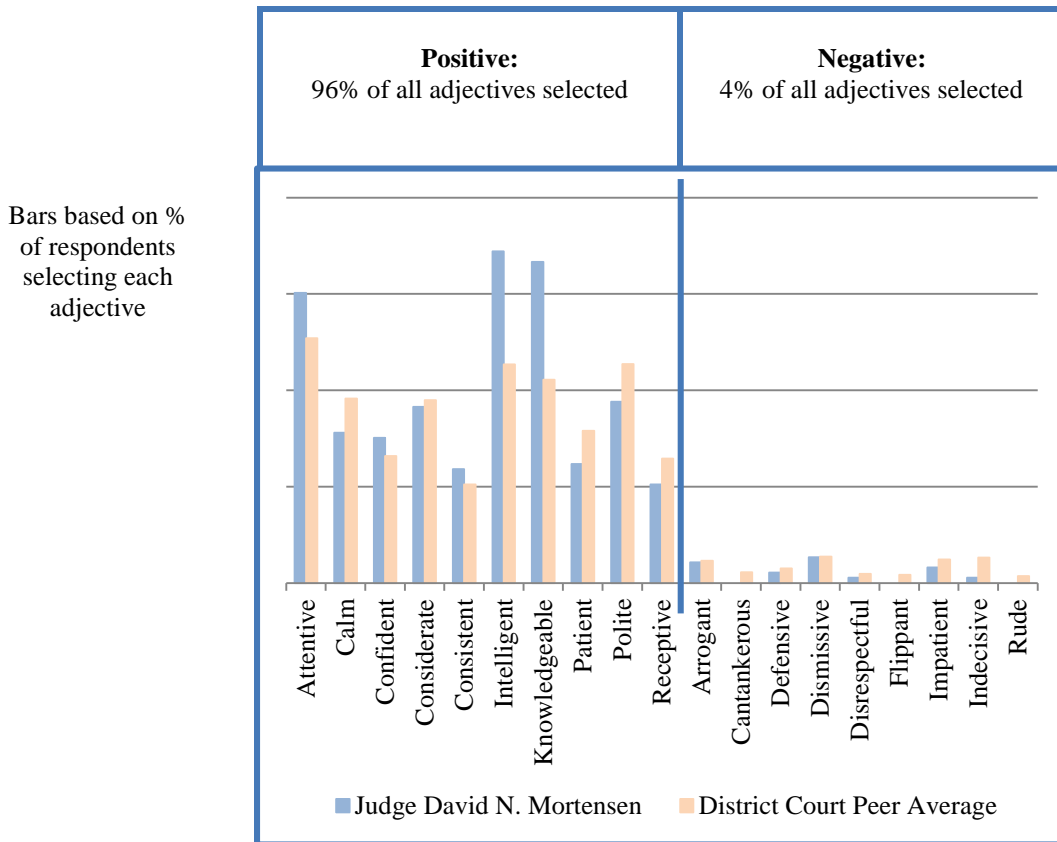
Category	Question	Judge David N. Mortensen	District Court
Administrative Skills	The judge is prepared for court proceedings.	4.8	4.4
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.8	4.6
Administrative Skills	The judge is an effective manager.	4.8	4.5
Administrative Skills	The judge convenes court without undue delay.	4.8	4.6
Administrative Skills	The judge rules in a timely fashion.	4.6	4.5
Administrative Skills	The judge maintains diligent work habits.	4.7	4.5
Administrative Skills	The judge's oral communications are clear.	4.7	4.5
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.6	4.3
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.8	4.6
Procedural Fairness	The judge is fair and impartial.	4.7	4.5
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.8	4.5
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.6	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	17%
Criminal	29%
Civil	71%
Other	6%

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	64%
6 - 10	17%
11 - 15	2%
16 - 20	2%
More than 20	14%

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 DAVID MORTENSEN

Four observers wrote 66 codable units that were relevant to 12 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">• Three observers were positive about Judge Mortensen. Observer A was positive in some areas but expressed reservations in other areas (see “Anomalous comments”).• All observers reported that they would feel comfortable appearing before Judge Mortensen, including Observer A, who believed he would be treated fairly, if brusquely.
WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none">• Three observers variously reported that Judge Mortenson paid careful attention, was efficient, professional, and well prepared, and he was respectful of others’ time and schedules. He commended and assisted parties as appropriate and looked out for defendants’ interests. While open and friendly, he was also all-business when needed. He never hurried despite a busy calendar, and he was thorough and careful in considering all information before making a decision. He was proactive in providing time for each side to speak without interruption, and he carefully and patiently listened to what was said. He spoke clearly and simply in user-friendly language, asked if participants understood their pleas and what was going on in court, and clearly explained the reasons for his orders.
MINORITY OBSERVATIONS	<ul style="list-style-type: none">• Two observers reported that Judge Mortenson usually looked directly at speakers, but occasionally kept his eyes on paperwork when attorneys were answering, and sometimes mumbled and was hard to understand (see “Body language” and “Voice quality”).
ANOMALOUS COMMENTS	<ul style="list-style-type: none">• In marked contrast to the other observers, Observer A reported that Judge Mortensen generally disregarded or was detached from defendants, instead only addressing their attorneys and not welcoming defendants or asking if they understood what they had been told. When addressing defendants directly regarding their pleas he usually spoke too quickly to be easily understood, and his body language gave the appearance that he was not attentive. Observer A suggested that it would take little time or effort to acknowledge defendants by name or inquire about their concerns (see “Courtesy, politeness, and general demeanor,” “Body language,” “Voice quality,” “Demonstrates concern for individual needs,” and “Ensures information understood”).• One observer was concerned that Judge Mortensen’s assertion of the relationship of LSD and schizophrenia was inappropriate from a judge who was not a health care professional (see “Courtesy, politeness, and general demeanor”).

Summary and *exemplar language* of four observers’ comments

<i>RESPECT</i>	
Listening & focus	One observer reported that Judge Mortensen <i>paid careful attention to all parties</i> .
Well-prepared & efficient	Two observers reported that Judge Mortensen <i>handled the court in an efficient manner</i> and was <i>clearly well prepared, asking specific questions to clarify issues</i> .

Respect for others' time	Two observers reported that Judge Mortensen <i>asked everyone for dates that would be convenient</i> if something had to be scheduled at a later date, and <i>really nailed these commitments down as to time and place</i> . He <i>took steps to allow a case to be heard rather than to defer</i> , noting it would be <i>of benefit to the participants to proceed rather than reschedule</i> . When he returned after a short recess, he <i>apologized for the time he was gone</i> which was more than the five minutes indicated.
Courtesy, politeness, and general demeanor	<p>Three observers reported that Judge Mortensen was <i>patient, open, and friendly, frequently smiled, and was able to laugh when appropriate</i>, but <i>when it was time to be serious he was all business and professional</i>. He <i>commended parties for entering into mediation</i>, and <i>after a lengthy exchange with counsel he ruled that a witness must answer</i>, but he then asked the witness <i>if he remembered the question before allowing him to proceed</i>.</p> <p>One observer was concerned when Judge Mortenson suggested that a defendant <i>go home and google LSD and schizophrenia</i>, saying, <i>"If you're predisposed to schizophrenia and try LSD once, then you have schizophrenia for life."</i> The observer was not sure his <i>blatant assertion is supported by clinical research</i> or an <i>appropriate statement to make in court</i> and suggested that the judge <i>keep his recommendations in the legal realm</i> as he is <i>not a mental health professional</i>.</p> <p>Observer A reported that Judge Mortensen <i>consistently disregarded defendants</i>. Unless addressing a defendant regarding a <i>plea deal or sentencing</i>, he <i>almost never welcomed or addressed a defendant by name</i>. <i>All comments were addressed directly to attorneys</i>, giving the impression that <i>the presence of the defendant was almost superfluous</i>. When a date was <i>proposed for a follow-up hearing</i>, the judge <i>simply pointed at the defendant and asked if it was okay</i>. He asked a <i>staff member to give a form to request a public defender to a thoroughly confused prisoner</i>, and <i>moved on to the next case</i> without talking to the <i>disoriented defendant to assure her that an attorney would be provided to protect her rights, etc</i>. The judge's <i>manner seemed unprofessional</i> in several cases, for example when <i>appearing impatient with a confused defense attorney</i> and when <i>leaning back and audibly sighing when a bit exasperated</i> with a defense attorney who was <i>delayed in coming to the lectern</i>. Observer A wondered if the <i>routine cases in a Law and Motion day</i> accounted for the <i>almost bored accomplishment of the tasks</i>, but felt it <i>would have required little effort to make a few comments to defendants or acknowledge them by name</i>.</p>
Body language	<p>Two observers reported that Judge Mortensen generally <i>looked directly at whoever was speaking and made eye contact</i>, but occasionally <i>kept his eyes focused on paperwork while he asked attorneys, "Is that your understanding?"</i> and one observer suggested that <i>while it may be more expedient to talk and review paperwork at the same time, it is more respectful to maintain good eye contact with individuals when addressing them until a question has been answered</i>.</p> <p>Additionally, Observer A reported that Judge Mortenson <i>tended to rest his head on his hand or let his finger trail into his mouth</i> as he looked at participants, <i>which gave the appearance that he was not fully attentive to what was being said</i>.</p>
Voice quality	<p>One observer reported that Judge Mortensen spoke in a <i>clear, direct manner</i>, but <i>sometimes appeared to mumble</i> making it hard to understand what was being said.</p> <p>Additionally, Observer A suggested the judge <i>speak slower</i>, for example <i>when discussing pleas directly with a defendant</i>, as this was <i>usually done very quickly and was difficult to understand</i>.</p>

NEUTRALITY

Demonstrates concern for individual needs	Three observers reported that Judge Mortensen <i>looked out for defendants, trying to get a man with a wife and children with serious health issues that left him addicted to pain medications into inpatient care</i> . Observer A <i>appreciated that the judge looked out for a young man's rights who had the name of his attorney but had not yet met him</i> , and the judge <i>pointed out the attorney when he entered the courtroom</i> to ensure the man could discuss his case <i>in advance of being called</i> .
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Demonstrates concern for individual needs <i>continued</i>	However, Observer A reported that Judge Mortensen was <i>uncharacteristically detached and dismissive</i> of one defendant with insufficient money for an <i>expert</i> or to continue to pay his attorney, never asking about the defendant's <i>concerns</i> , but saying, " <i>Rather than listening to – I was going to say the song and dance from the new attorney as to why they will need more time...</i> " he <i>delayed the case for a couple weeks to allow the defense to sort out the money issues</i> . Observer A felt that <i>it would not have taken much time for the judge to reach out to the defendant, but there was no indication of compassion or understanding</i> .
Unhurried and careful	Two observers reported that Judge Mortensen <i>at no time hurried</i> despite a <i>very busy calendar</i> . He <i>carefully considered all information, such as recommendations and reports, before making a decision</i> , and one observer was <i>impressed with his thoroughness in nailing down specifics</i> .

VOICE

Considered voice	Three observers reported that Judge Mortenson was <i>proactive</i> in providing <i>each side ample opportunity to elaborate their positions without interruption</i> . He <i>carefully and patiently</i> listened to a defendant <i>speak about his family circumstances</i> , but concluded, " <i>I can't reach any other conclusion than that prison is the proper judgement. The bottom line is, when you get out and if you do drugs, you're going to mess up,</i> " and though the defendant was <i>visibly disappointed</i> , he seemed to appreciate an <i>opportunity to explain his reasons for going back to using drugs</i> .
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COMMUNICATION

Communicates clearly	Two observers reported that Judge Mortensen <i>spoke clearly and simply</i> and was <i>very conscientious about communicating in user-friendly language to help defendants navigate the confusing world of courtroom procedures</i> . He asked a defendant, " <i>Have you discussed the purposes of a preliminary hearing with your attorney?</i> "
Ensures information understood	Three observers reported that Judge Mortensen helped defendants <i>understand the gravity of their situations</i> and asked <i>about their understanding of what was happening</i> , saying, " <i>Do you understand what is going on? Have you read the plea agreement paragraph by paragraph?</i> " Observer A reported one case in which Judge Mortenson <i>asked the defendant for comment</i> about the prosecutor's recommendation for 150 days in jail. He then agreed with the defense as he wanted the defendant to <i>complete his degree which was critical for future success</i> , and he went into <i>great detail</i> on the implications of <i>violating any aspect of the sentence and what would constitute a violation, asking several times if the defendant clearly understood</i> . But Observer A also reported that a <i>common thread</i> when a defendant asked a question was for the judge to <i>look at the attorney who then had a discussion with the defendant</i> , rather than the judge <i>answer the defendant directly</i> , after which the judge did not ask if the defendant was clear or <i>address or summarize the issue openly with the defendant</i> . For example, after <i>considerable discussion</i> between the attorney and a <i>confused defendant</i> about <i>postponing for a week</i> , which the judge felt <i>might not be to the defendant's advantage</i> , he <i>finally interrupted, smiled, and said "Just nod your head yes, this is to your advantage,"</i> and while Observer A <i>presumed the judge was correct</i> , she felt <i>he should have clarified for the defendant what was going on before extracting an answer</i> .
Provides adequate explanations	Two observers reported that Judge Mortensen was <i>very clear</i> in explaining an order, saying, " <i>This means you cannot go in Walmart at all,</i> " and when the defendant questioned which Walmart, the judge <i>patiently</i> said, " <i>This applies to ALL the Walmarts in the world - NO Walmarts for the next year.</i> " He <i>clearly explained</i> that " <i>poor showing on probation last time</i> " was the <i>best predictor of whether probation would be effective</i> , and " <i>there needs to be a wake-up call. The only way I can do that is to send you to prison. It is up to you whether to continue this same pattern.</i> "