

**Honorable Michael W. Kwan – Justice Court Judge**  
Serving Taylorsville Municipal Justice Court, Salt Lake County



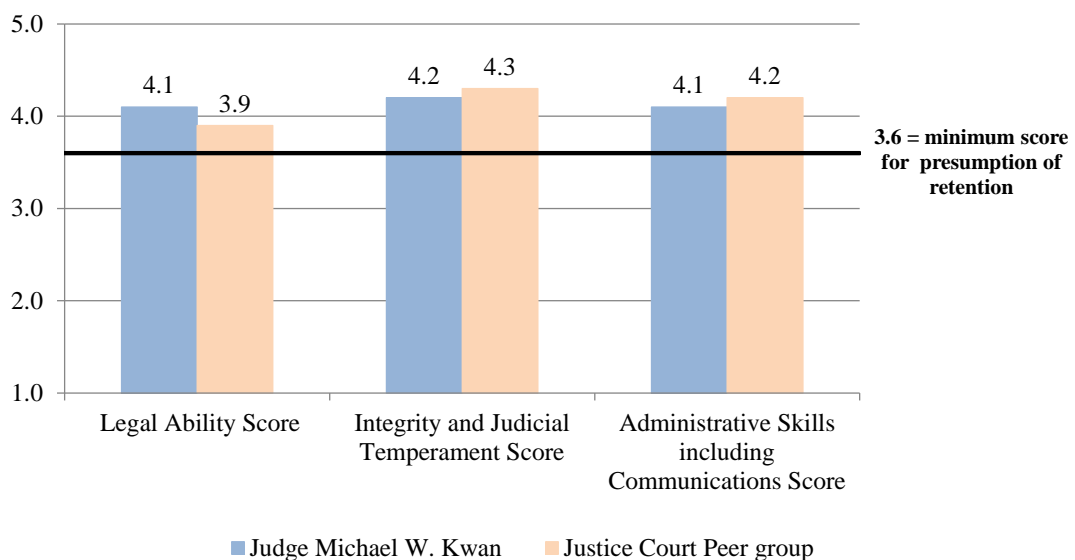
Commission Recommendation: **RETAIN**  
(vote count: 12-0 for retention)

Appointed in 1998, Judge Michael Kwan scores consistent with the average of his justice court peers in all survey categories, showing improvement from previous survey results. While many survey respondents describe Judge Kwan as knowledgeable and professional, some perceive him as arrogant and dismissive. Others praise Judge Kwan’s integrity and his fair and respectful treatment of those appearing before him. Courtroom observers, enthusiastically positive, all report they would feel comfortable appearing before Judge Kwan. They particularly note his patient explanation of decisions, focus on the parties appearing before him, and non-threatening, welcoming demeanor. As required by statute, the Judicial Performance Evaluation Commission notes that the Utah Supreme Court publicly reprimanded Judge Kwan in 2005 for making a crude and inappropriate remark in court in violation of the Code of Judicial Conduct. Of survey respondents answering the retention question, 79% recommend that Judge Kwan be retained.

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

Judge Michael Kwan was appointed in 1998. A graduate of Whittier College School of Law, he received the Quality of Justice Award in 2001. His Domestic Violence Program received the Peace on Earth Award from the SL Area Domestic Violence Advisory Council in 2002. He started one of the nation’s first DUI/Drug Courts in 1998, for which he received the 2008 Utah Governor's Award. Judge Kwan teaches courses across the country for state, national and international organizations. A past Chair of the Board of Justice Court Judges and member of the Utah Judicial Council, he currently serves on the Utah Substance Abuse Advisory Council, as Chair of the ABA Judicial Education Committee, and as a member of the National Asian Pacific American Judicial Council.

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



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# **The Honorable Michael W. Kwan**

**Judicial Performance Evaluation Commission Report**

**Retention 2016**

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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 Michael W. Kwan, 42% of qualified survey respondents submitted surveys. Of those who responded, 43 agreed they had worked with Judge Michael W. Kwan enough to evaluate his performance. This report reflects these 43 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 "Justice 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.

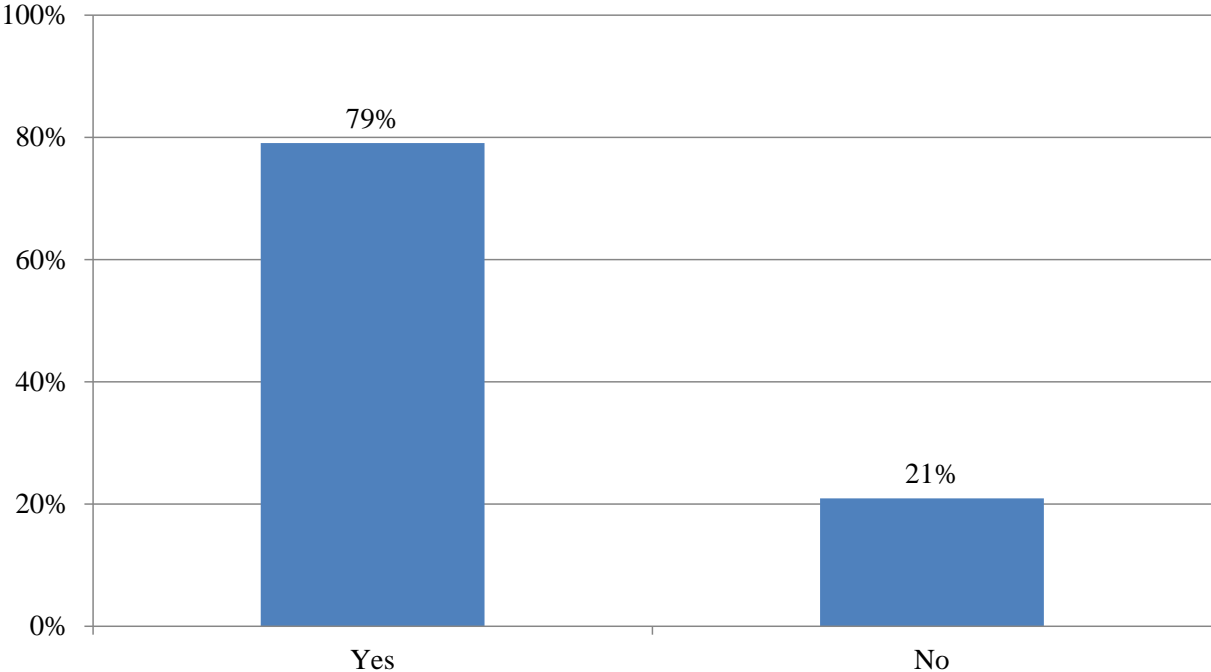
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to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

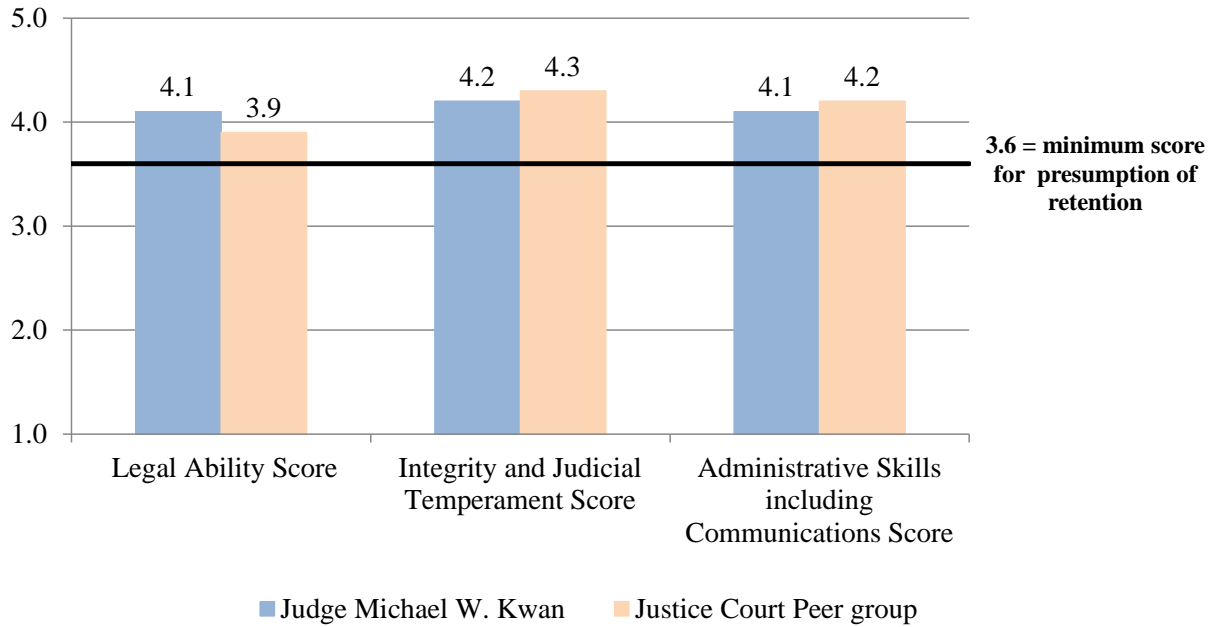
**B. Retention Question**

**Figure A. Would you recommend that Judge Michael W. Kwan be retained?**



## C. Statutory Category Scores

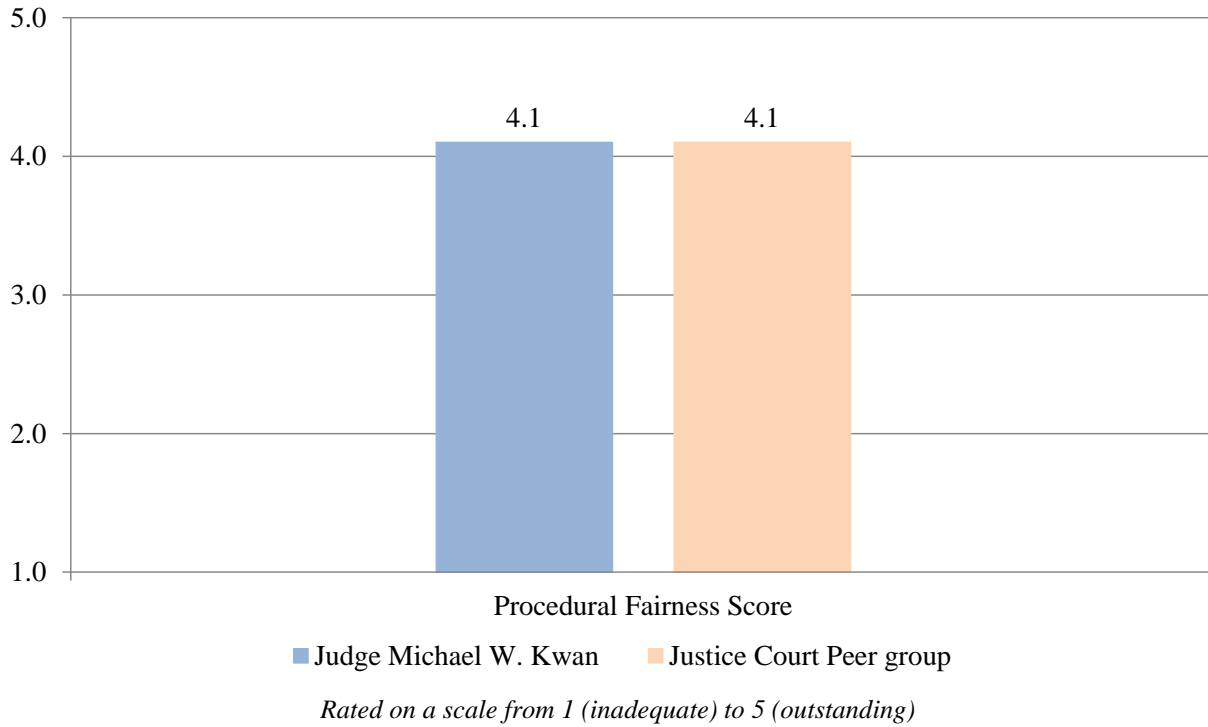
**Figure B. Statutory Category Scores**



*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 Michael W. Kwan
Procedural Fairness	Pass

## E. Responses to Individual Survey Questions

**Table B. Responses to Survey Questions**

Category	Question	Judge Michael W. Kwan	Justice 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	4.0
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.1	3.9
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.1	3.9
Legal Ability	The judge only considers evidence in the record.	4.2	3.9
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.2	3.8
Legal Ability	The judge's written opinions contain a readily understandable, concise ruling	4.2	3.9
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.5	4.3
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.3	4.3
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.1	4.1
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	3.9	4.0
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.	4.4	4.4

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



**Table C. Responses to Survey Questions (continued)**

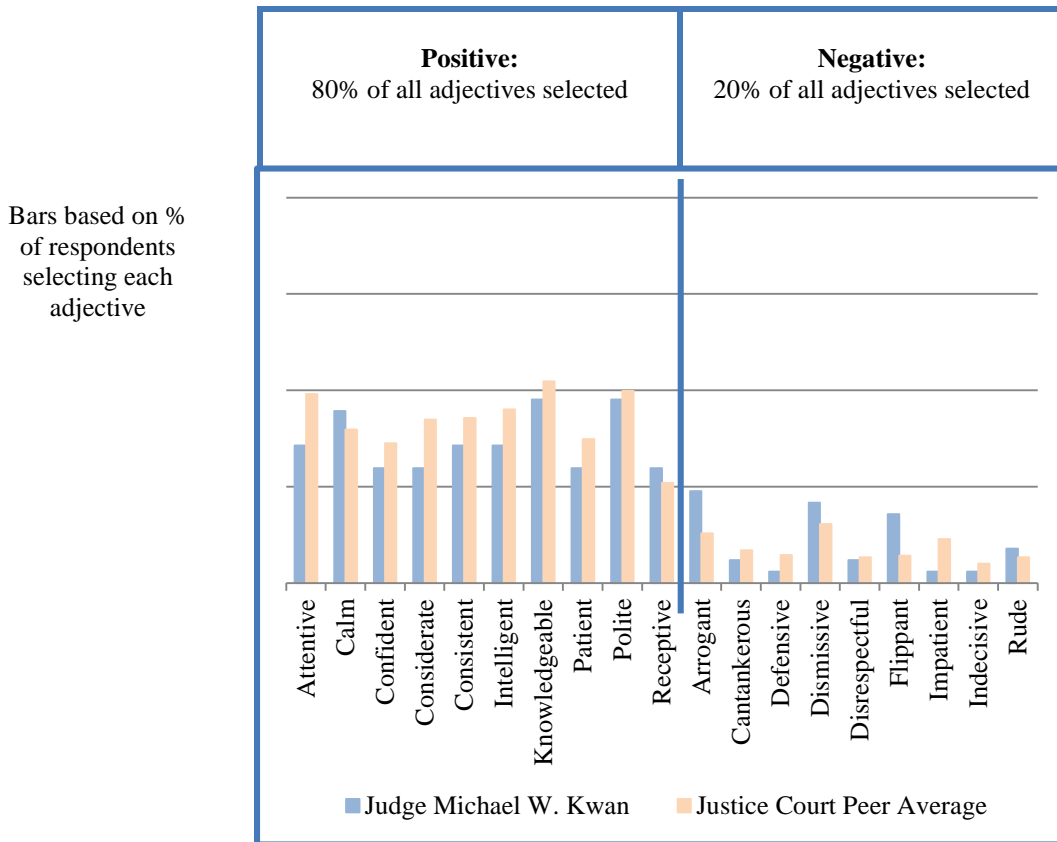
<b>Category</b>	<b>Question</b>	<b>Judge Michael W. Kwan</b>	<b>Justice Court</b>
Administrative Skills	The judge is prepared for court proceedings.	4.3	4.3
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	3.9	4.1
Administrative Skills	The judge is an effective manager.	3.9	4.1
Administrative Skills	The judge convenes court without undue delay.	3.8	4.1
Administrative Skills	The judge rules in a timely fashion.	4.3	4.3
Administrative Skills	The judge maintains diligent work habits.	4.2	4.3
Administrative Skills	The judge's oral communications are clear.	4.3	4.3
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.1	4.1
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.1	4.1
Procedural Fairness	The judge is fair and impartial.	4.0	4.0
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.1	4.0
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.3	4.2

*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	3%
Domestic	8%
Criminal	86%
Civil	19%
Other	8%

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	26%
11 - 15	6%
16 - 20	6%
More than 20	17%

## Survey Background and Methods

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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 MICHAEL KWAN

Four observers wrote 104 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"> <li>All observers were enthusiastically positive about Judge Kwan, particularly emphasizing and approving of his judicial philosophy of empowering defendants to take responsibility for their behavior by giving them second chances.</li> <li>All observers reported that they would feel comfortable appearing before Judge Kwan.</li> </ul>
WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none"> <li>All observers variously reported that Judge Kwan was focused, well prepared and organized, courteously greeting and welcoming participants to his court. His demeanor was calm, nonthreatening, and polite, as well as principled and professional. He was impartial to all, his sentences were even and consistent, and he was unhurried, anxious to have a full understanding of each case. He asked open ended questions and allowed more time for participants to tell their stories than one observer had observed in any other courtroom, and he listened to and reflected on their presentations before making up his mind. He spoke slowly and clearly and adjusted his vocabulary to ensure understanding, continually asking questions to ensure that he was understood. He explained pleas and the advantages of having an attorney, and he explained in detail his decisions and elements of the law.</li> <li>All observers particularly emphasized with many illustrations Judge Kwan’s philosophy of empowering defendants to take responsibility for improving their lives rather than only punishing them. They emphasized his personal, caring involvement in every case, and his treatment of people as individuals (see “Demonstrates concern for individual needs”).</li> </ul>
MINORITY OBSERVATIONS	<ul style="list-style-type: none"> <li>None</li> </ul>
ANOMALOUS COMMENTS	<ul style="list-style-type: none"> <li>One observer commented that when reprimanding one defendant, Judge Kwan’s voice was not particularly stern, and she hoped the defendant took him seriously (see “Voice quality”).</li> </ul>

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

<i>RESPECT</i>	
Listening & focus	One observer was amazed by Judge Kwan’s <i>focus on each defendant</i> given his <i>diverse and busy calendar</i> .
Well-prepared & efficient	Two observers reported that Judge Kwan was <i>well prepared</i> and <i>efficient and well organized</i> , with stack of <i>records</i> and <i>instruction sheets stored in separate visible bins</i> .
Courtesy, politeness, and general demeanor	<p>All observers reported that Judge Kwan entered with a <i>smile</i>, saying “<i>Good morning, ladies and gentlemen,</i>” <i>greeting each participant by name</i>, saying, “<i>Hello, how are you?</i>” and putting them <i>at ease</i> and <i>welcoming them as though into his front room</i>. He announced <i>4-5 cases at a time to come forward and sit and wait</i>, which helped prepare defendants about <i>what to do next</i>.</p> <p>Judge Kwan’s demeanor was <i>calm, pleasant, courteous, nonthreatening</i> and <i>polite</i>, as well as <i>principled, professional</i> and <i>appropriately enthusiastic</i>. All parties were <i>left feeling that their case was given due importance and that sufficient time was devoted to their matters</i>. He gave one man a <i>heartly “Congratulations!”</i> when he reported that he got a job.</p>

Courtesy, politeness, and general demeanor <i>continued</i>	When family members <i>asked to take photographs after a marriage ceremony</i> , the judge informed them that <i>this required a prior twenty-four hour request</i> , “ <i>but I will make an exception this one time</i> ,” a favorite statement that the observer heard Judge Kwan use <i>several times</i> . When their 4-year-old <i>gave him a gift with money he was surprised and unprepared</i> , but <i>thanked the child and graciously returned the money to the groom</i> , saying as a <i>public employee he could not accept money</i> , and they left <i>feeling their special time in court was not marred by a judge being judgmental</i> .
Body language	Two observers reported that Judge Kwan <i>made eye contact in every instance</i> . As his <i>seat was very low it was difficult to see his facial expression which was for the most part bland and neutral</i> except when <i>breaking into a kind of sparkly smile</i> .
Voice quality	One observer reported that when Judge Kwan told a non-compliant defendant, “ <i>I have heard this song before</i> ,” and <i>expected the defendant to make progress in thirty days on court ordered items</i> , <i>his voice was not particularly stern and the observer hoped the defendant took him seriously</i> .
Courtroom tone & atmosphere	Two observers reported that the courtroom was <i>informal, relaxed, nonthreatening, practical and motivational</i> , with the judge <i>chatting easily with each person</i> .

*NEUTRALITY*

Consistent and equal treatment	Three observers reported that Judge Kwan was <i>impartial towards all</i> , speaking with the <i>same calm tone of voice</i> and giving <i>no defendant special or unusual treatment</i> . His <i>sentencing decisions seemed remarkably even and consistent</i> .
Demonstrates concern for individual needs	<p>Fully one quarter of the observers’ comments were in this section. All observers particularly emphasized Judge Kwan’s concern to <i>get involved with every case in the interests of the participants</i> and to <i>improve their lives</i>, his <i>utmost consideration for the misfortune of others</i>, and his efforts to <i>treat people as individuals and connect at a personal, caring level</i>.</p> <p>Observers described with approval Judge Kwan’s philosophy that <i>everyone gets a second chance or maybe a third if needed</i> and emphasized his <i>understanding of other people’s lives</i> and that a <i>young person may take time to develop into a mature adult</i>. He saw the <i>value of rehabilitation versus punishment in empowering</i> defendants to become <i>more responsible</i>, and when defendants <i>explained their lack of actions due to life necessities and constraints</i>, the judge was <i>compassionate and cooperative</i>, saying, “<i>It is not in the interest of justice to further convict</i>.” He encouraged participants to <i>explore the source of their circumstances</i> and to <i>learn from mishaps and accept the consequences</i>. He was <i>sensitive and compassionate</i> when listening to an <i>under-age drinker’s circumstances</i>, <i>speaking in a witty and friendly way</i> and <i>drawing a comparison and contrast</i> to his own teenage years to <i>make the young man understand the need to be responsible</i>.</p> <p>One observer <i>did not at first understand</i> Judge Kwan’s style of <i>low level nurturing</i> in which he <i>wanted young defendants to succeed and no longer be a part of the Justice Court cycle even if this took several years</i>, but as the observer <i>watched defendants respond to him she could see that they wanted to please him</i>. Participants <i>appeared to benefit from Judge Kwan’s interesting style</i> in which cases <i>lingered without a resolution or court termination while participants made progress in their personal lives</i>. In one case a young defendant with prior difficulties paying fines had <i>recently become more responsible and was moving out of the court system</i>. The judge <i>gave him the option of another review or just being responsible and paying the fine on his own</i>. The young man who had made a payment that day was <i>pleased with himself, stood a little straighter and indicated in a clear voice that he would be responsible</i>. The observer felt that the judge <i>had been patient and allowed the man time to mature and become more responsible</i>.</p> <p>Judge Kwan <i>crafted each sentence to a person’s circumstances</i>, often asking, “<i>Can you give me a plan on how you would like to set up payment of this fine?</i>” In one case he <i>involved a defendant in a very empowering discussion</i> of her own sentence which resulted in a <i>suspension of her fine if there were no disciplinary actions while she was serving her current sentence</i>, and the <i>stunned defendant asked the judge to repeat her sentence</i> and explain the meaning of <i>disciplinary action</i>.</p>

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Demonstrates concern for individual needs <i>continued</i>	However, some defendants appeared to <i>take advantage of Judge Kwan's style</i> and come for court reviews <i>without making progress on their fines, attempting to delay any accountability</i> . One observer <i>imagined 'law and order' types being critical of Judge Kwan's courtroom philosophy</i> or see him as an <i>'easy' judge who may want to be liked by others</i> . However, the observers noted that while he <i>went to some lengths to work out individual arrangements, he was not a total softy</i> , saying for example, <i>"I cannot do that today as the city has a right, just as you do, to be prepared for your case. I would be able to delay it until next month. Would that work for you?"</i>
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Unhurried and careful	One observer reported that Judge Kwan was <i>careful and steady</i> , often <i>pausing the proceedings to examine court data for accuracy</i> . He was <i>anxious to have full understanding of a defendant's case without hurrying</i> . At the end of the session, <i>still unhurried and easy-going</i> , he continued to take care of <i>odds and ends and double check with the staff to ensure all cases had been addressed</i> .
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VOICE

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Considered voice	Three observers reported that Judge Kwan explained that he would <i>begin by listening to presentations and only make up his mind after he reflects on them</i> . He was <i>highly engaged in discussions</i> and asked <i>open ended questions</i> , saying, <i>"What do you want to tell me about why this happened?"</i> or, <i>"Anything you'd like me to know before I sentence you?"</i> and then <i>allowed ample time for comments, regardless of their relevance</i> . His <i>easy mannerisms, friendly conversation, and willingness to converse with people</i> made it <i>easy for them to comfortably tell the judge in great detail what had brought them to this situation</i> . He <i>patiently listened and gave consideration to their stories and perspectives</i> , although he <i>did not always grant their requests</i> .  One observer felt that Judge Kwan <i>allowed more time for participants to tell their stories than in any other courtroom she had observed</i> , and she found it <i>satisfying to hear people speak freely at length than say as little as possible, probably with good reason, in other court situations</i> .
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COMMUNICATION

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Communicates clearly	Two observers reported that Judge Kwan <i>spoke clearly and adjusted his vocabulary in layperson terms to ensure understanding</i> .
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Ensures information understood	Two observers reported that Judge Kwan <i>spoke slowly without being condescending</i> when he <i>continually checked to ensure he was understood</i> , stating, <i>"Do you know why you can't drive for a year?"</i> or, <i>"Are you with me on this?"</i> or, <i>"Do you understand, please ask questions."</i> He <i>checked for understanding of individual rights before beginning each case</i> , asking, <i>"Did you review the rights form and do you have any questions on your rights?"</i> or, <i>"Do you understand that you have a constitutional right to have an attorney?"</i>
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Provides adequate explanations	Three observers reported that Judge Kwan <i>repeatedly emphasized that defendants have a right to have an attorney and explained the advantages of having one</i> . He <i>discussed plea options</i> and when rights were being waived. He <i>did a fine job of explaining elements of law, going into detail to explain his decisions and what the law allowed regarding jail time, fines for each charge, and enhancement guidelines so they would be aware of the seriousness of later violations</i> . He explained to a woman who <i>said she never got a notice in the mail to appear that the traffic ticket itself indicated the requirement to appear in court</i> .
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