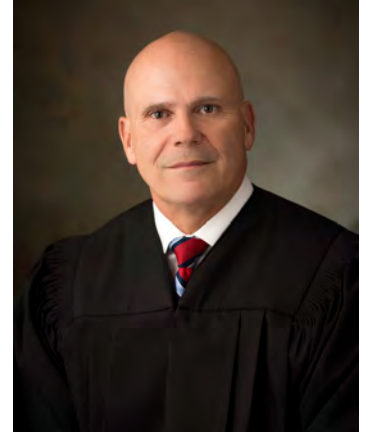


# The Honorable Richard D. McKelvie



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### About the report

In making its recommendation to voters about whether a judge should be retained, JPEC considers the judge's legal ability, integrity and judicial temperament, administrative skills, procedural fairness, public comment, and judicial discipline records as well as compliance with judicial education, fitness for office, and case-under-advisement time standards. If a judge meets minimum standards, there is a legal presumption that commissioners will vote to recommend the judge be retained. If a judge fails to meet minimum standards, there is a legal presumption that commissioners will vote not to recommend the judge for retention. Included below are the Survey and Courtroom Observation Reports. The Survey Report summarizes information collected from attorneys, court employees, jurors (district and some justice court judges only) and juvenile court professionals (juvenile court judges only). Surveys are anonymous and inclusion in the survey is based on court-appearance records. The Courtroom Observation Report summarizes information reported by at least four trained, volunteer court observers per judge.

### Content Links

[Survey Report](#)

[Survey Results](#)

[Survey Information](#)

[Courtroom Observation Report](#)

[Evaluative Criteria](#)

[Content Analysis](#)

[How to Read the Results](#)

[Voter Information Pamphlet](#)

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## Survey Report

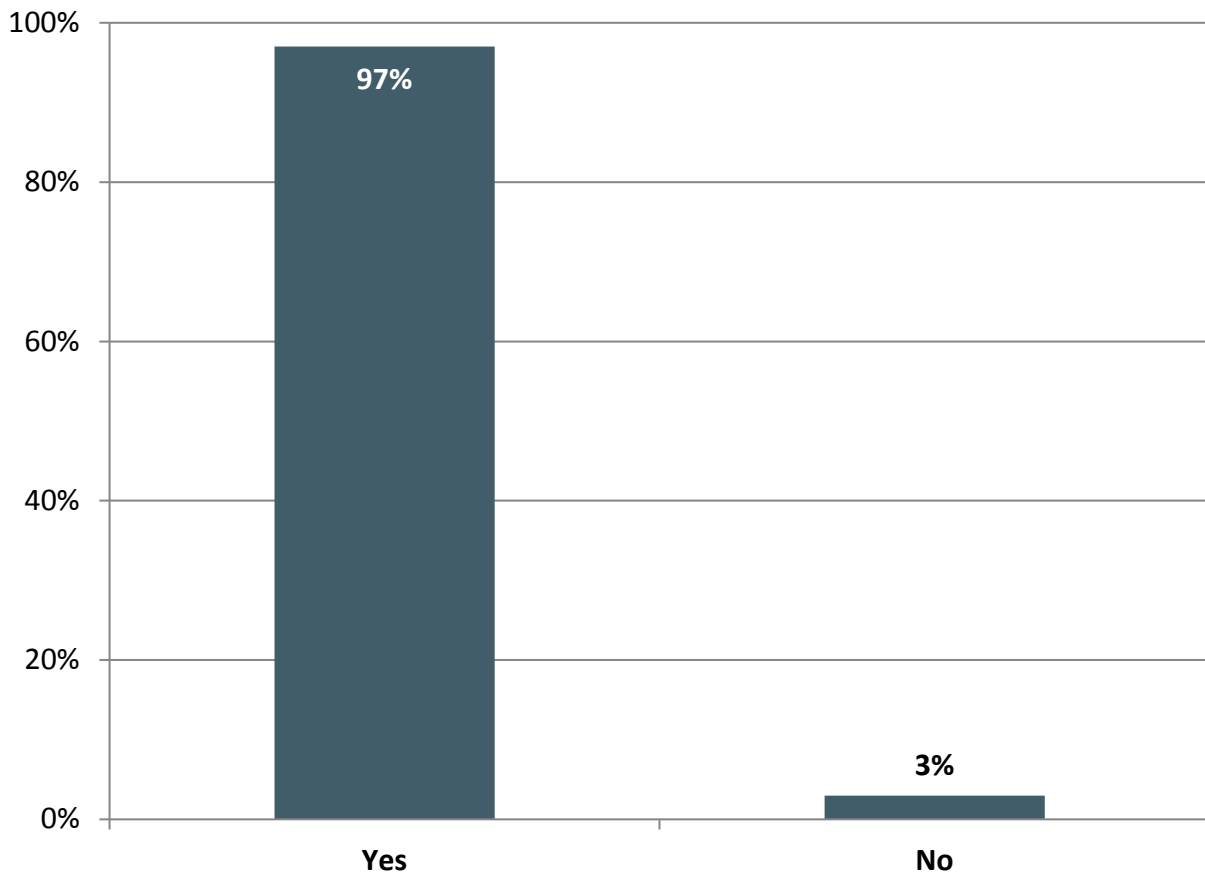
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### Survey Results

For Judge Richard D. McKelvie, 47% of qualified survey respondents submitted surveys. Of those who responded, 118 agreed they had worked with Judge Richard D. McKelvie enough to evaluate the judge's performance. This report reflects these 118 responses. For more information on the survey, please see Survey Information. For more information about the evaluation process, please see How to Read the Results.

### Retention Question

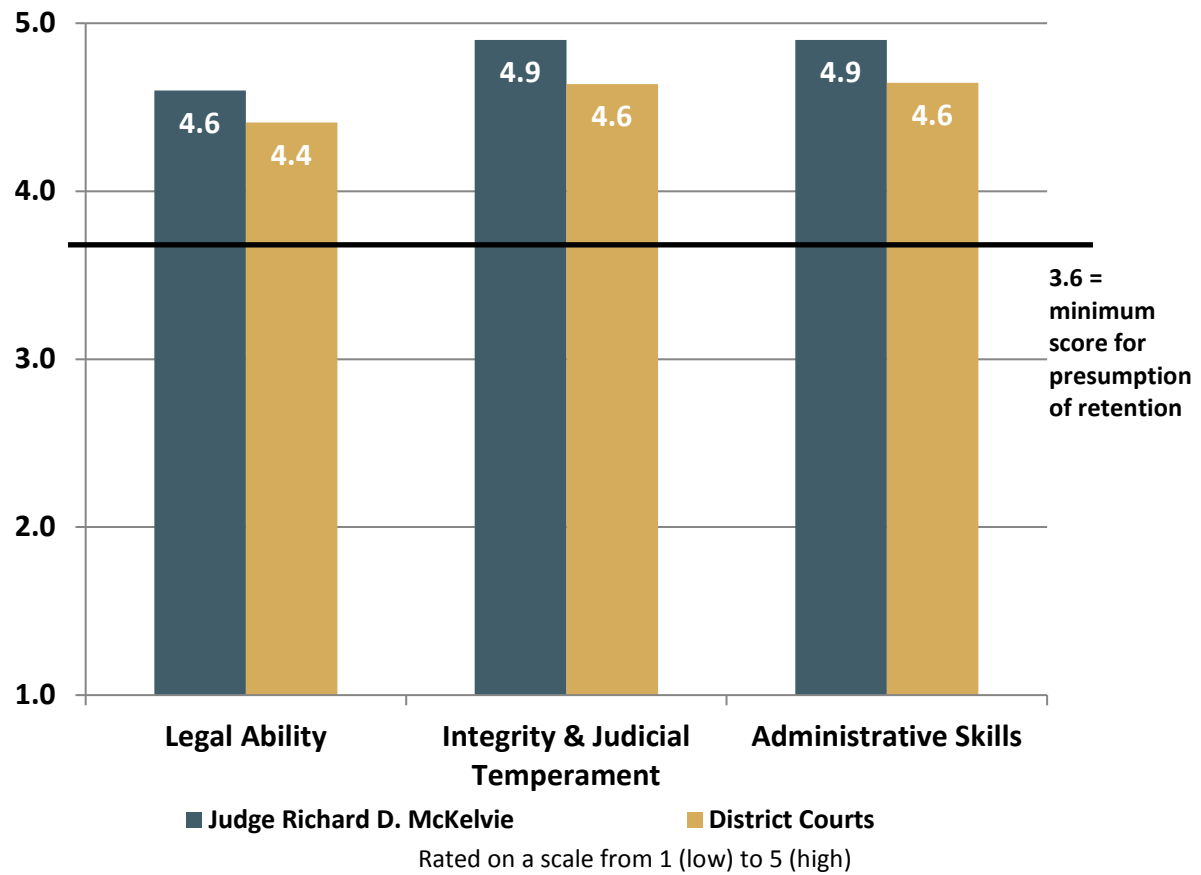
**Survey Question: Would you recommend that Judge Richard D. McKelvie be retained?**



## Survey Report

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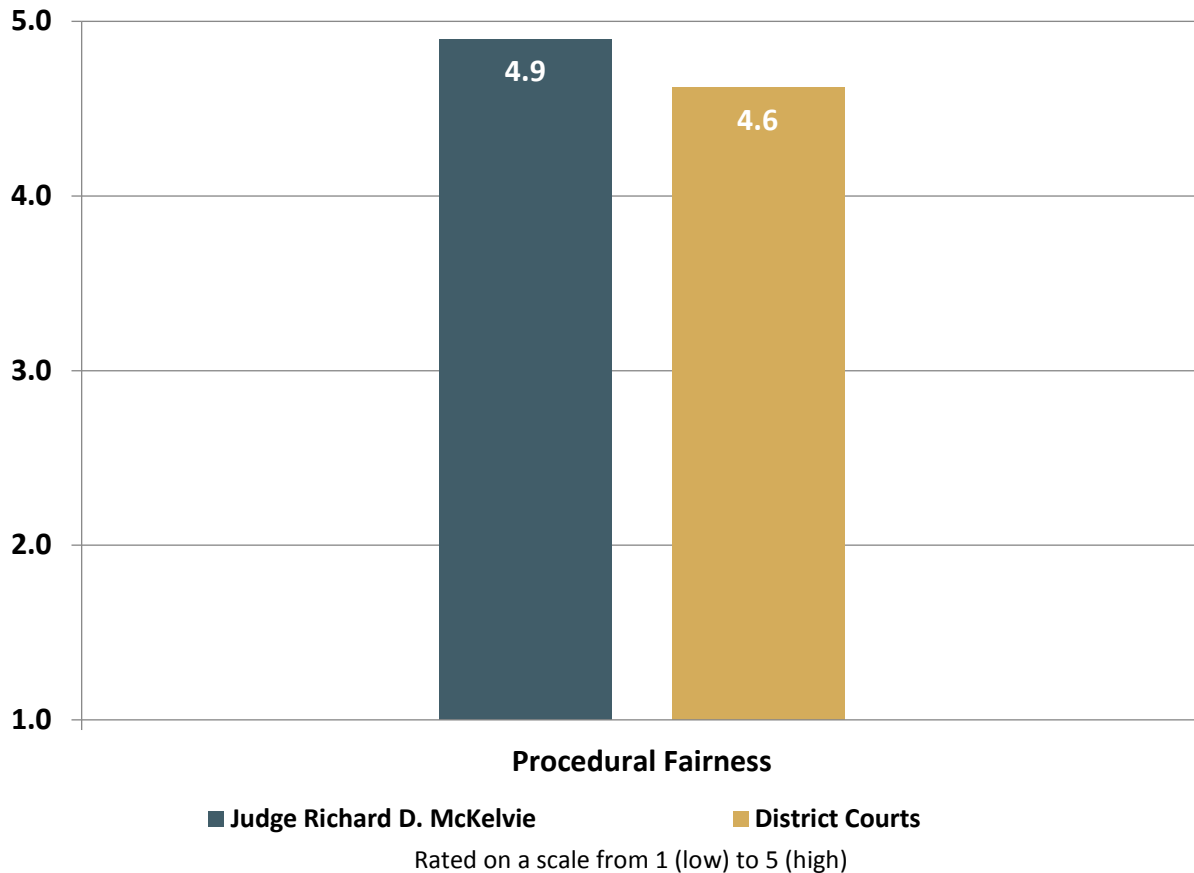
### Statutory Category Scores



## Survey Report

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### 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.

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

Category	Judge Richard D. McKelvie
Procedural Fairness	Pass



## Survey Report

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### Responses to Survey Questions

Category	Question	Judge Richard D. McKelvie	District Courts
Legal Ability	The judge followed the legal rules (e.g. civil procedure, criminal procedure, evidence, juvenile, appellate) that applied to the case at issue.	4.6	4.4
Legal Ability	The judge made adequate findings of fact and applied the law to those facts.	4.6	4.4
Legal Ability	The judge followed legal precedent or explained departures from precedent.	4.6	4.4
Legal Ability	The judge only considered evidence in the record.	4.7	4.5
Legal Ability	The judge based opinions/decisions on applicable legal principles and controlling law.	4.6	4.4
Legal Ability	The judge's opinions contained a readily understandable ruling.	4.7	4.5

Rated on a scale from 1 (low) to 5 (high)



## Survey Report

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### Responses to Survey Questions (continued)

Category	Question	Judge Richard D. McKelvie	District Courts
Integrity & Judicial Temperament	The judge made sure that everyone's behavior in the courtroom was proper.	4.9	4.7
Integrity & Judicial Temperament	The judge paid attention to what went on in court.	4.9	4.7
Integrity & Judicial Temperament	The judge's personal life or beliefs did not impair his or her judicial performance.	4.9	4.5
Integrity & Judicial Temperament	The judge demonstrated respect for the time and expense of those attending court.	4.9	4.6
Integrity & Judicial Temperament	The judge worked to ensure that the participants understood the court proceedings.	4.9	4.7
Integrity & Judicial Temperament	The judge conducted proceedings without favoritism.	4.9	4.6
Integrity & Judicial Temperament	The judge considered arguments from all sides before ruling.	4.8	4.6
Integrity & Judicial Temperament	The judge demonstrated diligent work habits.	4.7	4.6
Integrity & Judicial Temperament	The judge maintained a professional demeanor in the courtroom.	4.9	4.7

Rated on a scale from 1 (low) to 5 (high)



## Survey Report

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### Responses to Survey Questions (continued)

Category	Question	Judge Richard D. McKelvie	District Courts
Administrative Skills	The judge was prepared for court proceedings.	4.8	4.6
Administrative Skills	The judge's interactions with courtroom participants and staff were professional and constructive.	4.9	4.7
Administrative Skills	The judge managed the court calendar effectively.	4.8	4.5
Administrative Skills	The judge convened court without undue delay.	4.9	4.7
Administrative Skills	The judge ruled in a timely fashion.	4.8	4.6
Administrative Skills	The judge communicated clearly.	4.9	4.7
Category	Question	Judge Richard D. McKelvie	District Courts
Procedural Fairness	The judge treated all courtroom participants with equal respect.	4.9	4.6
Procedural Fairness	The judge performed his or her duties fairly and impartially.	4.9	4.6
Procedural Fairness	The judge promoted public trust and confidence in the courts through his or her conduct.	4.8	4.6
Procedural Fairness	The judge provided the court participants with a meaningful opportunity to be heard.	4.9	4.7

Rated on a scale from 1 (low) to 5 (high)



## Survey Report

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### Adjective Question Summary

Survey respondents rated how well a list of adjectives describes the judge. A rating of 1 indicates the adjective *does not describe the judge at all*, and a rating of 5 indicates the adjective *describes the judge very well*. For the positive adjectives, a higher average score is better. For the negative adjectives, a lower average score is better.

Descriptor	Judge Richard D. McKelvie	District Courts	
Attentive	4.7	4.6	<b>Positive Adjectives HIGHER average score is better</b>
Capable	4.8	4.5	
Ethical	4.8	4.7	
Knowledgeable	4.6	4.4	
Impartial	4.5	4.3	
Open-minded	4.6	4.3	
Disrespectful	1.1	1.4	<b>Negative Adjectives LOWER average score is better</b>
Impatient	1.4	1.6	
Indecisive	1.3	1.6	
Unprepared	1.2	1.4	





## Survey Information

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This report presents the results from the 2017 survey process, conducted by Market Decisions, LLC. A detailed description of the survey methodology is available separately on the Utah Judicial Performance Evaluation website.

### 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), and
- 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).

### Summary of Survey Methods

Surveys are conducted online, using web-based survey software. Each qualified respondent receives an initial email notification signed by the Chief Justice and JPEC Chairperson. 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 at least 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 35 (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 average score in Procedural Fairness.

### **Evaluation Period**

The retention evaluation period for judges standing for election in 2018 began on January 1, 2016 and ended on September 30, 2017.



# Courtroom Observation Report

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## Evaluative Criteria

CRITERIA	DESCRIPTION
<b>RESPECT</b>	
Listening & focus	Listening refers to all indications of attention and engagement through active listening. Giving voice to those in court is included below under “Considered voice”.
Well-prepared & efficient	Efficiency refers to the judge’s behaviors. The court’s efficiency appears below under “Courtroom tone & atmosphere”.
Respect for other's time	This includes the starting time of sessions as well as all interactions with those in court that take into consideration the value of their time.
Courtesy, politeness, and general demeanor	This refers to respectful behaviors generally, as well as behaviors directed at specific individuals that indicate respect for a person’s value or status.
Body language	This refers to eye contact and facial expressions, general body language, and engaged behavior.
Voice quality	This refers to both mechanical qualities such as pitch and volume, and emotional qualities such as inexpressive, sarcastic or exasperated tone.
Courtroom tone & atmosphere	This refers more generally to the tone and atmosphere of the courtroom.
<b>NEUTRALITY</b>	
Consistent and equal treatment	This refers to listening to all sides, and treating individuals in similar situations similarly.
Demonstrates concern for individual needs	This refers to concern for individual differences and giving due regard to the individual’s specific situation. Expressing concern that individuals understand the proceedings is included below under “Ensures information understood”.
Unhurried and careful	This refers to allowing sufficient time for the judge and those in court to conduct themselves in a thorough manner.
<b>VOICE</b>	
Considered voice	This refers both to allowing those in court to express themselves and to the judge’s consideration of what was expressed in his/her statements or decision.
Formal voice	This refers to giving voice based on required procedure without apparent consideration by the judge of what was expressed.
<b>COMMUNICATION</b>	
Communicates clearly	This refers both to clarity of speech and to the use of language appropriate to the listener.
Ensures information understood	This refers to active attention by the judge in ensuring those in court understand all information relevant to them, and includes translation and comprehension for non native English speakers.
Provides adequate explanations	This refers to providing sufficient explanation of the basis of decisions and of legal procedure and terminology to ensure that those in court understand proceedings relevant to them.



## FOUR OVERVIEW SECTIONS

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Overall assessment	<p>The first statement in this section is an overall summary of the entire set of observer comments.</p> <p>The second statement indicates the number of observers indicating that they would feel comfortable appearing before the judge.</p>
Widely agreed-upon themes	<p>Behaviors reported by all (or almost all) observers and thus well established. Deficits mentioned here were widely reported and therefore merit attention.</p> <p>The subsequent statements are not intended to be a complete summary of the observers comments, but rather highlight the most frequently noted and forcefully expressed themes in the way that the observers expressed them, with the goal of evoking an overall sense of the entire set of observer comments.</p>
Minority observations	<p>Behaviors noted by two (or possibly three) observers that would be worth building on (if desirable) or otherwise thinking about avoiding.</p> <p>Not every behavior reported by a minority of observers is summarized here, only those that reflect a notable or somewhat discrepant perspective that was not widely agreed upon.</p>
Anomalous comments	<p>Comments of one (or in rare cases two) observers that reflect a markedly different or decidedly contradictory perspective from all other observers are included here. They are intended to stimulate reflection, such as: why were these observers affected by this behavior, or does this particular situation tend to lead to this uncharacteristic behavior?</p> <p>Not every anomalous comment in the report is included in this summary section. While all have been included in the report, some are not included in this summary section because they are too minor, or appear to reflect something about the observer rather than the judge.</p>

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### Italicized text

Throughout the report, italicized text refers to actual words or phrases used by the observers.

### Terminology

In all three overview sections, paragraphs are introduced with the following terminology.

If the number of observers is specified, e.g. “All observers reported...” or “Three observers reported...”, then every statement in the paragraph was mentioned or implied or alluded to by that number of observers.

If the word “variously” is added, e.g. “All observers variously reported...” or “Three observers variously reported...”, then not every statement in the paragraph was directly mentioned or implied or alluded to by every one of those observers, but rather the sense of all the statements in the paragraph taken together was.

To avoid repetition, the word “variously” is not used to open every paragraph in every detail box of the report, even though it generally applies.



## Content Analysis

### Overview

OVERALL ASSESSMENT	<ul style="list-style-type: none"><li>All observers were strongly positive about Judge McKelvie.</li><li>All observers reported confidence that if appearing before Judge McKelvie they would be treated fairly.</li></ul>
WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none"><li>All observers variously reported that Judge McKelvie listened carefully with undivided attention, he was well prepared with detailed knowledge of the cases, and he ran the court efficiently. He was cordial, polite, and highly professional, his occasional humor was appropriate, and he maintained consistent eye contact. He showed equal respect for all parties, did not change his tone of voice regardless of the circumstances, and genuinely cared about defendants' problems and progress. He was expeditious but unhurried and asked many questions before making his decisions. He was more than willing to let defendants speak on their own behalf, and he continually asked for clarification and asked if they had questions or statements to make. He explained the law in a way that could be understood, using simpler language when necessary to ensure full comprehension. He clearly stated the reasoning behind his precise rulings, and he was informative and helpful in explaining the law and what defendants should do next.</li><li>Observers particularly emphasized Judge McKelvie's respect for all parties and the effectiveness of his very respectful behaviors in alleviating defendants' tension and agitation, thereby restoring their calm. Observers also particularly emphasized the judge's notable patience in all situations and his calm and collected demeanor. As a result, defendants were respectful in their responses and in some cases thanked the judge.</li></ul>
MINORITY OBSERVATIONS	<ul style="list-style-type: none"><li>Two observers suggested that acknowledging the frustration of participants whose cases were delayed or re-scheduled would have improved their experience (see "Respect for others' time").</li></ul>
ANOMALOUS COMMENTS	<ul style="list-style-type: none"><li>None</li></ul>

### Summary and *exemplar language* of five observers' comments

#### RESPECT

Listening & focus	Three observers reported that Judge McKelvie listened <i>carefully and attentively</i> . He <i>displayed his concern for defendants by the way in which he listened</i> . He <i>continued to pay attention even when a lawyer kept repeating the same things</i> .
Well-prepared & efficient	Three observers reported that Judge McKelvie was <i>well prepared with detailed knowledge of cases</i> , and his <i>management style and efficiency in dealing with requests and motions were excellent</i> .
Respect for others' time	Two observers reported that Judge McKelvie made <i>no explanation or thanked the very full courtroom for their patience</i> for a late start of the session, and while he was <i>very flexible in re-scheduling cases</i> , one observer felt that <i>a word from the judge to acknowledge the frustration of those who had taken time off work to be in the courtroom as ordered only to find they would have to be re-scheduled would go a long way to improving their experience</i> .



Courtesy, politeness, and general demeanor	<p>All observers reported that Judge McKelvie was <i>cordial, polite, open, compassionate, courteous</i>, as well as <i>highly professional, and serious</i>. He introduced <i>occasional light humor</i> and an <i>appropriate degree of levity</i> which seemed to <i>keep the courtroom relaxed</i>.</p> <p>Observers particularly emphasized that Judge McKelvie was <i>calm and collected even in hard cases</i> and <i>surprisingly patient</i> even when <i>interrupted by disgruntled participants</i>. If participants <i>did not understand the law he calmly and quietly listened to them</i> and then <i>explained</i> without being <i>patronizing what they did not understand</i>. In one session when many defendants <i>did not appear</i> and many attorneys were <i>unprepared to proceed, rather than express frustration he remained very calm and issued warrants or re-scheduled cases</i>. When an attorney who was <i>quite late finally arrived, he greeted her warmly and things moved on</i>. One observer described Judge McKelvie as a <i>great and honorable judge who was respectful to everyone</i>.</p> <p>Observers provided several illustrations of the effectiveness of Judge McKelvie’s respectful behaviors in alleviating participants’ <i>tension and agitation</i> and in <i>restoring their calm</i>, and several defendants <i>thanked him quite sincerely</i>. In a moving report a woman working two jobs requested a reduction in probation to return to Oregon to live with her daughter, but she had not completed her community service due to health issues. Judge McKelvie carefully explained that <i>he could not reduce her probation, but he reduced her community service hours in light of her medical needs</i> and explained in a <i>very respectful way that she must complete these hours before she could move on</i>. The woman was <i>calmed</i> by the judge’s explanation and <i>very respectful in her responses</i>.</p>
Body language	One observer reported that Judge McKelvie <i>maintained consistent eye contact</i> and his <i>posture and courtesy indicated his respect</i> .
Courtroom tone & atmosphere	One observer reported that the courtroom <i>ran very efficiently in spite of all the no-shows and the attorneys who seemed to be unprepared</i> .

*NEUTRALITY*

Consistent and equal treatment	Three observers reported that Judge McKelvie <i>showed equal respect</i> for all parties involved, and <i>asked a lot of questions in order to understand both sides</i> . He <i>did not change his tone of voice throughout the proceedings, even remaining respectful and straight to the point</i> when questioning a defendant who had <i>pled guilty to the murder of a child</i> . He used the <i>same tone</i> when showing <i>sympathy towards a mother who had lost her son, while maintaining his professionalism</i> . He showed <i>sensitivity in dealing with women and minorities without favoritism</i> .
Demonstrates concern for individual needs	Two observers reported that Judge McKelvie <i>genuinely cared about the parties</i> and was <i>interested in defendants’ progress, problems or issues</i> .
Unhurried and careful	Three observers reported that Judge McKelvie was <i>expeditious yet unhurried</i> in dealing with a <i>large number of cases in a relatively short time</i> . He <i>asked many questions before making his decisions and allowed sufficient time facilitating discussion</i> .

*VOICE*

Considered voice	Four observers reported that Judge McKelvie was <i>more than willing to let defendants speak on their own behalf</i> , listening to their <i>stories with undivided attention</i> . He <i>asked for clarification if he did not fully understand what they were saying</i> , and during a trial he <i>continually asked both parties if they had any questions or statements they wanted to make</i> . He <i>validated the defendants by letting them know that they had indeed been heard</i> when making his decisions.
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*COMMUNICATION*

Communicates clearly	Two observers reported that Judge McKelvie <i>explained the law in a way that could be understood well</i> . When necessary he <i>realized that he needed simpler wording to communicate</i> , in one case asking a defendant if he wanted to <i>“waive or give up your right...”</i>
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Ensures  
information  
understood

Two observers reported that Judge McKelvie *repeated what each side had to say* in order ensure he *understood their arguments*. He was *experienced* in dealing with defendants with *varying comprehension of the English language and courtroom terminology*, and they appreciated his *sincere efforts to use simpler language* and a *manner of questioning* that ensured their *full comprehension*.

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Provides  
adequate  
explanations

Three observers reported that Judge McKelvie *clearly stated the reasoning behind his very precise rulings*, and he provided participants with *specific information about what to do, where to go, and when to appear*. He was *very informative and helpful* in explaining the law and legal processes even when *participants became disgruntled*.

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## How to Read the Results

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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 Courts" 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.

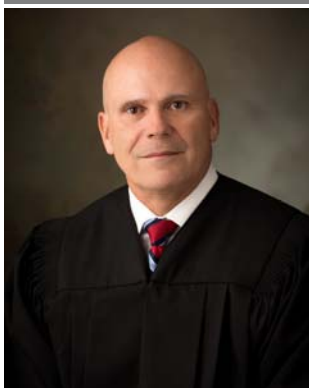
Respondents are asked whether or not they think the judge should be recommended for retention only during the retention cycle.





# 3<sup>RD</sup> JUDICIAL DISTRICT COURT

Visit [JUDGES.UTAH.GOV](http://JUDGES.UTAH.GOV) for more information about this judge



## Honorable Richard D. McKelvie

- Serving **Salt Lake, Summit & Tooele** Counties
- Commission Recommendation: **RETAIN**
- Commission Vote Count: 12-0 (for retention)
- Performance Standards: Passed 8 of 8

Appointed in 2014, Judge Richard D. McKelvie scores statistically well above his district court peers on integrity and judicial temperament, administrative skills, and procedural fairness, and above his peers on legal ability. Ninety-seven percent of survey respondents recommend Judge McKelvie for retention. Respondents and courtroom observers describe Judge McKelvie as being unusually talented at balancing efficient courtroom calendar management with the patient, careful attention necessary to ensure each litigant is thoroughly heard and has their ‘day in court.’ They also agree that Judge McKelvie has an excellent temperament and remarkable ability to demonstrate equal respect for all participants. In the words of one respondent, “Win or lose, it is a pleasure to appear before [Judge McKelvie].” When rating attributes that describe Judge McKelvie, respondents identify several as particularly descriptive: open-minded, capable, and ethical. They also characterize him as notably respectful, decisive, and prepared. This judge meets discipline standards set by statute and has been certified by the Judicial Council as meeting all time standards, education requirements, and mental and physical competence standards.

Judge Richard D. McKelvie was appointed to the Third District Court in 2014 by Governor Gary Herbert. He serves Salt Lake, Summit and Tooele counties. Judge McKelvie graduated from Weber State College and from the University of Utah College of Law. Judge McKelvie became a Deputy Salt Lake County Attorney in 1981. In 1988, he became an Assistant Attorney General for the State of Utah and Assistant Director of that office’s Statewide Prosecution and Illegal Narcotics Enforcement. He became an Assistant United States Attorney in 1990. Judge McKelvie is director of the Trial Advocacy Program at the S.J. Quinney University of Utah College of Law, a position he has held since 2008. In 2011, he earned the law school’s Excellence in Teaching Award.

