

Honorable David R. Hamilton – District Court Judge

Serving Davis, Weber and Morgan counties



Commission Recommendation: **RETAIN**

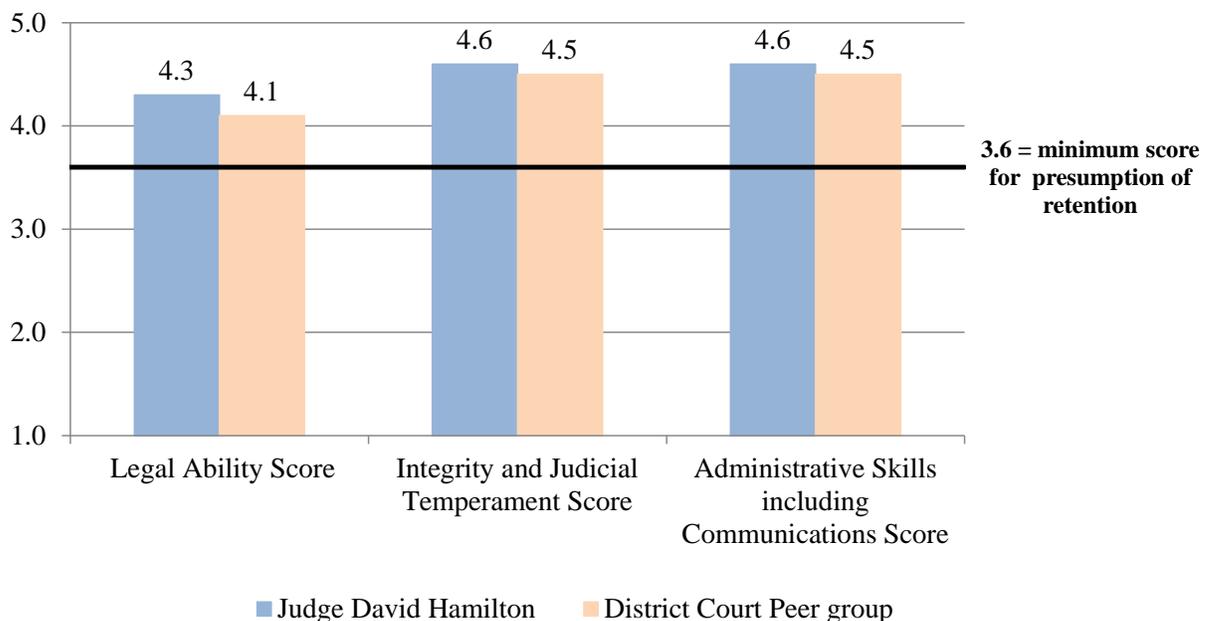
(vote count: 12-0 for retention)

Appointed in 2010, Judge David Hamilton has quickly become a highly-respected judge, characterized by survey respondents as decisive and hardworking. Respondents praised Judge Hamilton's excellent judicial temperament, highlighting his impartial and evenhanded handling of cases and his attentive, professional manner towards all courtroom participants. When choosing from a list of adjectives to describe Judge Hamilton, respondents chose 98% positive words. Courtroom observers noted Judge Hamilton's efficiently-run courtroom as well as his consistently respectful tone and were unanimous in their enthusiasm for his caring, confident demeanor. Of survey respondents who answered the retention question, 95% recommended Judge Hamilton be retained.

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

Judge David R. Hamilton was appointed to the Second District Court in 2010 by Governor Gary R. Herbert. He earned his bachelor's degree in 1975 and his law degree in 1978, both from the University of Utah. Prior to taking the bench, Judge Hamilton worked in private practice for 32 years, most recently as a solo practitioner at David R. Hamilton, P.C. His practice concentrated in insurance defense, collections, family law, and mediation. For more than 10 years, Judge Hamilton has served as the chair of the Utah State Bar's Fund for Client Protection (Client Security Fund). He is past president of the Weber County Bar Association.

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



The Honorable David Hamilton

Judicial Performance Evaluation Commission Report

Retention 2014

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II. Courtroom Observation Report

I. Survey Report

Survey Results

A. How to Read the Results

For Judge David Hamilton, 56% of qualified survey respondents submitted surveys. Of those who responded, 80 agreed they had worked with Judge David Hamilton enough to evaluate his performance. This report reflects the 80 responses. The survey results are divided into five sections:

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

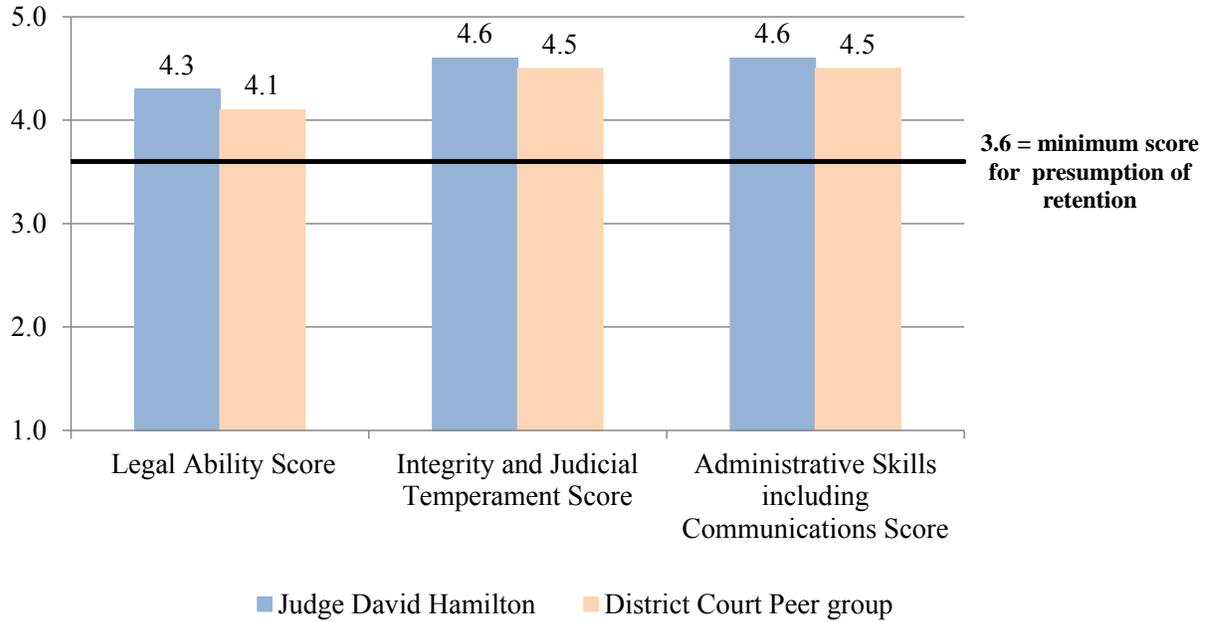
The results are shown in both graphs and tables. Each judge's scores are shown along with a comparison to other judges who serve at the same court level. The comparison group is called "District Court" on the charts.

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 these 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.

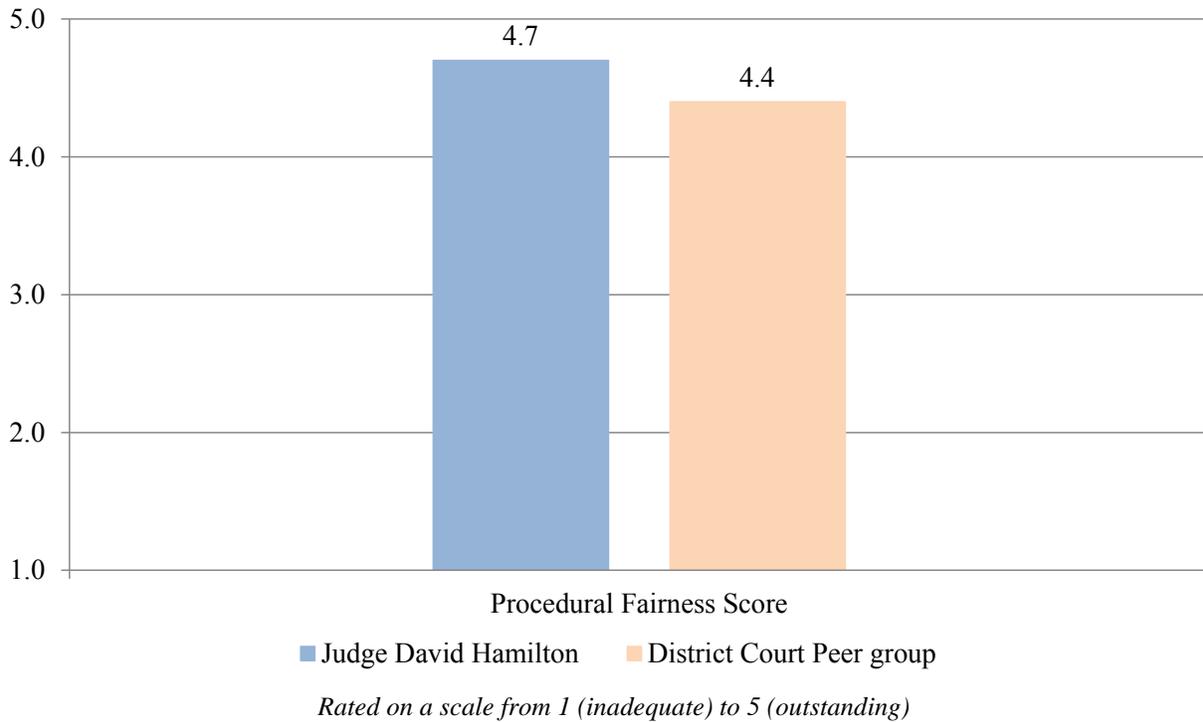
For procedural fairness, the judge must demonstrate that it is more likely than not, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants. Judges will receive either a Pass or Fail in procedural fairness, and this determination will be made by the commission only during the retention cycle.

B. Statutory Category Scores



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

C. Procedural Fairness Survey 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.

Overall Procedural Fairness Determination

Category	Judge David Hamilton
Procedural Fairness	PASS

D. Responses to Individual Survey Questions

Category	Question	Judge David Hamilton	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.	4.3	4.2
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.3	4.1
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.3	4.1
Legal Ability	The judge only considers evidence in the record.	4.4	4.2
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.3	4.1
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.6	4.5
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.6	4.5
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.6	4.3
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.6	4.3
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)

Category	Question	Judge David Hamilton	District Court
Administrative Skills	The judge is prepared for court proceedings.	4.6	4.4
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.7	4.5
Administrative Skills	The judge is an effective manager.	4.5	4.3
Administrative Skills	The judge convenes court without undue delay.	4.6	4.5
Administrative Skills	The judge rules in a timely fashion.	4.5	4.4
Administrative Skills	The judge maintains diligent work habits.	4.6	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.	4.4	4.3
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.7	4.5
Procedural Fairness	The judge is fair and impartial.	4.6	4.4
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.6	4.3
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.7	4.4

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

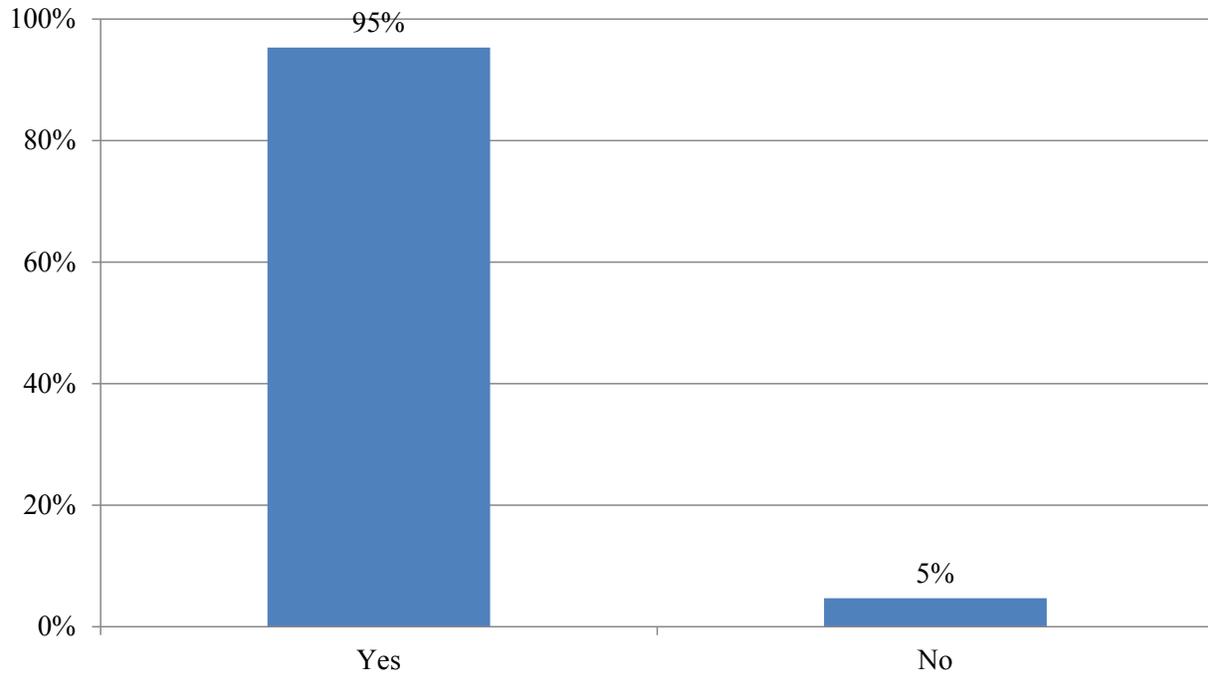
E. Adjective Question Summary

	Number of Times Mentioned*
Attentive	40
Calm	23
Confident	16
Considerate	36
Consistent	14
Intelligent	28
Knowledgeable	32
Patient	19
Polite	28
Receptive	19
Arrogant	1
Cantankerous	1
Defensive	0
Dismissive	0
Disrespectful	0
Flippant	0
Impatient	0
Indecisive	3
Rude	0
Total Positive Adjectives	255
Total Negative Adjectives	5
Percent of Positive Adjectives	98%

Respondents were asked to select adjectives from a list that best described the judge. The number shown is the total number of times an adjective was selected by respondents. The percent of positive adjectives shows the percent of *all* selected adjectives that were positive.

F. Retention Question

Would you recommend that Judge David Hamilton be retained?



G. Attorney Demographics

What are your primary areas of practice?

Collections	4%
Domestic	39%
Criminal	39%
Civil	59%
Other	2%

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

5 or fewer	49%
6 - 10	29%
11 - 15	-
16 - 20	7%
More than 20	15%

Survey Background and Methods

This report presents the results from the 2013 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 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 two-year 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 3 or more non-trial appearances, and those with 1-2 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 respondent receives an initial email invitation requesting participation in the survey. A separate email is sent for each judge that a respondent is asked to evaluate. A reminder email is sent one week later to those who did not respond by completing and submitting a survey. This is followed by three 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, the 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 2014 began on June 1, 2012 and ended on June 30, 2013.

II. Courtroom Observation Report

REPORT OF COURTROOM OBSERVATIONS FOR JUDGE DAVID R. HAMILTON

Four observers wrote 115 codable units that were relevant to 15 of the 17 criteria. All observers reported that it was unknown if the judge was aware the observers were present.

Overview

WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none"> All observers were enthusiastically positive about Judge Hamilton in all areas. All observers reported that Judge Hamilton listened carefully, was well-prepared and highly competent, and ran an efficient and well-organized court. He did not waste participants' time, and he ensured all were in agreement with any changed schedules. He treated everyone with utmost respect, greeting participants warmly and respectfully, and consistently complimenting, encouraging, and appreciating both defendants and attorneys. He was calm, gracious, and patient. His demeanor was professional, confident, and decisive, both tough and caring, while remaining attentive and engaged on a human level. He maintained good eye contact and his voice was easy to hear and varied from case to case. Judge Hamilton was highly skilled at showing his impartiality, but also acted in each participant's best interest, in some cases struggling with decisions in order to maximize the chance of a defendant's success. He was interested in hearing from every party, gave ample opportunity for them to do so, asked many questions, and listened to responses with interest and concern. He used clear language, ensured participants understood their rights and anything they were signing, and was alert to misunderstandings and quick to straighten them out. He carefully explained charges and the reasons for his decisions. All observers reported that they would feel comfortable appearing before Judge Hamilton.
MINORITY OBSERVATIONS	<ul style="list-style-type: none"> None
ANOMALOUS COMMENTS	<ul style="list-style-type: none"> None

Summary and *exemplar language* of four observers' comments

RESPECTFUL BEHAVIORS

Listening & focus	Three observers reported that Judge Hamilton <i>listened carefully</i> , paying <i>close attention to each speaker</i> .
Well-prepared & efficient	All observers reported that Judge Hamilton was <i>well prepared and highly competent</i> , saying <i>many times</i> , "Yes I have seen the paperwork," or, "Yes, I have read that letter and medical report." When <i>charges were being amended the judge was sharp enough to note how that would affect other charges in the document and made suggestions to amend those also</i> . The court was <i>efficient, very organized and well-run</i> , and <i>no time was wasted</i> .
Respect for others' time	All observers reported that court started <i>on time</i> , and one was <i>struck by the judge's opening comment and demeanor</i> , "All right. Good morning," in a <i>crisp tone that conveyed</i> , "I'm ready. Let's get down to business." During <i>slow times</i> when attorneys were meeting with clients, the judge <i>told the audience why he was leaving</i> . When an attorney <i>apologetically called to get the judge's attention to say he was ready</i> , the judge <i>replied with an enthusiastic</i> , "No, that's great!" Judge Hamilton ensured everyone was <i>in agreement with changed schedules</i> . He waited for an attorney to <i>call his office since he did not have his calendar with him</i> , and he <i>took time to ask defendants personally</i> if court dates worked for them. He expressed concern about being efficient in order <i>not to waste time or have unnecessary expense</i> for those involved.

Respectful behavior generally	<p>All observers reported that Judge Hamilton’s greetings were <i>high spirited, pleasant, and consistent</i>. He greeted each person <i>by name</i>, respectfully <i>using surnames</i> or calling defendants “sir” <i>just as they addressed him</i>. When saying goodbye he usually called them <i>by name again</i>, saying “Good luck, Ms. S.” One observer was impressed that he <i>recognized the defendants before greeting the attorneys</i>.</p> <p>Judge Hamilton <i>complimented and encouraged</i> participants in a <i>greater than usual tone of care and actual appreciation</i>. He <i>regularly complimented and expressed appreciation</i> to the attorneys, and he advised most defendants to <i>keep in touch with their attorneys and thank them for their good work</i>, saying, “Your attorney did a good job. Remember to thank him,” and telling a public defender, “Thank you, Mr. E. I appreciate your good work.” In one case he thanked both parties for their hard work in <i>trying to come to a resolution that would be beneficial to the litigant</i>. He was <i>honest</i> with his response to requests, in one case <i>acknowledging the defense’s desire but replying</i>, “I may not be able to...I will do the best I can.”</p>
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RESPECTFUL TONE

Courtesy, politeness and patience	<p>Two observers reported that Judge Hamilton was <i>consistently gracious, calm, and patient</i>, for example when <i>explaining procedures to a man without counsel</i> and when politely telling an attorney, “I appreciate your perspective but Mr. R is not on notice,” or, “I am not telling you how to practice law but helping you with discovery so we can decide how to proceed.”</p>
Courtroom tone & atmosphere	<p>Three observers reported that Judge Hamilton was <i>professional, direct, decisive</i> and had a very <i>confident and neutral</i> demeanor. He was <i>no push-over</i>, saying <i>nicely but firmly</i> to an attorney asking for a sentence of four weeks rather than five, “No, five was the deal.” When he gave a sort of “sermon” to a man, explaining “Jail is not meant to be a pleasure,” his tone was both <i>tough and caring, with no anger or condescension</i>. He was <i>extremely attentive and engaged on a human level</i>, showing <i>great compassion</i> when saying, “I hope you can come to some terms on this as this is family and you don’t want to risk driving a wedge between family members if it can be avoided.” He was also <i>light hearted where appropriate</i>.</p> <p>The courtroom was <i>very professional, formal, structured, quiet and orderly</i>, even though <i>busy with a lot of moving around</i> as attorneys called their clients. One observer was impressed with the <i>real camaraderie in court</i> and a <i>great example of how the justice system can work</i>.</p>
Body language	<p>Two observers reported that Judge Hamilton maintained <i>good eye contact</i> with whom he was speaking. There were <i>minor distractions</i> in his body language when he would <i>occasionally stroke his cheeks or chin, or seem to pull on his nose</i>.</p>
Voice quality	<p>Two observers reported that Judge Hamilton was <i>easy to hear</i>, his <i>tone of voice was appropriate and varied from case to case</i>, and the microphones were <i>refreshingly strong and clear</i> compared with some other courts.</p>

NEUTRALITY

Consistent and equal treatment	<p>Three observers reported that Judge Hamilton was <i>attentive to fully considering each perspective, even-handed</i> in sentencing, and <i>highly skilled at demonstrating a consistent and impartial level of fairness</i>. He gave <i>more time</i> to a man without counsel to <i>get his case together</i>, saying that he <i>understood the court rules are hard to understand but must be followed so no one is at a disadvantage</i>.</p>
Acts with concern for individual needs	<p>All observers reported that Judge Hamilton had <i>each participant’s best interest at heart</i>. He told a woman who <i>wanted to be sentenced to prison rather than return to jail</i>, “We’re talking about a <i>pretty major event here</i>. Do you want to discuss it further?” He <i>really struggled with some decisions</i> when trying to <i>make something work for maximum chance of success</i>, for example when allowing work release so that a defendant could <i>keep his current jobs</i>, and letting him <i>report on Saturday instead of Friday because of his work schedule</i>. He showed concern for the man’s <i>well-being and future</i>, saying, “Don’t foul it up, what’s hanging over your head is prison. It’s lousy, no one wants to send anyone to prison. I don’t want to see you back here. Good luck.”</p>

Acts with concern for individual needs <i>continued</i>	In a case of child molestation, Judge Hamilton acted with concern for the victim. The <i>seriously ill defendant with little time to live asked for jail rather than prison</i> , but after listening patiently with concern, he <i>ruled for the mandatory prison sentence, thanking the defendant for his candor and for being accountable, but noting the long-lasting effect on the victim.</i>
Unhurried and careful	Three observers reported that Judge Hamilton took <i>plenty of time when needed</i> to ask <i>lots of questions</i> , and he always allowed attorneys the <i>time needed to confer with clients, even when at the podium</i> . He studied all paperwork <i>meticulously and without haste</i> .

VOICE

Considered voice	All observers reported that Judge Hamilton was <i>very interested in hearing</i> from participants and ensuring that <i>each party had a chance to explain their side of the case</i> . He gave <i>ample opportunity</i> for participants to express themselves, saying, <i>“I’d be happy to hear from you, sir,”</i> or, <i>“Anything else you’d like to tell me, sir?”</i> and then <i>delving into details</i> to better understand <i>what was going on</i> , saying, <i>“Tell me more about that,”</i> and following up with more questions. His <i>openness invited defendants to also be open</i> . Every interaction <i>seemed an example of giving people ‘a voice,’</i> and as well as giving everyone a chance to talk, Judge Hamilton <i>listened with interest and concern</i> .
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COMMUNICATION

Communicates clearly	Two observers reported that Judge Hamilton used <i>clear language</i> and provided <i>clear and detailed</i> statements of each case.
Ensures information understood	All observers reported that Judge Hamilton ensured participants <i>understood what was happening</i> and was alert to the <i>possibility of misunderstanding and moved quickly to straighten it out</i> . When an agreement was reached he asked, <i>“Have you gone through this completely yourself? Did you understand it?”</i> and <i>would listen carefully to the response</i> . He told one participant, <i>“You say that somewhat hesitantly,”</i> and paid close attention when the man <i>explained himself in more detail</i> . In his colloquy he explained what rights were waived with a guilty plea, <i>interjected lots of “Do you understand?”</i> and explained he <i>needed to know if they understood what they were signing</i> .
Provides adequate explanations	Three observers reported that Judge Hamilton <i>carefully explained charges</i> and was <i>absolutely clear</i> and gave <i>very detailed information</i> when explaining his decisions. He <i>went the extra mile</i> in giving directions, and when he completed an agreement he spoke aloud what was happening, announcing each who signed, and saying, <i>“Now I’m attaching my signature.”</i> This <i>careful description of process was very helpful</i> in understanding what was being done and why. Judge Hamilton <i>altered his language and tone of voice</i> when repeating explanations of procedures to an unrepresented defendant who did not understand them, and concluded in a <i>calm and caring voice</i> , <i>“I am not able to be your attorney, but I will give you 10 days to get some help and figure it out. You need to follow the necessary procedures so we can move forward.”</i>