

Honorable Thomas R. Lee – Supreme Court Justice

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Commission Recommendation: **RETAIN**

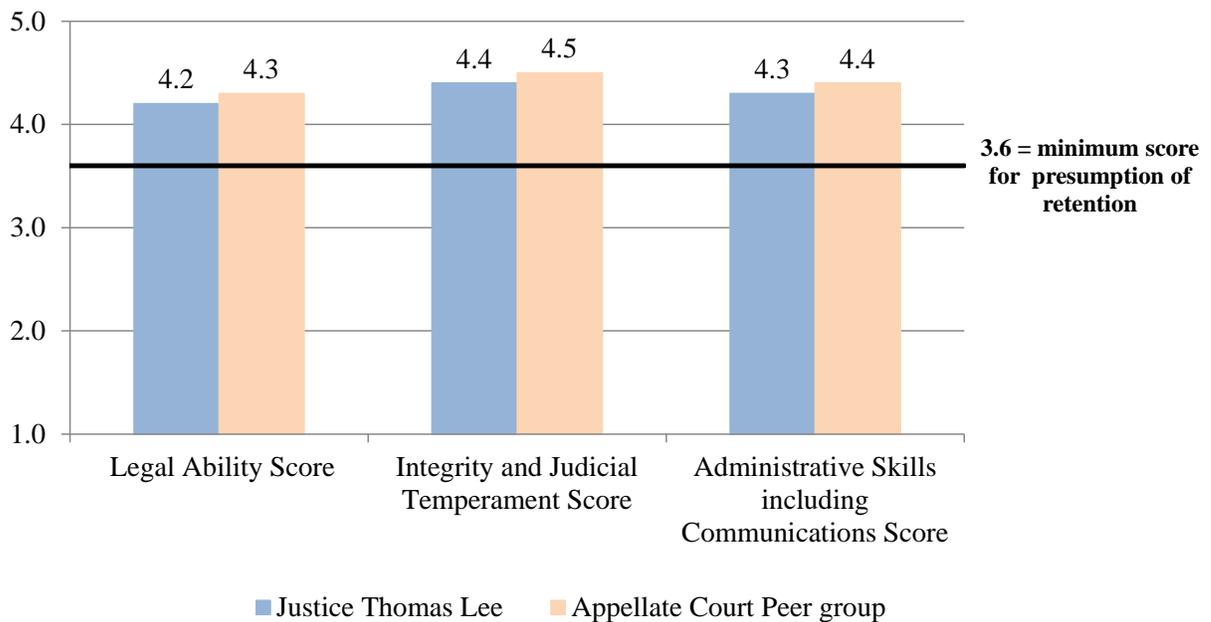
(vote count: 11-0 for retention)

Appointed in 2010, Justice Thomas Lee was described by a majority of survey respondents as vigorous in his preparations, confident in his rulings, and thoroughly knowledgeable about legal principles and procedures. He earned a perfect score for his diligent work habits. Most survey respondents characterized Justice Lee as extremely intelligent and particularly thoughtful in his application of the law. Some noted an arrogant demeanor and a style that was sometimes dismissive. Of those who answered the retention question, 89% recommended that Justice Lee be retained.

The commission reviewed surveys in addition to verifying that Justice Lee has met all time standards, judicial education requirements, and discipline standards established by the judicial branch.

Thomas R. Lee was appointed to the Utah Supreme Court by Governor Gary Herbert in 2010. Justice Lee graduated with high honors from the University of Chicago Law School in 1991. After law school, he served as a law clerk at the United States Court of Appeals for the Fourth Circuit and then at the United States Supreme Court. Justice Lee then joined the Salt Lake City law firm now known as Parr, Brown, Gee & Loveless, where he was a partner. From 1997-2010, Justice Lee was a professor on the law faculty at Brigham Young University. During that time he also maintained a part-time law practice, arguing cases in federal courts throughout the country and in the United States Supreme Court.

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



Justice Thomas Lee

Judicial Performance Evaluation Commission Report

Retention 2014

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I. Survey Report

Survey Results

A. How to Read the Results

For Justice Thomas Lee, 65% of qualified survey respondents submitted surveys. Of those who responded, 108 agreed they had worked with Justice Thomas Lee enough to evaluate his performance. This report reflects the 108 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

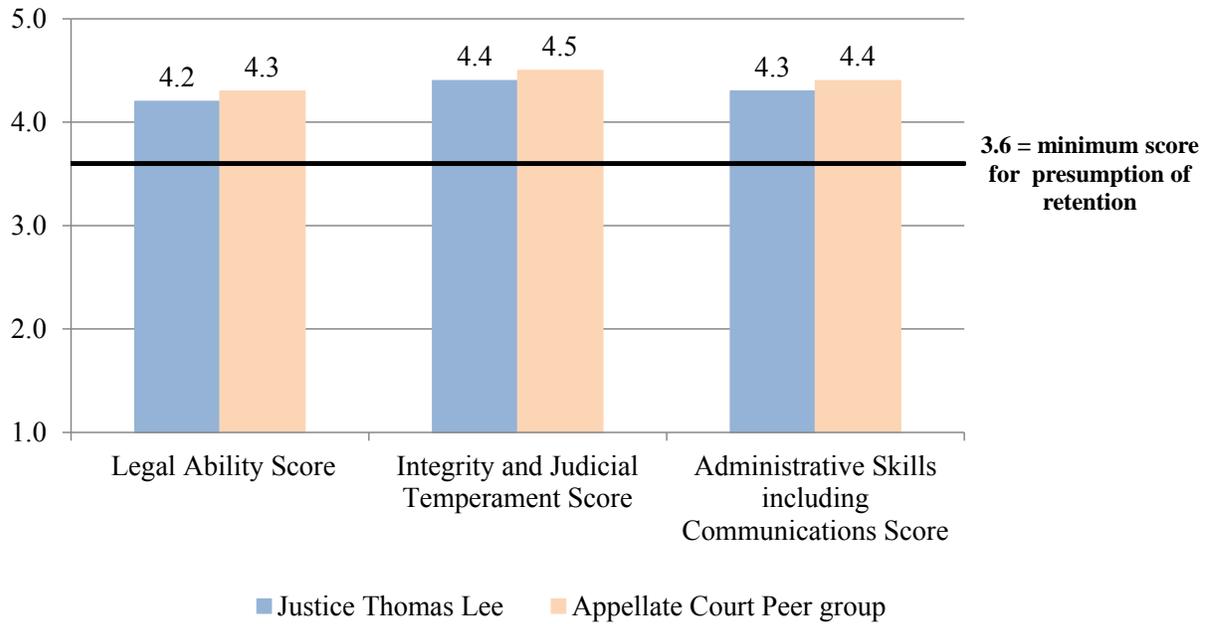
The results are shown in both graphs and tables. Each judge's scores are shown along with a comparison to other judges who serve at the same court level. The comparison group is called "Appellate Court" on the charts.

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.

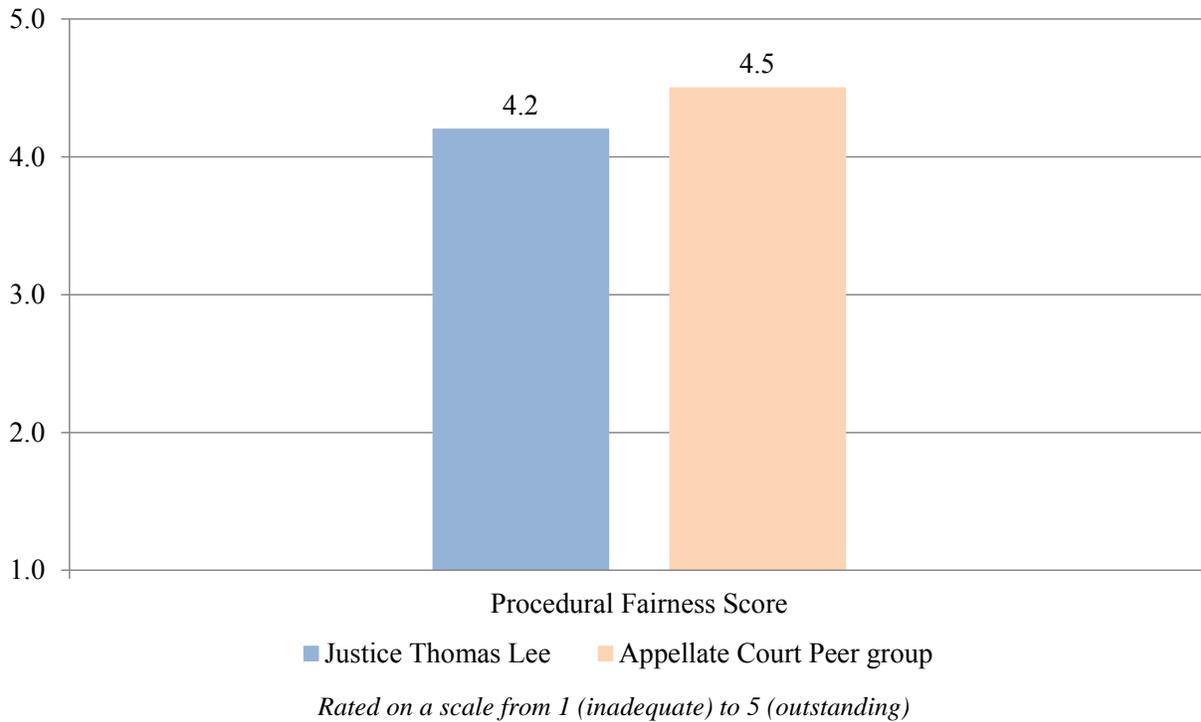
For procedural fairness, the judge must demonstrate that it is more likely than not, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants. Judges will receive either a Pass or Fail in procedural fairness,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

Overall Procedural Fairness Determination

Category	Justice Thomas Lee
Procedural Fairness	PASS

D. Responses to Individual Survey Questions

Category	Question	Justice Thomas Lee	Appellate 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.	4.4	4.4
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.1	4.2
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.1	4.2
Legal Ability	The judge only considers evidence in the record.	4.3	4.3
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.4	4.3
Legal Ability	The judge's written opinions contain a fair statement of the pertinent facts.	4.2	4.3
Legal Ability	The judge's written opinions contain a discussion of the applicable legal principles and controlling case law.	4.3	4.3
Legal Ability	The judge's written opinions clearly address the merits of the legal issues advanced by the parties.	4.3	4.2
Legal Ability	The judge's written opinions provide clear guidance to trial court judges and practitioners.	4.1	4.2
Legal Ability	The judge's written opinions contain a readily understandable, concise ruling.	4.2	4.2
Legal Ability	The judge's written opinions reflect a neutral, professional tone.	4.0	4.3
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.4	4.5
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.6	4.6
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.0	4.4

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

Category	Question	Justice Thomas Lee	Appellate Court
Administrative Skills	The judge is prepared for court proceedings.	4.6	4.6
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.3	4.5
Administrative Skills	The judge is an effective manager.	4.4	4.5
Administrative Skills	The judge rules in a timely fashion.	4.1	4.2
Administrative Skills	The judge maintains diligent work habits.	5.0	4.8
Administrative Skills	The judge's oral communications are clear.	4.5	4.5
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.3	4.3
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.3	4.5
Procedural Fairness	The judge is fair and impartial.	4.1	4.4
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.2	4.4
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.4	4.5

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

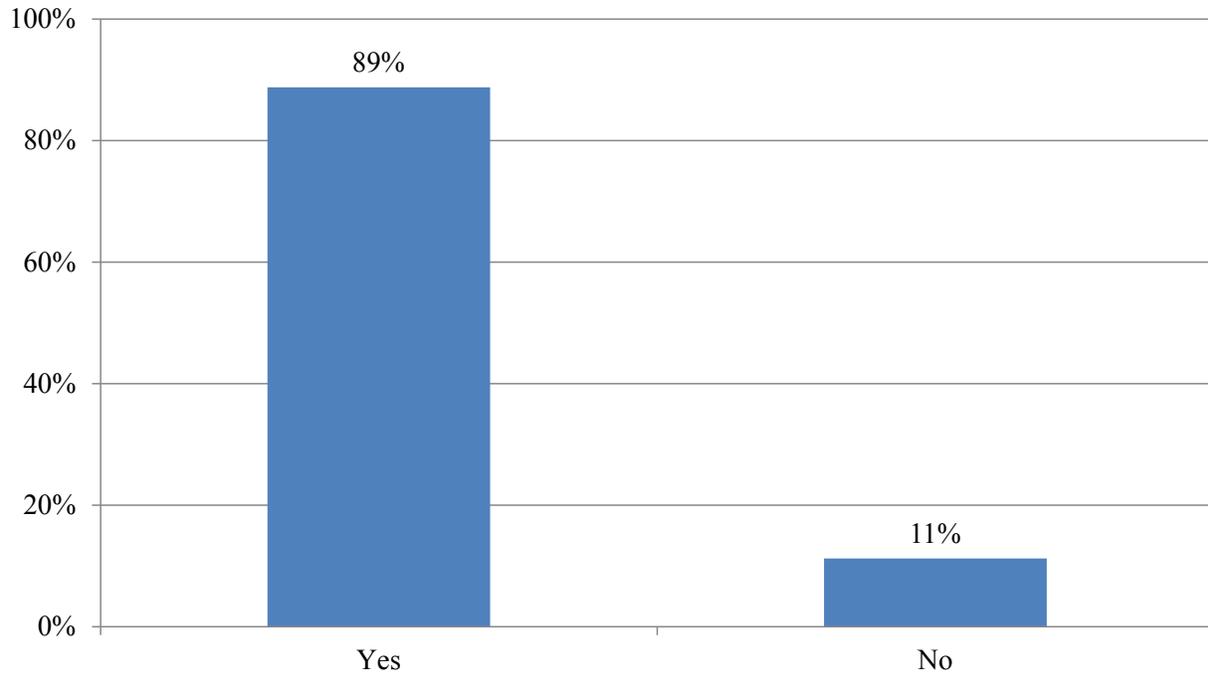
E. Adjective Question Summary

	Number of Times Mentioned*
Attentive	56
Calm	12
Confident	54
Considerate	10
Consistent	19
Intelligent	83
Knowledgeable	67
Patient	2
Polite	23
Receptive	6
Arrogant	24
Cantankerous	3
Defensive	7
Dismissive	20
Disrespectful	5
Flippant	5
Impatient	10
Indecisive	0
Rude	5
Total Positive Adjectives	332
Total Negative Adjectives	79
Percent of Positive Adjectives	81%

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 Justice Thomas Lee be retained?



G. Attorney Demographics

What are your primary areas of practice?

Collections	-
Domestic	7%
Criminal	22%
Civil	73%
Other	8%

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

5 or fewer	97%
6 - 10	2%
11 - 15	1%
16 - 20	-
More than 20	-

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.