

Honorable Michael G. Allphin – District Court Judge

Serving Davis, Weber, and Morgan counties



Commission Recommendation: **RETAIN**

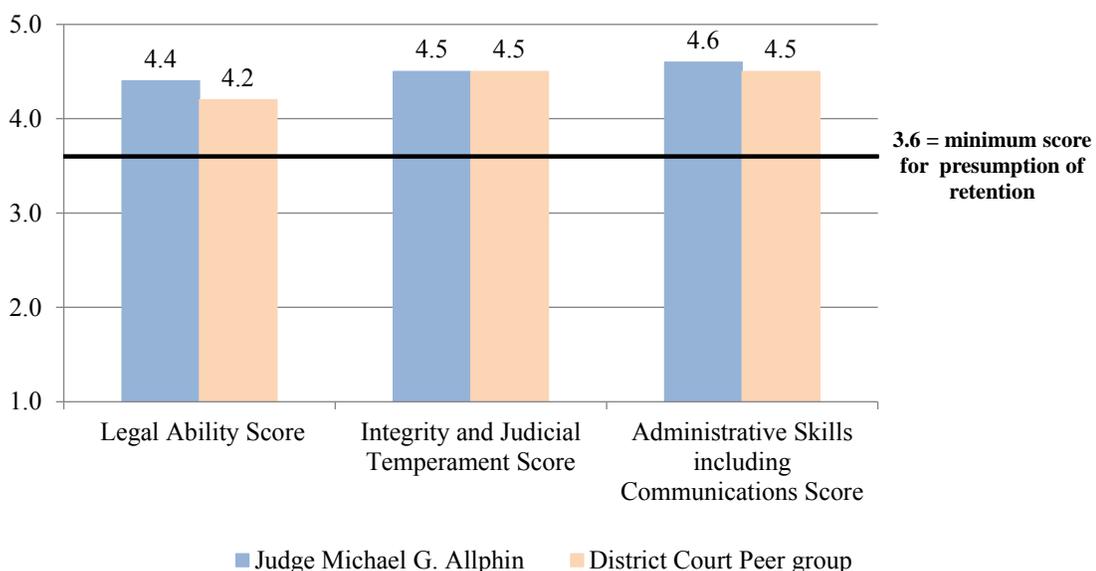
(vote count: 12-0 for retention)

Judge Michael Allphin is an experienced judge who scores consistent with the average of his district court peers in all survey categories. Survey respondents choose 92% positive adjectives from a list to describe him, frequently characterizing him as attentive, intelligent, and knowledgeable. Survey respondents and courtroom observers agree that Judge Allphin demonstrates efficiency and good preparation, and that he respects attorney input from both sides. As a group, however, courtroom observers are mixed in their evaluations of Judge Allphin. While acknowledging that Judge Allphin gives participants the opportunity to speak, most observers report that the judge's impersonal and somewhat intimidating demeanor seems to discourage people from actually speaking up. Several observers expressed discomfort at the prospect of appearing before him. Nonetheless, Judge Allphin enjoyed strong support from survey respondents, with 97% of those answering the retention question recommending that he be retained.

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

Judge Michael G. Allphin was appointed by Gov. Michael O. Leavitt to the Second District Court in 1995. Judge Allphin earned his law degree from the University of the Pacific, McGeorge School of Law and thereafter practiced law with the firm of Boyack, Allphin & Hansen. From 1988-89, he served as the State District Court Administrator, guiding the District Court transition from county-operated to state-operated courts. In 1989, he was appointed as a District Court Commissioner and later served as chair of the Executive Committee of Court Commissioners. Judge Allphin served as a member of the Board of District Court Judges and also as chair of that board. In addition, he has served as Associate Presiding Judge and Presiding Judge of the Second District Court.

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



The Honorable Michael G. Allphin

Judicial Performance Evaluation Commission Report

Retention 2016

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II. Courtroom Observation Report

I. Survey Report

Survey Results

A. How to Read the Results

For Judge Michael G. Allphin, 46% of qualified survey respondents submitted surveys. Of those who responded, 72 agreed they had worked with Judge Michael G. Allphin enough to evaluate his performance. This report reflects these 72 responses. The survey results are divided into five sections:

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

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

The statutory category scores and the procedural fairness survey score represent average scores on a scale of 1 (inadequate) to 5 (outstanding). Responses from all survey respondent groups contribute to the average score shown for each category, with the exception of Legal Ability. Only attorneys answer the Legal Ability questions.

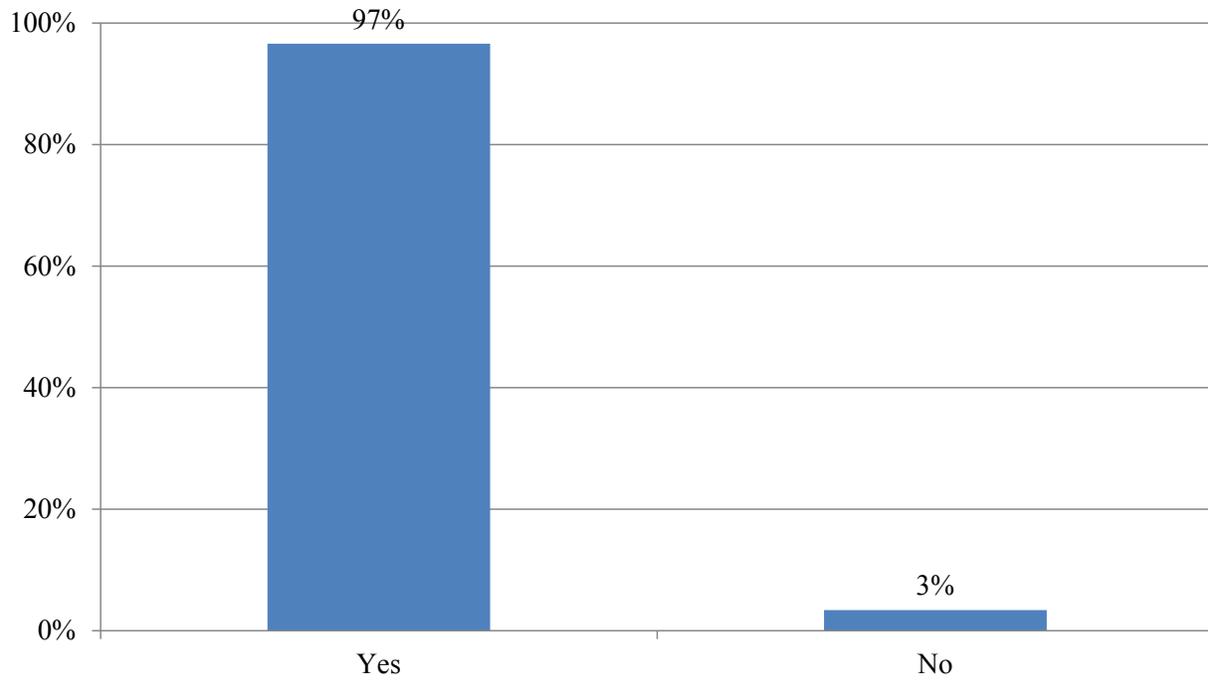
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to recommend retention unless it can articulate a substantial reason for overcoming the presumption in favor of retention. Similarly, if a judge fails to get a 3.6 in a category, the commission will vote against retention unless it can articulate a substantial reason for overcoming the presumption against retention.

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

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

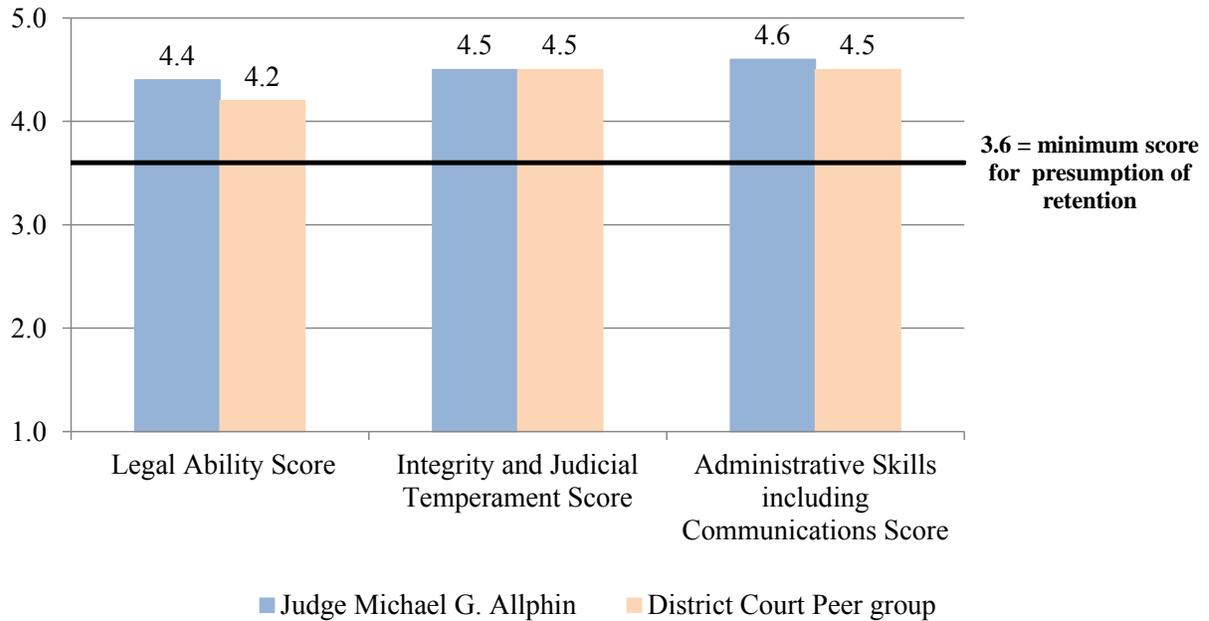
B. Retention Question

Figure A. Would you recommend that Judge Michael G. Allphin be retained?



C. Statutory Category Scores

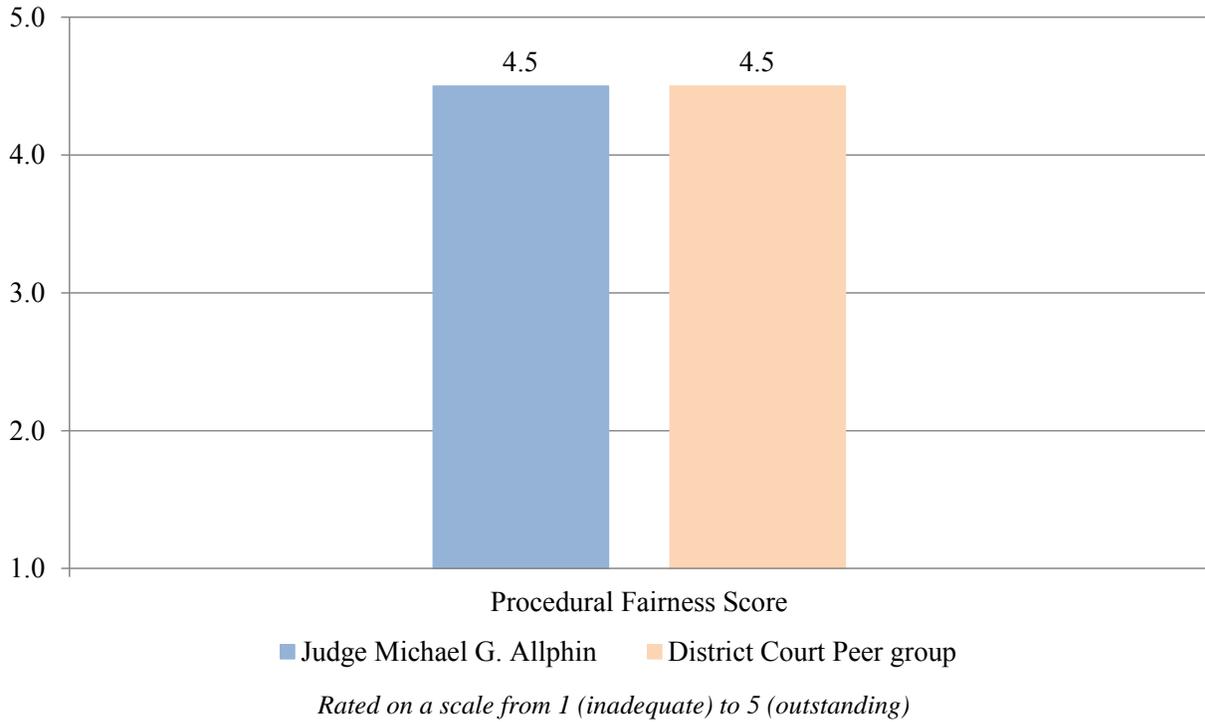
Figure B. Statutory Category Scores



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 G. Allphin
Procedural Fairness	Pass

E. Responses to Individual Survey Questions

Table B. Responses to Survey Questions

Category	Question	Judge Michael G. Allphin	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.	4.4	4.2
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.4	4.2
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.4	4.2
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	4.2
Legal Ability	The judge's written opinions contain a readily understandable, concise ruling	4.3	4.2
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.6	4.6
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.	4.4	4.3
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.5	4.4
Integrity & Judicial Temperament	The judge promotes access to the justice system for people who speak a language other than English, or for people who have a physical or mental limitation.	4.6	4.6

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

Table C. Responses to Survey Questions (continued)

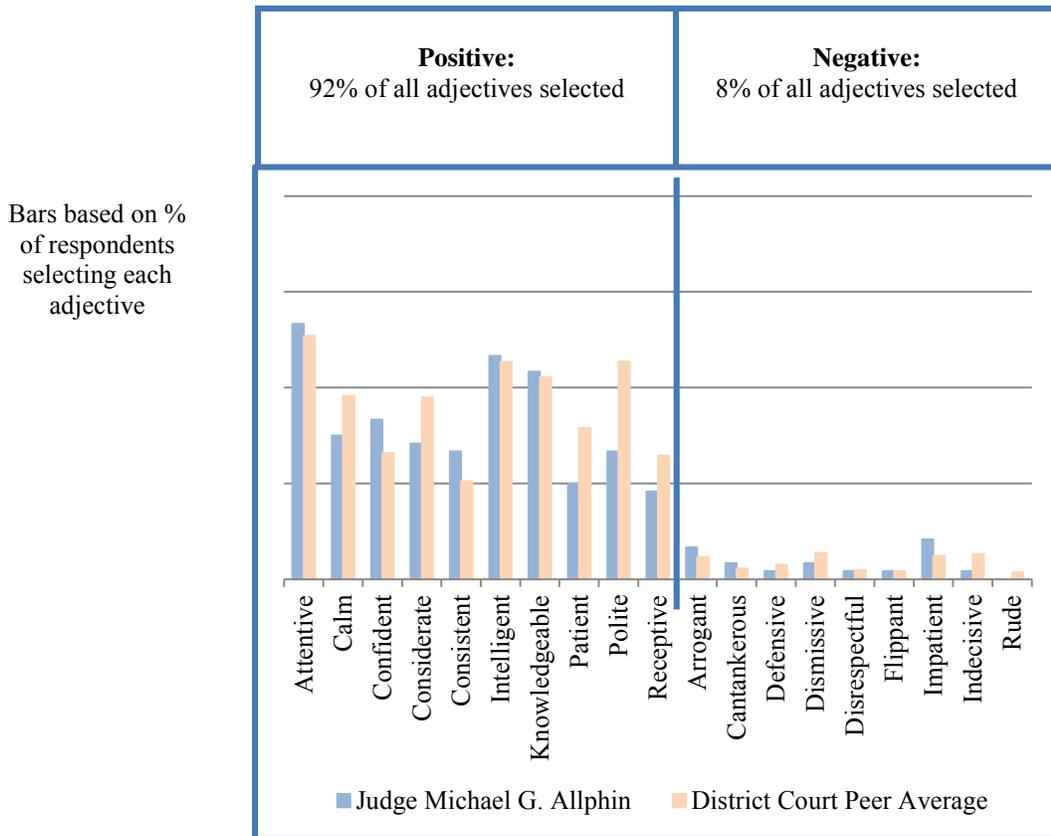
Category	Question	Judge Michael G. Alphin	District Court
Administrative Skills	The judge is prepared for court proceedings.	4.5	4.4
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.5	4.6
Administrative Skills	The judge is an effective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

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

F. Adjective Question Summary

From a provided list, survey respondents selected multiple adjectives to best describe the judge. The “positive” and “negative” labels at the top of the graph refer to the percent of all adjectives selected by all respondents that were either positive or negative. Each bar is based on the percent of respondents who selected that adjective. The adjacent bar shows a comparison to the other evaluated judges who serve on the same court level.

Figure D. Adjective Responses



G. Attorney Demographics

Table D: What are your primary areas of practice?

Collections	2%
Domestic	35%
Criminal	29%
Civil	47%
Other	5%

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	71%
6 - 10	7%
11 - 15	5%
16 - 20	2%
More than 20	15%

Survey Background and Methods

This report presents the results from the 2015 survey process, conducted by Market Decisions, LLC. A detailed description of the survey methodology is available separately on the Utah Judicial Performance Evaluation website.

A. Survey Overview

1. Description of Sample

The following groups are invited to participate in the survey process:

- Attorneys with appearances before the judge
- Court staff who work with the judge
- Juvenile court professionals who work in the judge's courtroom on a regular and continuing basis to provide substantive input to the judge (juvenile court judges only)
- Jurors who participate in jury deliberation (district and justice court judges only)

With the exception of the attorney survey, the survey contractor attempts to survey all court staff and juvenile court professionals who work with the judge and all jurors who reach the point of jury deliberation. The lists of court staff and juvenile court professionals are provided by the courts and by the Division of Child and Family Services and Juvenile Justice Services. A list of jurors is created after each trial. All lists are forwarded to the surveyor, Market Decisions, LLC.

For the attorney survey, a representative sample of attorneys is drawn to evaluate each judge based on appearances over a designated time period. The sample is weighted to select those with the greatest experience before the judge, assuming that these people will have a better knowledge base about the judge than those with less experience. Attorneys are first stratified into three groups: those with one or more trial appearances, those with three or more non-trial appearances, and those with one to two non-trial appearances. Attorneys within each sample are then randomized prior to selection. Selection begins with attorneys who have trial experience, then those with a greater number of non-trial appearances (if needed), and finally those with fewer non-trial appearances (if needed).

2. Summary of Survey Methods

Surveys are conducted online, using web-based survey software. Each qualified respondent receives an initial email notification signed by the Governor, Chief Justice, President of the Senate, and Speaker of the House, requesting participation in the survey. Next, an email invitation, signed by JPEC's Executive Director and the Utah State Bar President, contains links to all the individual surveys each respondent is invited to complete. A reminder email is sent one week later to those who did not respond by completing and submitting a survey. This is followed by two additional reminder emails sent to respondents over the next three weeks. If a respondent completes only part of the survey, he or she is able to finish the survey at a later time. Once a respondent has completed the survey for a specific judge, that survey is locked and cannot be accessed again.

The number of questions included in the survey varies, ranging from 9 (jurors) to 24 (attorneys with an appearance before an appellate court judge). Each question is evaluated on a sliding scale ranging from 1 (inadequate) to 5 (outstanding).

Responses to individual questions are used to calculate averaged scores in three statutory categories: Legal Ability, Integrity & Judicial Temperament, and Administrative Skills. Judges also receive an averaged score in Procedural Fairness.

B. Evaluation Period

The retention evaluation period for judges standing for election in 2016 began on January 1, 2014 and ended on June 30, 2015.

REPORT OF COURTROOM OBSERVATIONS FOR JUDGE MICHAEL ALLPHIN

Five observers wrote 94 codable units that were relevant to 12 of the 15 criteria. Three observers reported that the judge was not aware that JPEC observers were present, and two did not know if the judge was aware.

Overview

OVERALL ASSESSMENT	<ul style="list-style-type: none">• Two observers were mostly positive about Judge Allphin, but three observers provided mixed reports in most areas, noting that the judge’s impersonal, unexpressive, and somewhat intimidating demeanor did not communicate concern for defendants.• Two observers reported that they would feel comfortable appearing before Judge Allphin, and one observer reported that she would not. Two observers expressed mixed feelings about fair treatment due to the judge’s strict demeanor and intimidating courtroom culture.
WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none">• All observers variously reported that Judge Allphin was competent, knowledgeable, and well-prepared, and the court professional, well-run and efficient.
MINORITY OBSERVATIONS	<ul style="list-style-type: none">• <u>COURTESY, POLITENESS, AND GENERAL DEMEANOR</u> While two observers reported that Judge Allphin was courteous, readily apologized for errors, and generally showed respect, four observers reported a lack of respectful behavior, such as not greeting participants by name, leaving the courtroom abruptly, and responding dismissively to defendants.• <u>BODY LANGUAGE</u> Three observers reported that Judge Allphin displayed good eye contact and body language, but three observers reported that the lack of all facial expression and the mechanical voice tone were not obviously congenial, and the judge was hard to read.• <u>CONSISTENT AND EQUAL TREATMENT</u> Three observers reported that Judge Allphin generally displayed impartiality. However, one observer felt the judge could be more aware of how his interactions were taken by others defendants in the courtroom, and another did not gain a sense of trust in the judge due to a lack of consistency in treating similar situations.• <u>COURTROOM TONE & ATMOSPHERE</u> While one observer reported that the court’s down-to-business atmosphere was not intimidating, another observer felt tense and that the atmosphere was intimidating.• <u>DEMONSTRATES CONCERN FOR INDIVIDUAL NEEDS</u> While three observers reported that Judge Allphin tried to find solutions that were in the best interest of defendants, two observers reported that he was more concerned with getting through the cases and that his impersonal treatment of defendants would not lead them to feel he was concerned about them.• <u>UNHURRIED AND CAREFUL</u> While two observers reported that Judge Allphin took time to ponder or delay sentencing rather than make a quick decision, one observer felt that his lack of tolerance for wasting the court’s time led to impatient behavior with defendants.• <u>CONSIDERED AND FORMAL VOICE</u> Four observers reported that Judge Allphin generally gave participants an opportunity to speak, asked for more information, and respected the input of attorneys and prosecutors. However, four observers also reported that the judge’s behavior had the effect of discouraging defendants from expressing themselves, and he did not demonstrate that he considered defendants’ explanations in his decisions.• <u>ENSURES INFORMATION UNDERSTOOD</u> All observers reported that Judge Allphin ensured that defendants understood their rights and what he required them to do, but one observer also felt that if defendants were unclear they did not dare to ask this judge questions to clarify.• <u>PROVIDES ADEQUATE EXPLANATIONS</u> While two observers reported that Judge Allphin clearly explained his rulings and probation requirements, one observer felt there was little explanation to incarcerated defendants of his rulings beyond simply reading the decisions.
ANOMALOUS COMMENTS	<ul style="list-style-type: none">• One observer reported that Judge Allphin did not speak clearly in plain language that could be comprehended (see “Communicates clearly”).

Summary and *exemplar language* of five observers' comments

RESPECT

Well-prepared & efficient Three observers reported that Judge Allphin was *competent* and *knowledgeable about the law and how to apply it*. He was *well-prepared* and familiar with the content of the cases, his *records were in order*, and he was *never confused or mixed up*. The courtroom was *well organized* and cases moved along *smoothly and efficiently*.

One observer commented that having the *defendant stipulate to the accuracy* of the write-up of charges rather than having them read aloud saved time, and he felt it *more important* that the defendant *agrees to the accuracy of the narration than that the spectators hear the story*.

Courtesy, politeness, and general demeanor Two observers variously reported that Judge Allphin was *polite* and *courteous*, generally showed *respect* and *thanked* speakers after they presented their arguments. After listening to an inmate's request for credit for time served, and after checking the records and discovering his error, he *apologized for the oversight, saying with a smile, "Apparently I was here but wasn't here," and then ordered the man be given credit for time served*.

However, four observers also reported examples of a lack of respectful behavior. Judge Allphin did *not greet each defendant by name*, and because he *focused on paperwork* after sentencing, one defendant was *not sure if he had been dismissed* and had to ask the bailiff. *At the conclusion of the day* Judge Allphin looked up and asked *"Is this it?" and without waiting for any response stood up and disappeared*. On occasion his manner of *responding* to defendants or *reading* his decisions was *dismissive*, and one observer wished he would have *recognized defendants' efforts* rather than *dismissing them as of no value*. On one *awkward* occasion his *teasing* of a prosecutor regarding a female defendant was *possibly demeaning to the woman and clearly embarrassed the prosecutor*.

Three observers reported that while Judge Allphin's demeanor was *calm, attentive, and deliberate*, he was also *serious and stern*, showing *little emotion*, and only *mildly congenial*. He *robotically proceeded from one case to another, demonstrating a longtime memorized conduct*.

Body language Three observers reported that Judge Allphin made *appropriate and good eye contact* when asking for *pleas* and when *interacting* with speakers, and he *adopted a forward leaning posture while addressing them*. He *looked up* at defendants while reading statements on his monitor, showing that he *cared about what they had to say and was considering their input*.

However, three observers reported that Judge Allphin's facial expressions and voice tone appeared *very mechanical* and were not *obviously congenial*. He unfortunately tended to look *less than pleasant and impartial because the corners of his mouth seem to turn down naturally, except on the few occasions when he smiled*. Even when telling an attorney, *"Thank you for reminding me,"* he did so *as usual with NO facial expressions*. One observer focused on the judge's face to read his facial expression and reported that *I didn't see any, really! It was just a stone cold gaze*.

Courtroom tone & atmosphere Two observers reported that the court was *very professional* and *generally well-run and efficient*. While one observer found the *down-to-business* atmosphere to be *not intimidating*, another *felt tense* and found the atmosphere *intense and very intimidating while the judge was presiding*.

NEUTRALITY

Consistent and equal treatment Three observers reported that Judge Allphin *generally displayed impartiality* when *applying sentencing*, speaking to all participants in the *same tone of voice*. He was *mindful of defendants' rights*, in one case showing *dismay* that *AP&P had not handled a case appropriately, sending the case back and rescheduling sentencing*. However, in one case in which the defendant *complained about the treatment from a probation officer*, Judge Allphin had likely *spoken previously* about this with the defendant but *did not allude to prior conversations*, and he *might have handled this conversation better if he was aware of how it could be taken by others in the courtroom*.

Consistent and equal treatment continued One observer described at length her inability to gain a *great deal of trust* in how Judge Allphin was making his determinations. While he *did try to tailor decisions to fit the needs and best interests of defendants* and his heart was generally in the right place, she *did not get a clear sense of consistency in treating people in similar situations similarly*. While she could understand the judge being *fairly tough on people who had clearly fallen short*, he was also harsh with defendants who had *done a lot to improve*, yet gave probation to one woman who had *relapsed*.

Demonstrates concern for individual needs Three observers reported that Judge Allphin *tried to do what was best* for defendants. When an individual *needed special accommodation in a nursing home*, Judge Allphin *made an effort to find a solution that would provide the most favorable result*. He expressed concern to *conclude cases in a reasonable time frame*, and he granted most requests to continue cases when the time requested was less than *several months*. He *took into consideration* how prison time would *affect their ability to support their families*. In one case he sent a defendant to prison instead of jail, saying, *“You’ll probably spend less time there than in jail, and it likely should turn out best for you,”* even though it was *far from the probation which the defendant had hoped for*. In a case of *retail theft* in which a man was taking care of his girlfriend on *frequent kidney dialysis* and could not meet her medical expenses, the judge sentenced him to 30 days of jail time but *granted the girlfriend probation, a fine and attendance in a class*, telling her that he realistically did not expect her to pay the fine or attend the class but to *“stay out of trouble and take care of your health.”*

However, two observers expressed reservations about Judge Allphin’s apparent concern for defendants. One reported that he *wanted to get through the pile of cases and be done for the day*, that he *knows it all, has seen it all, and ruled on it all*, and that *his comfort and satisfaction was the most important issue*. Another reported that although the judge was *calm and polite*, the observer was not confident that defendants, especially *incarcerated men*, would feel that he was *concerned about them*, due to his *limited interaction and business-like and impersonal treatment*, and *lack of eye contact when imposing sentences*.

Unhurried and careful Two observers reported that Judge Allphin was *very patient with any delays in the attorneys’ presentations*, and he *did not rush participants but asked questions to help clarify*. In one probation violation case in which he had issued a *no tolerance rule several months before*, he took time to *ponder the situation to try to do the right thing* for the defendant rather than *make a quick decision and simply get the case completed, deciding to wait another week to decide on the sentence*.

However one observer reported that while Judge Allphin *may appear patient*, he did not tolerate *wasting the court’s time*. When asked if the charging document *stated accurately what happened*, the defendant replied, *“for the most part.”* The judge *seemed impatient* and responded, *“Either you agree or you don’t”* and the man *quickly agreed*. When a defendant blamed his *relapse on alcohol* for his *repeated violation* of the terms of probation, the judge *censured the individual for wasting the court’s time and imposed a 180 day sentence and the individual was taken into custody*.

VOICE

Considered voice Four observers reported that Judge Allphin *generally gave participants an opportunity* to say what they wanted to *that was relevant to their case* and asked, *“Anything you wish to say before sentencing?”* On the few occasions that someone asked to ask a question, the judge *invariably invited him to do so, listened attentively, and responded*. He *asked for more information when it was not clear to him what people were trying to express*, and he questioned members of the court as to their *thoughts regarding sentences*. He *respected the input of attorneys and carefully considered recommendations from prosecutors*. In one case Judge Allphin *encouraged a defendant who gave an extensive presentation on why he had failed a drug course and had repeat violations, why his motivation to succeed has changed, and why he felt that he needed drug treatment*. The judge *listened to and then considered the defendant’s arguments in his sentencing*.

Formal voice	However four observers felt that the judge only gave defendants the <i>appearance of voice</i> , listening on <i>auto-pilot</i> and expecting them to be <i>succinct</i> . Once he understood he <i>mechanically</i> and <i>quickly ended their conversations</i> . He <i>never gave time for participants to think or articulate their arguments</i> , and <i>no one questioned the judge for clarifications</i> . One observer felt that <i>the words he utters are well matched up with his intimidating behaviors and serve to discourage voice</i> . Additionally, Judge Allphin did <i>not demonstrate whether he was really listening and considering defendants' explanations</i> . He <i>read off his decisions very rapidly and although he listened to what each side had to say, his mind seemed already made up in some detail ahead of time</i> .
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COMMUNICATION

Communicates clearly	One observer reported that Judge Allphin did not speak clearly in plain language that could easily be comprehended.
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Ensures information understood	All observers reported that Judge Allphin <i>carefully read rights</i> to defendants and <i>asked if they understood</i> what rights they were giving up in cases which involved pleas. When a defendant who had changed attorneys <i>claimed that he had read over his rights, the judge insisted to the attorney that he and the defendant spend time going over the rights together</i> . When a man pleading guilty asked if he would get credit for time served, the judge explained, " <i>The state may recommend it, but I don't have to be bound by that. Do you understand?</i> " He <i>consistently asked if defendants understood what he required them to do</i> , and he was <i>particularly careful in asking about a woman's ability to understand English as well as Spanish and read the rest of the rights to her more slowly and carefully than usual</i> . However one observer felt that defendants did not <i>dare to question</i> the judge, noting in one case that the judge <i>interrupted a defendant who stated his confusion about a legal term, simply referring him to his attorney for later clarification</i> .
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Provides adequate explanations	Two observers reported that Judge Allphin <i>consistently and clearly explained why he ruled</i> as he had, and he <i>carefully outlined</i> probation requirements in an <i>understandable way so that defendants would completely understand what was required of them</i> . However, one observer felt there was <i>little explanation of sentencing to incarcerated men beyond reading the decision or imposing what the law required, which seemed routine and agreed to in advance by the attorneys</i> .
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