

## Honorable Su J. Chon – District Court Judge

Serving Salt Lake, Summit, and Tooele counties



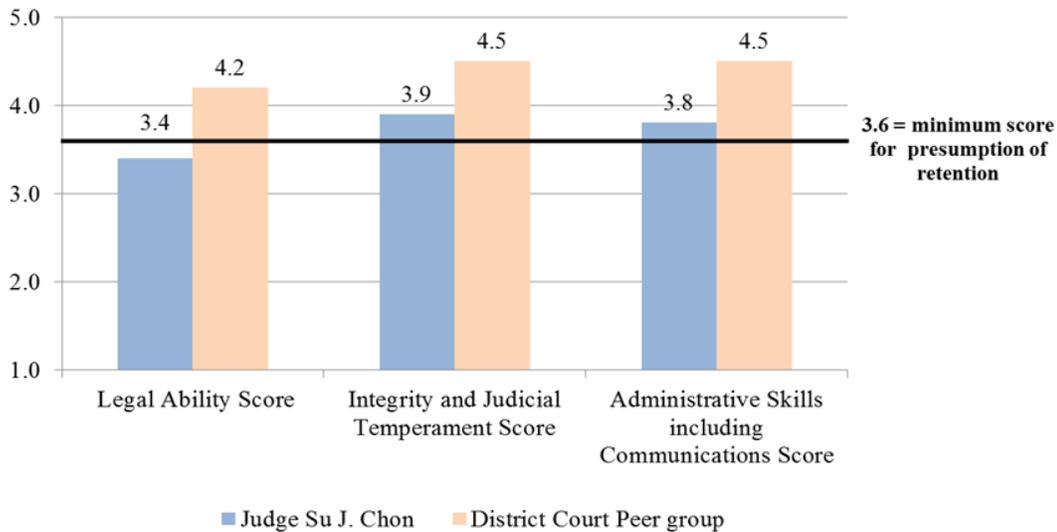
### Commission Recommendation: **DO NOT RETAIN** (vote count: 7-2 against retention)

Appointed in 2012, Judge Su Chon fails to meet the minimum performance standard for legal ability and scores well below the average of her district court peers in all other survey categories. Survey respondents focus on her perceived weakness in following legal precedent, lack of meaningful legal analysis in written decisions, and slow decision-making.

Some respondents view Judge Chon as a hard worker, noting her improvement over time. Others find her indecisive and unsure of her legal rulings, particularly in civil cases. Courtroom observers are more favorable but still mixed in their perceptions of Judge Chon. They commend her for attentive listening skills and the equal treatment of those appearing before her. Some see her as a no-nonsense professional who runs an efficient courtroom, while others perceive her as emotionally detached and somewhat intimidating. Half of the courtroom observers report they would feel comfortable appearing before her. Of survey respondents answering the retention question, 63% recommend that Judge Chon be retained.

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

Judge Su J. Chon was appointed to the Third District Court in August 2012 by Governor Gary Herbert. She graduated from BYU with a Bachelors of Arts in 1991 and a Juris Doctorate in 1994. Judge Chon has worked in small and medium law firms and served as a Property Rights Ombudsman for the State of Utah. Judge Chon received the Utah State Bar's 2005 Pro Bono Lawyer of the Year Award and the 2008 Raymond S. Uno Award. She is a member of the American Bar Association and National Association of Women Judges. She serves on the Court's Language Access and Community Relations committees and is the co-chair of the Utah Bar's Modest Means Committee.



#### **Statement from Judge Su J. Chon:**

Governor Herbert appointed me in 2012, and the majority of those reviewing me voted to retain. I ask you to retain me.

I feel fortunate to have been welcomed into this country as a child. My grandfathers were tortured and mistreated because North Korea refused to uphold the law – this drives the person and judge I am today. My family's experiences inspire me to carefully and fairly apply the rule of law. I respect the process, and I work hard. My rulings have not been overturned on appeal. Thank you for your support.

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# **The Honorable Su J. Chon**

**Judicial Performance Evaluation Commission Report**

**Retention 2016**

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### II. Courtroom Observation Report

# I. Survey Report

## Survey Results

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### A. How to Read the Results

For Judge Su J. Chon, 49% of qualified survey respondents submitted surveys. Of those who responded, 94 agreed they had worked with Judge Su J. Chon enough to evaluate her performance. This report reflects these 94 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.

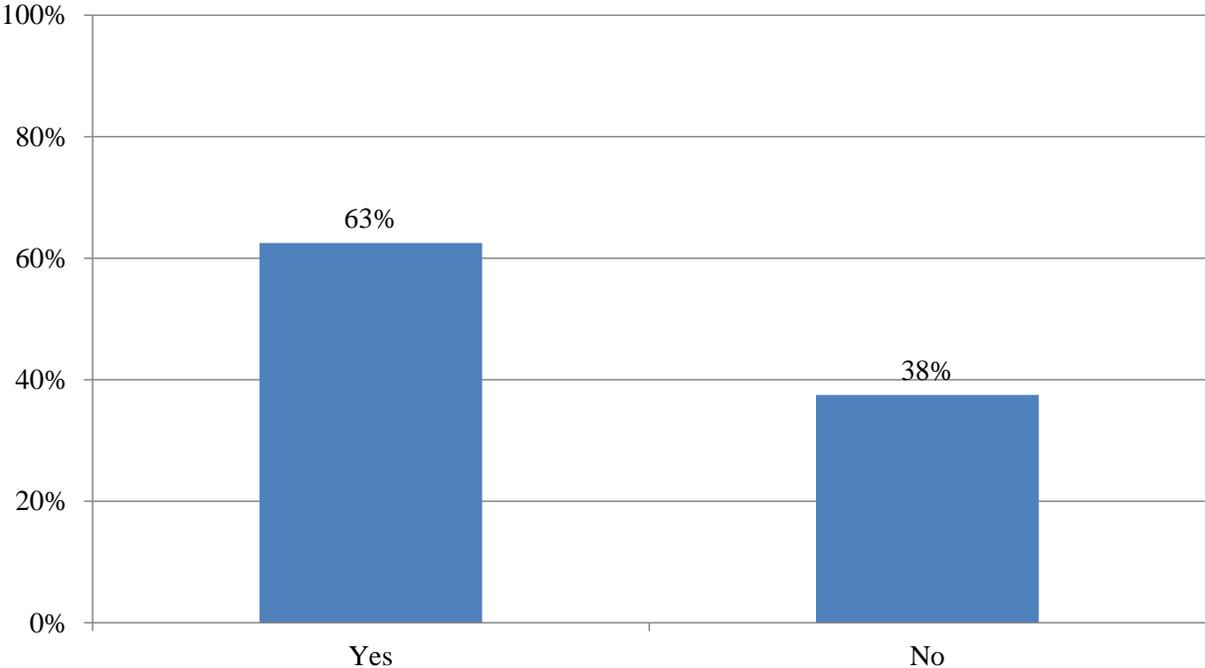
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to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

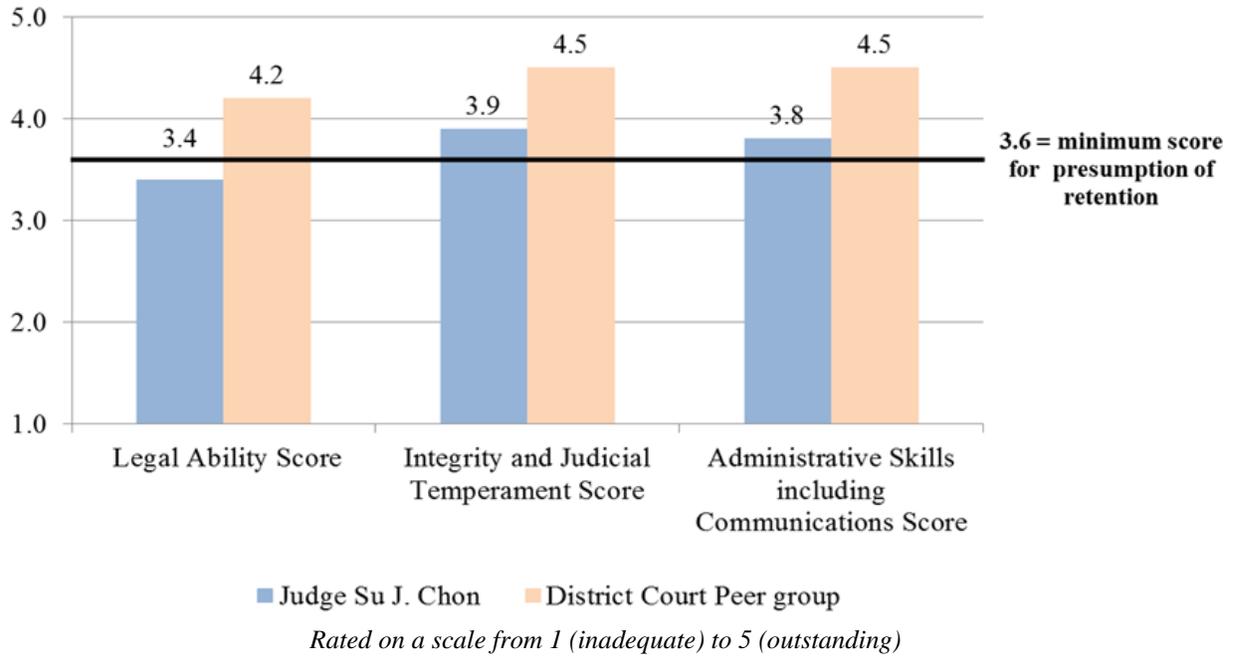
**B. Retention Question**

**Figure A. Would you recommend that Judge Su J. Chon be retained?**



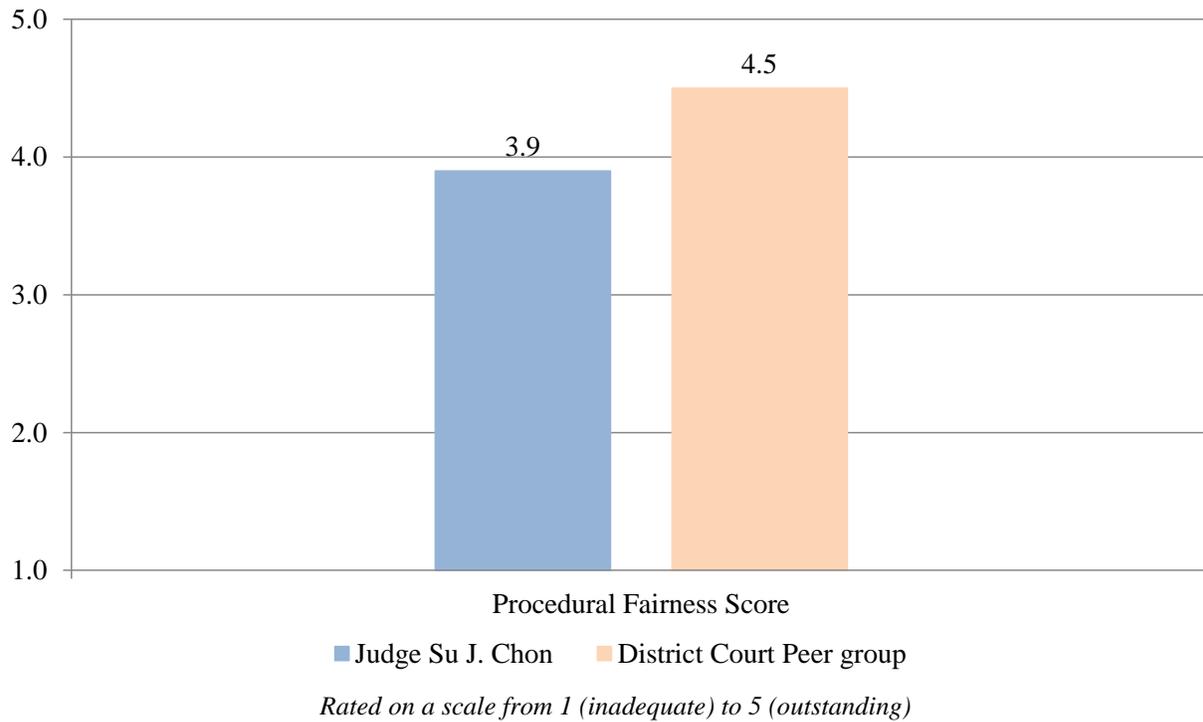
### C. Statutory Category Scores

**Figure B. Statutory Category Scores**



## 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 Su J. Chon
Procedural Fairness	Pass

## E. Responses to Individual Survey Questions

**Table B. Responses to Survey Questions**

Category	Question	Judge Su J. Chon	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.	3.4	4.2
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	3.4	4.2
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	3.3	4.2
Legal Ability	The judge only considers evidence in the record.	3.6	4.2
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	3.3	4.2
Legal Ability	The judge's written opinions contain a readily understandable, concise ruling	3.4	4.2
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.0	4.6
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.0	4.6
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.0	4.3
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	3.8	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.	4.0	4.6

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

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

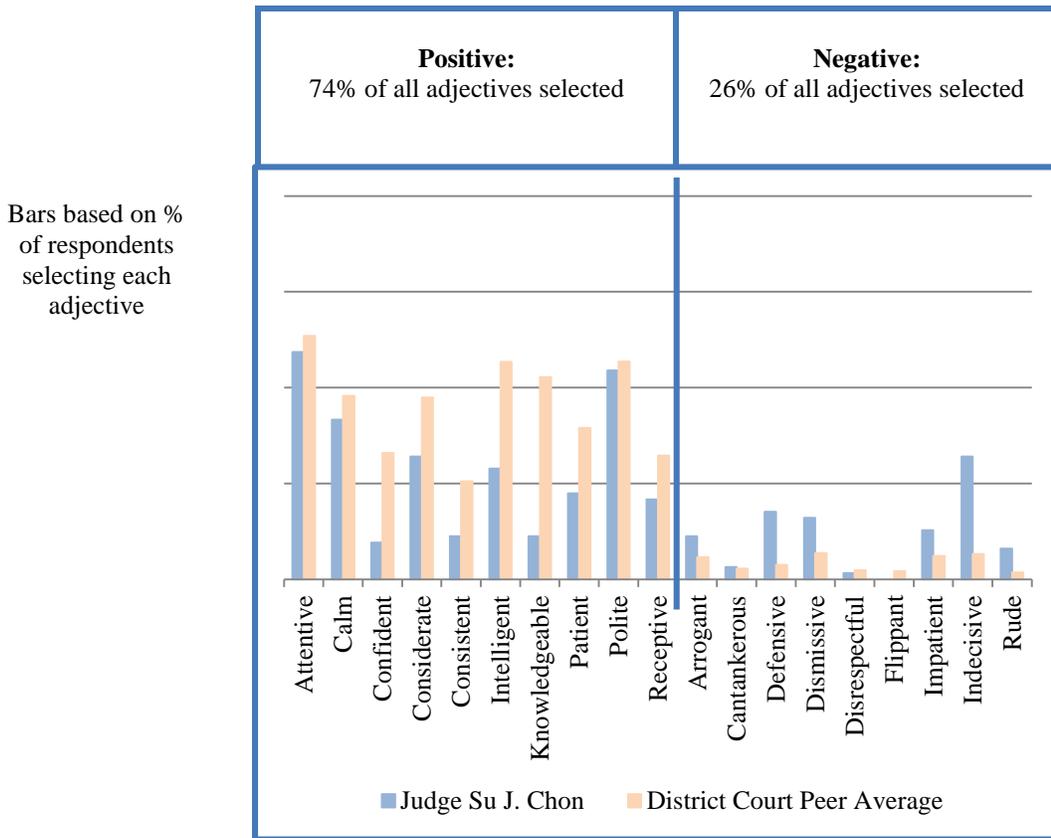
<b>Category</b>	<b>Question</b>	<b>Judge Su J. Chon</b>	<b>District Court</b>
Administrative Skills	The judge is prepared for court proceedings.	3.8	4.4
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.0	4.6
Administrative Skills	The judge is an effective manager.	3.6	4.5
Administrative Skills	The judge convenes court without undue delay.	4.1	4.6
Administrative Skills	The judge rules in a timely fashion.	3.7	4.5
Administrative Skills	The judge maintains diligent work habits.	3.9	4.5
Administrative Skills	The judge's oral communications are clear.	3.8	4.5
Administrative Skills	The judge's written opinions/decisions are clear and logical.	3.5	4.3
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.1	4.6
Procedural Fairness	The judge is fair and impartial.	4.0	4.5
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	3.7	4.5
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	3.8	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	5%
Domestic	24%
Criminal	11%
Civil	83%
Other	3%

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	78%
6 - 10	14%
11 - 15	7%
16 - 20	1%
More than 20	-

## Survey Background and Methods

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

### A. Survey Overview

#### 1. Description of Sample

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

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

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

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

#### 2. Summary of Survey Methods

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

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

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

## **B. Evaluation Period**

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

## REPORT OF COURTROOM OBSERVATIONS FOR JUDGE SU CHON

Four observers wrote 63 codable units that were relevant to 11 of the 15 criteria. All observers reported that they did not know if the judge was aware that JPEC observers were present.

### Overview

OVERALL ASSESSMENT	<ul style="list-style-type: none"> <li>Two observers were positive about Judge Chon. Two observers were positive in some areas but guardedly positive in other areas, noting the judge’s emotional detachment and overly controlled manner (see “Minority observations” and “Anomalous comments”).</li> <li>Two observers reported that they would feel comfortable appearing before Judge Chon. Two observers expressed apprehension due to the judge’s intimidating lack of emotion or empathy.</li> </ul>
WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none"> <li>All observers variously reported that Judge Chon had exceptional listening skills, she was prepared and efficient, and the court ran smoothly and without delays. She acknowledged participants by name, apologized when appropriate, and was kind with a reserved demeanor, as well as direct, no-nonsense, and professional. She leaned forward with eye contact in an engaged manner, although one observer was distracted when she turned away from participants when reading on her computer. Judge Chon treated everyone in the same way and was not impressed or swayed by more experienced legal teams. She acknowledged and responded to the needs of all participants, and when asked to clarify something by one side she ensured the other side was also clear. She was always thorough, gave each party as much time as needed to make their points in a formal back and forth dialogue, and patiently explained procedural matters until participants understood.</li> </ul>
MINORITY OBSERVATIONS	<ul style="list-style-type: none"> <li>Two observers, while noting that Judge Chon was not disrespectful in any way, also reported that her emotional detachment and somewhat short, abrupt, and cold manner did not put participants at ease, and Judge Chon created tension and nervousness in Observer A, who felt that the judge did not enjoy the social aspects of her work (see “Courtesy, politeness, and general demeanor”).</li> </ul>
ANOMALOUS COMMENTS	<ul style="list-style-type: none"> <li>Observer A noted that while Judge Chon gave participants time to speak and explained the consequences of waiving their rights, she did so in a limited, restrictive, or rote manner. The observer suggested that the judge sincerely ask all participants if they have further questions or if they are unsure about anything (see “Considered voice” and “Ensures information understood”).</li> </ul>

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

<i>RESPECT</i>	
Listening & focus	One observer reported that Judge Chon <i>listened intently</i> to all. She <i>was attentive to the images of an AV presentation</i> and <i>took notes</i> .
Well-prepared & efficient	Two observers reported that Judge Chon <i>came prepared with the Utah Code</i> and <i>utilized time efficiently</i> .
Respect for others’ time	Two observers reported that Judge Chon <i>let everyone know at the outset that there would be a lot of waiting while clients and attorneys connected with each other</i> , and she <i>asked for patience</i> . She <i>was flexible</i> and <i>worked easily with attorneys’ schedules and setting dates for trials</i> .

Courtesy, politeness, and general demeanor	<p>All observers reported that Judge Chon <i>acknowledged</i> each participant by name, <i>thanked a witness for his testimony</i>, and <i>gave deference</i> to an attorney by asking if the witness could be excused. She <i>apologized in a timely way</i> to an attorney for <i>cutting off his banter with a witness and explaining in a comfortable, humorous manner that bringing up favorite sports teams could be inflammatory</i>. She <i>very patiently explained the process of filing a motion</i> to an unprepared young man who had arrived <i>20 minutes late</i> and who had not served the respondent in his case. Judge Chon <i>could easily have dismissed him but instead showed respect for an individual who did not understand the process or have the skills or knowledge to maneuver around the justice system</i>. Judge Chon was <i>calm, kind, caring, and professional, with a reserved demeanor</i>. Her manner was also <i>instructive and direct, with a sense of no-nonsense authority and control, but in a fair way</i>.</p> <p>In contrast, one observer felt her manner <i>somewhat short, to the point, and not very warm</i>, and her <i>short abrupt comments</i>, such as, “<i>Can’t give legal advice,</i>” may reflect her <i>style rather than disrespectful behavior</i>. Observer A similarly felt that although Judge Chon <i>thanked everyone at the end of each case and was not disrespectful in any way</i>, her <i>emotional detachment created tension</i> in the observer. Judge Chon made <i>no effort to put anyone at ease</i>, and her <i>rather flat expressions</i> reminded Observer A of <i>someone who feels pain at the thought of having to smile</i>. Observer A felt that the judge <i>did not enjoy the social aspects of her work</i>, and her <i>coldness of manner</i> left Observer A feeling <i>nervous at the thought of having to appear in her courtroom</i>.</p>
Body language	<p>Two observers reported that Judge Chon <i>seemed engaged with her eye contact and posture, leaning forward to speakers with interest</i>. One observer was <i>distracted</i> when the judge <i>turned away to read a computer screen located away from the participants</i>, and the observer wondered <i>what she was reading on the screen</i>.</p>
Courtroom tone & atmosphere	<p>One observer reported that the proceedings <i>ran smoothly and without delays</i>. Another observer noted that the clerk <i>forgot to inform Judge Chon that an attorney was going to be late</i> and the participant had already left by the time the attorney arrived, and the observer felt <i>that such behavior did not support a well organized court</i>.</p>

*NEUTRALITY*

Consistent and equal treatment	<p>Two observers reported that Judge Chon <i>treated everyone in the same way and gave equal time to the arguments from both sides of the aisle</i>. In a case with a <i>young, seemingly inexperienced attorney dressed just “OK”</i> who was opposed by <i>two attorneys “spit shined from head to toe,”</i> Judge Chon was <i>not impressed by “power suits” and not swayed by the more experienced legal team whose presence could be felt when they entered the courtroom</i>, but instead <i>made a decision based on law</i>. When a plaintiff’s attorney asked the judge <i>to clarify a procedural ruling she had made the day prior</i>, Judge Chon was <i>open and receptive to a discussion</i>, but rather than <i>just reiterating the ruling she wanted to ensure that the previous day’s ruling was clear to both attorneys</i>, and <i>after interacting with the plaintiff’s attorney she addressed the defense attorney as well to confirm his understanding of the issue</i>. Both attorneys were <i>treated similarly and the observer felt a sense of order, efficiency, and control, with everyone on the same page</i>.</p>
Demonstrates concern for individual needs	<p>Three observers reported that Judge Chon <i>acknowledged the needs of all participants</i>. She offered a <i>wireless microphone and laser pointer to an expert witness</i> interpreting radiological images, and she offered a <i>closer position to the defense attorney, acknowledging the importance to the defense of accurately receiving the plaintiff’s data</i>. When a young man planning to represent himself was observing the court, Judge Chon <i>courteously responded to his questions</i> and was <i>willing to help him understand how the court process worked</i>, even though this was <i>not on her agenda</i>. After telling a participant, “<i>We aren’t here to discuss the merits of your case,</i>” the judge nevertheless <i>asked the clerk to provide the woman with a business card to contact divorce commissioners and attempted to provide some direction, saying, “Make sure you do that, ma’am.”</i></p>

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Unhurried and careful	Two observers reported that Judge Chon was <i>thorough</i> , in one case <i>taking a brief recess to review her notes before ruling</i> . When a defendant was involved in <i>two separate cases</i> , the judge initially <i>forgot to formally waive the right to a preliminary hearing in the second case</i> , so she <i>brought the defendant back in and went over the entire thing again to ensure all the details were in order</i> .
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VOICE

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Considered voice	Three observers variously reported that Judge Chon has <i>exceptional skills as a good listener and communicator</i> . Her <i>standard question</i> was, “ <i>What would you like the court to do?</i> ” and she <i>listened patiently</i> even to a participant <i>who had a very long story</i> . She <i>gave each party as much time as needed to make their points, hearing one position, then the other position, re-affirming, then coming to a resolution</i> . The <i>back and forth dialogue</i> suggested that <i>everyone had an opportunity to speak</i> , but always within what one observer described as <i>guidelines or parameters that she set</i> . However, Observer A felt that this approach of <i>asking defendants questions, allowing them to answer, but then not soliciting further questions, set a limit on what could be said</i> , as if the judge were saying, “ <i>You get one chance to say what you want, and after that, it’s too late.</i> ” Observer A suggested that Judge Chon <i>sincerely ask defendants if they have any questions</i> and make the <i>getting of information a priority over protocol</i> .
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COMMUNICATION

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Ensures information understood	<p>Two observers reported that Judge Chon <i>patiently explained the process of filing a motion</i> to an unrepresented litigant, but she was <i>uncertain if he understood</i> so kept checking until he <i>answered in the affirmative</i>. She then gave him <i>three resources</i> and had the bailiff write down the information, <i>strongly encouraging him to contact them for help in preparing his case</i>.</p> <p>Observer A reported that Judge Chon <i>told each defendant what they were giving up by waiving a preliminary hearing</i>, and she asked if their attorney <i>had explained the consequences of doing so</i>, but <i>went over the information very quickly</i> so that it sounded <i>very rote</i>. They all <i>answered that they understood</i>, but the judge <i>did not ask them if they had any questions about anything they might have felt unsure about</i>.</p>
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