

Honorable Brendan P. McCullagh – Justice Court Judge

Serving West Valley City Justice Court, Salt Lake County



Commission Recommendation: **RETAIN**

(vote count: 12-0 for retention)

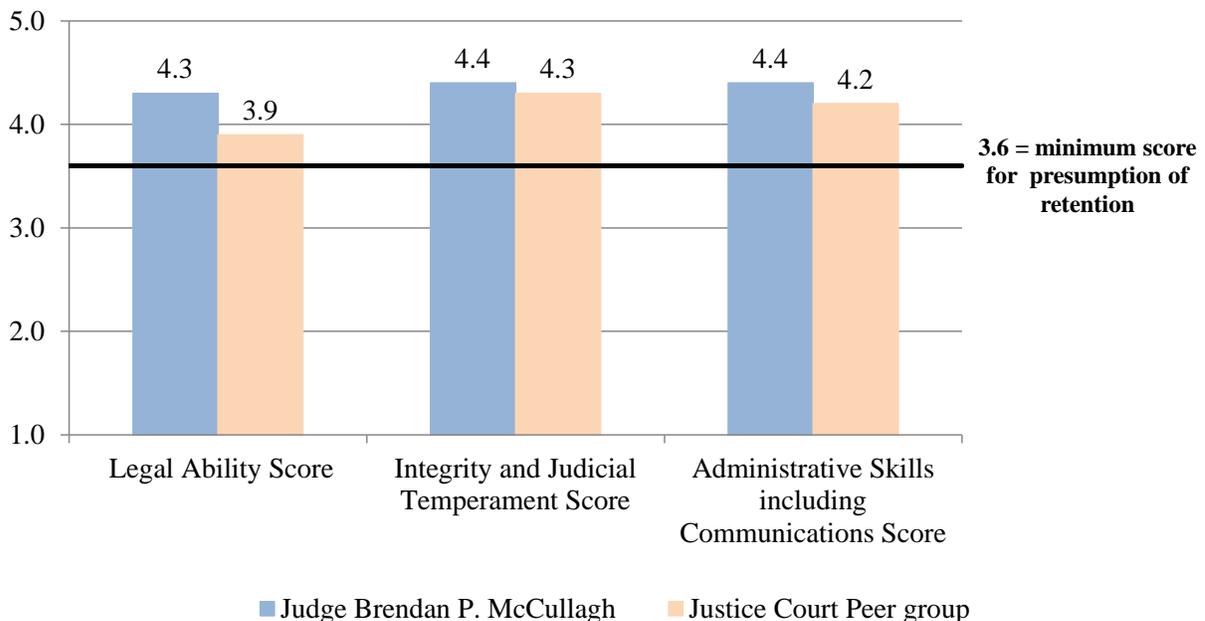
Appointed to the bench in 2002, Judge Brendan McCullagh scores higher than the average of his justice court peers in legal ability and equal to the average of his peers in all other survey categories. Survey respondents describe him as an intelligent, knowledgeable, and confident judge who thoroughly explains both his reasoning and relevant courtroom procedures.

Courtroom observers report that Judge McCullagh listens attentively, uses easily understood language, and handles cases efficiently and impartially. Most said they would feel comfortable appearing before him. Of survey respondents answering the retention question, 85% recommend that Judge McCullagh be retained.

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

Judge Brendan P. McCullagh was appointed to the West Valley City Justice Court in 2002. He earned a law degree from the University of Utah College of Law in 1995 and subsequently served as a Deputy District Attorney for Salt Lake County. Judge McCullagh was elected by his justice court peers to serve two terms on the Utah Judicial Council. In 2007, he received the Utah Judicial Council's Quality of Justice award for his dedication to the highest quality of justice. In 2008, he was honored with the Scott M. Matheson Award for outstanding service to law-related education. In 2010, Judge McCullagh was awarded the Utah Substance Abuse Advisory Council's Governor's award for contributions to establishing the Utah E-Warrant system.

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



The Honorable Brendan P. McCullagh

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 Brendan P. McCullagh, 39% of qualified survey respondents submitted surveys. Of those who responded, 50 agreed they had worked with Judge Brendan P. McCullagh enough to evaluate his performance. This report reflects these 50 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 "Justice 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.

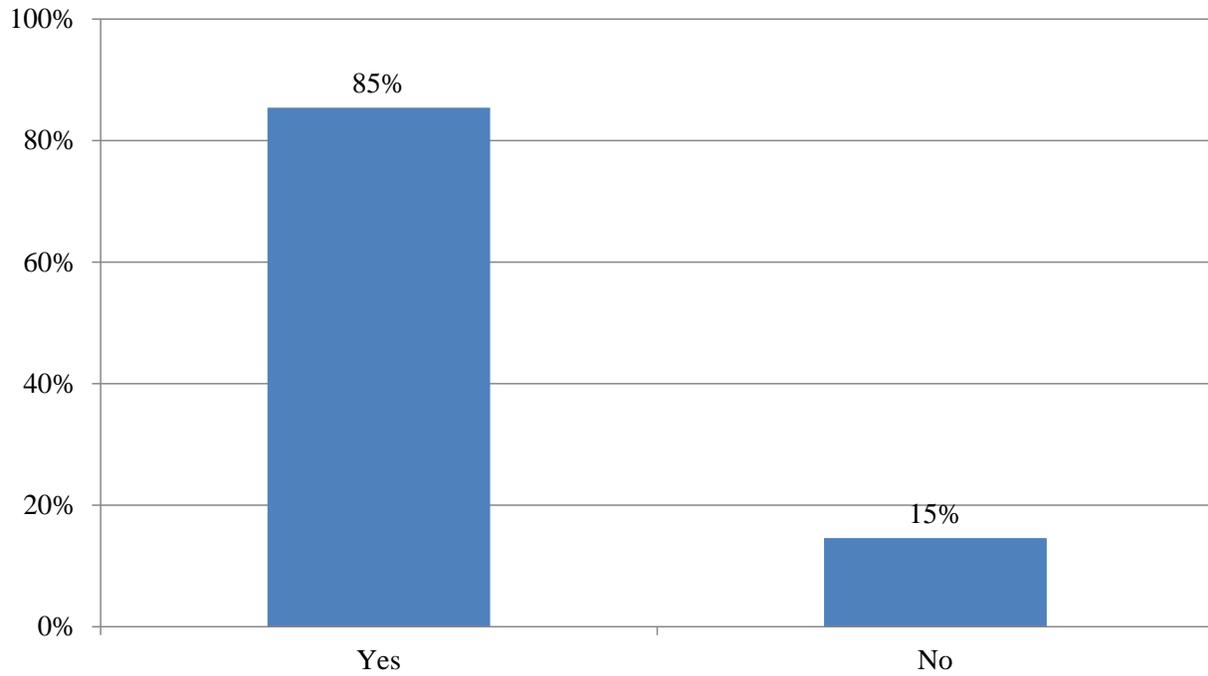
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to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

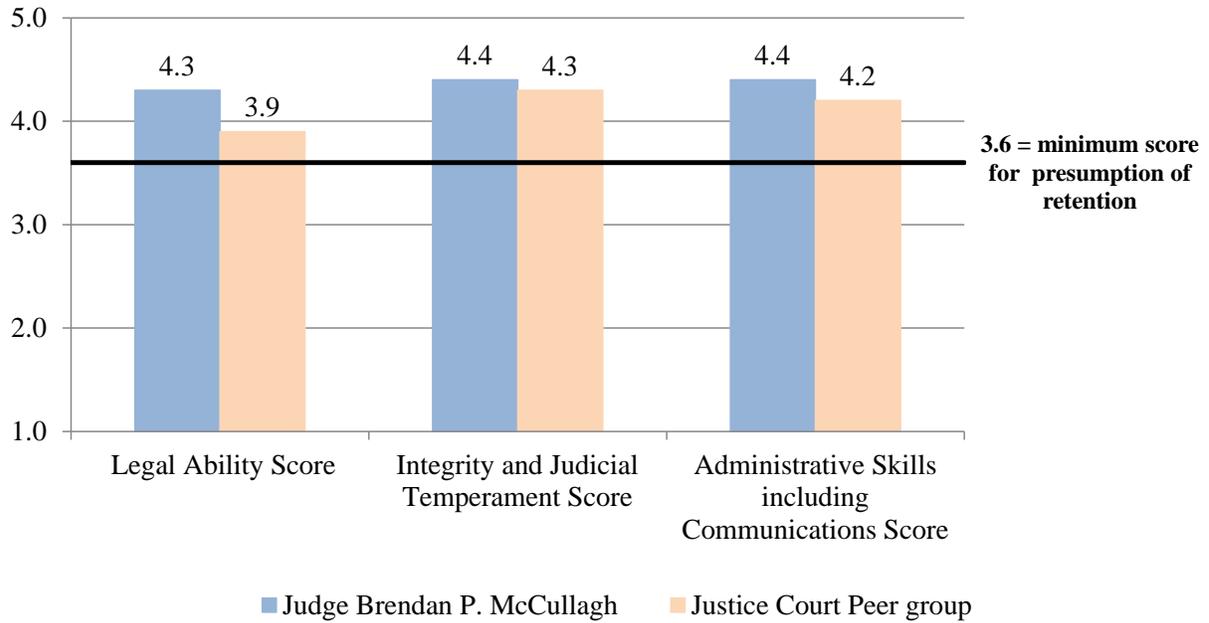
B. Retention Question

Figure A. Would you recommend that Judge Brendan P. McCullagh be retained?



C. Statutory Category Scores

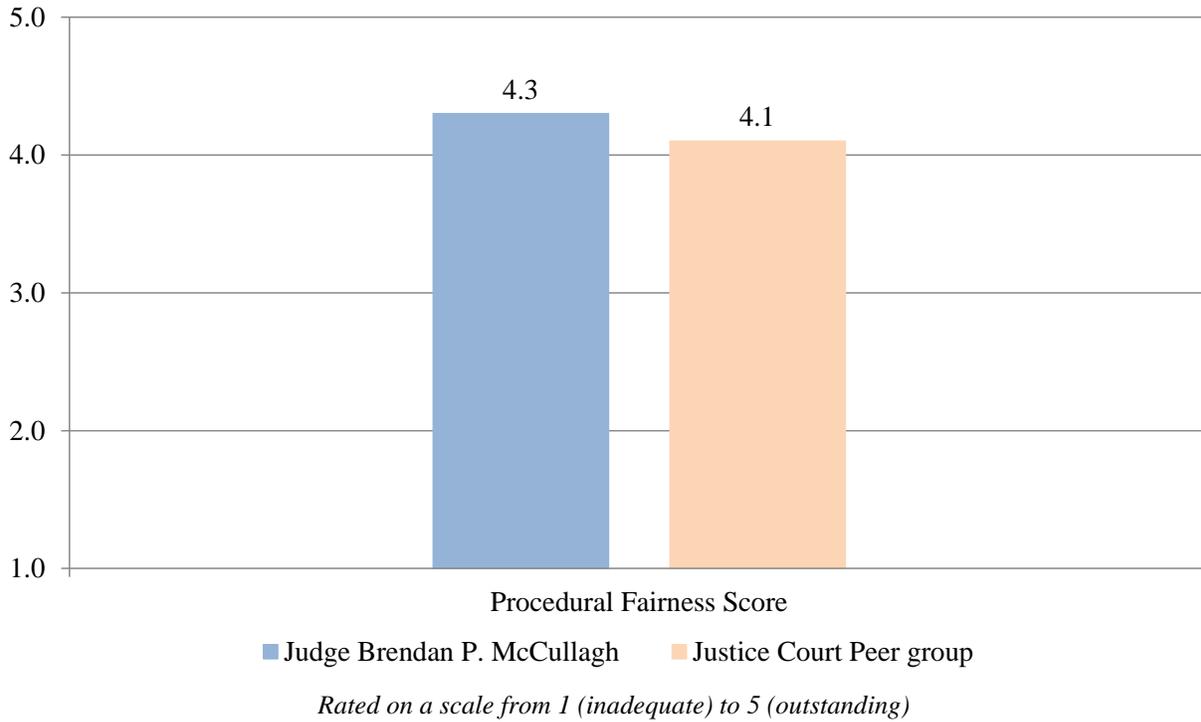
Figure B. Statutory Category Scores



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 Brendan P. McCullagh
Procedural Fairness	Pass

E. Responses to Individual Survey Questions

Table B. Responses to Survey Questions

Category	Question	Judge Brendan P. McCullagh	Justice 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	4.0
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.3	3.9
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.3	3.9
Legal Ability	The judge only considers evidence in the record.	4.2	3.9
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.2	3.8
Legal Ability	The judge's written opinions contain a readily understandable, concise ruling	4.3	3.9
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.4	4.3
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.4	4.3
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.4	4.1
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.4	4.0
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	4.4

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

Table C. Responses to Survey Questions (continued)

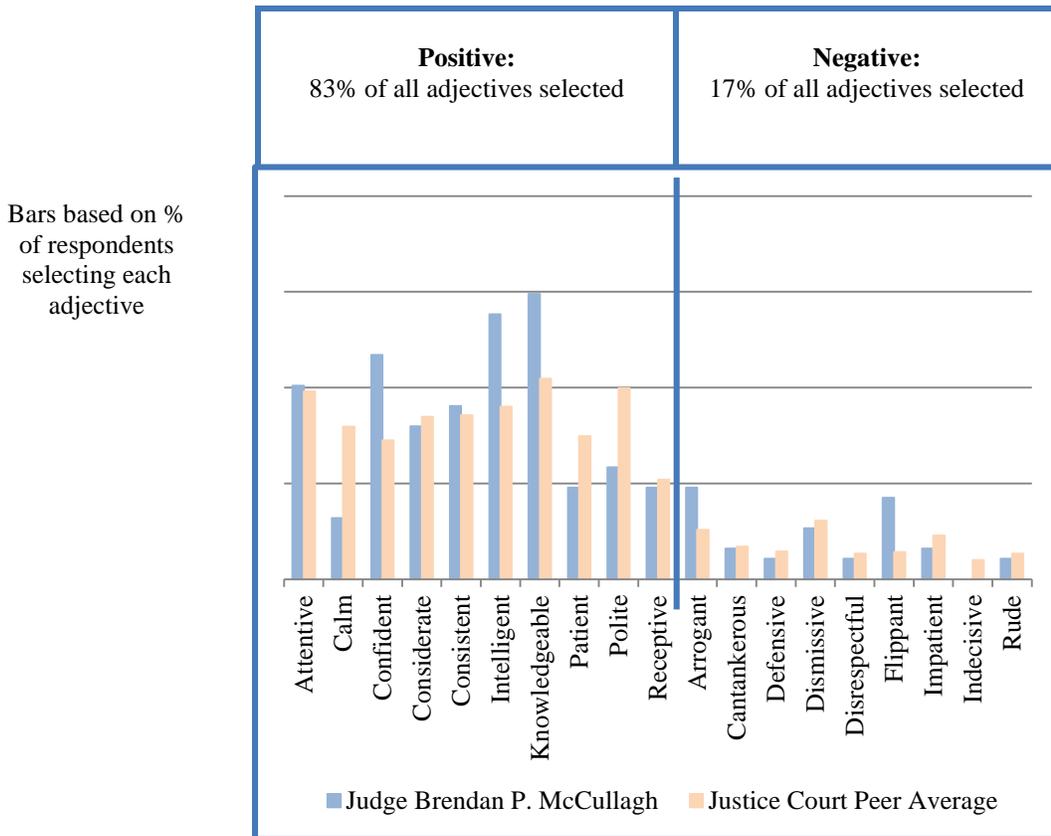
Category	Question	Judge Brendan P. McCullagh	Justice Court
Administrative Skills	The judge is prepared for court proceedings.	4.5	4.3
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.2	4.1
Administrative Skills	The judge is an effective manager.	4.4	4.1
Administrative Skills	The judge convenes court without undue delay.	4.4	4.1
Administrative Skills	The judge rules in a timely fashion.	4.5	4.3
Administrative Skills	The judge maintains diligent work habits.	4.3	4.3
Administrative Skills	The judge's oral communications are clear.	4.5	4.3
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.4	4.1
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.2	4.1
Procedural Fairness	The judge is fair and impartial.	4.3	4.0
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.3	4.0
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.4	4.2

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	21%
Criminal	93%
Civil	24%
Other	2%

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	48%
6 - 10	31%
11 - 15	5%
16 - 20	5%
More than 20	12%

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 BRENDAN McCULLAGH

Four observers wrote 95 codable units that were relevant to 13 of the 15 criteria. Three observers reported that the judge was aware that JPEC observers were present, and one did not know if the judge was aware.

Overview

OVERALL ASSESSMENT	<ul style="list-style-type: none">• Three observers were positive about Judge McCullagh. Observer A was positive in some areas but expressed some strong reservations in other areas (see “Anomalous comments”).• Three observers reported that they would feel comfortable appearing before Judge McCullagh. Observer A was comfortable with the judge’s fairness and impartiality but was uncomfortable with the lack of a “business” atmosphere in the courtroom.
WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none">• All observers variously reported that Judge McCullagh listened attentively and handled cases efficiently. His body language was attentive and engaged with good eye contact, and his speech pleasant, even, and unhurried. He was polite and respectful, thanked defendants for appearing, and treated all defendants in a consistent manner regardless of race or appearance. He gave all defendants time to express their concerns, and he actively solicited their input. He used easily understood language and re-phrased his speech when necessary. He asked if his explanations were understood and explained in a different manner if anyone was confused. He outlined defendants’ rights and available options and explained their charges and how the law was applied. When prompted he explained his thinking process.• Three observers described at length the interesting balance between Judge McCullagh’s stern, professional, and to-the-point demeanor, and his compassionate, approachable, and rather informal manner.• Three observers particularly emphasized Judge McCullagh’s interest in and concern for each defendant. He was thoughtful and considerate in fitting sentences to offenses, and while holding defendants to their obligations, he adjusted payment arrangements and other penalties to each defendant’s situation.• Three observers noted the 30-45 minute delays to starting, without explanation or apology.
MINORITY OBSERVATIONS	<ul style="list-style-type: none">• One observer reported that Judge McCullagh was well prepared, but another noted that he did not appear to have reviewed the cases for the day (see “Well-prepared & efficient”).• Two observers reported that the courtroom atmosphere was calm and orderly, but another found the meetings of attorneys and defendants in court to be very distracting (see “Courtroom tone & atmosphere”).
ANOMALOUS COMMENTS	<ul style="list-style-type: none">• <u>IN STARK CONTRAST TO THE OTHER OBSERVERS, OBSERVER A REPORTED THAT:</u><ul style="list-style-type: none">• The courtroom proceedings were disorganized, lacking in solemnness, and on occasion wild and loose, so that at times Observer A was clueless as to what was going on (see “Courtroom tone & atmosphere”)• Judge McCullagh never further explained defendants’ rights or provided sufficient instructions, but acted as if everything was self-explanatory (see “Provides adequate explanations”)• Observer A was shocked by a caustic conversation between Judge McCullagh and the prosecutor (see “Courtesy, politeness, and general demeanor”)• <u>OBSERVER A ALSO NOTED THAT:</u><ul style="list-style-type: none">• The unexplained late starts and awkward breaks between cases made the observer feel ignored or unimportant (see “Respect for others’ time”)• Judge McCullagh’s rocking back and forth in his chair when talking was too casual (see “Body language”)• When Judge McCullagh backed away from the microphone his voice faded in and out annoyingly (see “Voice quality”)

Summary and *exemplar language* of four observers' comments

<i>RESPECT</i>	
Listening & focus	One observer reported that Judge McCullagh <i>listened</i> to participants stories <i>attentively</i> .
Well-prepared & efficient	Three observers reported that Judge McCullagh <i>handled cases efficiently</i> , allotting <i>sufficient time for each individual case</i> . One observer reported that the judge was <i>well prepared</i> , but another noted that <i>on arrival the judge quickly glanced over the computer screen and did not appear to have reviewed the cases for the day</i> , but as the observer assumed <i>he may not have known who would show up, she did not find this surprising or impractical</i> .
Respect for others' time	One observer reported that the court <i>began on time</i> , but the three other observers noted that the court started 30-45 minutes <i>late without explanation or apology</i> . Observer A considered the court's <i>administrative efficiency poor</i> because of these starting delays and also because of <i>awkward breaks between cases</i> , and Observer A felt <i>ignored or made unimportant</i> .
Courtesy, politeness, and general demeanor	<p>Three observers reported that Judge McCullagh was <i>even, very polite and respectful</i>, and <i>never appeared bored, impatient or annoyed</i>. He <i>thanked each</i> defendant at the conclusion of the conversation, saying, <i>"Thanks for coming in,"</i> and was <i>patient in hearing</i> requests for clarification of their concerns. While defendants <i>were nervous, none appeared upset</i> about the proceeding or the outcome, as he was <i>not so far removed as an authoritative figure that defendants would appear too nervous to communicate</i>. He was able to <i>build a relationship in a way that did not make him seem like a pushover or unqualified to be in a position of authority</i>.</p> <p>Observers gave examples of Judge McCullagh's <i>interesting balance</i> of being both <i>stern and respectful</i>, and his <i>blend</i> of being both <i>casual and professional</i>. While he was <i>compassionate and approachable</i>, he was also <i>appropriately professional and task oriented</i> with a <i>no nonsense</i> approach, for example, <i>quickly coming to the point</i> when saying, <i>"Pay the fees and attend traffic school, this is a contract. If you have any problems, come see me."</i> However, one observer was <i>initially surprised</i> when first hearing his <i>more informal and casual style of comments</i>, for example, <i>"I think I figured out what is wrong with this case; it was kind of a funky way of doing things,"</i> but his <i>tone, even-handed manner, and general politeness</i> were <i>not compromised</i>.</p> <p>Observers also noted Judge McCullagh's <i>somewhat dry sense of humor</i>. When he made a <i>small joke</i> with a <i>nervous female</i> defendant who then <i>appeared to flirt with him</i>, he <i>did not engage or appear receptive</i> but discussed only <i>what was pertinent to the case and proceeded with the ruling</i>, as he did <i>with all other cases</i>.</p> <p>Observer A was <i>shocked</i> when Judge McCullagh had a <i>caustic conversation with the prosecutor and almost threw a stack of documents back at him, saying he was not interested in reading them</i>.</p>
Body language	Two observers reported that Judge McCullagh <i>maintained good eye contact</i> and his <i>body language was attentive and engaged</i> . However, Observer A considered the judge's <i>rocking back and forth in his chair when talking to be too casual</i> .
Voice quality	Three observers reported that Judge McCullagh spoke with a <i>pleasant, friendly, and even</i> tone without <i>raising his voice</i> , and he was <i>skilled in maintaining unhurried speech</i> . However, Observer A noted that <i>many times he backed away from the microphone in the middle of his speech, so his voice would fade in and out annoyingly</i> .
Courtroom tone & atmosphere	<p>Two observers reported that the atmosphere in the courtroom was <i>calm and orderly</i>, and <i>everything moved along smoothly</i>. The bailiffs were <i>polite and professional in well kept uniforms</i> and they spoke <i>pleasantly</i> to defendants.</p> <p>In contrast, one observer found the meetings of attorneys with defendants to be <i>very distracting to the proceedings</i>, and in stark contrast to the other observers, Observer A reported that the <i>courtroom proceedings were too disorganized, perhaps even wild and loose at times, and lacking in solemnness</i>, with the judge <i>chit chatting with the clerks and people in and out of the courtroom for no apparent reason</i> so that Observer A was <i>left clueless as to what was going on</i>.</p>

NEUTRALITY

Consistent and equal treatment Three observers reported that Judge McCullagh's *demeanor was the same regardless of defendants' race, gender, age, appearance or charges*. He treated a Pacific Islander male dressed in basketball shorts, flip-flops, and an oversized hoodie with the same respect as he had all others before him. He was *consistent in re-stating requirements* and indicating that *it was the final chance for compliance* when defendants had not paid a fine or *complied with an order*.

Demonstrates concern for individual needs Three observers reported that Judge McCullagh showed *interest, concern, and compassion for all parties*. He inquired into the *plight* of an *economically distressed* defendant brought from jail, was *pleased* that he had reached a plea deal, then freed him *for time served and urged him to be a productive person to society*. He was *thoughtful and considerate* in his sentencing to *fit his judgement to the offense*. He ensured that defendants unable to make payments were *aware they could call to make alternate payment arrangements*, and he *clearly stated the court is willing to work with defendants in such situations*. After listening to an unemployed woman's *financial situation*, he gave her a *reasonable payment schedule and some community service but added probation and regular UA's*. He *devised a way for a pregnant defendant unable to pay for counseling concerning her drinking to receive financial assistance through a program she needed to contact*.

VOICE

Considered voice Three observers reported that Judge McCullagh *in all cases gave defendants time to express any concerns or ask for clarification*, and he *actively solicited their input and consistently encouraged them to speak*. One observer additionally noted that while Judge McCullagh *allowed adequate time for participants to speak, most did not ask questions and seemed satisfied with short deliberations, appearing to want to get the judgement over with*.

COMMUNICATION

Communicates clearly One observer reported that Judge McCullagh *used language easily understood by defendants and attorneys*, while two observers noted he *would realize when he was using legal jargon that might be confusing and re-phrased his speech*.

Ensures information understood Two observers reported that Judge McCullagh asked if defendants *understood their charges and let them know they had the right to appeal*. He asked if participants understood his explanations, and if they *appeared confused, he explained in a different manner*. If an interpreter was required the judge was *patient and checked to make sure all parties were aware of what was happening*.

Provides adequate explanations Two observers reported that Judge McCullagh *outlined the rights of each defendant, clearly explained their charges, and provided specific information about the options available to them*. He explained *what happens during a pre-trial and how the rules of law were applied in his decisions*, for example, explaining the *typical jail sentence or penalty and why or why not these would be applied*. When prompted he helpfully *shared his thinking process* in coming to conclusions. He explained the *seriousness of probation guidelines*, and in one case concluded *in a kind and straightforward way that did not seem off putting*, "Make sure that you are on time to the appointment or I'll be mad." Some defendants *noted their appreciation when he took time to explain their options and how they might or might not affect them*.

In stark contrast, Observer A reported that Judge McCullagh *never once further explained defendants' rights, what to do, where to go, etc., but acted as if everything was self-explanatory*.
