

## Honorable Thomas M. Higbee – Juvenile Court Judge

Serving Beaver, Iron, and Washington counties



### Commission Recommendation: **RETAIN**

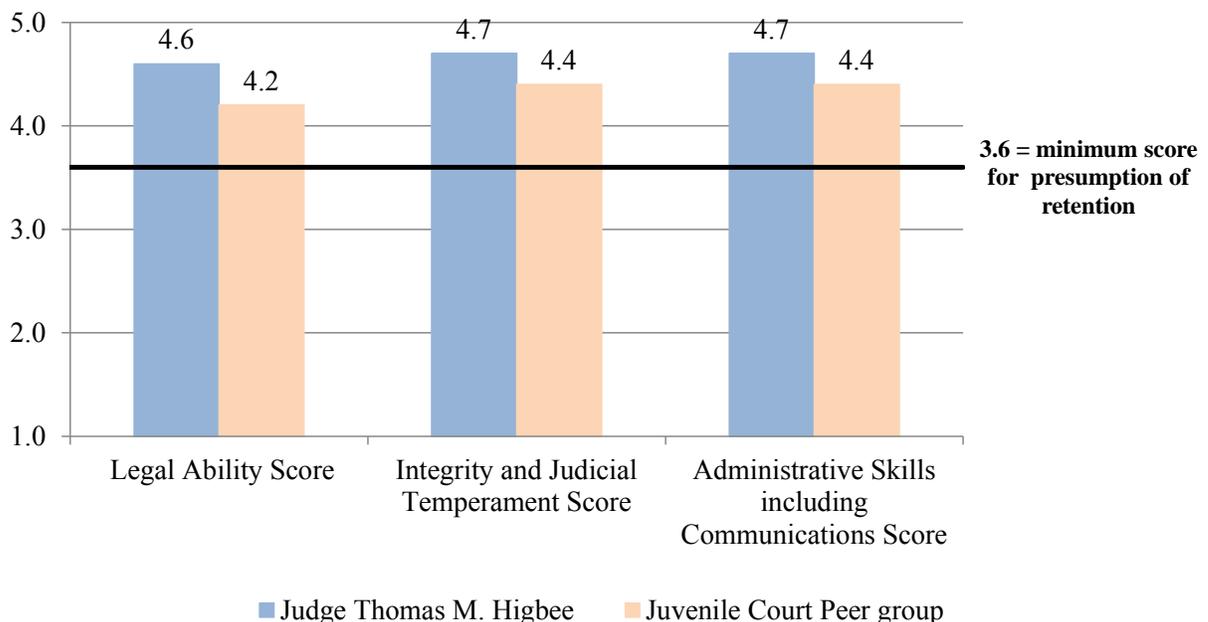
(vote count: 12-0 for retention)

Judge Thomas Higbee, an experienced judge, receives outstanding evaluations from survey respondents, earning scores above the average of his juvenile court peers in all survey categories. In particular, survey respondents give him very high scores for properly applying legal rules and precedent. From a list, survey respondents select 95% positive adjectives to describe him, emphasizing his knowledge, confidence, and consistency. Both survey respondents and courtroom observers characterize Judge Higbee as fair and impartial, demonstrating genuine concern for the well-being of juveniles and families appearing in his court. Some observers and survey respondents note that his personal or religious views influence his judicial outlook. All observers are strongly positive about Judge Higbee and report they would feel comfortable appearing before him in court. Of survey respondents answering the retention question, 98% recommend that Judge Higbee be retained.

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

Judge Thomas M. Higbee was appointed to the Fifth District Juvenile Court in 2001 by Gov. Michael O. Leavitt. Judge Higbee earned his law degree from the University of Utah College of Law in 1980. He practiced law for 20 years and was the senior partner at Higbee & Jensen and a trustee of Southern Utah University at the time of his appointment. He has served as a board member and chair of the Board of Juvenile Court Judges, the co-chair of the Judicial Council's Standing Committee on Children and Family Law, and on several other committees. Judge Higbee currently serves on the Utah Judicial Council.

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



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# **The Honorable Thomas M. Higbee**

**Judicial Performance Evaluation Commission Report**

**Retention 2016**

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## Table of Contents

### I. Survey Report

Survey Results .....	1
A. How to Read the Results .....	1
B. Retention Question .....	2
C. Statutory Category Scores .....	3
D. Procedural Fairness Score .....	4
E. Responses to Individual Survey Questions .....	5
F. Adjective Question Summary .....	7
G. Attorney Demographics .....	8
Survey Background and Methods .....	9
A. Survey Overview .....	9
B. Evaluation Period .....	10

### II. Courtroom Observation Report

# I. Survey Report

## Survey Results

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### A. How to Read the Results

For Judge Thomas M. Higbee, 54% of qualified survey respondents submitted surveys. Of those who responded, 65 agreed they had worked with Judge Thomas M. Higbee enough to evaluate his performance. This report reflects these 65 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 "Juvenile 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.

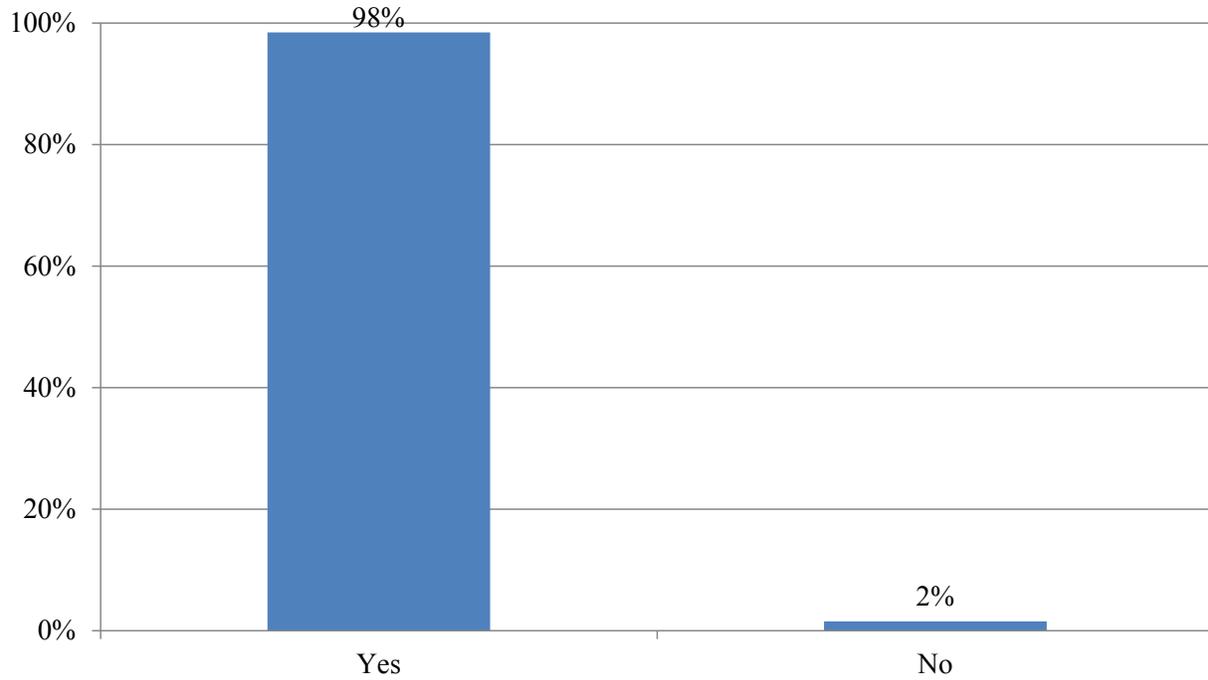
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to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

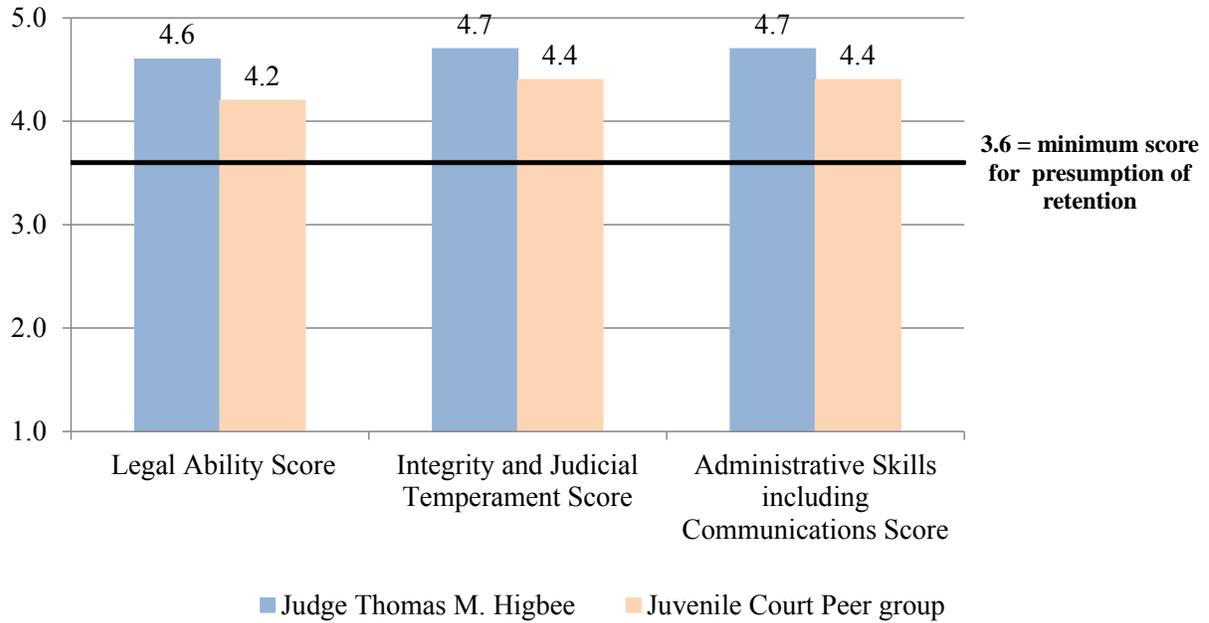
## B. Retention Question

**Figure A. Would you recommend that Judge Thomas M. Higbee be retained?**



## C. Statutory Category Scores

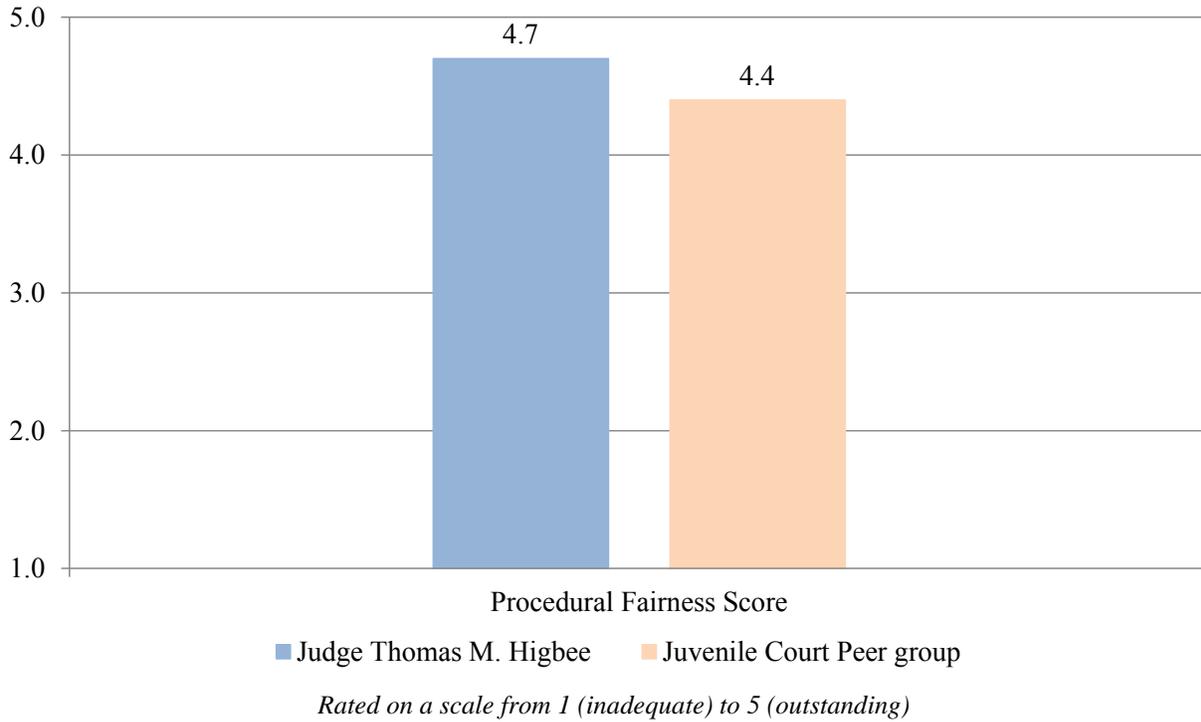
**Figure B. Statutory Category Scores**



*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 Thomas M. Higbee
Procedural Fairness	Pass

## E. Responses to Individual Survey Questions

**Table B. Responses to Survey Questions**

Category	Question	Judge Thomas M. Higbee	Juvenile 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.	4.8	4.3
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.5	4.2
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.7	4.2
Legal Ability	The judge only considers evidence in the record.	4.3	4.1
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.5	4.2
Legal Ability	The judge's written opinions contain a readily understandable, concise ruling	4.6	4.3
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.8	4.6
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.9	4.6
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.5	4.4
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.4	4.3
Integrity & Judicial Temperament	The judge promotes access to the justice system for people who speak a language other than English, or for people who have a physical or mental limitation.	4.9	4.7

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

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

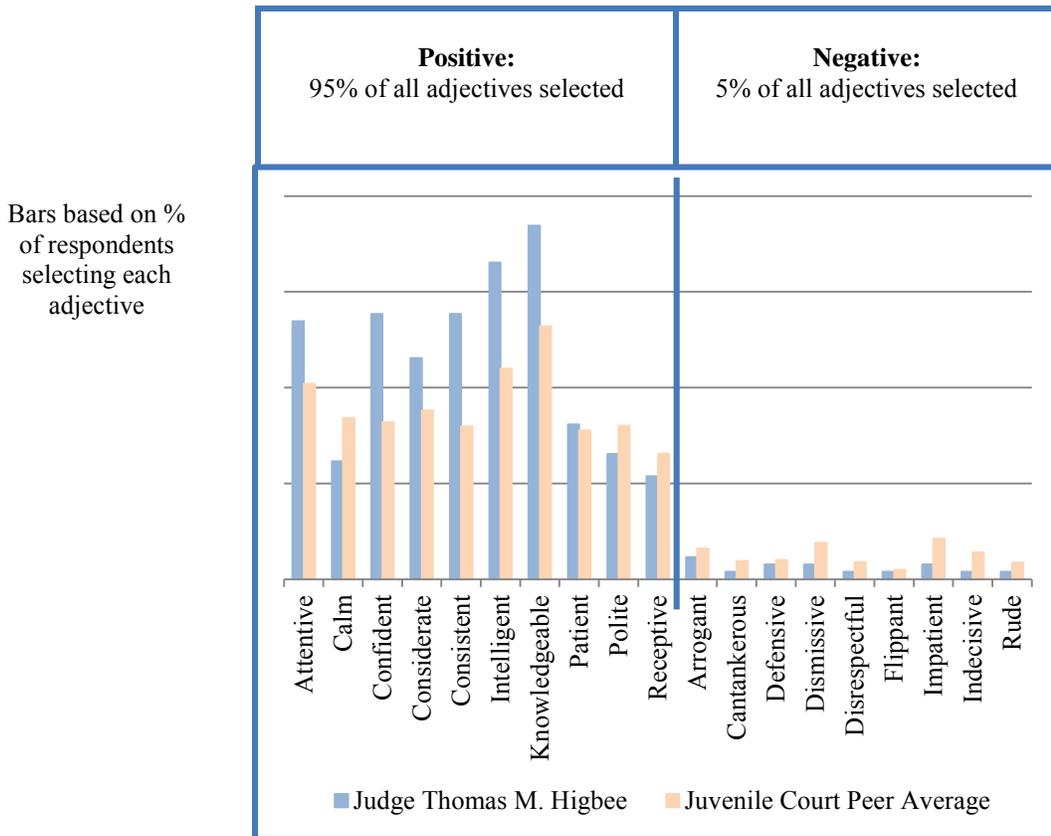
<b>Category</b>	<b>Question</b>	<b>Judge Thomas M. Higbee</b>	<b>Juvenile Court</b>
Administrative Skills	The judge is prepared for court proceedings.	4.8	4.6
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.8	4.5
Administrative Skills	The judge is an effective manager.	4.7	4.4
Administrative Skills	The judge convenes court without undue delay.	4.5	4.3
Administrative Skills	The judge rules in a timely fashion.	4.6	4.6
Administrative Skills	The judge maintains diligent work habits.	4.8	4.6
Administrative Skills	The judge's oral communications are clear.	4.8	4.6
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.8	4.6
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.7	4.5
Procedural Fairness	The judge is fair and impartial.	4.7	4.5
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.8	4.5
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.8	4.6

*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	8%
Domestic	52%
Criminal	44%
Civil	44%
Other	28%

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	32%
6 - 10	24%
11 - 15	8%
16 - 20	4%
More than 20	32%

## 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 THOMAS HIGBEE

Four observers wrote 91 codable units that were relevant to 13 of the 15 criteria. All observers reported that the judge was aware that JPEC observers were present.

### Overview

OVERALL ASSESSMENT	<ul style="list-style-type: none"> <li>All observers were strongly positive about Judge Higbee. One observer commented that Judge Higbee was precisely suited to his role and an example to other juvenile court judges.</li> <li>All observers reported that they would feel comfortable appearing before Judge Higbee.</li> </ul>
WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none"> <li>All observers variously reported that Judge Higbee listened attentively without his mind wandering, never talking until he had finished listening. He was familiar with each case and allocated the time it required so that cases began on time, but if there was a delay he apologized immediately. He was patient and polite to all participants, thanked them for their contributions, praised accomplishments, and connected well with the juveniles. His demeanor was balanced, mixing fairness with justice, and he was both supportive, non-threatening, compassionate, caring, and occasionally humorous, as well as firm, professional, and business-like. His attentive body language and good eye contact demonstrated his concern for each speaker, and the courtroom was orderly and efficient. Judge Higbee used terms that could be understood by all, and he watched carefully to ascertain the understanding of both juveniles and families. He patiently explained the law and his rulings and reasoning. He gave good instructions to unrepresented defendants about the court process and ensured that defendants left with written copies of his orders.</li> <li>All observers particularly emphasized that Judge Higbee was very involved and concerned with each juvenile's welfare, offering many examples of his common sense advice which were tailored to each juvenile's circumstances. Observers also emphasized the judge's skill in encouraging juveniles to contribute to the proceedings by asking open-ended questions that invited open and honest communication. He always asked juveniles and parents to present their views, and he ensured that the juveniles understood the parents' viewpoints.</li> </ul>
MINORITY OBSERVATIONS	<ul style="list-style-type: none"> <li>None</li> </ul>
ANOMALOUS COMMENTS	<ul style="list-style-type: none"> <li>None</li> </ul>

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

<i>RESPECT</i>	
Listening & focus	All observers reported that Judge Higbee <i>listened attentively</i> with a thoughtful expression, never <i>showing signs of a wandering mind or disinterest</i> . He did not talk <i>until he had finished listening</i> .
Well-prepared & efficient	Three observers reported that Judge Higbee was familiar with the matters at hand. <i>Nearly every case</i> began on time, indicating that the judge <i>understood each case</i> and its <i>needed allotted time</i> .
Respect for others' time	Two observers reported that Judge Higbee commenced court about ten minutes late, immediately saying, <i>"I apologize for making you late. You should not have to wait. What I was doing was court related and very important. I am sorry."</i> When he called a recess and reconvened a few minutes after the appointed start time, he <i>gave the same apology</i> .

<p>Courtesy, politeness, and general demeanor</p>	<p>All observers reported that Judge Higbee was <i>polite</i> to defendants, parents, counselors, and truancy and probation officers. He thanked participants for their responses, thanked those who <i>arrived early so they could be seen while waiting for other defendants to arrive</i>, and he did <i>not call a case until there was ample opportunity for delayed participants to appear</i>. He <i>praised juveniles' efforts and acknowledged their challenges, noting positive accomplishments</i> by saying for example, <i>"I commend you... I am delighted... Good for you."</i> His <i>connection to juveniles was good</i>, and in one case he said helpfully, <i>"I try to remember what it was like to be a kid."</i> Judge Higbee spoke as an <i>adult who wants to impart his wisdom and give them alternatives to their present behavior</i>. He appeared <i>more approachable</i> when he occasionally shared his <i>personal values</i>, and that makes him more approachable for those in his court.</p> <p>Observers emphasized Judge Higbee's <i>mix of fairness and justice</i> and his balanced demeanor. While he was <i>supportive, attentive, and non-threatening</i>, and <i>communicated compassion and caring</i>, he was also <i>professional and principled</i>. He was both <i>gentle and firm, pleasant and business-like, calm</i> while also <i>emphasizing the importance of the serious nature of violations</i>. One observer considered Judge Higbee positioned precisely where his talents and experience can be maximally used and was an <i>example for other juvenile court judges to follow</i>. His humor <i>softened the proceedings without undermining his authority</i>, for example when denying a man who wanted a change in his required hair cut, the judge said he <i>had no sympathy for balding, tipping his head slightly to show thinning hair, and everyone laughed, including the man</i>.</p> <p>Observers gave many examples of Judge Higbee's <i>patient and professional</i> manner. He <i>patiently listened to a lengthy answer</i> from a woman who <i>constantly interrupted him</i>, telling her in a <i>patient tone</i>, <i>"Please answer my question,"</i> eventually <i>telling her not to interrupt but just listen</i>. He <i>maintained his professional demeanor</i> in the face of a <i>mother's vitriol</i> over being required to <i>transport her daughter to community service</i>. When a mother <i>broke down in tears</i> when he considered removing her child, he <i>told her to take all the time she needed before speaking</i>.</p>
<p>Body language</p>	<p>Three observers reported that Judge Higbee <i>leaned forward and maintained good eye contact</i>, indicating his <i>full attention and sincere concern</i>. He <i>often gestured or turned to the person speaking, confirming statements with a slight smile and a nod</i>.</p>
<p>Courtroom tone &amp; atmosphere</p>	<p>Two observers reported that the court room was <i>orderly, efficient, and effective</i>. The bailiff asked an attorney to have a client <i>in a very skimpy tank showing a "tramp stamp" tattoo to cover up</i>.</p>
<p><b>NEUTRALITY</b></p>	
<p>Consistent and equal treatment</p>	<p>One observer reported that Judge Higbee was <i>very consistent</i> in his treatment of <i>individual teens with different circumstances</i>.</p>
<p>Demonstrates concern for individual needs</p>	<p>All observers particularly emphasized that Judge Higbee was <i>very involved</i> with the cases and <i>interested in the welfare of the juveniles</i>. He <i>exhibited compassion and real concern for families and their challenges</i> and for <i>the course of each young defendant's life</i>. He showed <i>that the court was in existence for their guidance</i> and that <i>penalties were only some of the tools used</i>. He explained that his advice was intended to get them on <i>the right track before they end up in the adult system</i>. He <i>consistently tailored</i> a lesson to each juvenile based on their <i>individual circumstances</i>, and he never showed his displeasure or appeared bored by <i>another drug and alcohol case</i>. He told them, <i>"I don't think that I can change things with a little lecture, but I can't resist the chance ... your choice of friends is going to make or break you in your life."</i> His <i>conversations gave each defendant something to consider</i> when looking at <i>their future</i>, saying for example, <i>"Two decisions you are going to have to make: Are you going to be a drug and alcohol abuser, and are you going to get an education?"</i> and, <i>"Listening to your dad's [drug and alcohol history] why would you want to use alcohol ... Your goal is to walk out of here with serious considerations of where your life is going to go."</i></p> <p>One observer <i>detected concern, frustration and compassion</i> on Judge Higbee's face as he gave <i>very common sense counsel</i> to a young woman, explaining that the <i>choice of adoption or keeping her baby</i> would only be her choice if she did not continue on drugs, <i>otherwise he would order adoption."</i> She admitted she was pregnant but did <i>not know who the father was</i>.</p>

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Unhurried and careful	One observer reported that Judge Higbee scheduled <i>sufficient time to thoroughly address each case, and the courtroom clock was never a factor.</i>
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*VOICE*

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Considered voice	Three observers reported that Judge Higbee asked the juveniles to <i>present their views, confirmed their version of events with parents and guardians, and then ensured the juveniles understood the parents' viewpoint.</i> He understood the <i>necessity of "squeezing" out contributions</i> from the juvenile defendants, and his <i>calm tone and nonthreatening and nonaccusatory demeanor</i> calmed and <i>encouraged</i> them to participate and to <i>put fears behind them</i> so they could <i>consider the advice that was given to them.</i> He <i>invited participation in determining the outcomes from all those involved, carefully considering possible options and inviting further input.</i> After stating his decisions Judge Higbee asked <i>if the parties agreed or disagreed.</i>
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Judge Higbee *conversed with defendants extensively, using both general and specific open-ended questions that invited open and honest communication.* He asked, *"Tell me what happened?"* or, *"Do you think it was wrong? ... Then? ... Now?"* and, *"Is there anything else we can do?"* and, *"In your report you recognize that your old friends and acquaintances are negative influences ... what are you going to do if they contact you and say 'lets get together and hang out?'* When a young man described a *shopping trip he went on without the intention of paying,* he asked, *"Did you have money? Why did you do it?"* and then set up a *scenario of his own and walked the young man through the scenario asking him, "What would you do here?"*

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*COMMUNICATION*

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Communicates clearly	Two observers reported that Judge Higbee <i>used terms that juveniles and their parents could understand.</i>
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Ensures information understood	Two observers reported that Judge Higbee was <i>careful to confirm understanding</i> of the proceedings and <i>watched carefully to ascertain the juveniles' and parents' level of understanding.</i> He asked a twelve-year-old young man, <i>"Now I know you are young and the words I use are big words. I realize that and I will try to explain it to you so that you will understand,"</i> but he was <i>also careful that the boy's mother was equally understanding.</i> He <i>repeatedly explained in detail</i> what defendants were <i>required to do</i> and ensured their <i>attorneys explained to them.</i> When a juvenile admitted something, the judge asked, <i>"You admit because you did it?"</i>
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Provides adequate explanations	Three observers reported that Judge Higbee <i>explained the law and the consequences of breaking it and very patiently explained his rulings and reasoning.</i> He gave an unrepresented defendant <i>good instructions regarding the process and a business card so that she could get in contact with the city attorney and discuss how the charges may be resolved prior to a pre-hearing.</i> When a mother <i>belittled her daughter's charges and persistently requested a dismissal,</i> the judge <i>again explained the reasoning</i> for his ruling, which <i>both prosecution and defense agreed was reasonable.</i> At the end of each case he instructed participants <i>not to leave until they had received a written copy of the order, so that they would understand what was required of them.</i>
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