

## **Honorable Mark W. May – Juvenile Court Judge**

Serving Salt Lake, Summit, and Tooele counties



### **Commission Recommendation: **RETAIN****

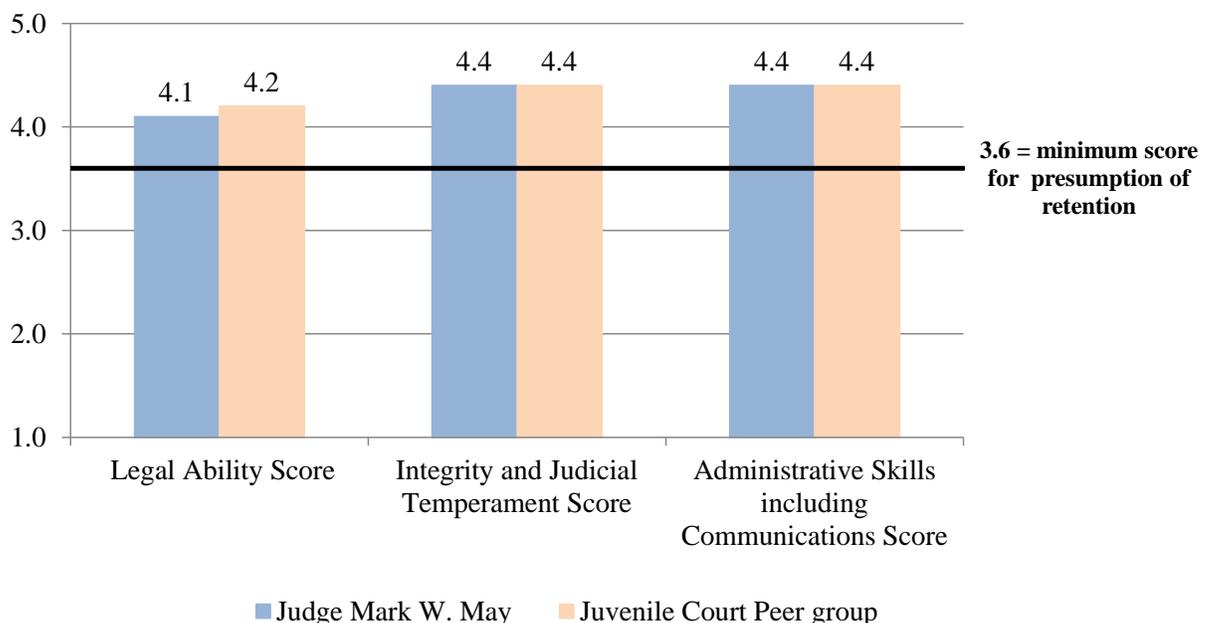
(vote count: 12-0 for retention)

Appointed to the bench in 2007, Judge Mark May scores consistent with the average of his juvenile court peers in all survey categories. Survey respondents describe him as an intelligent, calm, and fair judge who comes to court prepared and who runs an efficient, timely courtroom. At the same time, respondents fault him for an impatient and dismissive attitude towards the caseworkers who work in his court. Courtroom observers characterize Judge May as an engaged and attentive judge who comes to the bench prepared and on time and who handles potentially distressing situations calmly. They all report they would feel comfortable appearing before him. Of survey respondents answering the retention question, 85% recommend that Judge May be retained.

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

Judge Mark W. May was appointed to Third District Juvenile Court in 2007 by Gov. Jon M. Huntsman, Jr. Judge May earned a degree in Business Finance from Brigham Young University in 1984 and received his law degree from the University of Utah College of Law in 1989. Prior to his appointment to the bench, Judge May worked for the Utah Attorney General's Office where he was the division chief of the Child Protection Division. Judge May also worked for the Office of the Guardian ad Litem and the law firm of Moyle & Draper. Judge May is currently the Presiding Judge in the Third District Juvenile Court and is a past chair of the Board of Juvenile Court Judges.

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



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# **The Honorable Mark W. May**

**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 Mark W. May, 44% of qualified survey respondents submitted surveys. Of those who responded, 86 agreed they had worked with Judge Mark W. May enough to evaluate his performance. This report reflects these 86 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.

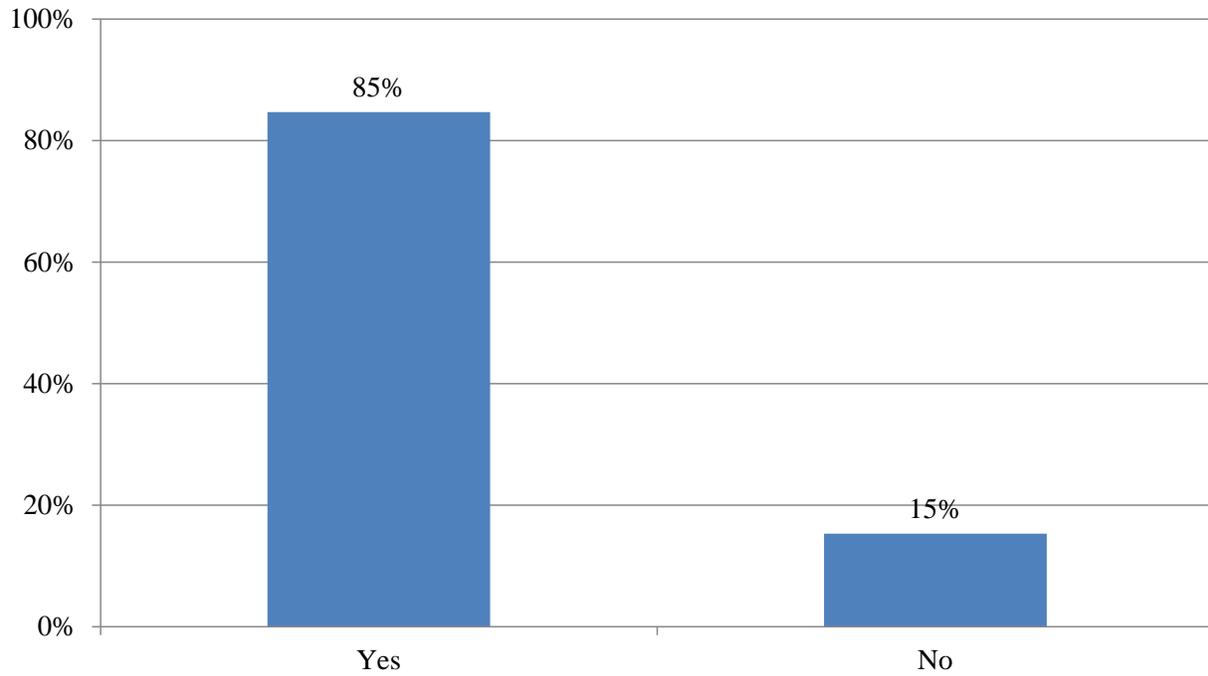
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to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

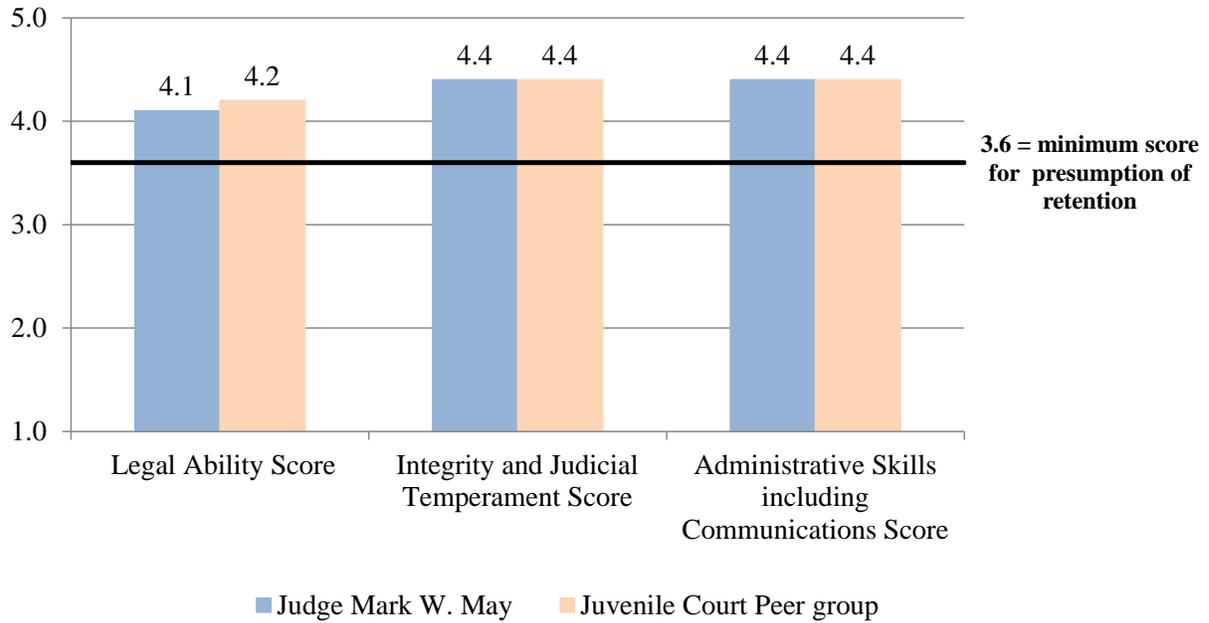
## B. Retention Question

**Figure A. Would you recommend that Judge Mark W. May be retained?**



## C. Statutory Category Scores

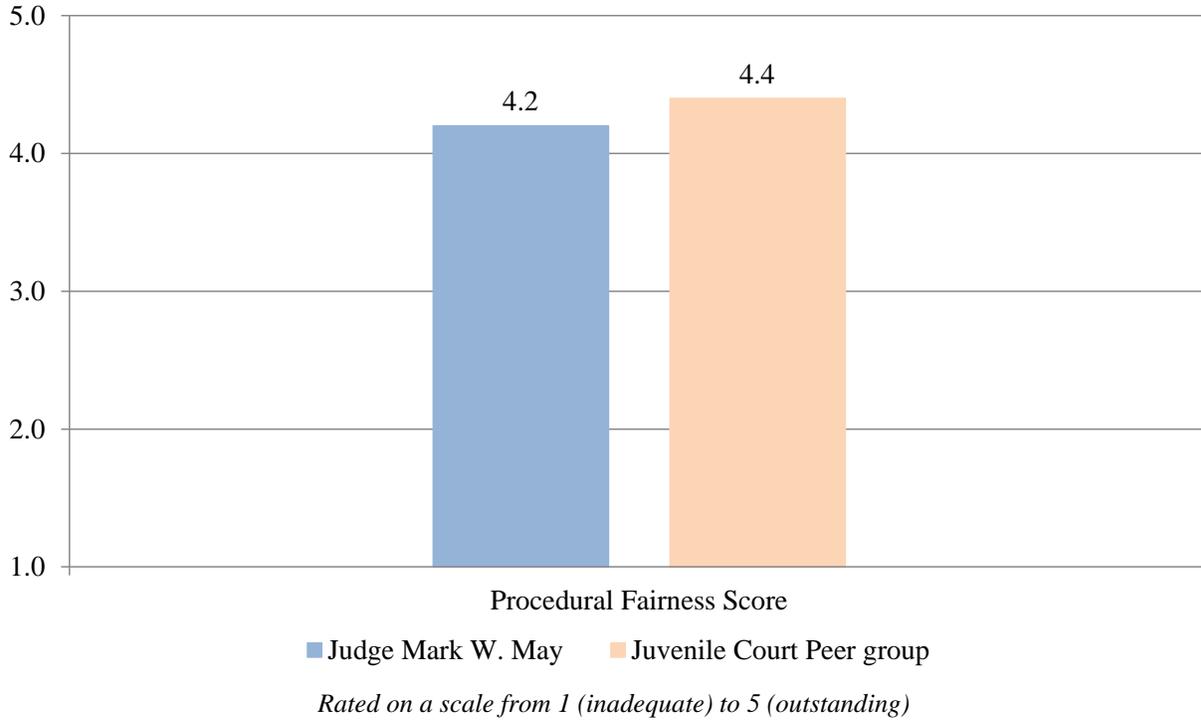
**Figure B. Statutory Category Scores**



*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 Mark W. May
Procedural Fairness	Pass

## E. Responses to Individual Survey Questions

**Table B. Responses to Survey Questions**

Category	Question	Judge Mark W. May	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.	4.1	4.3
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.2	4.2
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.2	4.2
Legal Ability	The judge only considers evidence in the record.	4.1	4.1
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	4.4	4.3
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.5	4.6
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.5	4.6
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.2	4.4
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.3	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.	4.6	4.7

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

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

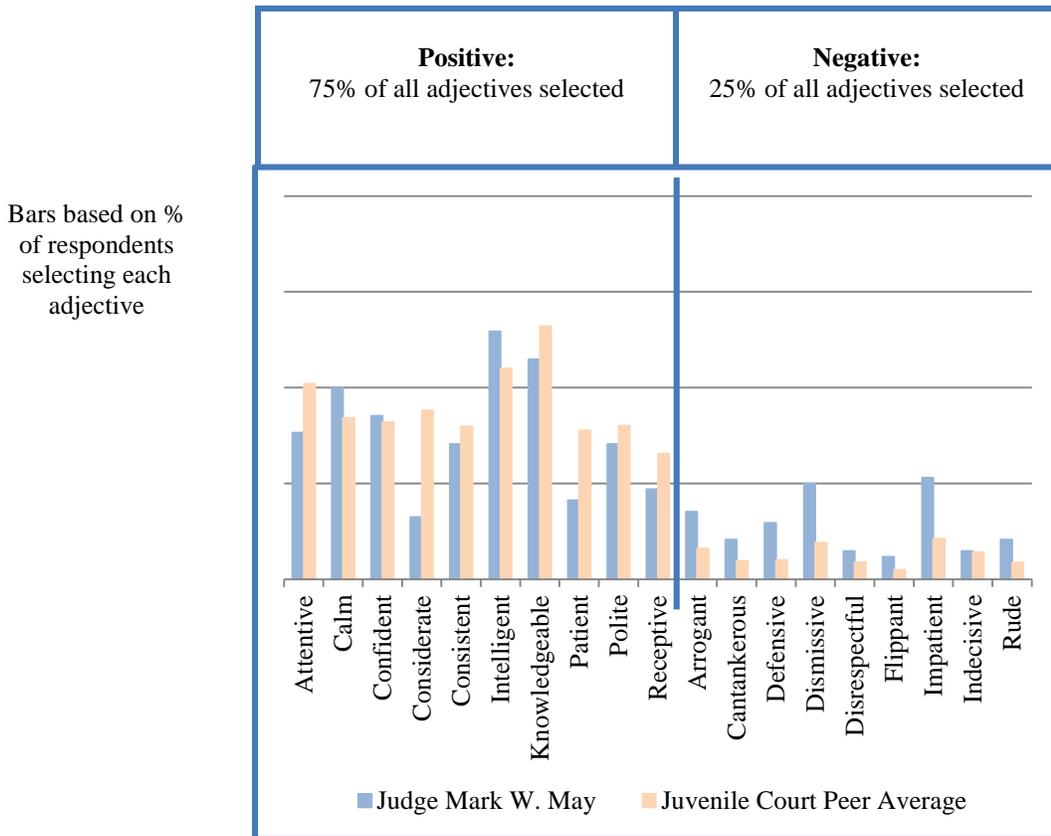
<b>Category</b>	<b>Question</b>	<b>Judge Mark W. May</b>	<b>Juvenile Court</b>
Administrative Skills	The judge is prepared for court proceedings.	4.6	4.6
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.1	4.5
Administrative Skills	The judge is an effective manager.	4.3	4.4
Administrative Skills	The judge convenes court without undue delay.	4.5	4.3
Administrative Skills	The judge rules in a timely fashion.	4.5	4.6
Administrative Skills	The judge maintains diligent work habits.	4.6	4.6
Administrative Skills	The judge's oral communications are clear.	4.4	4.6
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.4	4.6
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.2	4.5
Procedural Fairness	The judge is fair and impartial.	4.2	4.5
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.2	4.5
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.3	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	-
Domestic	28%
Criminal	44%
Civil	19%
Other	44%

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	46%
6 - 10	14%
11 - 15	11%
16 - 20	11%
More than 20	19%

## 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 MARK MAY

Four observers wrote 86 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

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OVERALL ASSESSMENT	<ul style="list-style-type: none"><li>• Three observers were positive about Judge May. Observer A expressed strong reservations in several areas regarding Judge May's style and lack of human engagement (see "Anomalous comments").</li><li>• All observers reported that they would feel comfortable appearing before Judge May, including Observer A who, notwithstanding her strong reservations, felt that Judge May would be fair and make decisions in both her own and society's best interests.</li></ul>
WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none"><li>• Three observers variously reported that Judge May listened intently and was prepared, informed, and knowledgeable. He was very aware of time and sincerely apologized for delays, but he did not rush anyone along and took time to carefully read newly presented documents. He praised and encouraged defendants when appropriate, and he deftly handled potentially distressing situations without emotion, remaining calm and speaking in an even and flat tone. He leaned forward with direct eye contact, nodding his understanding, and was consistent in the attitude, affect, and consideration shown to similar offenses. He was a model of thoughtful consideration in shaping juveniles' and parents' future success. He allowed all parties to speak as long as needed without interrupting them, listened actively, asked good questions, and considered their views. He meticulously described defendants' rights, clarified and repeated and asked if issues were understood.</li></ul>
MINORITY OBSERVATIONS	<ul style="list-style-type: none"><li>• None</li></ul>
ANOMALOUS COMMENTS	<ul style="list-style-type: none"><li>• In marked contrast, Observer A reported strong reservations about Judge May's style that minimized conversation and reflected negativity and impatience rather than encouragement or hope, his detachment and seeming lack of concern, and his lack of interaction with and acknowledgement of participants (see "Courtesy, politeness, and general demeanor," "Body language," "Consistent and equal treatment," "Demonstrates concern for individual needs," "Considered voice").</li><li>• Observer A offered examples of warmth and humanity that she hoped would increase if Judge May knew that they stood out (see "Courtesy, politeness, and general demeanor").</li></ul>

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

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<i>RESPECT</i>	
Listening & focus	All observers reported that Judge May was <i>attentive</i> and <i>listened intently</i> . When a family asked for their <i>current counselor to conduct a psychological evaluation</i> when a <i>neuro-psychological evaluation was needed</i> , the judge <i>interjected and explained the difference</i> .
Well-prepared & efficient	Three observers reported that Judge May was <i>prepared, informed</i> and <i>aware of the current status of each case</i> and <i>able to discuss with parents their children's situations</i> . He was <i>already familiar with documents prior to the discussion of the cases</i> . He was <i>knowledgeable about the administration of the judicial system</i> , and the <i>orderly court ran smoothly and efficiently</i> . One observer noted that Judge May <i>had not read the recommendations</i> before a case, but the observer felt that <i>perhaps this was part of the process</i> rather than the judge being <i>ill prepared</i> .

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Respect for others' time	Two observers reported that in one session court <i>began early</i> to accommodate a <i>child's mother who was in prison in a different state</i> . Judge May <i>sincerely</i> apologized in another session when the court <i>began to run behind due to the need to conduct an unscheduled phone interview and the arrest of one of the parents</i> . His <i>familiarity</i> with case documents <i>appeared to speed along cases that otherwise might be held up with additional reading time in court</i> .
Courtesy, politeness, and general demeanor	<p>Two observers reported that Judge May was <i>in control</i> but neither <i>heavy-handed</i> nor <i>over controlled</i>, for example when <i>briefly raising concerns</i> that were <i>clearly intended as corrective or educational</i> regarding the performance of a two representative regarding <i>lateness</i> and the <i>timely submission of reports</i>. He <i>praised</i> parents' successful progress and offered them <i>encouragement</i>. <i>Without showing emotion</i> he <i>willingly assisted a defense lawyer who stumbled on providing the defendant information about rights</i>, and he <i>acknowledged a mother's legitimate time conflicts with visits to her daughter in a non-condemning but poignant manner, pointing out the daughter's perspective and possible disappointment regarding the mother's missed appointments</i>. One observer felt that a <i>potentially distressing situation was handled deftly</i> when Judge May was <i>attentive and kind</i> when <i>engaging the children in a case and dismissing them prior to any mention of the father's warrant and arrest so they would not have to witness their father brought into court in handcuffs</i>, and his <i>calm and evenness reduced tension to a minimum</i>.</p> <p>One of these observers was <i>initially bothered</i> by the judge's style which <i>eliminated casual conversation and felt as if he was ignoring the juveniles</i>. The observer later concluded that the judge's <i>serious</i> style in fact showed <i>respect for the juveniles' age and mental acuity</i> through <i>eliminating extraneous banter</i> and communicating that <i>penalties would be the consequences of their actions</i>. However, while the <i>dominant tone</i> in the <i>very somber courtroom</i> was one of <i>negativity and impatience rather than encouragement and hope</i>, Observer A also noted a <i>few distinct moments of warmth and humanity</i>, and felt that Judge May would <i>probably increase their frequency if he knew how they stood out</i>. In one case he asked a mother, "<i>You seem to be falling asleep. Are you not feeling well?</i>" and when the mother told him she was <i>working all night at McDonalds to get a place with her kids</i>, the judge <i>actually smiled and made a little joke about not knowing McDonalds was open all night</i>, and when summing up he <i>seemed a little softer and more sympathetic</i>, telling the mother who was criticized by DCFS for <i>bringing junk food to her kids during supervised visits</i>, "<i>I want to mention the junk food, I don't think you need to stop altogether, your kids won't understand that and it will make them upset, but I do think you should exercise a little more discretion,</i>" which <i>made the mom smile and felt like a human connection</i>. The judge created <i>another human connection</i> when <i>asking the GAL to go and see what happened to the bailiff who had gone to look for a family member</i>, and the judge <i>smiled briefly and shook his finger, saying, "But YOU have to come back!" at which everyone in the courtroom smiled</i>.</p>
Body language	<p>Three observers reported that Judge May <i>leaned forward with consistent eye contact, nodded understanding and connection, and did not exhibit any distracting motions or mannerisms</i>.</p> <p>Observer A was alone in feeling <i>very uncomfortable</i> when Judge May's <i>fixed facial expression with an unblinking, penetrating stare</i> was directed towards her, an expression that the observer felt is <i>generally perceived, even if misinterpreted, as boredom, disinterest, or anger</i>. In conjunction with the judge's <i>brevity and seeming lack of engagement with people</i>, Observer A felt that Judge May was almost "<i>put out</i>" to be there or would <i>certainly rather be somewhere else</i>.</p>
Voice quality	Three observers reported that Judge May spoke in a consistently <i>even</i> and <i>generally flat</i> tone, and even when <i>the discussion became a little heated</i> he <i>remained calm and neutral without letting emotions change his outward behavior</i> .
<b>NEUTRALITY</b>	
Consistent and equal treatment	Three observers reported that Judge May showed the <i>same consideration, attention and type of sentencing for similar offenses</i> , consistently <i>dealing with the business at hand with the same attitude and affect</i> . He asked a defendant if she was <i>able to hear what her mother had said</i> who was <i>patched into the courtroom over the phone</i> , and when she could not the judge <i>paraphrased her mother's comments for her</i> , ensuring that all parties were heard equally.

Consistent and equal treatment continued	Observer A was put <i>on guard</i> by Judge May’s statement while waiting for an interpreter, “ <i>He still needs an interpreter? He’s been here since 2006,</i> ” but she did not observe other examples of <i>bias against ESL individuals</i> . Observer A was very uncomfortable when the judge, with <i>obvious doubt and suspicion, repeatedly and emphatically</i> referred to a young man in a <i>tribal marriage not legally recognized in Utah</i> , and who was petitioning to block the mother from <i>giving up their child for adoption</i> , as “ <i>the ALLEGED father,</i> ” when there seemed to Observer A to be <i>no compelling reason to doubt that the very frustrated young man was the father</i> .
Demonstrates concern for individual needs	<p>Three observers reported that Judge May was a <i>model of thoughtful consideration for shaping a successful future</i> for the juveniles. He <i>consistently offered to lower the community service if defendants could show a particular grade point average</i>, showing that he considered community service to be both a <i>rehabilitative process</i> and an <i>incentive for self improvement</i>. He <i>questioned an agency’s recommended requirements as too difficult to allow the goal of family preservation to be met</i>, and he seemed to understand the <i>parent’s dilemma of trying but being physically unable to comply with multiple competing recommendations</i> and eventually a <i>compromise was reached</i>.</p> <p>In stark contrast, Observer A gave examples of Judge May’s <i>detachment</i>. Rather than make a <i>connection</i> with a defendant by personally <i>explaining the implications of pleas</i>, the judge <i>asked the defendant’s lawyer</i> to do this. As cases were <i>scheduled precisely every 20 minutes</i>, if a case was <i>going past time there seemed to be some tension</i>, for example, when the judge kept <i>glancing at the clock</i>, or when a family was <i>milling out of the courtroom</i> and Judge May <i>seemed impatient</i>, saying, “<i>Sorry, we’re running a little late, we need to move to the next case,</i>” and while <i>there was nothing wrong with staying on schedule, it increased the chilliness felt in his presence</i>.</p>
Unhurried and careful	Three observers reported that Judge May did <i>not rush anyone along, even with his awareness</i> in one session of <i>running a bit behind</i> . He <i>took his time when carefully reading newly presented documents</i> and ensured <i>that they were seen by all parties</i> .

*VOICE*

Considered voice	<p>Three observers reported that Judge May asked all parties <i>if they had anything to say, allowing as much time as needed without interrupting or cutting anyone short</i>. He <i>listened actively</i> and gave each speaker his <i>undivided attention</i>, asking <i>good follow-up questions in natural breaks in the dialog</i>, and after hearing input he <i>considered their views when pulling together the information</i>. He asked parents to <i>explain anything subjective such as “doing better in school,”</i> and he <i>patiently listened to and clarified a mother’s rambling and confused presentation</i> until arriving at a <i>clear understanding</i>. He <i>remained calm when parents were not</i>, allowing them to <i>vent their frustration</i>, giving him the opportunity to <i>acknowledge their difficulties</i>. In one case when the mother of a runaway defendant <i>yelled that DCFS would not be getting her child, saying, “I’ll get a lawyer!”</i> the judge let the <i>visibly agitated mother speak</i> before explaining in a <i>calm voice</i> that when they picked up the girl the <i>court would need to see the child and the mother would be notified</i>.</p> <p>In stark contrast, Observer A reported that while Judge May <i>usually asked for questions and every once in a while</i> asked if participants <i>had anything to add, if they did it wasn’t always addressed or acknowledged</i>. Observer A was <i>shocked</i> when a mother indicated that <i>her daughter had missed so much school due to dental issues</i>, but this <i>did not register or merit a request for clarification</i> or inquiry whether <i>resources were available to mitigate the problem</i>. Observer A felt the mother <i>would have felt dismissed or ignored</i>, was <i>very disappointed</i> at Judge May’s <i>lack of concern</i>, and felt as if he had <i>already decided how the case would be handled and did not want to hear about the details</i>. Observer A was <i>shocked</i> when the judge <i>did not interact</i> with a juvenile or parent at all, and <i>individuals left the courtroom with scowls, looking angry or bewildered</i>.</p>
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*COMMUNICATION*

Communicates clearly	Two observers reported that Judge May <i>spoke clearly in language that was appropriate to the understanding of the participants</i> .
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Ensures information understood	Two observers reported that Judge May ensured that defendants understood the rights that he had <i>meticulously described</i> . He <i>clarified, repeated, and frequently asked</i> if issues were <i>clear and understood</i> .
Provides adequate explanations	One observer reported that Judge May explained the <i>likely consequences of not following through with sentencing orders</i> , and he provided a clear explanation to a parent of why a juvenile with <i>two felony convictions</i> was required to perform significant community service even though the juvenile <i>had endured a shoulder separation and the father would probably have to supervise</i> .

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