

Honorable James R. Michie, Jr. – Juvenile Court Judge

Serving Salt Lake, Summit, and Tooele counties

Commission Recommendation: **RETAIN**

(vote count: 12-0 for retention)

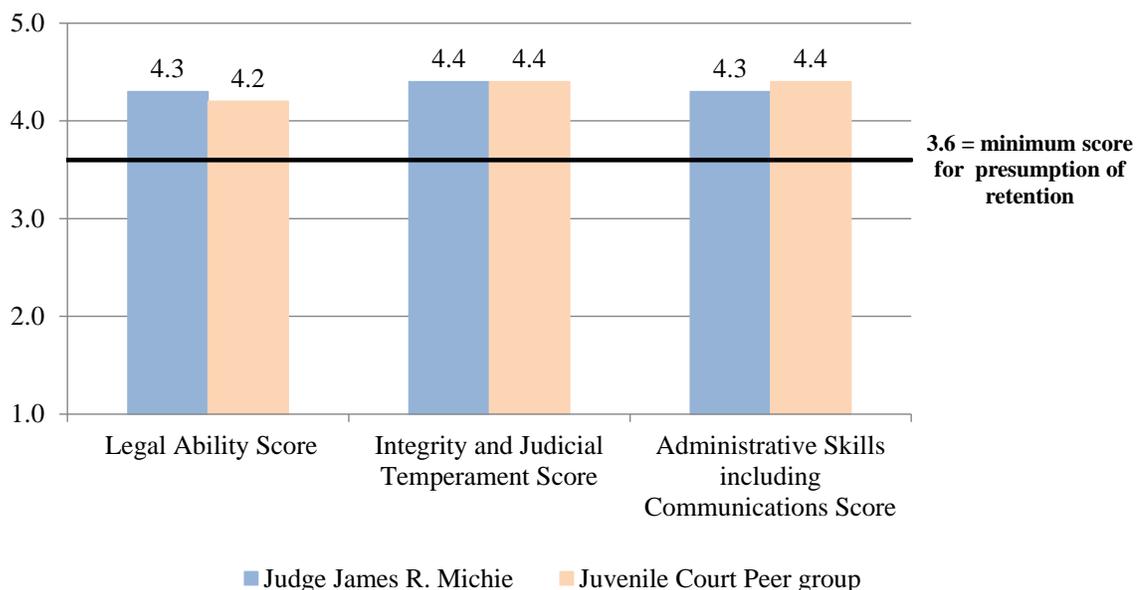


Appointed to the bench in 2006, Judge James Michie scores higher than the average of his juvenile court peers in procedural fairness and consistent with the average in all other survey categories. From a list, survey respondents choose 98% positive adjectives to describe him. They characterize him as a consistently kind, caring judge who is especially good at listening attentively, allowing ample time for those appearing before him to speak, and thoroughly explaining his actions. Survey respondents also report, however, that Judge Michie has difficulty managing his court calendar, resulting in delays and long hearings that undermine respect for the time of courtroom participants. Courtroom observers also emphasize Judge Michie's genuine caring and concern for each juvenile, noting that he takes every opportunity to guide juveniles towards a better future. Observers all report they would feel comfortable appearing before him. Of survey respondents answering the retention question, 97% recommend that Judge Michie be retained.

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

Judge James R. Michie, Jr. was appointed to the Third District Juvenile Court in 2006 by Governor Jon M. Huntsman, Jr. He graduated cum laude from the University of Utah in 1986 and earned his Juris Doctor from the University of Utah College of Law in 1989. Thereafter, Judge Michie practiced public finance law with the law firm of Ballard, Spahr, Andrews & Ingersoll. He served as a Guardian ad Litem from September 1999 until his appointment to the bench. Judge Michie served on the Children's Justice Center Board for several years, on the Utah Board of Juvenile Justice from 2008-2015, and as the Presiding Judge for Third District Juvenile Court from 2011-2013.

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



The Honorable James R. Michie

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 James R. Michie, 46% of qualified survey respondents submitted surveys. Of those who responded, 103 agreed they had worked with Judge James R. Michie enough to evaluate his performance. This report reflects these 103 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.

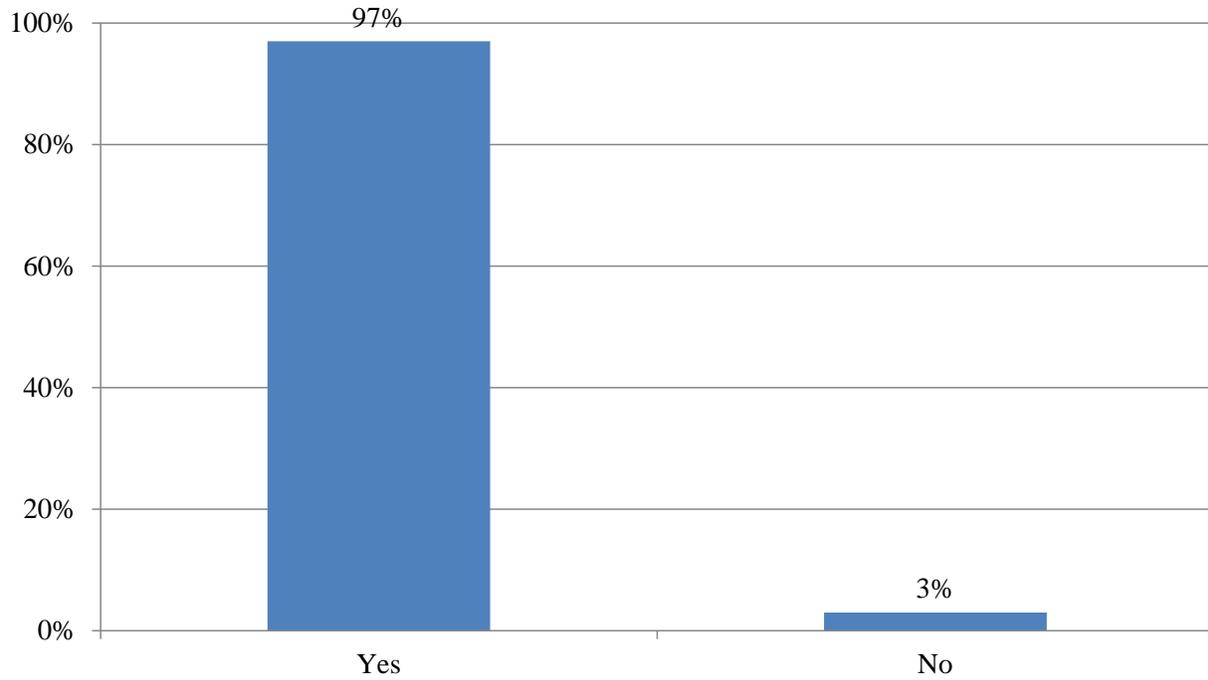
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to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

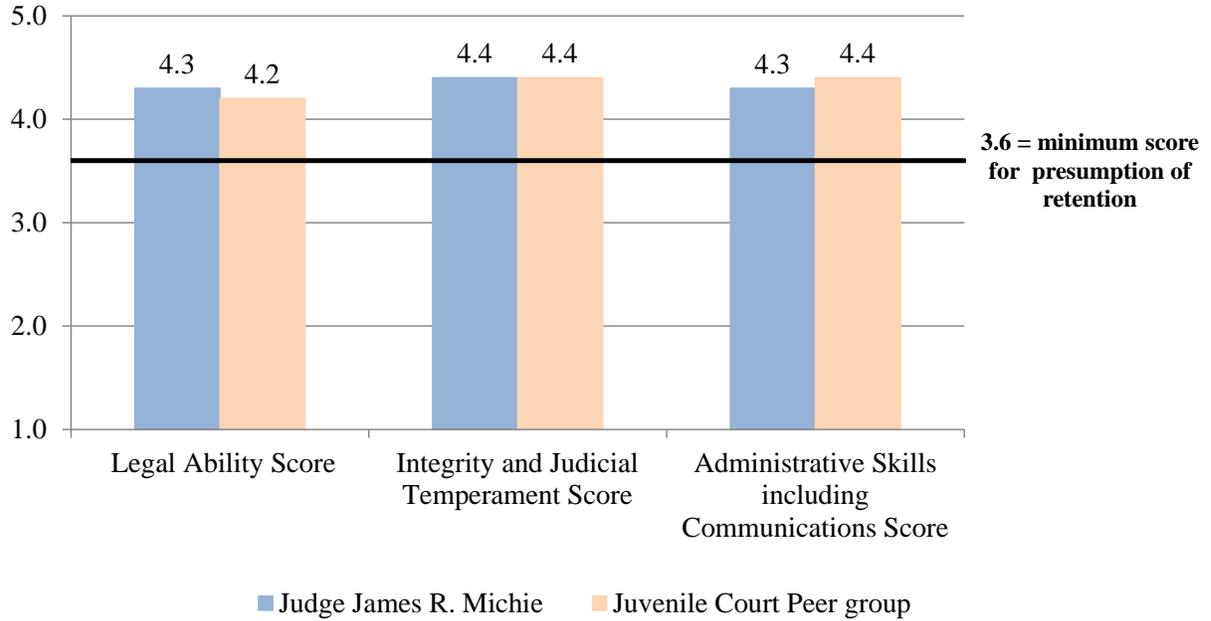
B. Retention Question

Figure A. Would you recommend that Judge James R. Michie be retained?



C. Statutory Category Scores

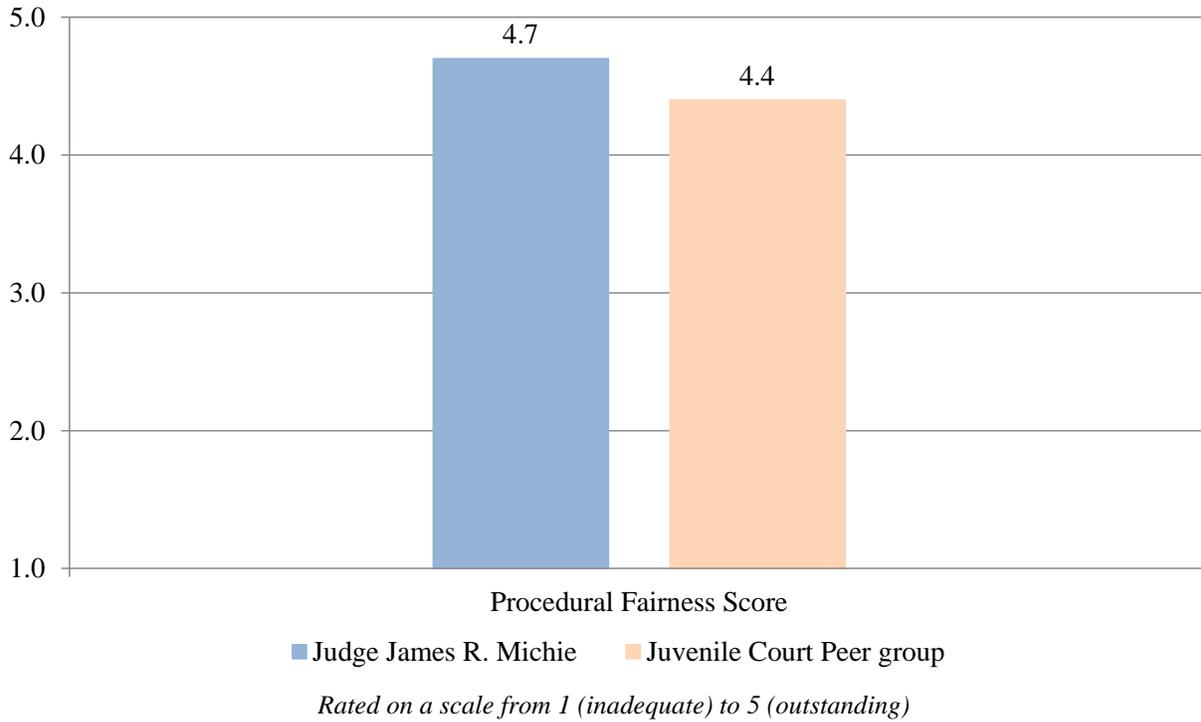
Figure B. Statutory Category Scores



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 James R. Michie
Procedural Fairness	Pass

E. Responses to Individual Survey Questions

Table B. Responses to Survey Questions

Category	Question	Judge James R. Michie	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.	4.4	4.3
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.3	4.2
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.3	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	4.3	4.3
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.6	4.6
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.7	4.6
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.6	4.4
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	3.6	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.	4.7	4.7

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

Table C. Responses to Survey Questions (continued)

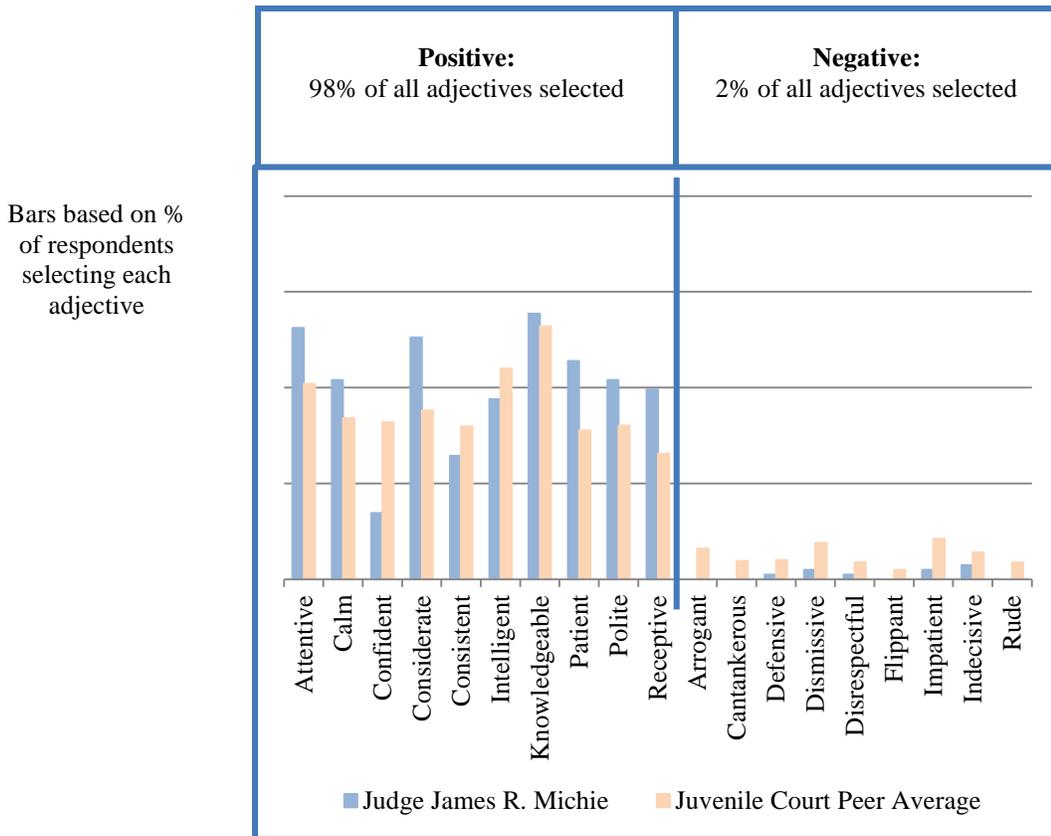
Category	Question	Judge James R. Michie	Juvenile Court
Administrative Skills	The judge is prepared for court proceedings.	4.4	4.6
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.6	4.5
Administrative Skills	The judge is an effective manager.	4.1	4.4
Administrative Skills	The judge convenes court without undue delay.	3.5	4.3
Administrative Skills	The judge rules in a timely fashion.	4.4	4.6
Administrative Skills	The judge maintains diligent work habits.	4.5	4.6
Administrative Skills	The judge's oral communications are clear.	4.5	4.6
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.5	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.	4.6	4.5
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.7	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	34%
Criminal	46%
Civil	27%
Other	39%

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	17%
16 - 20	5%
More than 20	22%

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 JAMES MICHIE

Five observers wrote 114 codable units that were relevant to 12 of the 15 criteria. Two observers reported that the judge was aware that JPEC observers were present, and three did not know if the judge was aware.

Overview

OVERALL ASSESSMENT	<ul style="list-style-type: none">• Four observers were enthusiastically positive about Judge Michie. Observer A was also positive in some areas but also expressed reservations in other areas (see “Minority observations” and “Anomalous comments”).• All observers reported that they would feel comfortable appearing before Judge Michie.
WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none">• All observers variously reported that Judge Michie listened actively, was fully prepared, efficient, and organized, and was adept at adjusting the schedule as necessary. He was patient and courteous, thanked participants and wished them well, expressed appreciation and compliments for defendants’ strengths, and treated those who disappointed him with dignity. He was principled, professional and competent, warm and friendly, but also tough and firm when warranted. Judge Michie looked everyone in the eye and spoke in a calm, clear, and audible voice. He ensured that anyone who needed to speak had the opportunity to do so, and he asked many questions and carefully considered the responses. He asked questions to ensure that juveniles understood their charges and their rights, and he reworded his language when participants did not understand him. He provided excellent explanations of his orders and why they had been made and of any follow-up needed.• All observers particularly emphasized Judge Michie’s genuine concern and sincere caring for the future of each juvenile and that he did not miss an opportunity to use the cases to teach juveniles and express his expectations for their future behavior.
MINORITY OBSERVATIONS	<ul style="list-style-type: none">• Three observers reported that Judge Michie was exceptional in his impartial treatment of all participants, maintaining his composure even when speaking sternly to defendants in contentious cases. In marked contrast, Observer A reported that Judge Michie treated compliant participants very respectfully, with good rapport and generous praise, but he did not maintain his professional demeanor or his composure with non-compliant participants, and Observer A felt this was an ineffective way to gain their compliance. However, another observer reported that when Judge Michie was clearly annoyed with non-compliant participants and spoke sternly in a raised voice, the observer felt this behavior was effective and did not require an apology (see “Courtesy, politeness, and general demeanor” and “Consistent and equal treatment”).
ANOMALOUS COMMENTS	<ul style="list-style-type: none">• Observer A reported that Judge Michie’s stern and unwelcoming facial expressions could be perceived as intimidating and that he often looked at the computer screen while listening or speaking to the state attorney (see “Body language”).• Observer A noted that in two cases Judge Michie missed an opportunity when not inviting the defendant to speak (see “Considered voice”).

Summary and *exemplar language* of five observers’ comments

<i>RESPECT</i>	
Listening & focus	Two observers reported that Judge Michie <i>listened actively</i> and <i>diligently anytime someone was speaking</i> .
Well-prepared & efficient	Three observers reported that Judge Michie <i>cared enough to be fully prepared on each case before arriving in the courtroom</i> . He was <i>efficient, organized</i> , and was <i>very adept at moving the cases according to the schedule</i> despite interruptions.

Courtesy, politeness, and general demeanor	<p>All observers reported that Judge Michie was <i>very patient and courteous towards everyone</i>. He <i>thanked</i> participants and <i>wished them well</i>. He showed <i>compassion to an attorney who spoke harshly about a juvenile</i> and helped him “<i>save face</i>.” He <i>expressed appreciation for the strengths seen in different defendants despite their sometimes negative attitude</i>, and even when their actions and choices disappointed him, he treated them with <i>dignity and respect</i>. He was <i>complimentary when warranted</i>, telling one young man, “<i>Getting a GED was a great achievement</i>.”</p> <p>Judge Michie was <i>highly principled, professional, decisive, and competent</i> with a <i>commanding presence</i>. He was <i>warm, friendly, and never reluctant to express a little of his personal history when relevant</i>, but also <i>tough and firm when warranted</i>. In one case he was <i>very stern and clearly annoyed though controlled</i> when in a <i>slightly raised voice</i> he said to a mother with a <i>drug addiction and several children by different fathers who was unable to follow through and to case workers who were slow in following up</i>, to “<i>Get it done. No excuses. Fix the problem. I want results</i>,” and when he <i>later apologized for being “grouchy,”</i> the observer thought the judge <i>used his sternness effectively to drive his point home and that there was no need for an apology</i>.</p>
Body language	<p>Two observers reported that Judge Michie <i>looked everyone directly in the eye when addressing participants</i>.</p> <p>Observer A felt that Judge Michie’s facial expressions <i>often looked stern and not welcoming and could be perceived as intimidating</i>. He also <i>looked at the computer screen too much</i>, in some cases listening to or speaking to the state attorney <i>while still reading on his computer screen</i>.</p>
Voice quality	Three observers reported that Judge Michie spoke in a <i>calm, clear, even, and warm tone</i> that was <i>audible from the back of the courtroom</i> .
Courtroom tone & atmosphere	One observer reported that the courtroom atmosphere was <i>calm, congenial, and efficient</i> , with <i>quite a bit of good humored banter back and forth which made for a relaxed atmosphere in what could be a very tense courtroom</i> .

NEUTRALITY

Consistent and equal treatment	<p>Four observers reported that Judge Michie was <i>exceptional</i> in his <i>impartial</i> treatment of all participants. When a father had to <i>participate via conference call</i>, the judge ensured he was <i>comfortable being heard that way</i> and that his <i>concerns were adequately addressed</i>. When both parents were present, he addressed each in the <i>same tone of voice</i>, and when neither was present he <i>did not favor one’s position over the other</i>. In a termination case with neither parent present, and after the representatives testified that <i>every element of the service plan had been neglected by both parents</i>, the judge asked <i>several times if the parents were notified</i> and only when <i>satisfied</i> did he proceed with the trial in absentia. Judge Michie <i>remained above the fray and maintained his composure</i> while speaking <i>sternly</i> to a contentious mother and father, <i>calmly instructing them to devise a service plan</i>, saying, “<i>It’s your plan, not my plan. I want you to be involved with this plan. It is your family</i>,” and <i>charged them to create a safe home in the best interest of the baby</i>.</p> <p>In marked contrast, Observer A expressed <i>concern</i> that Judge Michie <i>established a good rapport</i> and treated defendants <i>very respectfully if they complied with court orders</i>, but that there was a “<i>crack</i>” in his <i>professional demeanor</i> with defendants who were <i>not compliant or not making progress</i>. The judge then displayed <i>anger or impatience, cut off defendants and attorneys when they were speaking, used an inappropriately loud and shrill tone of voice</i>, and did not <i>maintain his composure</i>, which Observer A did not feel would <i>get defendants to be more compliant</i>.</p> <p>Observer A provided many illustrations of each behavior. Judge Michie was <i>generous with his praise</i> with successful participants, saying, “<i>Congratulations. A little over a year ago you were in crisis. Your children were in crisis. A few hearings later, we set some big goals. And you have done it! Our goal is to have parents do what you’ve done. You’ve done possibly the hardest work you will ever do</i>.” But with those not in compliance he had <i>difficulty maintaining a respectful demeanor</i>, telling one defendant, “<i>Why did you lie to me in court?</i>” and when she started explaining, he said in a <i>raised voice</i>, “<i>Don’t interrupt! I asked in court where your children were and you gave me false information. That’s illegal, did you know that? You can sit down</i>.”</p>
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Demonstrates concern for individual needs	<p>All observers, including Observer A, were <i>very impressed</i> with Judge Michie’s <i>genuine concern</i> and <i>sincere caring</i> for the juveniles. He <i>took an interest in the particulars of each case</i> and how his decisions <i>will affect their lives</i>. He encouraged participants to <i>use the resources of the court to get their lives in order</i> or to <i>get their children returned to them</i>. He offered <i>practical advice in a caring manner</i>, and his <i>priority</i> was the well being of the children, saying, “<i>The ones most affected by this case are the children. Our goal is to strengthen the family but I need your help in getting that done.</i>” He was concerned that young children <i>felt welcome, putting them at ease</i> by saying, “<i>Have you been to a courtroom before? Do you know why you’re here? I’ll tell you--there are some people that think your family needs some help. I’m here to tell you that no one is in trouble. I want to make sure you’re happy and you’re safe. You are the stars of this show.</i>”</p> <p>When young parents who <i>had managed to get sober on their own</i> requested <i>overnight visits with their children</i>, he was <i>warm, encouraging, and profoundly respectful</i>, saying, “<i>Congratulations for doing it alone. The key is to stay sober and reach out for help when you need it. Good luck!</i>” and the judge suggested an NA or AA group, saying, “<i>I want you to go. Sit in back and watch, listen. Pick one close by. I’m not requiring, just recommending.</i>” In a case of parental termination he <i>understood the gravity of the decision</i> but <i>knew it was best for the children to be adopted by their loving grandparents</i> who he thanked <i>for what they had done</i>. He asked the GAL about a former child in his court, saying he feels “<i>so proud of these kids when they graduate.</i>”</p> <p>Judge Michie did <i>not miss an opportunity to teach juveniles</i> and to <i>give his expectations for their behavior going forward</i>. In one case he said, “<i>Is there something that you could have done differently? What could have avoided the trouble? Maybe go get another adult to help you figure it out? I appreciate that you were honest with me.</i>” One observer <i>admired</i> the consistent order of the cases: <i>get information, teach the juvenile, summarize and say a polite ‘Thank you.’</i></p>
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Unhurried and careful	One observer reported that Judge Michie <i>took adequate time on each case</i> , ensuring that <i>all aspects were carefully considered and nothing was left undone</i> .
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VOICE

Considered voice	<p>All observers reported that Judge Michie made sure that <i>anyone who wanted or needed to speak had the opportunity to do so</i> and <i>took adequate time to determine what had taken place</i>, asking for example, “<i>What does the state want to see? Thank you, sir. That’s interesting. Dad, any comments? Thank you. Mom, any comments? Anything you’d like to tell me? You don’t need to be nervous.</i>” He asked each juvenile to <i>explain in their own words “What happened?”</i> or, “<i>What were you thinking when this was going on?”</i> and <i>carefully considered the responses</i> and asked <i>many appropriate follow up questions to obtain more information</i>, and then asked them to <i>provide suggestions on what they felt should be done</i>. He <i>often asked</i> the parent in the courtroom if they <i>understood or agreed with a juvenile’s assessment, and why</i>.</p> <p>Observer A felt that Judge Michie <i>missed an opportunity</i> when he praised a <i>young mother</i> for the <i>changes that allowed her to be reunited with her children</i>, but did not give her a <i>chance to speak</i>, and also when he spoke with an attorney, but only spoke to the defendant after the case to say that he <i>appreciated her appearance but wanted to know why she had not attended the prior hearing</i>.</p>
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COMMUNICATION

Ensures information understood	Three observers reported that Judge Michie asked questions to ensure that juveniles <i>understood their rights</i> and <i>why they were being charged</i> . He <i>did a good job</i> with a <i>meth-addicted mother of four children</i> who <i>clearly did not understand</i> when the judge said, “ <i>Ma’am, I have no other choice but to terminate reunification services. What I am not doing today is terminating anyone’s parental rights. What we are going to do is change our focus to custody/guardianship.</i> ” Judge Michie then <i>reworded his decision</i> , saying “ <i>We have two options. One is adoption to terminate parental rights. The other is permanent custody/guardianship, which does not involve terminating parental rights,</i> ” and the defendant then <i>indicated she understood</i> .
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Provides
adequate
explanations

Three observers reported that Judge Michie provided *excellent explanations*, saying, “*I’m glad you’re here today but you’re being charged with contempt. Contempt means you didn’t do what you were supposed to do.*” He *carefully and deliberately explained issues and the law which he had to consider*, and he provided *clear and thorough explanations of why an order had been made while untangling the reasoning behind it*. He *explained any follow-up necessary from all parties*.
