

Honorable F. Richards Smith III – Juvenile Court Judge

Serving Juab, Millard, Utah, and Wasatch counties



Commission Recommendation: **RETAIN**

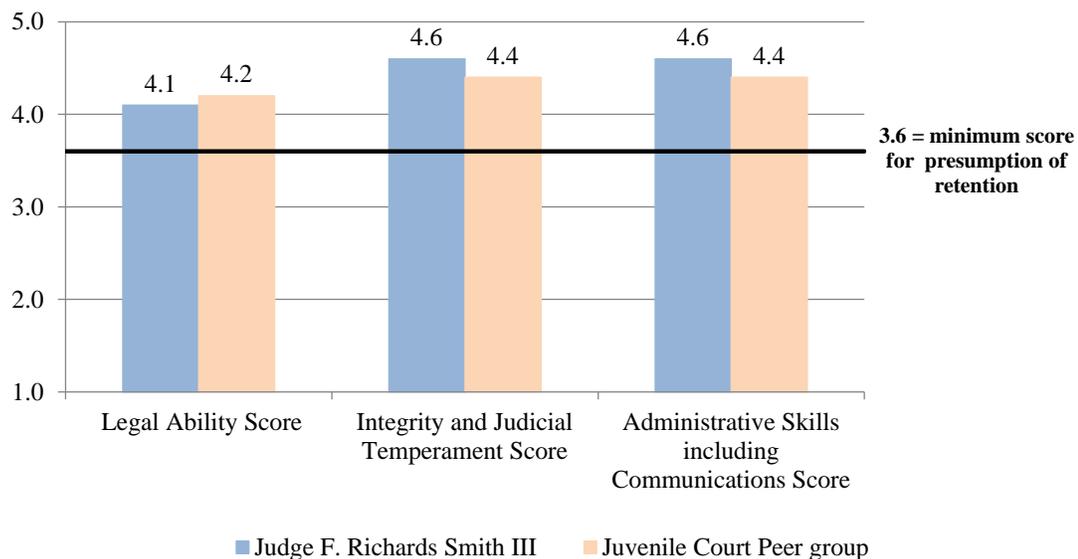
(vote count: 12-0 for retention)

Appointed in 2012, Judge F. Richards Smith scores above the average of his juvenile court peers in integrity and judicial temperament, and consistent with the average of his peers in all other survey categories. Most survey respondents and all observers agree that he shows caring and concern for the juveniles and families in his court, simultaneously projecting authority, kindness, and respect. From a list, survey respondents select 97% positive words to describe him. Most survey respondents and all courtroom observers view Judge Smith as an attentive and patient listener, though some respondents report that his time management causes unnecessary courtroom delays. All courtroom observers would feel comfortable appearing before Judge Smith, noting his skill in communicating with juveniles and his sensitivity in delivering firm sentences. Of 76 survey respondents answering the retention question, 71 (93%) recommend that Judge Smith be retained.

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

Judge F. Richards Smith was appointed to the Fourth District Juvenile Court in 2012 by Governor Gary Herbert. He is a board-certified Child Welfare Law Specialist by the National Association of Counsel for Children. Prior to taking the bench, Judge Smith worked as director of the Office of Guardian ad Litem; an attorney for that office; and in private and corporate law practices. He earned his law degree from the J. Reuben Clark Law School at BYU. He serves on the Board of Juvenile Court Judges and Court Improvement Program Committee, and previously served on Governor Huntsman's Child and Family Cabinet Council and various committees and boards. He was named 2004 Child Advocate of the Year by the Utah County Abuse Council.

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



The Honorable F. Richards Smith III

Judicial Performance Evaluation Commission Report

Retention 2016

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

A. How to Read the Results

For Judge F. Richards Smith III, 44% of qualified survey respondents submitted surveys. Of those who responded, 77 agreed they had worked with Judge F. Richards Smith III enough to evaluate his performance. This report reflects these 77 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.

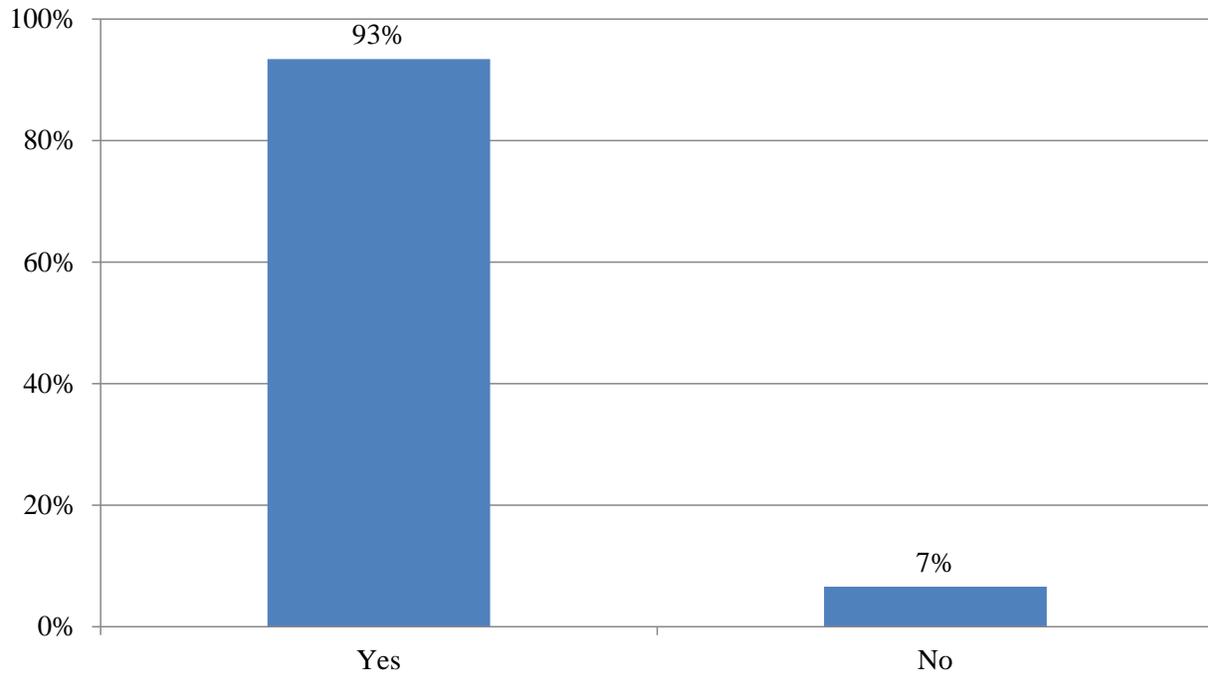
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to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

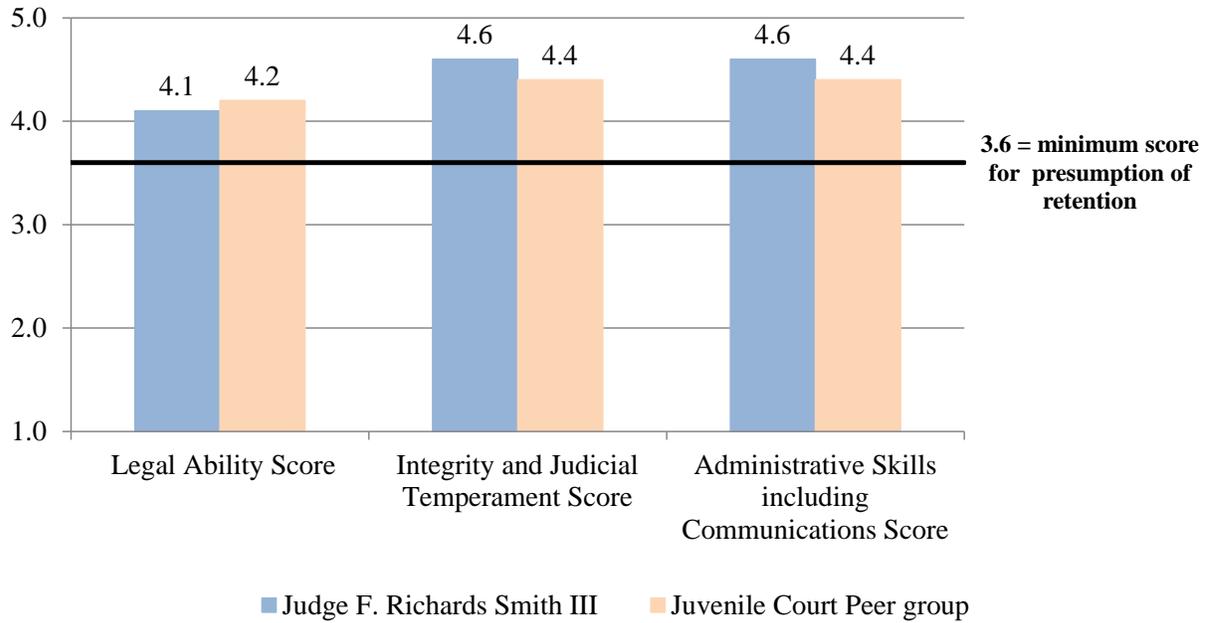
B. Retention Question

Figure A. Would you recommend that Judge F. Richards Smith III be retained?



C. Statutory Category Scores

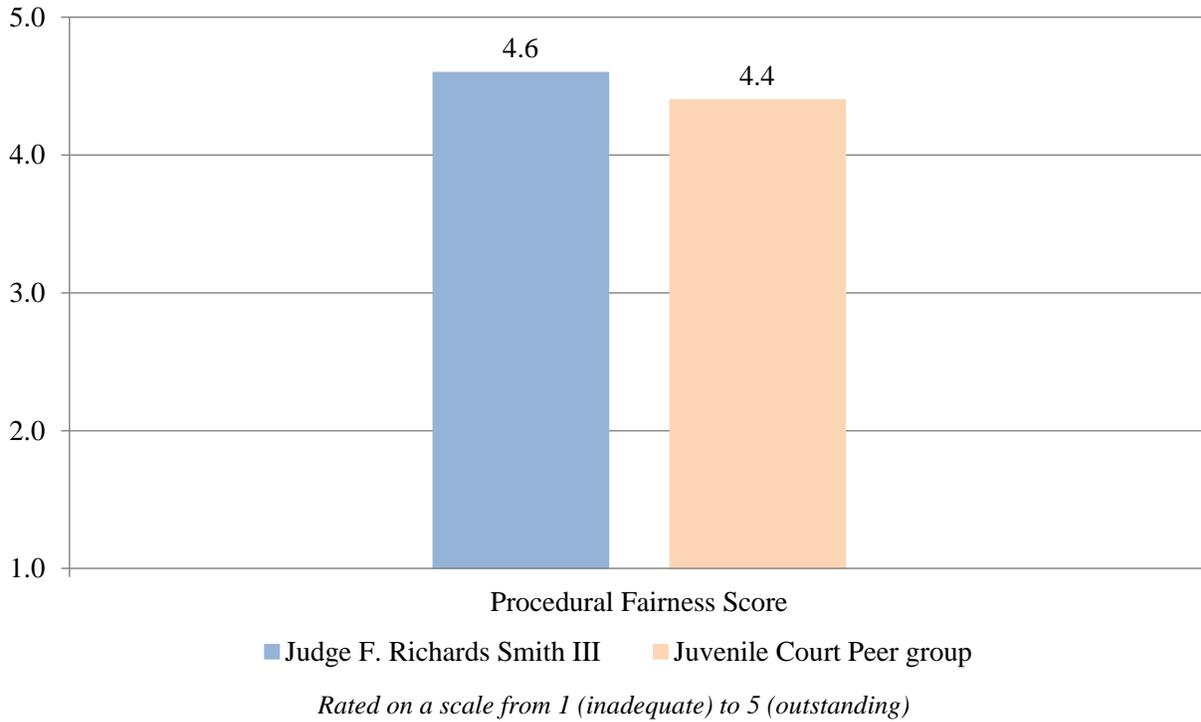
Figure B. Statutory Category Scores



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 F. Richards Smith III
Procedural Fairness	Pass

E. Responses to Individual Survey Questions

Table B. Responses to Survey Questions

Category	Question	Judge F. Richards Smith III	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.	4.1	4.2
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.0	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.	4.0	4.2
Legal Ability	The judge's written opinions contain a readily understandable, concise ruling	4.1	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.	4.4	4.4
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.6	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)

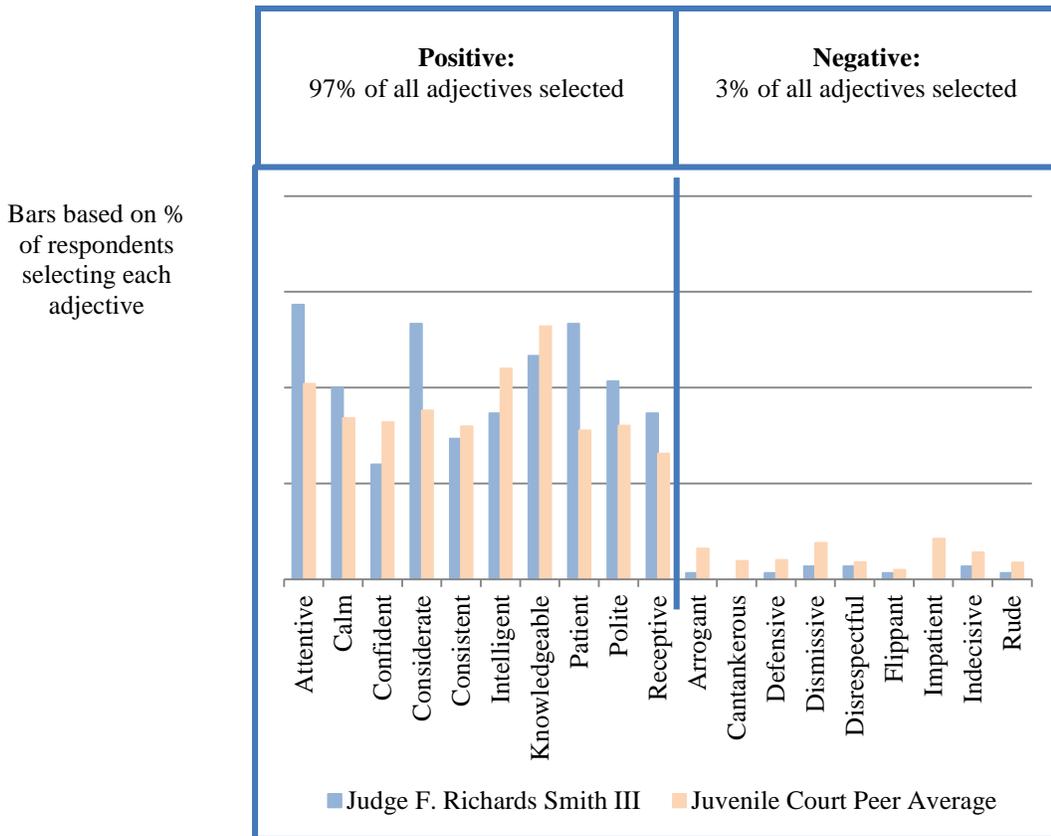
Category	Question	Judge F. Richards Smith III	Juvenile Court
Administrative Skills	The judge is prepared for court proceedings.	4.6	4.6
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.6	4.5
Administrative Skills	The judge is an effective manager.	4.5	4.4
Administrative Skills	The judge convenes court without undue delay.	4.4	4.3
Administrative Skills	The judge rules in a timely fashion.	4.6	4.6
Administrative Skills	The judge maintains diligent work habits.	4.7	4.6
Administrative Skills	The judge's oral communications are clear.	4.7	4.6
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.6	4.6
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.6	4.5
Procedural Fairness	The judge is fair and impartial.	4.5	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	62%
Criminal	42%
Civil	35%
Other	23%

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	35%
6 - 10	19%
11 - 15	12%
16 - 20	-
More than 20	35%

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 F. RICHARDS SMITH

Four observers wrote 90 codable units that were relevant to 12 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"> All observers were enthusiastically positive about Judge Smith, speaking admiringly of the depth of his concern for and skill in effectively communicating with juveniles. One observer felt that newly appointed Juvenile and Drug Court judges could benefit from observing Judge Smith. All observers reported that they would feel comfortable appearing before Judge Smith.
WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none"> All observers variously reported that Judge Smith listened diligently, and he acknowledged and explained delays. He was polite, patient, and courteous, even when he had to be firm, and was also highly principled, knowledgeable and competent, careful with details, and professional. He greeted and thanked participants, and with his strong communication skills he comforted and gained the trust of both adults and youth. He engaged juveniles to be a part of their court process and outcome. He looked everyone in the eye and spoke in a calm tone with a kind smile. He was exceptional in dealing equally and without favoritism to all participants, regardless of their attitude or situation. He was exceptionally skilled at ensuring everyone had a chance to speak, asking questions in a conversational manner and listening thoughtfully, and juveniles were comfortable giving the judge their side of the story. He spoke at a level that juveniles could understand, frequently asked if they understood the proceedings and their charges, and repeated their rights even when knowing they had heard them many times before. All observers particularly emphasized and provided numerous illustrations of Judge Smith's positive interactions, his encouragement coupled with sound advice, his genuine interest and concern for each person's needs, and the sensitivity and grace with which he communicated sanctions without chastising or compromising defendants' dignity.
MINORITY OBSERVATIONS	<ul style="list-style-type: none"> None
ANOMALOUS COMMENTS	<ul style="list-style-type: none"> None

Summary and *exemplar language* of four observers' comments

<i>RESPECT</i>	
Listening & focus	One observer reported that Judge Smith <i>listened diligently anytime someone was talking.</i>
Respect for others' time	One observer reported that Judge Smith <i>explained delays and acknowledged</i> that participants had been waiting by <i>apologizing for the court running behind schedule and thanking participants for their patience.</i>
Courtesy, politeness, and general demeanor	All observers reported that Judge Smith was <i>kind, polite, patient, and courteous, even when he had to be firm.</i> He was <i>highly principled with consummate respect for the law, experienced, competent, and professional.</i> Observers emphasized his communication skills in <i>gaining the trust of both adults and youth, in engaging participants to become part of their own court process and own their outcome, and in setting the tone for others in the courtroom who followed his lead.</i>

Courtesy, politeness, and general demeanor continued	<p>Judge Smith <i>greeted</i> family members, <i>asking their names</i>, thanked attorneys for patience in <i>working through matters</i>, and frequently thanked participants, saying, “I appreciate your input,” and he told a defendant that <i>he appreciated his phone call to inform the court about being late</i>. His <i>friendly conversation</i> about a boy’s interests and how he was getting along in detention helped put the boy and his family at ease. He offered a great deal of comfort to a family by describing in detail the conditions at the recommended facility and the very caring and child-centered staff. He made families feel welcome and proud rather than embarrassed to be there by casually reinforcing the importance of family support without making it the point of his remarks.</p> <p>Observers provided numerous elaborated illustrations of Judge Smith’s <i>great knack for positive interactions</i> with juveniles, for <i>recognizing them as individuals who in his eyes were more than a court number</i>, and for the effectiveness of his encouragement coupled with sound advice. When a young man with a sling on his arm appeared for arraignment, the judge said, “First, I want to hear about your arm.” He told a juvenile in a sort of <i>co-conspirator voice</i> that implied we’re in this together and I’m rooting for you, “Now remember what I said, if people around you are getting into mischief, you just walk away so you don’t get in trouble just for being in the wrong place at the wrong time – remember what I said about vicarious liability.” One observer was impressed how the children responded to the judge as a real person, not just a man in a black robe who sits high above them.</p> <p>One observer felt it <i>might be helpful for Judge Smith to know</i> that she was initially unsure if she would want to be addressed in court in <i>such a familiar way</i> as “Mom,” but having considered all other options concluded it was <i>appropriate and consistent</i> with his overall approach.</p>
Body language	One observer reported that Judge Smith <i>always looked everyone in the eye</i> when providing defendants their rights.
Voice quality	Two observers reported that Judge Smith <i>spoke in an even, calm tone</i> and with a <i>kind smile</i> .

NEUTRALITY

Consistent and equal treatment	<p>Three observers reported that Judge Smith was <i>exceptional and a great role model</i> in dealing <i>equally</i> without an ounce of favoritism or difference in the care he showed to participants of all ethnic backgrounds, whether or not <i>nicely dressed or articulate</i>, whether juveniles were <i>attentive and remorseful</i> or <i>sullen and uncooperative</i>, or whether parents were at <i>wit’s end but responsible and eager to get things back to normal</i>, or <i>angry and blaming the other parent for the child’s difficulties</i>. In drug court he <i>understood that even the appearance of favoritism would have been detrimental to others</i>, and he did not allow a well liked young father to graduate due to a <i>short relapse and a missed UA</i>, despite his <i>hard work, appealing personality, and determination</i>, but instead honored him with a <i>Certificate of Completion</i>, to ensure others did not feel the process was not fair since they were expected to complete all the required steps in order to graduate.</p>
Demonstrates concern for individual needs	<p>All observers reported that Judge Smith was <i>genuinely interested</i> in the juveniles, <i>engaged</i> at all times, <i>considerate of everyone’s needs</i>, and <i>handled cases with sensitivity and caring</i>, saying, “We want to do the very best thing for you.” Observers provided numerous illustrations of his concern for juveniles’ best outcomes. He <i>did not like to keep kids in detention and put pressure on the state attorney to get a placement done quickly</i>. No matter how complicated the case, he ensured that each juvenile <i>had a plan for the future and their education</i> which was always part of the remedy. When a toddler had ingested meth, he told the parents <i>they are lucky he survived</i> and held this was <i>abuse and not mere neglect</i> when determining visitation, but that <i>the objective of the court is not to point fingers but to help them be better parents</i>, saying, “Let’s all move forward.”</p> <p>One observer was impressed with Judge Smith’s skill when <i>letting a mother know with the most amazing grace and calm</i> that she has some work to do, and without <i>chastising or questioning her parental authority or compromising her maternal dignity in front of the court</i>, he had her participate in a “strengthening families” program and <i>put the children under the courts’ jurisdiction</i>. Another observer noted that the <i>nods and even smiles on family members</i> leaving the court suggested that they were going to <i>happily comply</i> with his instructions and encouragement.</p>

Unhurried and careful	Two observers reported that Judge Smith was <i>always careful with details and took the needed time to review documents and make sure things are done right</i> . In one case he said he needed to read some documents that he had not read prior to a boy's admissions.
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VOICE

Considered voice	<p>All observers reported that Judge Smith was <i>exceptionally skilled</i> at ensuring that <i>everyone had a chance to speak if they so chose, and most of the juveniles seemed to be very comfortable giving the judge their side of the story</i>. He always asked family members if they wanted to speak. One mother was clearly relieved to be able to give her input about how her son's behavior had improved in the home. He took adequate time to go through the charges, saying in a personal conversational manner rather than rote recitation, <i>"I will go through and describe each charge separately, give you a chance to tell us if you did these things, and then you can explain any of the details you want us to hear."</i> He asked appropriate questions to determine what had taken place, and in some instances requested more specific details. At the end he would always say, <i>"Does that make sense, have we covered everything?"</i> to ensure that <i>nothing was left unresolved</i>.</p> <p>One observer would have felt <i>she had landed in a "safe" zone</i> in Judge Smith's court, being heard by an <i>advocate for my well-being rather than a judgmental official</i>. In one case the judge listened with a <i>thoughtful and gentle expression</i> to a runaway teen, telling her, <i>"Great job expressing yourself, we see a bright, beautiful young lady. We ache to see you harm yourself. We want to see you get help,"</i> and with the agreement of the Guardian ad Litem <i>wanted her released from detention</i> and placed at Vantage Point.</p>
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COMMUNICATION

Communicates clearly	One observer reported that Judge Smith spoke to juveniles <i>at a level that they could understand, and he used even simpler language and smiled often to one 12 year old, which was very effective in making the child feel more comfortable</i> .
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Ensures information understood	Two observers reported that Judge Smith <i>frequently asked juveniles if they understood what was taking place, and after clearly stating the charges and their options, asked if they understood</i> . He told a defendant, <i>"We have talked many times of your rights,"</i> and the observer was glad that he then <i>proceeded to once again state all of the defendant's rights</i> . He was very patient with <i>non-English speaking parents, stopping frequently to ask if they understood or had anything to say</i> .
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Provides adequate explanations	Two observers reported that Judge Smith <i>carefully explained rights, trials, and juvenile court, telling a juvenile if he admits to charges today, "you give up those rights."</i> He explained things <i>thoughtfully and clearly, for example raising both arms over his head and lowering them in an arc to shoulder level while explaining the entire umbrella of services</i> .
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