



The Honorable Keith A. Kelly

About the Report

In making its recommendation to voters about whether a judge should be retained, JPEC considers the judge's legal ability, integrity and judicial temperament, administrative skills, procedural fairness, public comment, and judicial discipline records as well as compliance with judicial education, fitness for office, and case-under-advisement time standards. If a judge meets minimum standards, there is a legal presumption that commissioners will vote to recommend the judge be retained. If a judge fails to meet minimum standards, there is a legal presumption that commissioners will vote not to recommend the judge for retention. Included below are the Survey Report and Report of Courtroom Observation. The Survey Report summarizes information collected from attorneys, court employees, jurors (district and some justice court judges only) and juvenile court professionals (juvenile court judges only). Surveys are anonymous and inclusion in the survey is based on court-appearance records. The Report of Courtroom Observation summarizes information reported by at least four trained, volunteer court observers per judge.

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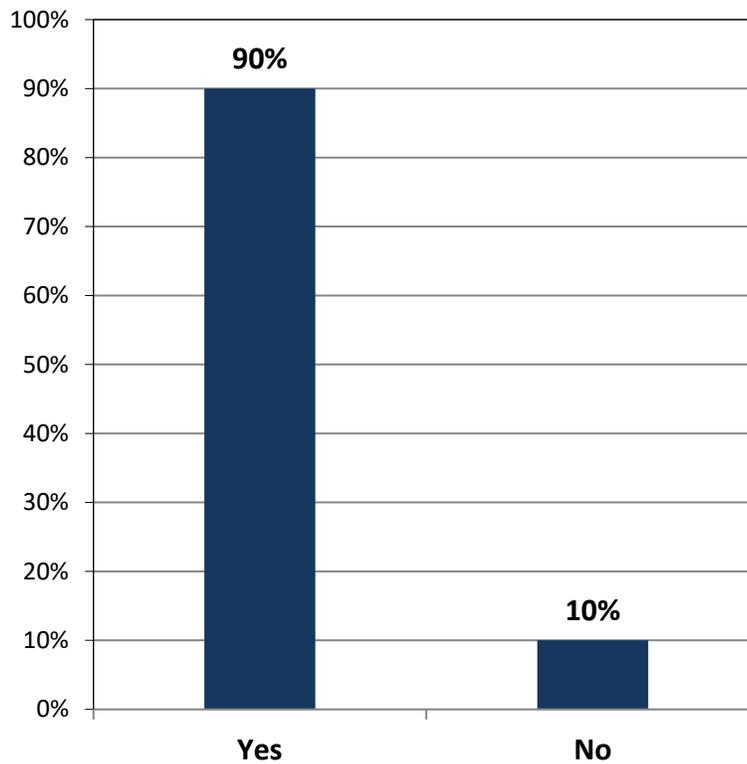
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Survey Report

Survey Results

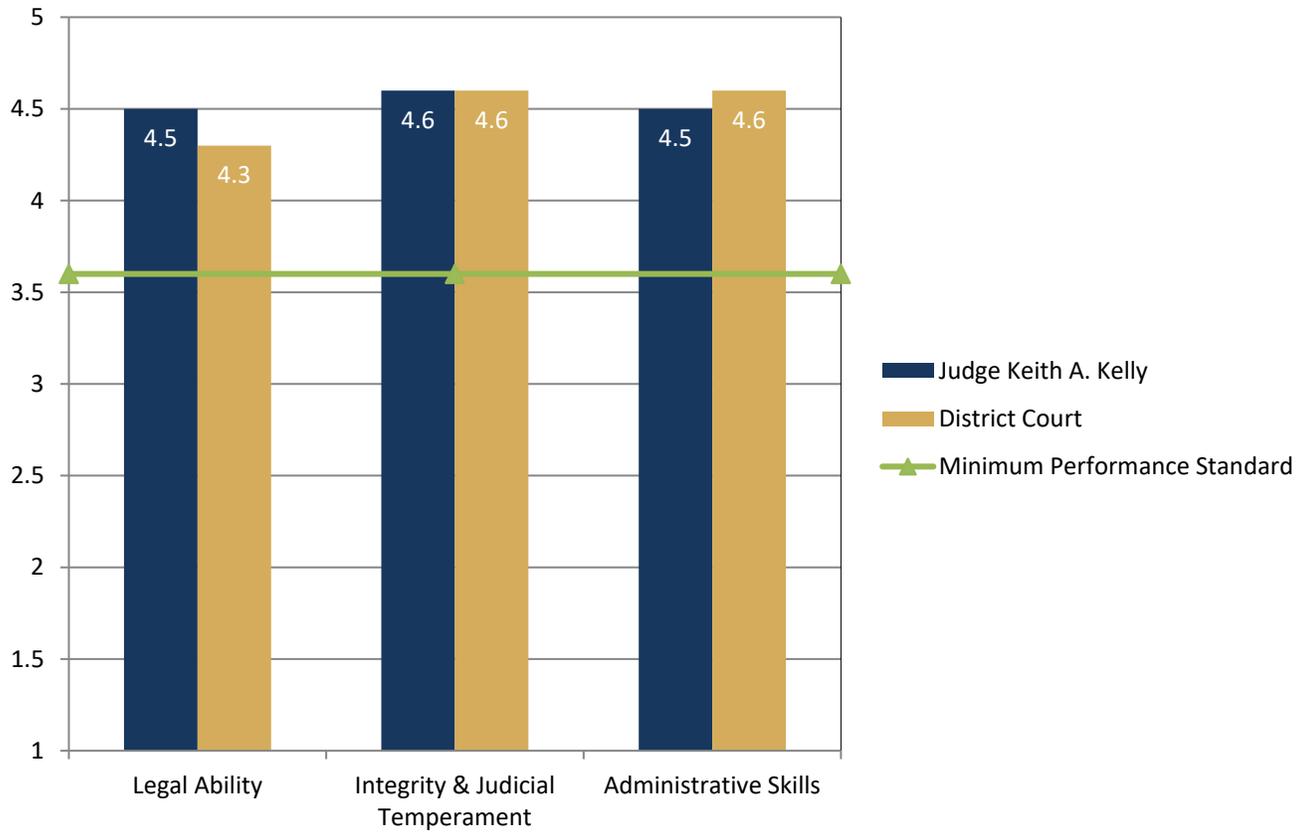
For Judge Keith A. Kelly, 71 qualified survey respondents agreed they had worked with Judge Kelly enough to evaluate the judge's performance. This report reflects these 71 responses. For more information on the survey, please see Survey Information. For more information about the evaluation process, please see How to Read the Results.

Retention Question



Survey Report

Statutory Category Scores



Survey Report

Procedural Fairness Results

The judge must demonstrate by the totality of the circumstances that the judge's conduct in court promotes procedural fairness for court participants at a level commensurate with the other scored standards.

Table A. Overall Procedural Fairness Determination

Category	Judge Kelly
Procedural Fairness	Pass

To determine whether the judge passes the procedural fairness standard, the Commission considers only data collected as part of the performance evaluation, which includes, but is not limited to:

- Courtroom Observation results
- The judge's disciplinary record
- Survey results (below):

Category	Judge Kelly	District Court
Procedural Fairness	4.5	4.6



Survey Report

Responses to Survey Questions

Category	Question	Judge Kelly	District Court
Legal Ability	The judge follows the legal rules (e.g. civil procedure, criminal procedure, evidence, juvenile, appellate) that apply to the case at issue.	4.5	4.4
Legal Ability	The judge made adequate findings of fact and applied the law to those facts.	4.5	4.3
Legal Ability	The judge followed legal precedent or explained departures from precedent.	4.4	4.2
Legal Ability	The judge only considered evidence in the record.	4.5	4.4
Legal Ability	The judge based opinions/decisions on applicable legal principles and controlling law.	4.4	4.3
Legal Ability	The judge's opinions contained a readily understandable ruling.	4.5	4.3

Rated on a scale from 1 (low) to 5 (high)



Survey Report

Responses to Survey Questions (continued)

Category	Question	Judge Kelly	District Court
Integrity & Judicial Temperament	The judge paid attention to what went on in court.	4.8	4.7
Integrity & Judicial Temperament	The judge's personal life or beliefs did not impair his or her judicial performance.	4.5	4.5
Integrity & Judicial Temperament	The judge conducted proceedings without favoritism.	4.5	4.5
Integrity & Judicial Temperament	The judge considered arguments from all sides before ruling.	4.6	4.5
Integrity & Judicial Temperament	The judge demonstrated diligent work habits.	4.6	4.6
Integrity & Judicial Temperament	The judge maintained a professional demeanor in the courtroom.	4.7	4.7
Integrity & Judicial Temperament	The judge worked to ensure that the participants understood the court proceedings.	4.7	4.6
Integrity & Judicial Temperament	The judge demonstrated respect for the time and expense of those attending court.	4.1	4.6
Integrity & Judicial Temperament	The judge made sure that everyone's behavior in the courtroom was proper.	4.6	4.7

Rated on a scale from 1 (low) to 5 (high)



Survey Report

Responses to Survey Questions (continued)

Category	Question	Judge Kelly	District Court
Administrative Skills	The judge was prepared for court proceedings.	4.7	4.6
Administrative Skills	The judge's interactions with courtroom participants and staff were professional and constructive.	4.6	4.7
Administrative Skills	The judge ruled in a timely fashion.	4.4	4.6
Administrative Skills	The judge communicated clearly.	4.6	4.6
Administrative Skills	The judge managed the court calendar effectively.	4.1	4.5
Administrative Skills	The judge convened court without undue delay.	4.6	4.7
Category	Question	Judge Kelly	District Court
Procedural Fairness	The judge treated all courtroom participants with equal respect.	4.5	4.6
Procedural Fairness	The judge performed his or her duties fairly and impartially.	4.5	4.6
Procedural Fairness	The judge promoted public trust and confidence in the courts through his or her conduct.	4.5	4.5
Procedural Fairness	The judge provided the court participants with a meaningful opportunity to be heard.	4.6	4.6

Rated on a scale from 1 (low) to 5 (high)



Survey Report

Attribute Question Summary

Survey respondents rated how well a list of attributes describes the judge. A rating of 1 indicates the descriptor *does not describe the judge at all*, and a rating of 5 indicates the descriptor *describes the judge very well*. For the positive descriptors, a higher average score is better. For the negative descriptors, a lower average score is better.

Descriptor	Judge Kelly	District Court	
Attentive	4.7	4.5	Positive Attributes HIGHER average score is better
Capable	4.3	4.4	
Ethical	4.8	4.7	
Knowledgeable	4.5	4.4	
Impartial	4.3	4.3	
Open-minded	4.2	4.2	
Disrespectful	1.5	1.5	Negative Attributes LOWER average score is better
Impatient	1.9	1.8	
Indecisive	2.0	1.8	
Unprepared	1.6	1.6	



Survey Information

This report presents the results from the 2019 survey process, conducted by Market Decisions, LLC. A detailed description of the survey methodology is available separately on the Utah Judicial Performance Evaluation website.

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), and
- 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 five or more non-trial appearances, and those with fewer than five 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).

Summary of Survey Methods

Surveys are conducted online, using web-based survey software. Each qualified respondent receives an initial email notification signed by the Chief Justice, the Utah State Bar President, and JPEC Chairperson. Next, an email invitation, signed by JPEC's Executive Director contains a link to access 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 at least 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.

The number of questions included in the survey varies, ranging from 9 (jurors) to 35 (attorneys with an appearance before an appellate court judge). Each question is evaluated on a sliding scale ranging from 1 (low) to 5 (high).



Survey Information

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 average score in Procedural Fairness.

Evaluation Period

The retention evaluation period for judges standing for election in 2020 began on October 1, 2017 and ended on September 30, 2019.



Report of Courtroom Observations

Explanation of Courtroom Observation Summary

SECTION	DESCRIPTION
Overall assessment	<p>The first statement in this section is an overall summary of the entire set of observer comments.</p> <p>The second statement indicates the number of observers indicating that they would feel comfortable appearing before the judge.</p>
Widely agreed-upon themes	<p>Behaviors reported by all (or almost all) observers and thus well established. Deficits mentioned here were also widely reported and therefore merit attention.</p> <p>The subsequent statements are not intended to be a complete summary of the observers' comments, but rather highlight the most frequently noted and forcefully expressed themes, presented in the way that the observers expressed them, with the goal of evoking an overall sense of the entire set of observer comments.</p>
Minority Observations	<p>Behaviors noted by two (or possibly three) observers that would be worth building on (if desirable) or otherwise thinking about avoiding.</p> <p>Not every behavior reported by a minority of observers is summarized here, only those that reflect a notable or somewhat discrepant perspective that was not widely agreed upon.</p>
Anomalous comments	<p>Comments of one (or in rare cases two) observers that reflect a markedly different or decidedly contradictory perspective from all other observers. They are intended to stimulate reflection, such as: why were these observers affected by this behavior, or does this particular situation tend to lead to this uncharacteristic behavior?</p> <p>Not every anomalous comment in the observers' comments are included in this section, typically if they are too minor, or appear to reflect something about the observer rather than the judge.</p>

Paragraphs are introduced with the following terminology.

If the number of observers is specified, e.g. "All observers reported..." or "Three observers reported...", then every statement in the paragraph was mentioned or implied or alluded to by that number of observers.

If the word "variously" is added, e.g. "All observers variously reported..." or "Three observers variously reported...", then not every statement in the paragraph was directly mentioned or implied or alluded to by every one of those observers, but rather the sense of all the statements in the paragraph taken together was.



Report of Courtroom Observations

Evaluative Criteria for Courtroom Observation

CRITERIA	DESCRIPTION
RESPECT	
Listening & Focus	Listening refers to all indications of attention and engagement through active listening.
Well-prepared & efficient	Efficiency refers to the judge's behaviors. The court's efficiency appears below under "Courtroom tone & atmosphere".
Respect for other's time	This includes the starting time of sessions as well as all interactions with those in court that take into consideration the value of their time.
Courtesy, politeness, and general demeanor	This refers to respectful behaviors generally, as well as behaviors directed at specific individuals that indicate respect for a person's value or status.
Body language	This refers to eye contact and facial expressions, general body language, and engaged behavior.
Voice quality	This refers to both mechanical qualities such as pitch and volume, and emotional qualities such as inexpressive, sarcastic or exasperated tone.
Courtroom tone & atmosphere	This refers more generally to the tone and atmosphere of the courtroom.
NEUTRALITY	
Consistent and equal treatment	This refers to listening to all sides, and treating individuals in similar situations similarly.
Demonstrates concern for individual needs	This refers to concern for individual differences and giving due regard to the individual's specific situation.
Unhurried and careful	This refers to allowing sufficient time for the judge and those in court to conduct themselves in a thorough manner.
VOICE	
Considered voice	This refers both to allowing those in court to express themselves and to the judge's consideration of what was expressed in his/her statements or decision.
Formal voice	This refers to giving voice to participants based only on required procedure without apparent consideration by the judge of what was expressed.



Report of Courtroom Observations

COMMUNICATION

Communicates clearly	This refers both to clarity of speech and to the use of language appropriate to the listener.
Ensures information understood	This refers to active attention by the judge in ensuring those in court understand all information relevant to them, and includes translation and comprehension for non-native English speakers.
Provides adequate explanations	This refers to providing sufficient explanation of the basis of decisions and of legal procedure and terminology to ensure that those in court understand proceedings relevant to them.



Report of Courtroom Observations

Content Analysis

Overall Assessment

- All observers were positive about Judge Kelly. One observer expressed a reservation in one area (see “Anomalous comments”).
- All observers reported confidence that if appearing before Judge Kelly they would be treated fairly.

Widely Agreed-Upon Themes

- All observers variously reported that Judge Kelly was attentive and truly listened. Court sessions and the returns from recess started exactly on time, and he was well prepared with full knowledge of the law. He was confident, intelligent and professional, thoughtful, kind, patient, gracious and courteous, and his relaxed and easygoing demeanor put participants at ease. He read out the names of defendants so people in the gallery would know if they were in the correct courtroom. If a person’s name was subject to mispronunciation he asked for the proper pronunciation. He sometimes greeted litigants with “Good afternoon, sir,” and concluded with “Good luck.” His body language and excellent eye contact indicated his full engagement in the proceedings, and his tone of voice was firm and professional. He gave participants ample time to explain their circumstances, and he displayed excellent communication skills when listening and responding to their questions and statements, remaining open and receptive to their input.
- Judge Kelly was patient with defendants who were representing themselves, helping them sort through their unorganized presentations, explaining the meaning of the law in ways they could understand, and providing pertinent advice. In one case he went the extra mile in helping an unrepresented plaintiff who had filed an incomplete and confusing complaint. Judge Kelly had studied it for an hour before trial, and pointing out numerous procedural errors and omissions he dismissed the complaint without belittling the plaintiff and gave him a few weeks to improve his complaint. He showed a true interest in learning defendants’ needs and goals, and he ensured that the court had current addresses so that eviction notices or other matters would get to them. He paid great attention to detail when anticipating issues in future trials, and he was able to integrate the more subtle aspects from both sides of a case, give a good synopsis of the testimony, and clearly and efficiently explain how the law worked. One observer commented that Judge Kelly made a superb first impression and is perfectly suited to his position.

Minority Observations: None

Anomalous Comments

- In contrast to other observers, one observer reported that when participants wished to share more of their story he was directive in what he needed to hear and guided the participants to do so in a quick manner. This observer felt that Judge Kelly was perhaps slightly impatient when cutting off participants if he did not get a quick answer, and he could provide more opportunity for participants to elaborate on their experience and explanations rather than cut them off in the middle of their speech when he found the answer he wanted.



How to Read the Results

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 "District Court" on the charts.

The statutory category scores and the procedural fairness survey score represent average scores on a scale of 1 (low) to 5 (high). 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.

To determine whether the judge passes the Procedural Fairness standard, the Commission considers only data collected as part of the performance evaluation. 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. For midterm evaluations, respondents are asked whether they think the judge would benefit from added training or education.



3rd Judicial District Court

Visit JUDGES.UTAH.GOV for more information about this judge



Honorable Keith A. Kelly

- Serving Salt Lake, Summit & Tooele counties
- Commission Recommendation: **Retain**
- Commission Vote Count: 13 - 0 (for retention)
- Performance Standards: Passed 8 of 8

Appointed in 2009, Judge Keith Kelly's scores are consistent with his district court peers on all minimum performance standards. Ninety percent of survey respondents recommend him for retention. Respondents and courtroom observers praise the judge for his diligence and the dignity he affords to courtroom participants. They appreciate the time the judge takes to address participants' needs in the courtroom, though several respondents suggest the judge could improve his timeliness. All court observers report confidence that they would be treated fairly if they were to appear in Judge Kelly's court. This judge meets discipline standards set by statute and has been certified by the Judicial Council as meeting all time standards, education requirements, and mental and physical competence standards.

In 2009, Judge Keith A. Kelly was appointed to Third District Court. He graduated from Stanford Law School, where he was an editor of the Stanford Law Review. Before his appointment, he worked in Salt Lake City for 23 years as a civil attorney. Judge Kelly serves as supervising tax judge for Utah, along with managing his regular civil caseload. He also serves as chair of WINGS, an interdisciplinary network of Utah guardianship stakeholders, and as a member of the Civil Model Utah Jury Instruction Committee. Judge Kelly has served as chair of the boards of trustees of the Utah Parent Center, "and Justice for All," and the Disability Law Center; as president of the Anderson Inn of Court; as a member of the Utah State Advisory Board on Children's Justice and the Utah Supreme Court's Evidence Advisory Committee; and as chair of the Utah Judicial Council's Guardian ad Litem Oversight Committee.

