Honorable Charlene Barlow – District Court Judge

Serving Salt Lake, Summit and Tooele Counties

Commission Recommendation: **RETAIN**

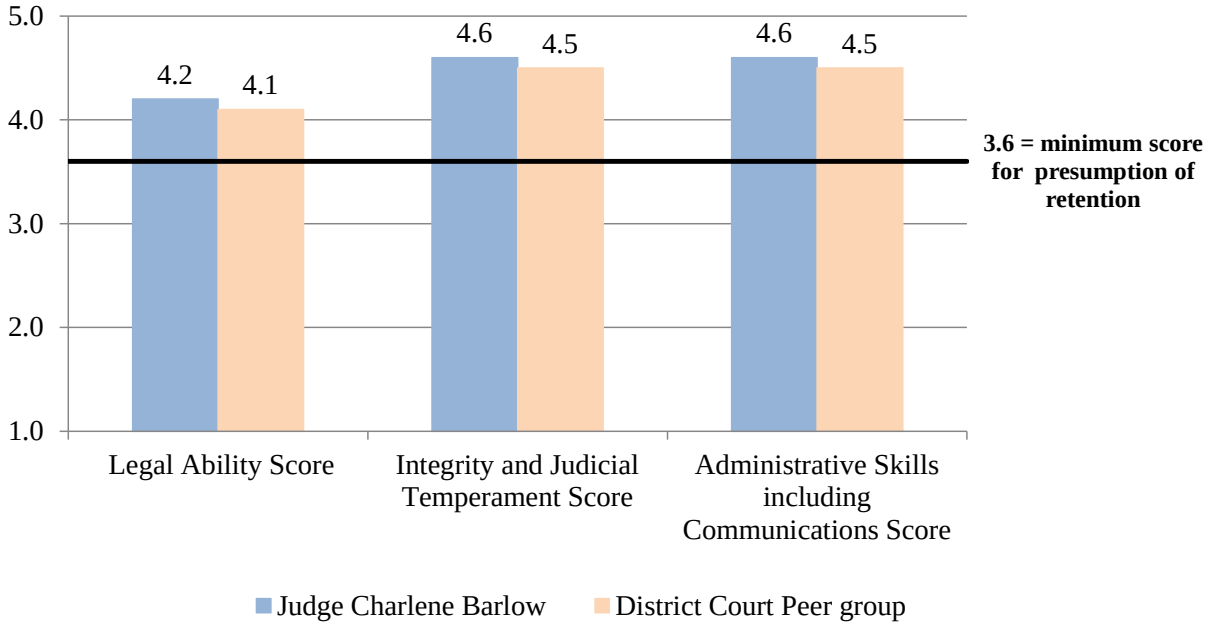
(vote count: 12-0 for retention)

Appointed in 2010, Judge Charlene Barlow is a capable judge, most often described by survey respondents as polite, attentive and composed. Respondents noted Judge Barlow's courteous and fair demeanor, characterizing her as intelligent, calm, and extremely considerate of courtroom participants. Courtroom observers agreed with survey respondents, describing her as innately respectful and patient, while still projecting a firm and professional demeanor. Observers also noted that she managed her demanding courtroom effectively and efficiently. All observers reported that they would feel comfortable appearing before her. Of survey respondents who answered the retention question, 94% recommended that Judge Barlow be retained.

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

Judge Charlene Barlow was appointed to the Third District Court in October 2010 by Governor Gary Herbert. She graduated with a Bachelor of Arts in English from Brigham Young University and taught high school before entering law school. Judge Barlow earned a juris doctorate from the J. Reuben Clark Law School at Brigham Young University in 1981. She served as a criminal prosecutor for Orem City, Provo City, and Utah County before joining the Utah Attorney General's Office in August 1988. During 22 years in the Attorney General's Office, she represented the State in criminal appeals and prosecuted fraud cases. Judge Barlow is currently assigned to the West Jordan district court, where she handles criminal, domestic, civil, landlord/tenant, and debt collection cases.

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



The Honorable Charlene Barlow

Judicial Performance Evaluation Commission Report

Retention 2014

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I. Survey Report

Survey Results

A. How to Read the Results

For Judge Charlene Barlow, 54% of qualified survey respondents submitted surveys. Of those who responded, 73 agreed they had worked with Judge Charlene Barlow enough to evaluate her performance. This report reflects the 73 responses. The survey results are divided into five sections:

- Statutory category scores
- Procedural fairness survey score
- Responses to individual survey questions
- Summary of adjectives
- Retention question

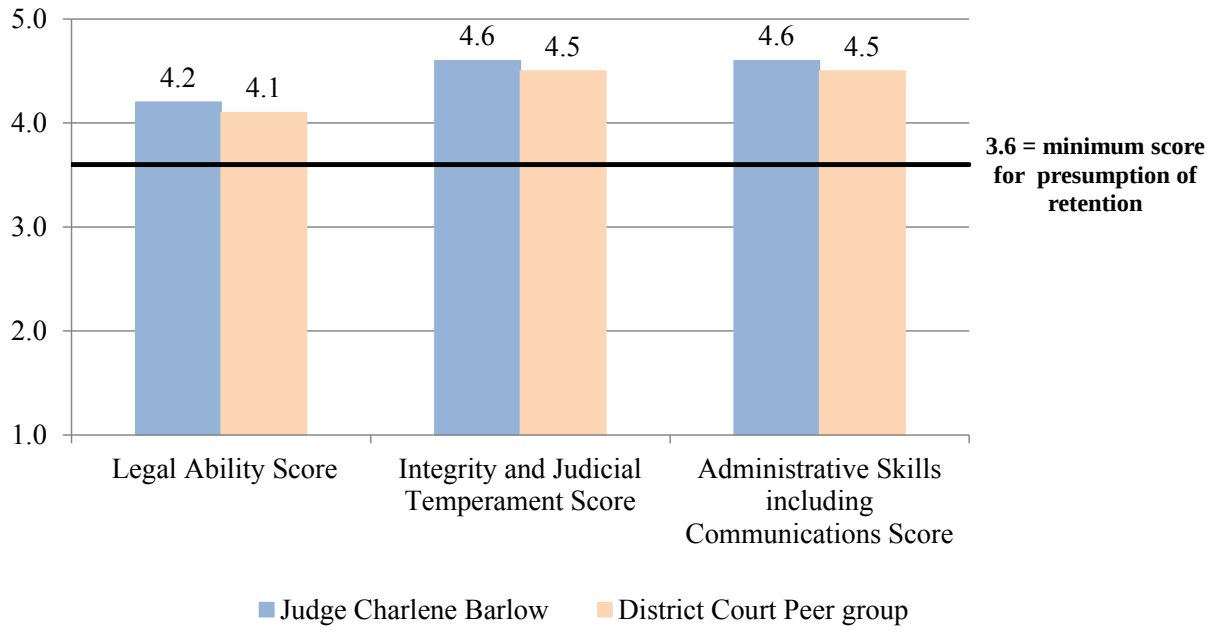
The results are shown in both graphs and tables. Each judge's scores are shown along with a comparison to other judges who serve at the same court level. The comparison group is called "District Court" on the charts.

The statutory category scores and the procedural fairness survey score represent average scores on a scale of 1 (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 these questions.

<u>What does it take to "pass"?</u> 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.

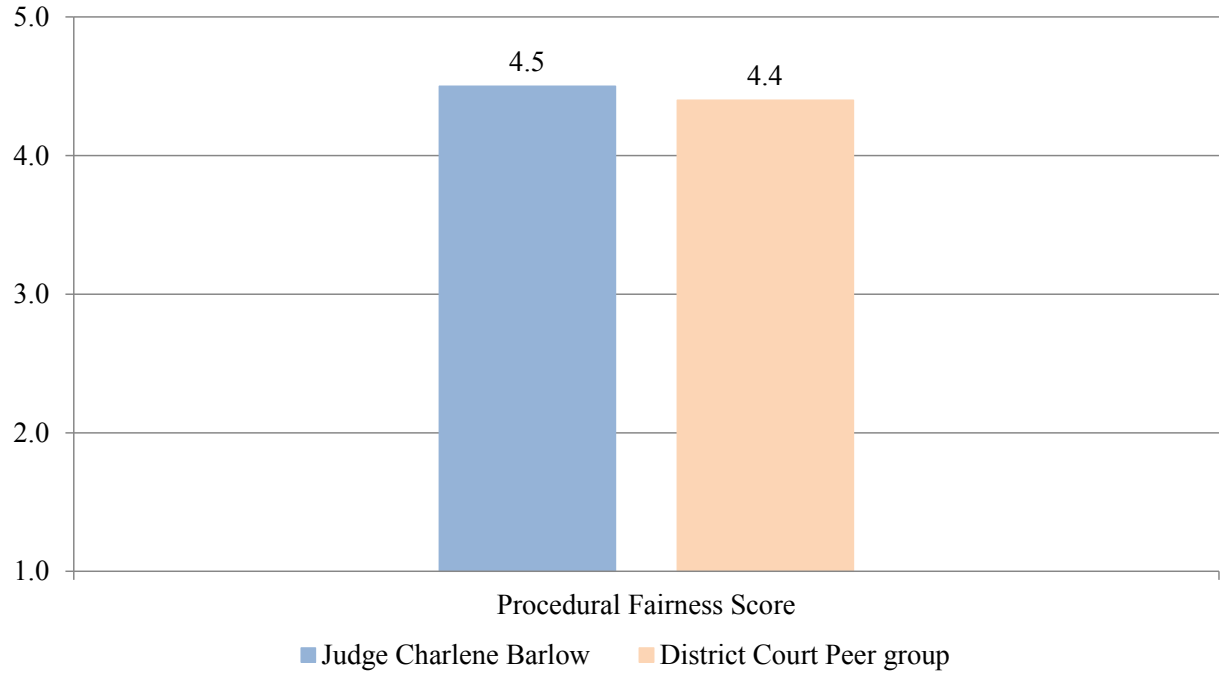
For procedural fairness, the judge must demonstrate that it is more likely than not, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants. Judges will receive either a Pass or Fail in procedural fairness, and this determination will be made by the commission only during the retention cycle.

B. Statutory Category Scores



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

C. Procedural Fairness Survey Score



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

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.

Overall Procedural Fairness Determination

Category	Judge Charlene Barlow
Procedural Fairness	PASS

D. Responses to Individual Survey Questions

Category	Question	Judge Charlene Barlow	District 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.	4.3	4.2
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.2	4.1
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.1	4.1
Legal Ability	The judge only considers evidence in the record.	4.2	4.2
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.0	4.1
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.5	4.5
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.6	4.5
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.4	4.3
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	4.6

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

Category	Question	Judge Charlene Barlow	District Court
Administrative Skills	The judge is prepared for court proceedings.	4.6	4.4
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	4.3
Administrative Skills	The judge convenes court without undue delay.	4.6	4.5
Administrative Skills	The judge rules in a timely fashion.	4.5	4.4
Administrative Skills	The judge maintains diligent work habits.	4.6	4.5
Administrative Skills	The judge's oral communications are clear.	4.6	4.5
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.4	4.3
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.6	4.5
Procedural Fairness	The judge is fair and impartial.	4.4	4.4
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.4	4.3
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.6	4.4

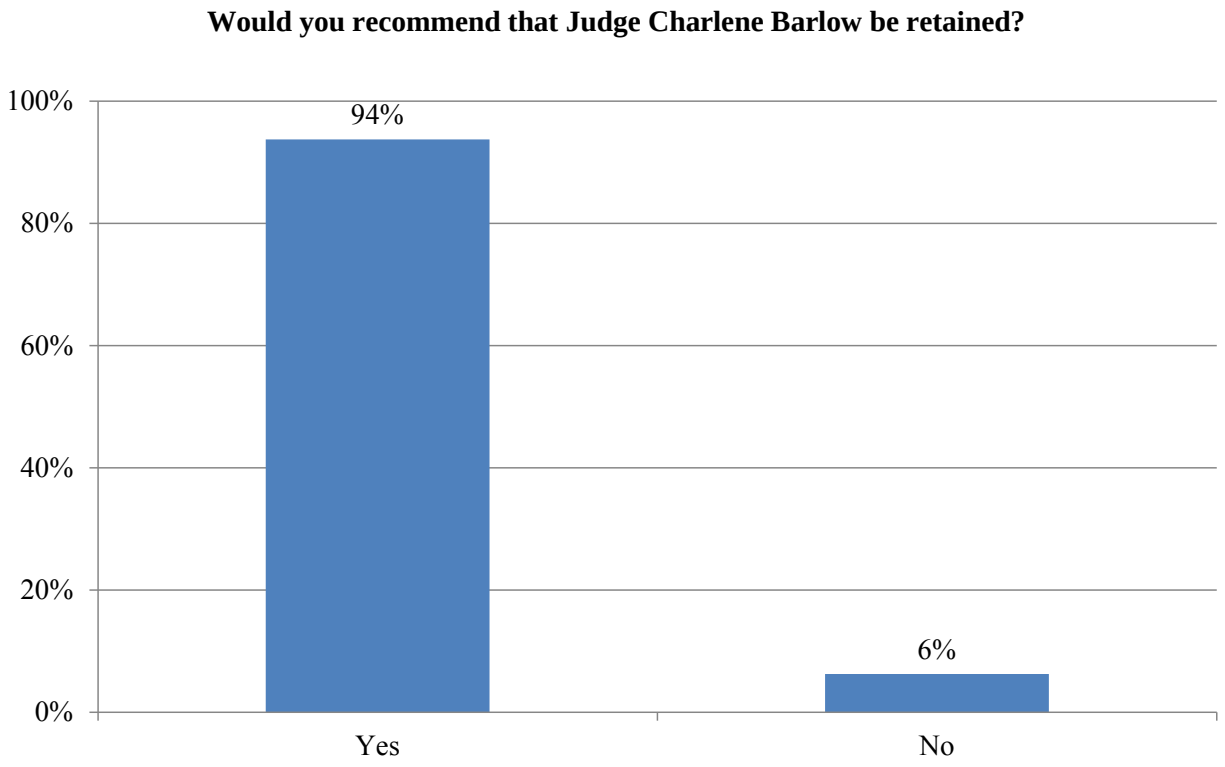
Rated on a scale from 1 (inadequate) to 5 (outstanding)

E. Adjective Question Summary

	Number of Times Mentioned*
Attentive	**32**
Calm	**30**
Confident	**11**
Considerate	**27**
Consistent	**12**
Intelligent	**22**
Knowledgeable	**17**
Patient	**30**
Polite	**33**
Receptive	**22**
Arrogant	**1**
Cantankerous	**0**
Defensive	**0**
Dismissive	**3**
Disrespectful	**2**
Flippant	**0**
Impatient	**2**
Indecisive	**1**
Rude	**0**
Total Positive Adjectives	**236**
Total Negative Adjectives	**9**
Percent of Positive Adjectives	**96%**

Respondents were asked to select adjectives from a list that best described the judge. The number shown is the total number of times an adjective was selected by respondents. The percent of positive adjectives shows the percent of *all* selected adjectives that were positive.

F. Retention Question



G. Attorney Demographics

What are your primary areas of practice?

Collections	17%
Domestic	26%
Criminal	47%
Civil	50%
Other	3%

How many trials or hearings have you had with this judge over the past year?

5 or fewer	59%
6 - 10	12%
11 - 15	3%
16 - 20	2%
More than 20	24%

Survey Background and Methods

This report presents the results from the 2013 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 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 two-year 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 3 or more non-trial appearances, and those with 1-2 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 respondent receives an initial email invitation requesting participation in the survey. A separate email is sent for each judge that a respondent is asked to evaluate. A reminder email is sent one week later to those who did not respond by completing and submitting a survey. This is followed by three 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, the 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 2014 began on June 1, 2012 and ended on June 30, 2013.

II. Courtroom Observation Report

REPORT OF COURTROOM OBSERVATIONS FOR JUDGE CHARLENE BARLOW

Five observers wrote 114 codable units that were relevant to 16 of the 17 criteria. Two observers reported that the judge was not aware that JPEC observers were present, and two did not know if the judge was aware.

Overview

WIDELY AGREED-UPON THEMES	• All observers were positive about Judge Barlow. • All observers variously reported that Judge Barlow paid close attention and listened intently, was well prepared, efficient, punctual, and accommodating and respectful of participants' time constraints. Her demeanor was innately respectful, even when firm, and she was polite and courteous to good effect with all participants, however challenging their behavior. She was concerned, pleasant, relaxed, and projected warmth, as well as being serious and professional without being stiff. She gave equal time and attention to each participant, showed flexibility in responding to individual circumstances, and expressed care and concern for the progress and success of all defendants. Despite a full calendar she was unrushed and careful. She went out of her way to ensure that all participants asked questions and responded to information, and she was good at patiently and intently listening to their stories and ensuring she had understood them. She took the time to help participants understand her meaning, their choices, and their sentences, and was clear and transparent regarding how she reached her decisions and what was required to fulfill her sentences. • All observers reported that they would feel comfortable appearing before Judge Barlow, but one observer expressed a reservation about the lesser attention paid to witnesses' testimony than to attorneys or to non-testimony comments (see "Consistent and equal treatment").
MINORITY OBSERVATIONS	• None
ANOMALOUS COMMENTS	• One observer reported a greater eagerness to help landlords than tenants (see "Consistent and equal treatment," "Expresses concern for the individual," and "Provides adequate explanations").

Summary and *exemplar language* of five observers' comments

RESPECTFUL BEHAVIORS	
Listening & focus	Thee observers reported that Judge Barlow paid close attention to those speaking, watching them and listening attentively.
Well-prepared & efficient	Three observers reported that Judge Barlow was *prepared to hear the cases*. She was very *efficient*, making *good use of 'down time' by doing paper work* at the bench and handling matters such as scheduling with the attorneys. The courtroom *ran very smoothly*.
Respect for others' time	Four observers reported that Judge Court started on time, and Judge Barlow was very accommodating in scheduling *subsequent court dates* and was *very respectful* of defendants' and attorneys' *time constraints*. She *graciously complied* when defendants asked for a later hearing *because of personal responsibilities*. She *saved time and avoided delay* by *going through pleas verbally step by step when there wasn't a plea form*.
Respectful behavior generally	All observers reported that Judge Barlow is an *innately respectful* person, even when needing to be firm. She handled a defendant *very well* who was irritated by a warrant for non-appearance due to having phone problems. She *increased her polite tone*, smiled, told him she remembered his name, asked him in a non-accusatory way why he had not appeared, and arranged the next hearing date so he wouldn't have to worry about phone problems, and the defendant *left saying thank you to the judge*.

Respectful behavior generally *continued*	When a defendant admitted to taking a variety of medications under a doctor's care, Judge Barlow asked in a kind way, without being *demeaning or patronizing*, if he was *able to think clearly*.. She ensured that litigants could *concentrate and properly hear* by asking lawyers in court to talk more quietly. After cases she called defendants *by their names*, thanked them, and wished them *good luck*. One observer reported that Judge Barlow did not *acknowledge defendants' presence as other judges do,* but that she was respectful in all other situations.
	RESPECTFUL TONE
Courtesy, politeness and patience	Three observers reported that Judge Barlow was *polite and courteous* to plaintiff and defendant alike, *never interrupted the speaker*, and even though the judge *ruled against every defendant*, only one or two left frustrated, a *perfect example of the power of politeness*.
Courtroom tone & atmosphere	All observers reported that Judge Barlow was *accepting and concerned*, *pleasant* and *relaxed*, *projecting a certain warmth* that appeared to be *well received*. She had a *quick mind*, looked and acted *professionally,* but was *not stiff*. She was patient with questions but also *clear on the consequences of not following through*, and *quite firm* with defendants when sentencing or giving instructions. She was *serious and meant business*, stating, "*I'm concerned about the severity of this crime. At the first hint of recurrence you are in jail or prison.*" She *displayed a sense of humor* and *small talk during down time*, but she otherwise maintained a professional manner and *took matters before her very seriously*.
Body language	Two observers reported that Judge Barlow *looked directly* at each speaker.
Voice quality	Two observers reported that Judge Barlow spoke in a *very pleasant voice*.
	NEUTRALITY
Consistent and equal treatment	Four observers reported that Judge Barlow acted *fairly and consistently* to uphold everyone's rights, in one case saying, "*I don't want to assume anything about anybody*," which the observer felt was an *important statement that showed how unbiased, invested and interested she was with each case*. Judge Barlow *clearly weighed all the information* presented, gave all participants *equal time* to speak, and gave *equal attention* to all participants. However, two observers also noted two inconsistent behaviors. One observer reported that Judge Barlow appeared *more eager to help landlords than tenants*, and the observer thought that in addition to letting tenants vent, the judge *could have helped by briefly answering tenants' questions* and *asking landlords as well as tenants to explain their behavior*. Another observer reported that in several cases Judge Barlow paid close attention to attorneys but appeared to be *involved with other things and to not listen carefully when witnesses were speaking*. However, when *non-testimony comments* were given, Judge Barlow listened intently and *gave appropriate feedback* and thanked the speakers for offering their comments.
Acts with concern for individual needs	Four observers reported numerous examples of Judge Barlow's flexibility and fairness in her concern for participants' individual circumstances. She *graciously allowed a flexible schedule* for delayed participants due to treacherous driving conditions and *cheerfully thanked late arrivals* for coming, which the observer appreciated, knowing that Judge Barlow is *meticulously punctual*. She allowed a termination of probation for a defendant waiting for his GED to be offered in jail, and the judge also *congratulated him on his progress*. Judge Barlow showed concern for a defendant who *balked at completing her GED as part of her plea agreement*, which the judge said would help her. After the defendant conferred with her attorney and was permitted to speak again, the judge *eliminated the requirement*. She permitted an early review for a defendant in a treatment program so that he could enlist in the military, and she *congratulated him on his progress*. When informed that a defendant was in the State Mental Hospital, Judge Barlow "Dismissed without prejudice," which the observer *felt was fair and equitable*.

Expresses concern for the individual	Two observers reported that Judge Barlow *seemed to cover all bases* when considering the *correct thing to do in a situation*. In a very concerned tone she told a young defendant, "Make sure you make the payments. I hate seeing a breach because I think [this is] such a good deal." One was impressed how much care and concern she felt in a case when she said*, "I'm concerned that the victim is a child and that your reaction was not totally appropriate…You need therapy to help you understand how to react appropriately to an out of control child*." She advised defendants that there could be immigration consequences if that was a possibility. However, one of these observers, who had noted earlier that Judge Barlow was *more eager to help landlords than tenants*, reported that in *a complex foreclosure case the judge did not ask many questions, and when the defendant asked questions to try to understand his rights regarding eviction papers, the judge replied while looking down in an uninterested sounding voice that it was his right not to have to sign anything, and moved on to the next case.*
Unhurried and careful	Two observers reported that although the courtroom was *crowded* and her *calendar was full*, Judge Barlow *never rushed or hurried anyone through*, but was *unhurried, patient and careful*.
	VOICE
Considered voice	All observers reported that Judge Barlow *invited questions* from defendants as well as attorneys. She allowed participants to *speak quite a long time*, *went out of her way to make sure each person had a chance to respond* to information from the various parties, and asked each party if they had any more to say, frequently asking, "*Is there anything you want to tell me?* " or, *"Is there any good news?*" She was very good at *listening to defendants' stories*, and she understood *how important it was for litigants to vent*. When someone wished to make comments regarding their case, they were prompted by her to speak. She *listened patiently* and *intently* and would often repeat back what the litigant or the lawyers had said, to *make sure she had all of the facts*, and indicated when she had heard and understood.
	COMMUNICATION
Communicates clearly	Two observers reported that Judge Barlow was *always clear* in her use of language and when ruling.
Ensures information understood	Four observers reported that Judge Barlow helped participants *understand her meaning* and asked *clarifying questions* like, "*Is that what I'm hearing?*" She *took the time and effort to ensure defendants understood their choices*, how she had determined their penalties, and the *specific requirements of their sentences*, and she *watched defendants to make sure they understood her colloquy* and always asked if they had any questions. She asked each litigant if they *understood what they were signing* and if they had any questions about pleas in abeyance, and when there were no written plea forms she said, "We'll do it verbally," going through *the process step by step*, expressing herself very well and *patiently waiting for the defendant to answer*.
Provides adequate explanations	Three observers reported that Judge Barlow was *open, clear and transparent* regarding how she had come to her decisions and the requirements of her sentences. When sentences required *specific treatments or counseling*, she was *explicit in what was required and within what time frame*. She was *always clear* about how to get *'pre-sentence' reports*, how to *contact probation agencies*, etc. However, one observer reported that *defendants in occupancy hearings* seemed confused and *unsure what they should do next*. The observer felt that while Judge Barlow *followed the law* when defendants had stopped paying rent for apparently understandable reasons, defendants would have *appreciated more explanation or information*. In contrast, Judge Barlow *explained to a landlord which papers needed to be signed to gain immediate occupancy and told him about a helpful website to get more information.*