

## **Honorable Clark A. McClellan – District Court Judge**

Serving Daggett, Duchesne and Uintah counties



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

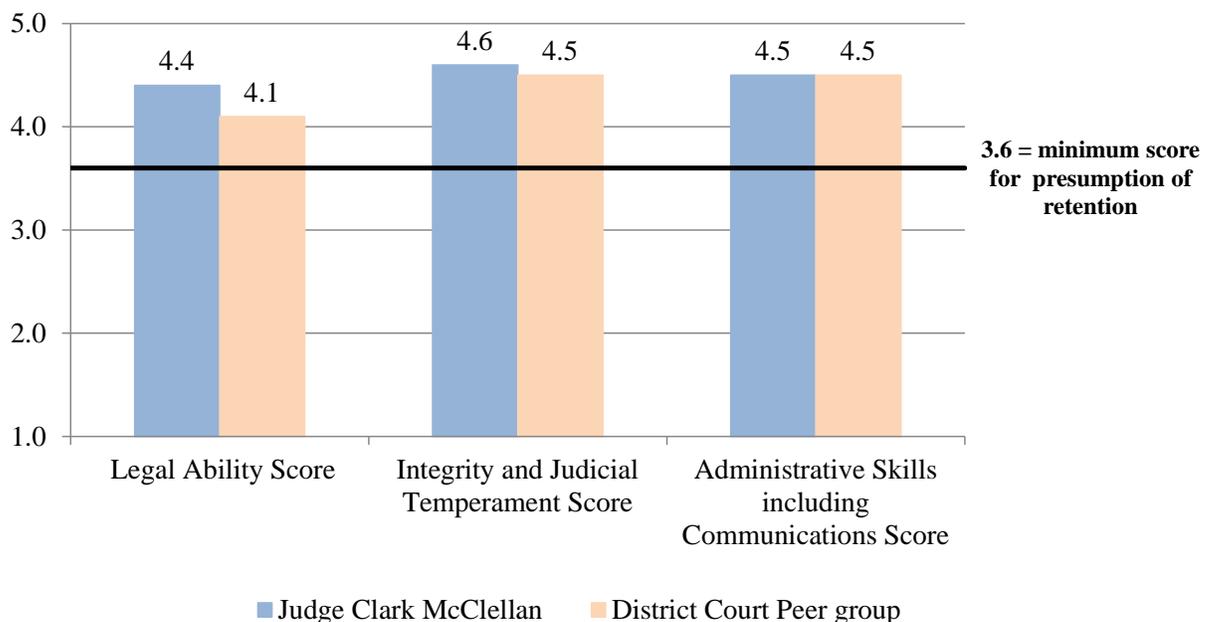
(vote count: 12-0 for retention)

Appointed in 2010, Judge Clark McClellan is viewed by survey respondents as an attentive, knowledgeable, and well-prepared judge. Respondents noted Judge McClellan's diligent work habits, his thoughtful address of courtroom participants, and his skillful management in the face of a heavy caseload. Courtroom observers noted Judge McClellan's engaged approach with each participant and praised his effective explanations of circumstances and decisions. All courtroom observers reported that they would feel comfortable appearing before him. Of survey respondents who answered the retention question, 96% percent recommended that Judge McClellan be retained.

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

Judge Clark A. McClellan was appointed to the bench in 2010 by Governor Gary Herbert. Judge McClellan graduated from Brigham Young University, magna cum laude, and the University of Utah College of Law, where he was named a Leary Scholar and was a Utah Law Review editor. He clerked for the Utah Supreme Court and practiced law in Phoenix and Salt Lake. Judge McClellan's practice included criminal prosecution in Roosevelt, Vernal, and Duchesne County. He has represented numerous private and governmental entities in civil cases. He is a member of the Board of District Court Judges, Committee on Fines and Bails, and the New Lawyer Education Committee. Judge McClellan has served as a Drug Court Judge since 2011.

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



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# **The Honorable Clark McClellan**

**Judicial Performance Evaluation Commission Report**

**Retention 2014**

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### II. Courtroom Observation Report

# I. Survey Report

## Survey Results

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### A. How to Read the Results

For Judge Clark McClellan, 49% of qualified survey respondents submitted surveys. Of those who responded, 63 agreed they had worked with Judge Clark McClellan enough to evaluate his performance. This report reflects the 63 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

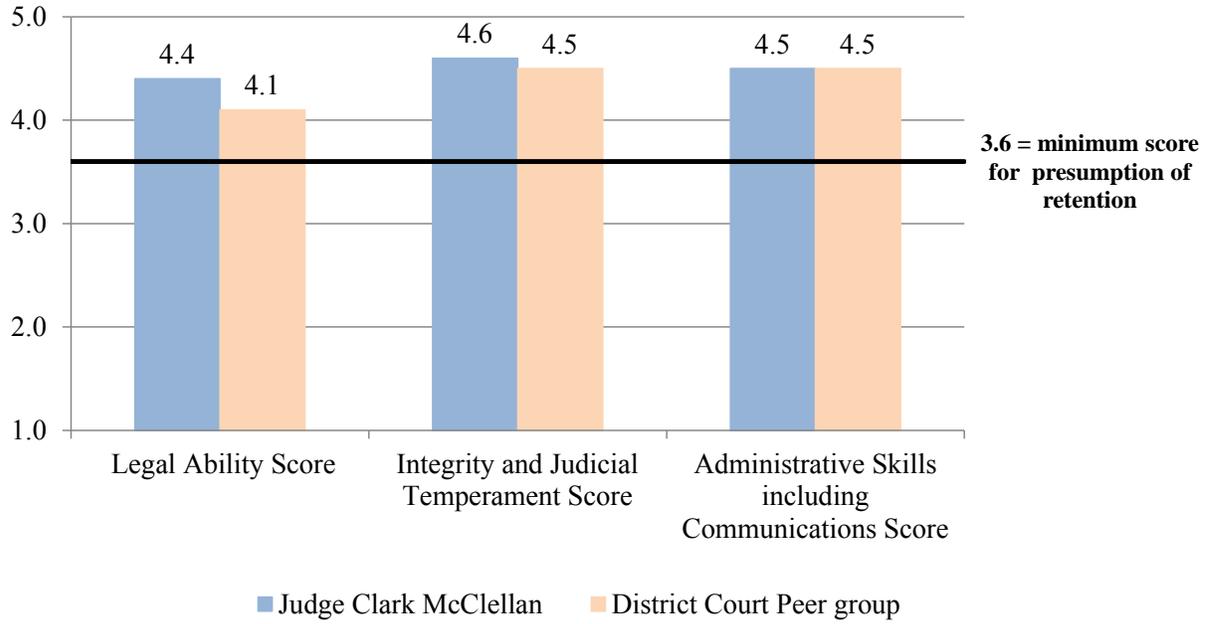
The results are shown in both graphs and tables. Each judge's scores are shown along with a comparison to other judges who serve at the same court level. The comparison group is called "District Court" on the charts.

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.

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.

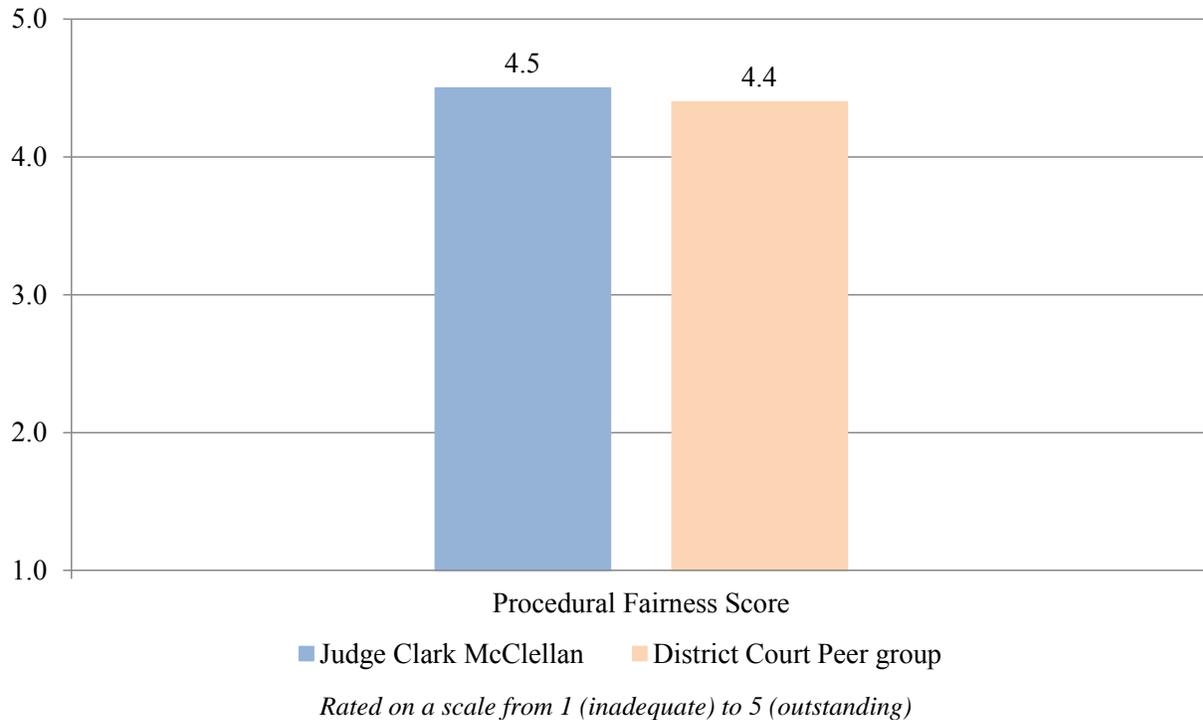
For procedural fairness, the judge must demonstrate that it is more likely than not, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants. Judges will receive either a Pass or Fail in procedural fairness,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

## B. Statutory Category Scores



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

### C. Procedural Fairness Survey 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.

#### Overall Procedural Fairness Determination

Category	Judge Clark McClellan
Procedural Fairness	PASS

## D. Responses to Individual Survey Questions

Category	Question	Judge Clark McClellan	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.	4.4	4.2
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.4	4.1
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.3	4.1
Legal Ability	The judge only considers evidence in the record.	4.4	4.2
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.5	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.	4.6	4.3
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.4	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)*

<b>Category</b>	<b>Question</b>	<b>Judge Clark McClellan</b>	<b>District Court</b>
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.	4.3	4.3
Administrative Skills	The judge convenes court without undue delay.	4.4	4.5
Administrative Skills	The judge rules in a timely fashion.	4.6	4.4
Administrative Skills	The judge maintains diligent work habits.	4.8	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.	4.5	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.	4.5	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)*

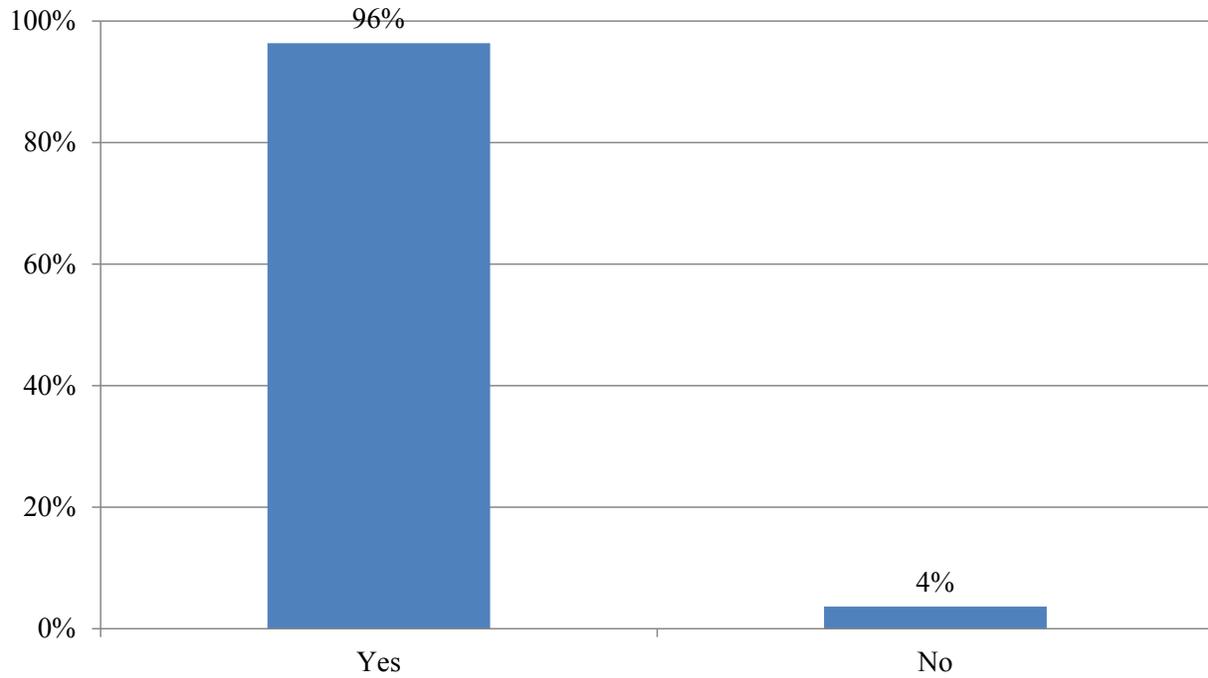
## E. Adjective Question Summary

	Number of Times Mentioned*
Attentive	26
Calm	12
Confident	18
Considerate	21
Consistent	11
Intelligent	24
Knowledgeable	29
Patient	10
Polite	17
Receptive	21
Arrogant	2
Cantankerous	1
Defensive	1
Dismissive	3
Disrespectful	1
Flippant	1
Impatient	5
Indecisive	4
Rude	0
<b>Total Positive Adjectives</b>	<b>189</b>
<b>Total Negative Adjectives</b>	<b>18</b>
<b>Percent of Positive Adjectives</b>	<b>91%</b>

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

**Would you recommend that Judge Clark McClellan be retained?**



## G. Attorney Demographics

### What are your primary areas of practice?

Collections	2%
Domestic	44%
Criminal	49%
Civil	66%
Other	10%

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

5 or fewer	40%
6 - 10	26%
11 - 15	10%
16 - 20	2%
More than 20	21%

# Survey Background and Methods

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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 CLARK McCLELLAN

Four observers wrote 88 codable units that were relevant to 15 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	<ul style="list-style-type: none"> <li>All observers were positive about Judge McClellan.</li> <li>All observers variously reported that Judge McClellan was knowledgeable, well-prepared, and had obviously carefully trained his professional and very efficient staff. He spoke directly to defendants as well as attorneys, put participants at ease, and apologized if he neglected to recognize someone. His demeanor was energetic, assertive, confident and authoritative, with a commanding presence, and he was also personable, sincere, and not without humor. His voice was strong, and he made eye contact with speakers, but observers mentioned that he also spent significant time looking down writing during testimony.</li> <li>Judge McClellan spoke in a consistent way to all participants, and his explanations showed his neutrality. He was genuinely interested in each case, tailoring his comments and rulings to each defendant’s circumstances and taking time to help participants and offer them his true feelings rather than platitudes. Judge McClellan encouraged and facilitated participants to speak at length if necessary, and he was skillful in drawing out information through dialog. He painstakingly explained the proceedings, repeating them if necessary, and was particularly diligent in explaining defendants’ rights. He ensured all issues were understood, often stopping his explanations to ask for a response as to whether he was understood.</li> <li>All observers reported that they would feel comfortable appearing before Judge McClellan.</li> </ul>
MINORITY OBSERVATIONS	<ul style="list-style-type: none"> <li>None</li> </ul>
ANOMALOUS COMMENTS	<ul style="list-style-type: none"> <li>None</li> </ul>

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

#### RESPECTFUL BEHAVIORS

Well-prepared & efficient	Three observers reported that Judge McClellan was <i>knowledgeable, well prepared</i> , where appropriate <i>holding up paperwork showing he had it at his fingertips</i> and had <i>read it</i> . The court was <i>well run</i> and <i>remarkably efficient without sacrificing compassion</i> for such a big caseload. Judge McClellan has <i>obviously carefully trained his professional and efficient staff</i> , who were <i>very respectful</i> and <i>anticipated his requirements and often acted without prompting</i> .
Respect for others’ time	One observer reported that Judge McClellan <i>began court promptly</i> and <i>progressed efficiently from each case to the next</i> .
Respectful behavior generally	All observers reported that Judge McClellan <i>spoke directly to defendants</i> when appropriate, rather than just to their attorneys, and spoke <i>kindly to witnesses, giving instructions as to how to give testimony</i> . When he <i>immediately started talking in detail to the defense lawyer</i> , he realized he had <i>ignored the defendant and said, “Miss X, I am sorry I didn’t acknowledge you. I am very sorry.”</i> When participants asked questions and expressed their frustrations, he was <i>not condescending nor dismissive of their feelings or fears</i> . When Judge McClellan noticed that a <i>defense attorney was conferring quietly with his client, he stopped in mid-sentence to defer to that on-going conversation, patiently waiting for them to finish</i> .

Respectful behavior generally <i>continued</i>	One observer was alone in suggesting that Judge McClellan <i>could have shown even more respect for the witnesses by greeting them by name and thanking them for their testimony.</i>
<b>RESPECTFUL TONE</b>	
Courtesy, politeness and patience	One observer reported that Judge McClellan <i>tried to put witnesses at ease by speaking to them in a neutral but friendly tone of voice.</i>
Courtroom tone & atmosphere	Three observers reported that Judge McClellan was <i>assertive, decisive, confident, authoritative, direct, to the point</i> , and had a <i>commanding presence</i> . <i>Everyone knew he was in charge and knew what he was doing</i> , and his <i>style minimized confusion and ambiguity</i> . He was <i>energetic and animated, swiveling his chair quickly from one computer to another, passing papers, and referring to a calendar on the wall</i> . Judge McClellan's <i>demeanor remarkably minimized the tension in the court in which 75% of defendants were in cuffs or leg shackles.</i>  Judge McClellan was also <i>personable and sincere, forceful or gentle as the situation required, and not without humor</i> , which was <i>never aimed at any participant but showed that he was human and not above making a mistake.</i>
Body language	Three observers reported that Judge McClellan <i>looked directly</i> at those he was addressing and <i>made eye contact</i> except when <i>writing notes about what was being said</i> . One observer noted the <i>significant amount of time writing during testimony</i> and felt Judge McClellan <i>could have looked at the witness more frequently to reassure them that he was actually paying attention to what was being said.</i>
Voice quality	One observer reported that Judge McClellan <i>spoke with a voice that could be heard throughout the court</i> , and the <i>microphones were at an appropriate volume</i> . One observer suggested that the judge <i>encourage soft speakers to project their voice or speak more directly into the microphone.</i>
<b>NEUTRALITY</b>	
Consistent and equal treatment	All observers reported that Judge McClellan <i>spoke in the same tone of voice and with the same body language</i> to a <i>wide variety</i> of defendants, regardless of gender, ethnicity and status, or whether or not they were in custody. He <i>worked intently</i> to ensure that his explanations were <i>neutral and showed no bias</i> . He <i>impressed all in the courtroom</i> by going into <i>great detail about his relationship with a defendant's family</i> after his offer to recuse himself had been declined.  In one case in which Judge McClellan <i>appeared aggravated by the defense attorney's lines of questioning</i> , he spoke in a <i>less than neutral tone of voice but partially covered his mouth as if he was trying to hide his feelings regarding what he said.</i>
Acts with concern for individual needs	Three observers reported that Judge McClellan was <i>genuinely interested</i> in every case. He <i>tailored his comments and rulings to each individual</i> , for example <i>changing his deadline for a court order until the next day after the defendant said he had no transportation other than by foot</i> and allowing a defendant who <i>exhibited a greater degree of trustworthiness</i> to serve jail time three days a week <i>so that the defendant could maintain his business</i> . In a case in which the court learned that a <i>theft of drugs was in an effort to commit suicide</i> , the observer found it <i>appropriate and uplifting</i> that the judge's questions and comments <i>shifted to getting the proper counseling for the defendant and moved in the direction of healing rather than punishment</i> , even though the court order <i>still presented challenging requirements to be fulfilled.</i>
Expresses concern for the individual	Two observers reported that Judge McClellan <i>took the time to explain</i> that drug court may <i>sound like a favorable alternative to a trial, but in reality it may have long term implications that were not readily apparent</i> . He offered his <i>true feelings</i> rather than <i>platitudes</i> when helping to <i>stimulate better future choices</i> , saying for example, <i>"I'm worried about your direction in life. I sound like your father, don't I? and, "The most important thing is to get your life back."</i>

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Unhurried and careful	Two observers reported that Judge McClellan <i>took extreme care to respect defendants' rights</i> and gave them <i>all the time and attention they needed</i> when <i>streamlining the heavy caseload</i> . He <i>halted a proceeding until an answer could be found</i> , impressing the observer that the right solution was <i>not being trumped by getting to the fastest conclusions</i> .
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*VOICE*

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Considered voice	Two observers reported that Judge McClellan <i>facilitated</i> the opportunity for participants to make comments, and he <i>encouraged</i> and gave them all the time they needed to <i>speak their minds</i> . Judge McClellan's skill in <i>drawing out</i> a defendant and <i>entering into a dialog</i> about his/her circumstances, in which the defendant <i>provided considerable additional details</i> , resulted in <i>house arrest and community service</i> , a better outcome for the defendant and the family, with which the prosecutor agreed.  In one case an observer <i>expressed his opinion that the judge was overly generous</i> in allowing a defendant to <i>go on for several minutes giving excuses and denying the evidence</i> .
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*COMMUNICATION*

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Communicates clearly	One observer reported that Judge McClellan <i>paraphrased legal terms</i> by saying, " <i>What this means is...</i> "
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Ensures information understood	Two observers reported that Judge McClellan provided a <i>blanket explanation about the effect of waivers on individual rights</i> , but he <i>assured each defendant</i> that he would again <i>explain the pertinent issues about their case at the appropriate time</i> and <i>elicit a response</i> that they understood. He also <i>asked defense lawyers if they had had rights discussions</i> with their clients. He ensured <i>pro se participants had a thorough understanding</i> of the charges against them and <i>recommended that they get the help of an attorney</i> , helping them <i>qualify for a public defender</i> .  Whether issues were <i>simple or complex</i> , McClellan <i>consistently stopped during his explanations to ask if the person understood</i> and <i>required a reply</i> that they did so, and if not, <i>he would patiently re-explain</i> .
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Provides adequate explanations	All observers reported that Judge McClellan <i>painstakingly explained the nature of each case</i> and took <i>great pains to explain the complexities of various situations in detail</i> . He was particularly <i>diligent in explaining the consequences of a waiver of rights</i> , <i>completely and clearly explained the reasoning behind his rulings</i> , and <i>explained clearly and cordially why a second witness not be in the courtroom during the first witness's testimony</i> . He <i>carefully explained to a defendant without an attorney what steps the man needed to fulfill</i> .
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