

Honorable Brian G. Cannell – District Court Judge

Serving Box Elder, Cache, and Rich counties



Commission Recommendation: **RETAIN**

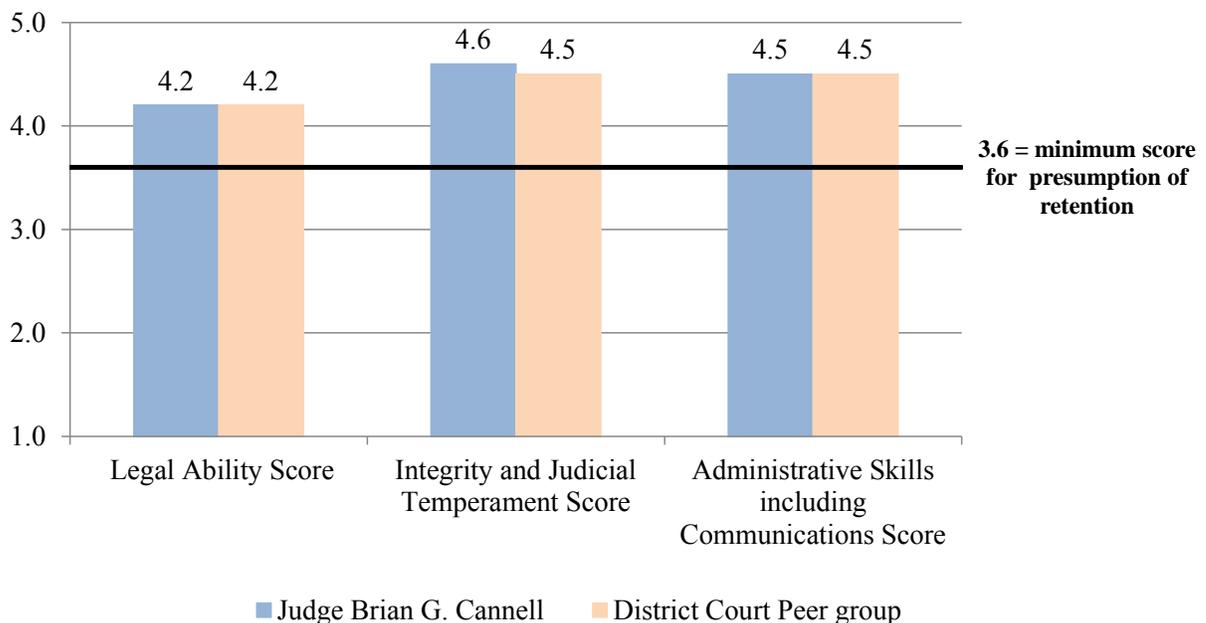
(vote count: 12-0 for retention)

Appointed to the bench in 2013, Judge Brian Cannell is a relatively new judge who scores on average with his district court peers in all survey categories. Survey respondents describe him as a careful and fair judge who listens closely and treats those appearing before him with courtesy and respect. They view him as considerate and polite. Courtroom observers note that Judge Cannell runs a well-organized courtroom. They characterize him as calm, professional, confident and decisive, with an empathetic demeanor that fosters a non-threatening atmosphere. Nearly all courtroom observers report they would feel comfortable appearing before him. Of survey respondents answering the retention question, 93% recommend that Judge Cannell be retained.

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

Judge Brian G. Cannell was appointed to the First District Court by Governor Herbert in 2013. Judge Cannell graduated from Utah State University and earned his law degree from the University of Houston Law Center, both with honors. Until his appointment, he maintained a civil law practice with Hillyard, Anderson and Olsen. Judge Cannell taught Mass Media Law at USU and has served as president of both the Cache County Bar Association and Estate Planning Council of Northern Utah. Judge Cannell currently serves on the pro-bono committee, helping provide access to the courts and legal services for the indigent. He also presides over the Box Elder County Mental Health Court.

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



The Honorable Brian G. Cannell

Judicial Performance Evaluation Commission Report

Retention 2016

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II. Courtroom Observation Report

I. Survey Report

Survey Results

A. How to Read the Results

For Judge Brian G. Cannell, 53% of qualified survey respondents submitted surveys. Of those who responded, 69 agreed they had worked with Judge Brian G. Cannell enough to evaluate his performance. This report reflects these 69 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 "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 the Legal Ability questions.

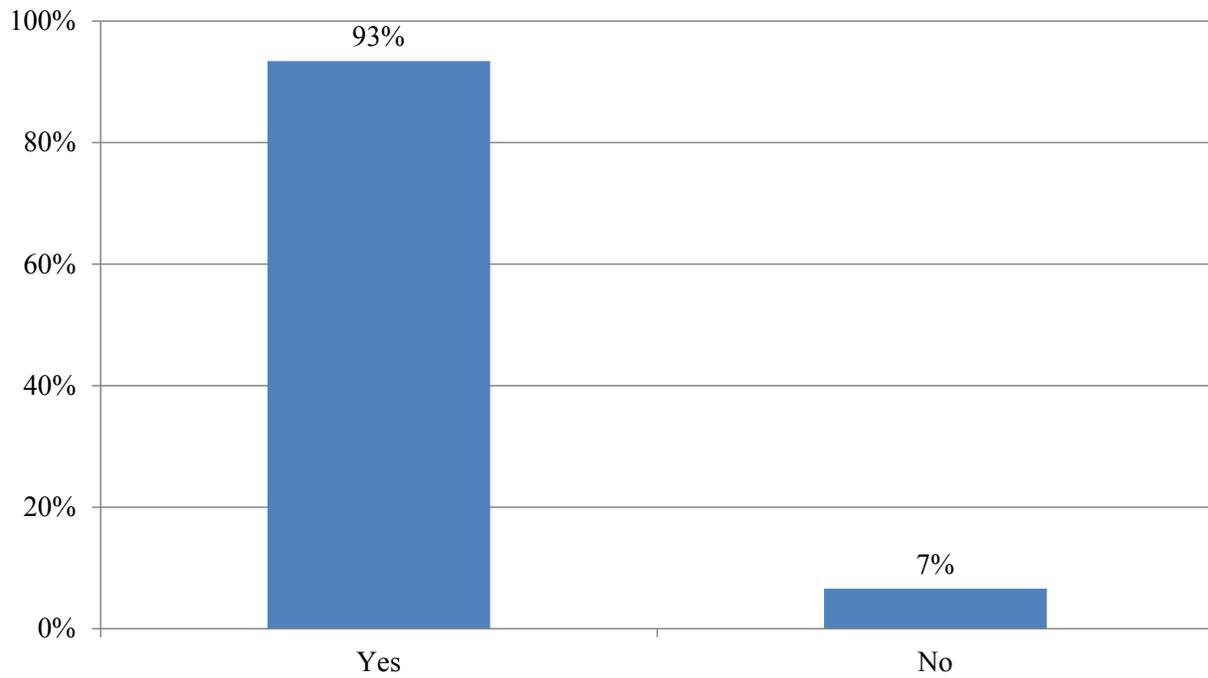
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to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

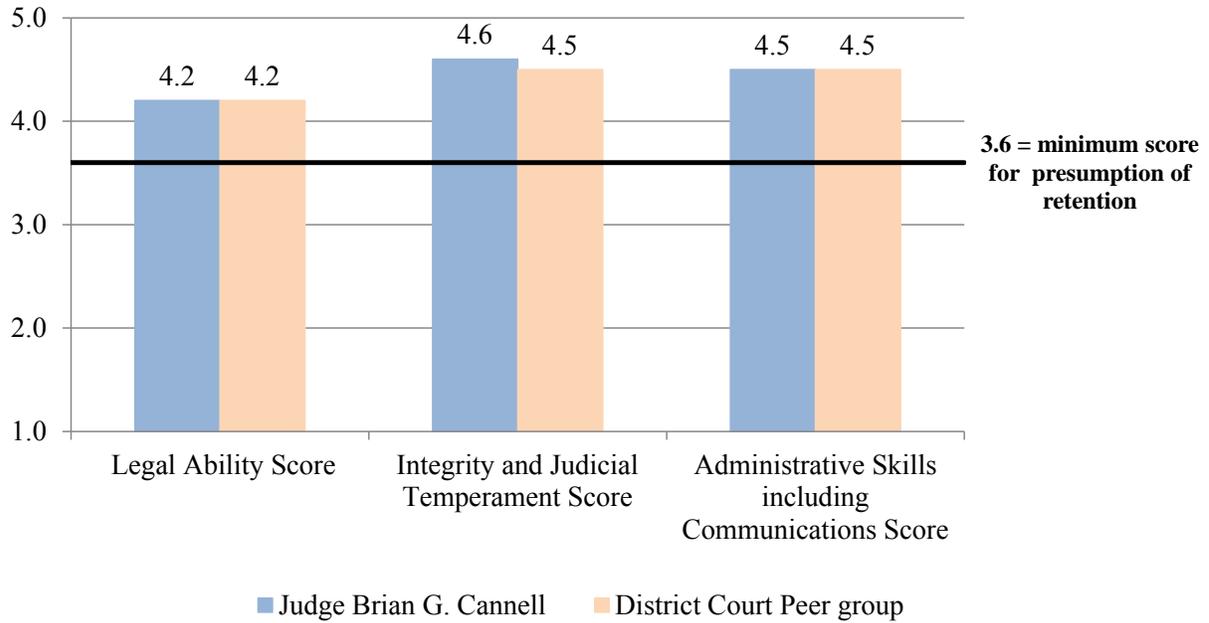
B. Retention Question

Figure A. Would you recommend that Judge Brian G. Cannell be retained?



C. Statutory Category Scores

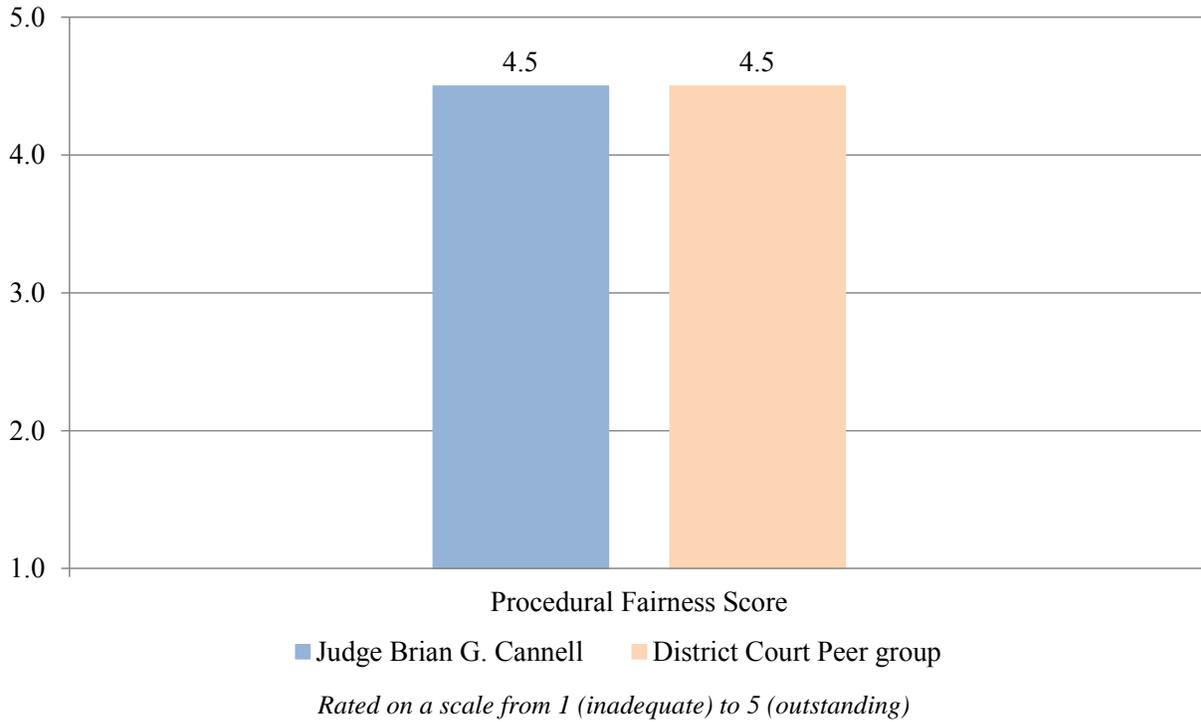
Figure B. Statutory Category Scores



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 Brian G. Cannell
Procedural Fairness	Pass

E. Responses to Individual Survey Questions

Table B. Responses to Survey Questions

Category	Question	Judge Brian G. Cannell	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	4.2
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.1	4.2
Legal Ability	The judge only considers evidence in the record.	4.3	4.2
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.2	4.2
Legal Ability	The judge's written opinions contain a readily understandable, concise ruling	4.2	4.2
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.5	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	4.3
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.6	4.4
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.	4.6	4.6

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

Table C. Responses to Survey Questions (continued)

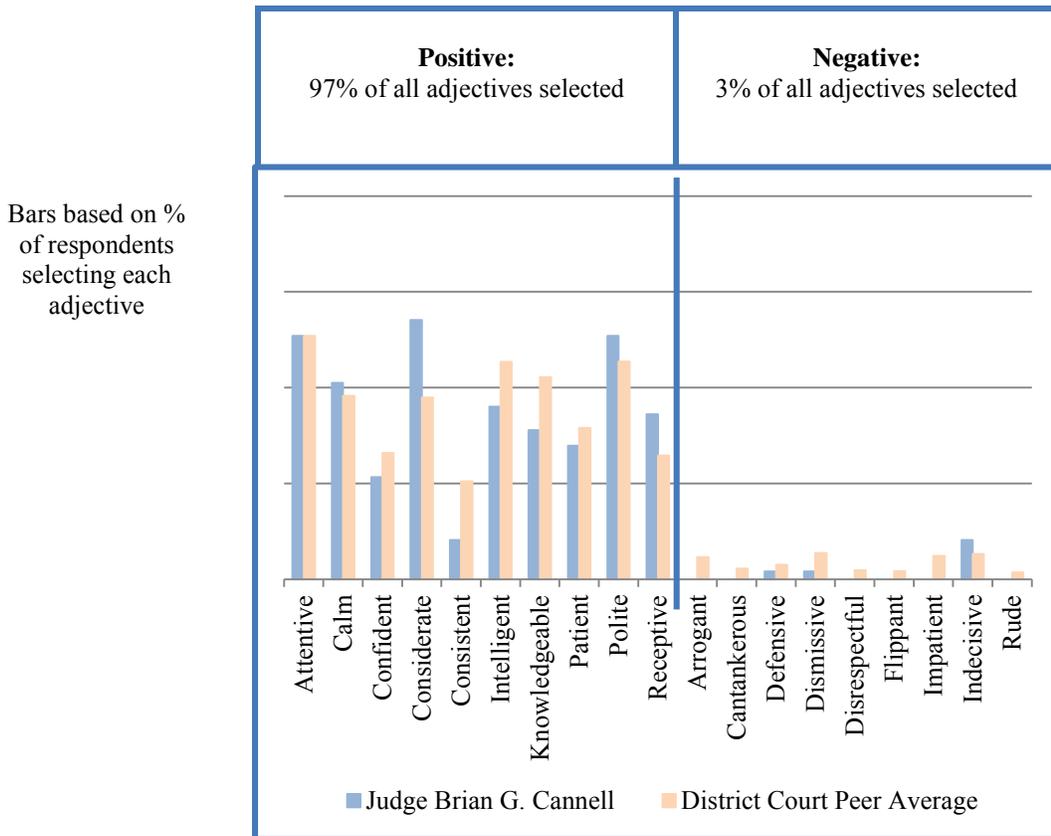
Category	Question	Judge Brian G. Cannell	District Court
Administrative Skills	The judge is prepared for court proceedings.	4.5	4.4
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.7	4.6
Administrative Skills	The judge is an effective manager.	4.6	4.5
Administrative Skills	The judge convenes court without undue delay.	4.6	4.6
Administrative Skills	The judge rules in a timely fashion.	4.4	4.5
Administrative Skills	The judge maintains diligent work habits.	4.5	4.5
Administrative Skills	The judge's oral communications are clear.	4.5	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	4.6
Procedural Fairness	The judge is fair and impartial.	4.4	4.5
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.5	4.5
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.5	4.4

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	15%
Domestic	40%
Criminal	36%
Civil	58%
Other	11%

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	72%
6 - 10	19%
11 - 15	4%
16 - 20	2%
More than 20	4%

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 BRIAN CANNELL

Six observers wrote 116 codable units that were relevant to 13 of the 15 criteria. Three observers reported that the judge was not aware that JPEC observers were present, and three did not know if the judge was aware.

Overview

OVERALL ASSESSMENT	<ul style="list-style-type: none">• All observers were positive about Judge Cannell. Observer A additionally reported some reservations in the second hearing she observed (see “Anomalous comments”).• Five observers reported that they would feel comfortable appearing before Judge Cannell. Observer A would have reservations only if her experience were similar to the second hearing she observed (see “Anomalous comments”).
WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none">• All observers variously reported that Judge Cannell listened attentively and stayed focused on each case. He was well prepared and remembered the circumstances of prior cases. The court was well-organized and efficient with a no-nonsense atmosphere. Judge Cannell was calm, professional, confident, and decisive, and his empathetic demeanor created a non-threatening atmosphere. He was very respectful, greeting and thanking participants politely and apologizing promptly when participants were delayed. He maintained good eye contact and his body language indicated his sincere interest and attention. He was equally calm and consistent with each defendant without any pre-conceptions, regardless of their charges or station in life. He showed genuine concern for defendants’ circumstances after empathetically hearing their stories, and while he did his best to give the benefit of the doubt he did not let his concern sway his judgment. Judge Cannell allowed participants as much time as needed to tell their story, listened closely without rushing or correcting them, and carefully weighed what he heard before making a decision. He was an excellent communicator, speaking slowly and clearly in an understandable way, and he asked for confirmation of defendants’ understanding of their rights, the proceedings, and their charges. He took time to explain his clear and articulate decisions.
MINORITY OBSERVATIONS	<ul style="list-style-type: none">• None
ANOMALOUS COMMENTS	<ul style="list-style-type: none">• Observer A reported that in the first hearing all participants received Judge Cannell’s full attention, but in the second hearing some individuals were “short-changed”:<ul style="list-style-type: none">• Judge Cannell interrupted and was impatient with a defendant who had become insistent on some concerns, but Observer A gained respect for the judge when he self-corrected his behavior (see “Courtesy, politeness, and general demeanor”).• Judge Cannell showed less interest and gave less attention than other judges to a new parent in an adoption process (see “Demonstrates concern for individual needs”).• Judge Cannell’s efforts at saving everyone’s time led a participant to be hurried and confused when testifying during a gap in a different case (“Unhurried and careful”).• Judge Cannell’s statement of his lack of knowledge in an area may have lessened trust in his decision (see “Provides adequate explanations”).

Summary and *exemplar language* of six observers’ comments

RESPECT

Listening & focus	Four observers reported that Judge Cannell <i>listened very carefully, intently, and attentively without interrupting</i> . He <i>stayed focused on each case rather than address the room at large</i> .
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Well-prepared & efficient	Three observers reported that Judge Cannell had <i>read reports</i> and information about cases <i>in advance</i> and was <i>well prepared</i> . He was <i>impressive</i> in remembering <i>circumstances from prior cases</i> and seemed to remember <i>prior promises and held participants accountable</i> to these. One observer commented that the judge needed to look up the <i>standard rules of probation</i> and that it might <i>appear more reassuring to produce that information without needing to look it up</i> .
Respect for others' time	Three observers reported that Judge Cannell <i>apologized</i> when he <i>needed a minute to assess a situation</i> and <i>quickly acknowledged impositions</i> on others' time and <i>asked for forgiveness</i> . When he had <i>not read a pre-sentence report</i> he apologized to the inmate, saying, " <i>I am sorry, I know you have been waiting patiently,</i> " and he <i>apologized profusely</i> to a defendant who did <i>not understand that his case had been moved out two weeks and had waited the entire morning</i> .
Courtesy, politeness, and general demeanor	<p>Five observers reported that Judge Cannell was <i>polite, pleasant, calm, and professional</i>, and his demeanor <i>empathetic, personable, and non-threatening</i>, creating an atmosphere that made <i>defendants feel safe</i>. He was <i>confident and decisive</i>, saying <i>without hesitation</i>, "<i>This will be the sentence of the court.</i>" He called the defendants <i>Sir and Ma'am</i>, <i>thanked participants for their input</i>, and asked a man for the <i>correct pronunciation of his name</i>. He <i>showed humility at every turn</i> and was <i>quick to accept responsibility for suggested changes to his decision</i>. However, he <i>demanded respect for the proceedings and could be quick to show his displeasure</i>, saying to an attorney and client <i>talking at the same time as the judge</i>, "<i>Are you finished? Now it's my turn.</i>"</p> <p>Observers offered many examples of Judge Cannel's respectful manner. He said to a young man when agreeing to send him home to Oregon, "<i>Thank you, sir, I hope that you make it home safely.</i>" He <i>respectfully gave a defendant a "heads up" on the timing of sentencing</i>, saying, "<i>Be prepared ... It's usually six weeks on.</i>" When a defendant said, "<i>I'm not a criminal, I'm just stupid,</i>" the judge <i>treated him with respect by simply responding</i>, "<i>Thank you, sir.</i>"</p> <p>In marked contrast Observer A reported one case in which the judge's <i>body language was a bit more tense</i> and he <i>initially interrupted</i> and was <i>impatient</i> with a participant who was <i>very insistent</i> about what the observer felt were <i>trivial concerns</i>. However the judge <i>caught himself and became more patient</i> and asked her for clarification. The observer <i>gained respect</i> for Judge Cannell's ability to <i>self-correct his judicial behavior</i>, and <i>after some time he allowed the participant to give her full perspective and gave a more clear explanation of the process</i>.</p>
Body language	Four observers reported that Judge Cannell <i>maintained good eye contact</i> and <i>open body language</i> that <i>indicated his interest and attention to what was being said</i> . His <i>facial expressions were serious and sincere</i> . He <i>did not move around on the bench</i> , and one observer thought to himself, " <i>This Judge knows what he is doing and doesn't need to fidget about.</i> "
Courtroom tone & atmosphere	Five observers reported that the courtroom was <i>well organized</i> and ran <i>efficiently and effectively</i> , with a <i>no-nonsense, business-like atmosphere</i> . However, three observers were surprised when the bailiff said, " <i>Remain seated,</i> " each time the judge entered, although one observer felt that the judge <i>commanded respect without the court being asked to rise</i> .
<i>NEUTRALITY</i>	
Consistent and equal treatment	Four observers reported that Judge Cannell displayed the <i>same calmness and consistency</i> with each defendant. He asked defendants <i>who wanted to plead guilty the same questions he knew by heart in the same way</i> . His body language did not indicate <i>any preconceived notions regarding a person's alleged crime or station in life that may put a person at a disadvantage</i> . He listened to all the stories with <i>equal attention to detail</i> , having <i>empathy and yet holding defendants accountable</i> . In the face of some very ugly charges he <i>stayed calm and collected, treating these defendants just like those charged only with misdemeanors</i> .
Demonstrates concern for individual needs	Five observers provided numerous examples of Judge Cannell's <i>genuine concern</i> . He tried to <i>keep a defendant in his job</i> by allowing him to serve his final days of incarceration on the weekend. When a man asked for <i>one last chance with his daughters in the community, as he had been in a program and now understood what was important</i> , Judge Cannell <i>watched and listened intently</i> and gave him the <i>benefit of the doubt, allowing time served and releasing him</i> .

Demonstrates concern for individual needs <i>continued</i>	<p>However, while he <i>showed appreciation</i> of defendants' circumstances, this <i>did not necessarily sway his judgment</i>. When an attorney asked for the release of a <i>troubled young man</i>, Judge Cannell <i>respectfully asked for the opinion of case workers</i> and others before deciding that he <i>needed a serious action plan</i> before his release.</p> <p>In marked contrast, Observer A felt that Judge Cannell gave less attention than she has observed in other courts to an adoption process, in which a mother's new husband was in the process of adopting her son. The judge <i>asked the standard questions but he didn't seem to be interested in the responses or dwell on the "why" and the responsibility of adopting</i>. Judge Cannell <i>gave sound advice but he might have gone into a bit more detail with the parents on adoption</i>.</p>
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Unhurried and careful	<p>Four observers reported that Judge Cannell moved expeditiously from one case to the next <i>without any sense of rushing anyone</i>.</p> <p>Observer A noted that on one occasion Judge Cannell <i>wanted to be flexible and considerate of everyone's time</i> by asking an unscheduled participant, "<i>Are you ready to testify today? Let's take advantage of the time,</i>" which led a participant <i>expecting a full hearing rather than one in the middle of another</i> to become <i>confused and frustrated trying to explain her point of view in a hurried fashion</i>, which could have been avoided if the judge <i>had handled his schedule differently</i>.</p>
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VOICE

Considered voice	<p>Four observers reported that Judge Cannell <i>invited participants to address the court in a manner that communicated a willingness to listen</i>. He allowed however much time was needed to tell their story, <i>listening carefully and never rushing them or trying to intercede or correct</i>. He <i>always acknowledged an accused defendant</i>, asking if they had <i>anything to add or say</i>, and if they did he <i>listened closely</i>. When a defendant expressed concern that his plea arrangement was for 6 months probation, and the judge decreed one year, Judge Cannell <i>re-read the plea arrangement and changed the sentence to match the plea arrangement</i>. He weighed carefully <i>counsel's advice and ensured that the defendants were agreeing and understanding before making a decision</i>.</p> <p>An observer was <i>impressed</i> that he listened <i>attentively to a woman who wept while making an extended plea for probation</i>, allowing her the time to communicate <i>all that she wanted</i> before <i>carefully considering the information</i>. He allowed another defendant to explain <i>his schooling, certificates, etc.</i> for several minutes and asked <i>for clarifications</i>, but then <i>allowing for points made</i>, he still <i>held the defendant accountable</i>, and the observer felt <i>the guy got to say his piece</i>.</p>
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COMMUNICATION

Communicates clearly	<p>Two observers reported that Judge Cannell was an <i>excellent communicator</i>. He spoke in a <i>slow, clear voice, attempting to communicate important questions in the most understandable way</i>.</p>
Ensures information understood	<p>Two observers reported that Judge Cannell <i>asked for confirmation that individuals understand their rights and the potential consequences of their plea</i>, and he ensured that they <i>understood the proceedings</i> and that <i>the charges were correct</i>.</p>
Provides adequate explanations	<p>Four observers reported that Judge Cannell was <i>clear and articulate</i> when making his decisions and took the time to explain <i>why he made a decision</i>. He explained to a defendant with a job that her sentence <i>without work release</i> was needed <i>in order to "get her attention,"</i> even though he <i>understood it could affect her employment</i>. After sentencing, he <i>carefully explained in detail what defendants were required to do</i>, giving the <i>time and place</i> to be next in court.</p> <p>Observer A was <i>unsure</i> why in one case Judge Cannell <i>made an initial statement about his lack of knowledge</i>, saying, "<i>Survey issues wasn't an area of expertise for me. I have done some real estate work but not much,</i>" and stating he would be relying on the expert witnesses and counsel for information. The observer felt this <i>might have cast a bit of doubt or mistrust on his decision</i>.</p>
