

Honorable R. Scott Waterfall – Justice Court Judge

Serving Roy Municipal Justice Court, Weber County



Commission Recommendation: **RETAIN**

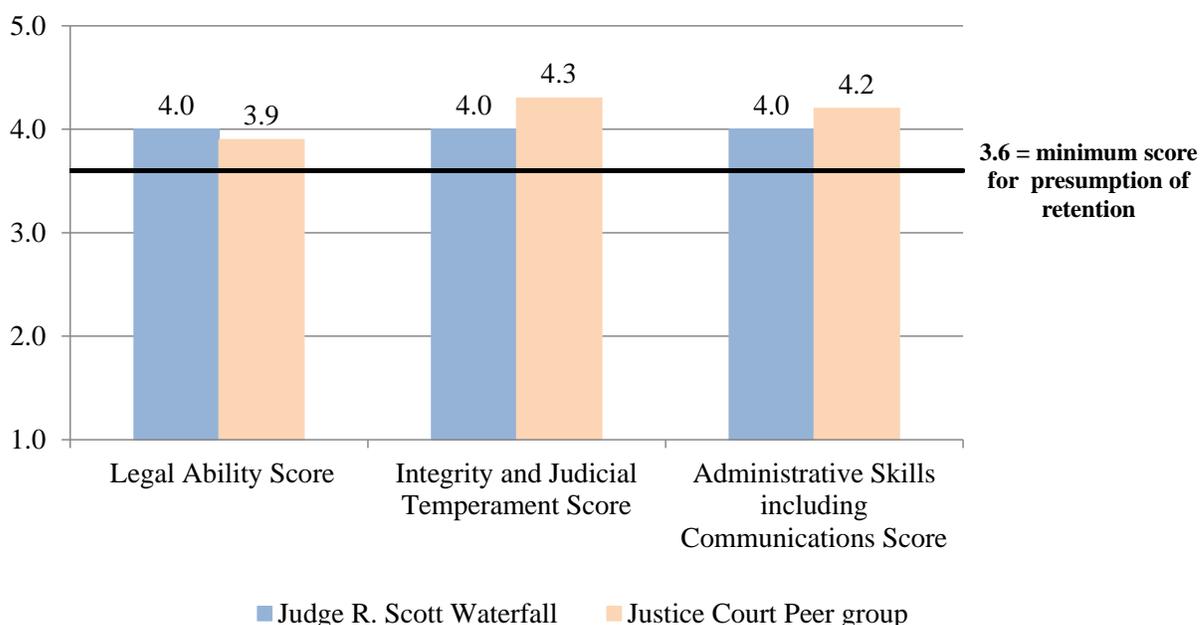
(vote count: 12-0 for retention)

An experienced judge, Judge Scott Waterfall scores consistent with the average of his justice court peers in all survey categories. Respondents generally agree that Judge Waterfall is intelligent, knows the law, and projects confidence. Some, however, view him as disrespectful for flippant comments and a dismissive attitude towards attorneys, court staff, and other courtroom participants. In contrast, all courtroom observers praise Judge Waterfall, noting his professional demeanor, engaged approach, and excellent communication skills. All observers report that they would feel comfortable appearing before him in court. Of 27 survey respondents answering the retention question, 18 (67%) recommend retention for Judge Waterfall.

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

Judge Scott Waterfall was appointed to the South Ogden Justice Court in 1992 and the Roy Justice Court in 2003. After earning bachelors and masters degrees from Weber State University, he earned a law degree from Brigham Young University. A member of the Utah State and Weber County Bar Associations and the Utah Association of Justice, Judge Waterfall worked as an attorney in private law practice for many years. He has taught at Weber State University and authored law-related articles published in national and local media. Judge Waterfall has served on the Board of Justice Court Judges and as Chair of the Second Judicial District Education Committee.

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



The Honorable R. Scott Waterfall

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 R. Scott Waterfall, 35% of qualified survey respondents submitted surveys. Of those who responded, 27 agreed they had worked with Judge R. Scott Waterfall enough to evaluate his performance. This report reflects these 27 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 "Justice 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.

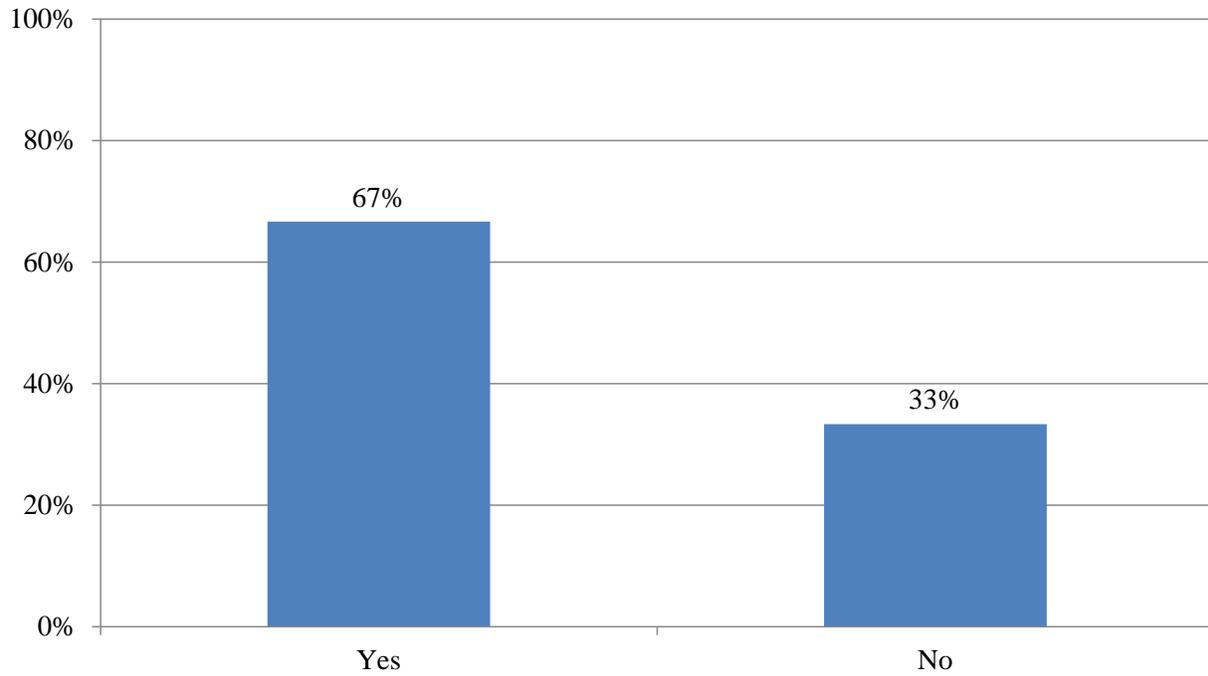
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to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

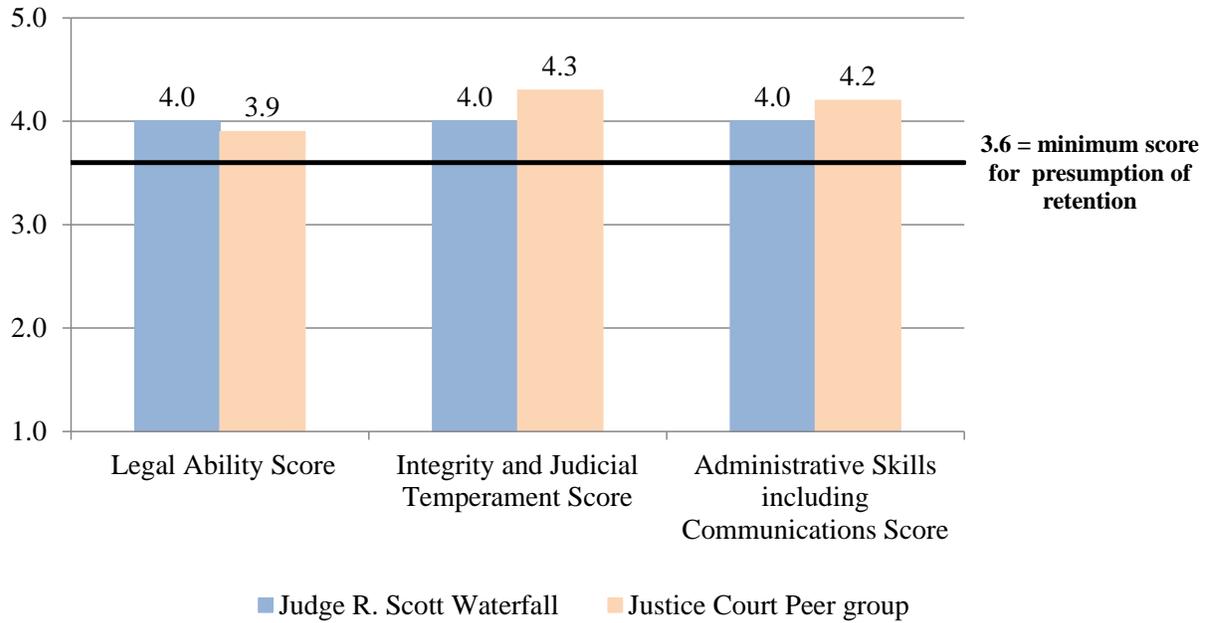
B. Retention Question

Figure A. Would you recommend that Judge R. Scott Waterfall be retained?



C. Statutory Category Scores

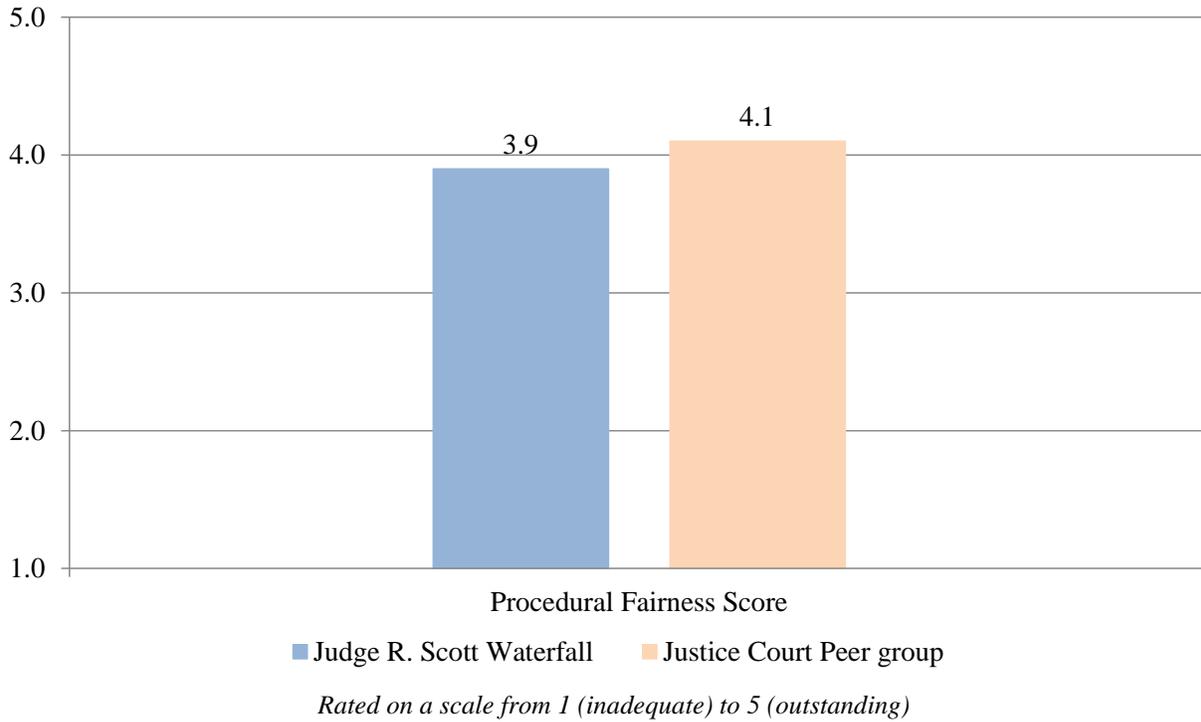
Figure B. Statutory Category Scores



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 R. Scott Waterfall |
|---------------------|--------------------------|
| Procedural Fairness | Pass |

E. Responses to Individual Survey Questions

Table B. Responses to Survey Questions

| Category | Question | Judge R. Scott Waterfall | Justice Court |
|----------------------------------|---|--------------------------|---------------|
| Legal Ability | The judge follows the applicable legal rules (e.g. civil procedure, criminal procedure, evidence, juvenile, appellate) that apply to the case at issue. | 4.1 | 4.0 |
| Legal Ability | The judge makes appropriate findings of fact and applies the law to those facts. | 4.0 | 3.9 |
| Legal Ability | The judge follows legal precedent or clearly explains departures from precedent. | 3.9 | 3.9 |
| Legal Ability | The judge only considers evidence in the record. | 3.7 | 3.9 |
| Legal Ability | The judge's written opinions/decisions offer meaningful legal analysis. | 4.1 | 3.8 |
| Legal Ability | The judge's written opinions contain a readily understandable, concise ruling | 4.3 | 3.9 |
| Integrity & Judicial Temperament | The judge makes sure that everyone's behavior in the courtroom is proper. | 3.9 | 4.3 |
| Integrity & Judicial Temperament | The judge appears to pay attention to what goes on in court. | 4.1 | 4.3 |
| Integrity & Judicial Temperament | The judge's personal life or beliefs do not impair his or her judicial performance. | 3.9 | 4.1 |
| Integrity & Judicial Temperament | The judge demonstrates respect for the time and expense of those attending court. | 3.7 | 4.0 |
| 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. | 4.3 | 4.4 |

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

Table C. Responses to Survey Questions (continued)

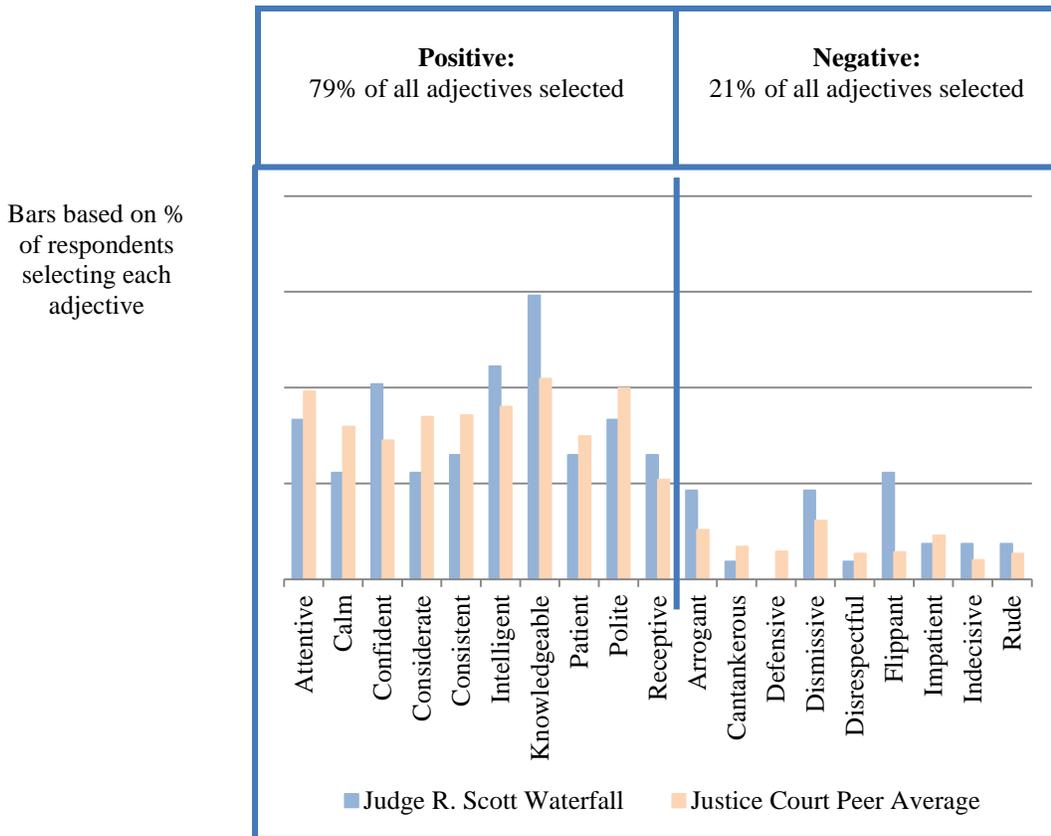
| Category | Question | Judge R. Scott Waterfall | Justice Court |
|-----------------------|---|---------------------------------|----------------------|
| Administrative Skills | The judge is prepared for court proceedings. | 3.9 | 4.3 |
| Administrative Skills | The judge's interactions with courtroom participants and staff are professional and constructive. | 3.9 | 4.1 |
| Administrative Skills | The judge is an effective manager. | 3.7 | 4.1 |
| Administrative Skills | The judge convenes court without undue delay. | 3.7 | 4.1 |
| Administrative Skills | The judge rules in a timely fashion. | 4.3 | 4.3 |
| Administrative Skills | The judge maintains diligent work habits. | 3.8 | 4.3 |
| Administrative Skills | The judge's oral communications are clear. | 4.1 | 4.3 |
| Administrative Skills | The judge's written opinions/decisions are clear and logical. | 4.1 | 4.1 |
| Procedural Fairness | The judge treats all courtroom participants with equal respect. | 3.8 | 4.1 |
| Procedural Fairness | The judge is fair and impartial. | 3.9 | 4.0 |
| Procedural Fairness | The judge promotes public trust and confidence in the courts through his or her conduct. | 3.8 | 4.0 |
| Procedural Fairness | The judge provides the parties with a meaningful opportunity to be heard. | 4.1 | 4.2 |

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?

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|-------------|-----|
| Collections | 9% |
| Domestic | 23% |
| Criminal | 95% |
| Civil | 23% |
| Other | 9% |

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 | 27% |
| 6 - 10 | 23% |
| 11 - 15 | 27% |
| 16 - 20 | - |
| More than 20 | 23% |

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 R. SCOTT WATERFALL

Four observers wrote 90 codable units that were relevant to 12 of the 15 criteria. Three observers reported that the judge was not aware that JPEC observers were present, and one did not know if the judge was aware.

Overview

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|---------------------------|---|
| OVERALL ASSESSMENT | <ul style="list-style-type: none">• All observers were positive about Judge Waterfall and emphasized his favorable and nonthreatening demeanor. Observer A additionally commented on several matters, mostly related to the more informal nature of Justice Courts (see “Anomalous comments”).• All observers reported that they would feel comfortable appearing before Judge Waterfall. |
| WIDELY AGREED-UPON THEMES | <ul style="list-style-type: none">• All observers variously reported that Judge Waterfall was a great listener, knowledgeable about the law, and organized and prepared. His eye contact and posture showed his interest in what speakers were saying, and he treated everyone the same, no matter the offense. While the court was professional, the relaxed air lent a nonthreatening atmosphere. Judge Waterfall was willing to take time to assist and work with defendants, asking them many questions, and participants did not hesitate to ask questions of the judge. He took time to consider each case without rushing, and he gave participants multiple opportunities to speak and explain their circumstances without interceding. He repeated himself and asked questions to ensure participants understood the proceedings and their situations, and he explained his decisions, how the law was applied, and fines and payment systems in detail.• All observers emphasized Judge Waterfall’s favorable personality and demeanor. He was polite and patient, an excellent communicator, comforting, empathetic, and kind, and he used appropriate and effective humor and was very human and connected at all times. While he was professional and held defendants accountable, he did not look down on them but made them feel relaxed and safe (see “Courtesy, politeness, and general demeanor”). |
| MINORITY OBSERVATIONS | <ul style="list-style-type: none">• Two observers reported that Judge Waterfall showed concern for defendants’ rights but did not always receive verbal verification of their understanding (see “Ensures information understood”). |
| ANOMALOUS COMMENTS | <ul style="list-style-type: none">• Observer A reported matters that he assumed reflected the more informal nature of Justice Courts. The observer was surprised by long unexplained breaks when nothing was going on and also wondered if security checks at the entrance occurred while the sole officer was in court performing bailiff duties (see “Respect for others’ time” and “Courtroom tone & atmosphere”).• Observer A also noted that neither judge nor prosecutor knew drivers’ traffic records, but relied on the word of the defense attorney (see “Well-prepared & efficient”), that the judge rarely asked for or received input from the prosecutor (see “Consistent and equal treatment”), and that the judge always greeted attorneys good morning, but his first statement to defendants was if they understood their rights (“Courtesy, politeness, and general demeanor”). |

Summary and *exemplar language* of four observers’ comments

RESPECT

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| Listening & focus | One observer reported that Judge Waterfall was a <i>great listener</i> and <i>focused on defendants’ statements at all times.</i> |
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| Well-prepared & efficient | <p>Three observers reported that Judge Waterfall was <i>knowledgeable about the law</i>. He was <i>very organized and prepared</i> for the cases, <i>reviewing the history of each defendant</i> without spending an <i>undue amount of time viewing the computer monitor</i>.</p> <p>In marked contrast Observer A found it <i>somewhat strange</i> that neither the judge, prosecutors, nor defense attorneys <i>had any idea regarding defendants' traffic record</i>, and the <i>word of the defense attorney was taken as factual in all cases</i>.</p> |
| Respect for others' time | <p>Observer A reported that court <i>started 10 minutes late</i> and was surprised by <i>unexplained breaks of 20 to 25 minutes when absolutely nothing was going on</i>. The observer assumed <i>this is the way this justice court conducts its business because everyone seemed to be quite comfortable with it</i>.</p> |
| Courtesy, politeness, and general demeanor | <p>All observers reported that Judge Waterfall was <i>polite</i> and an <i>excellent communicator</i> and was <i>never tired, rude, or impatient</i>. He <i>asked people questions about themselves and calmed them down to get to the reason they were there</i>. He was <i>comforting and kind, open and friendly, empathetic and personable with a positive tone</i>, but also <i>extremely professional</i>. He had a <i>smile for everyone</i> and was <i>very human and connected at all times, remaining as light as possible to make defendants feel safe, which relaxed everyone</i>. While he held defendants <i>accountable</i>, his decisions were <i>tempered with a lack of arrogance</i>, and he <i>did not look down on defendants</i>. They <i>understood his decisions were fair as they nodded and smiled or shrugged their shoulders in agreement</i>.</p> <p>Judge Waterfall <i>greeted participants with a pleasant tone and welcoming smile and ensured that he pronounced names correctly</i>. In marked contrast, Observer A reported that the judge <i>always said "Good morning" to the attorneys</i>, but he <i>never said good morning or acknowledged defendants</i>, as his <i>opening statement was almost always, "Do you understand your rights?"</i></p> <p>Observers noted Judge Waterfall's appropriate humor. When he <i>read something incorrectly and apologized</i>, he <i>made a joke about himself</i>, and on occasion when he <i>laughed he explained and apologized that he was not being facetious, but took the case seriously and hoped the defendant did as well</i>. Observer A reported a humorous exchange that <i>clearly broke the tension</i> with a young offender who had been speeding, and the observer felt that this communicated <i>empathy</i> and the idea that <i>we are not here to crucify you and destroy your life forever</i> and concluded that this is <i>probably an important way to gain acceptance of the legal system by young individuals</i>.</p> |
| Body language | <p>Two observers reported that Judge Waterfall's <i>eye contact and posture showed an interest in what each party was saying</i>.</p> |
| Courtroom tone & atmosphere | <p>One observer reported that while court was <i>professional, there was a relaxed air that lent a nonthreatening atmosphere to the courtroom</i>. However, Observer A noted that while he understood that <i>Justice Courts are far more informal than District Courts</i>, he wondered if a <i>security check was being conducted as people entered the courtroom while the sole officer was in the courtroom performing his bailiff duties</i>.</p> |
| <i>NEUTRALITY</i> | |
| Consistent and equal treatment | <p>Two observers reported that Judge Waterfall <i>treated everyone the same, no matter the offense</i>. Observer A reported that the judge <i>rarely ask for or received any input from the prosecuting attorney</i> and even <i>failed to consult the prosecution when the defendant's attorney stated that charges had been dropped</i>. The observer wondered if the <i>public's interest in these matters was being fully considered</i>.</p> |

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| Demonstrates concern for individual needs | All observers provided examples of Judge Waterfall’s willingness to assist and work with defendants. He asked questions <i>if clarification was needed</i> or if he <i>found something unusual</i> . Participants <i>did not hesitate to ask questions about their cases</i> , and the judge <i>provided them some direction</i> . He took time to listen to participants who <i>did not understand the process</i> in other courts and <i>reviewed any documents they had with them</i> . He <i>took quite a bit of time asking questions and talking to a juvenile</i> , telling him there would be a review in 6 months “ <i>to see what your situation is at that time</i> ,” and that <i>during this time he should look for a job</i> , and he agreed to <i>delay the payment of the fine until the review</i> . When a young man <i>extensively outlined his difficulty obtaining work and finding community service that did not interfere with mandated classes</i> , the judge <i>took his attempts to comply into consideration</i> but also <i>stressed that there were community service opportunities that could be taken advantage of that had evening hours</i> . |
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| Unhurried and careful | Three observers reported that Judge Waterfall <i>took time to consider each case, letting everyone take their time to explain things and never rushing them or trying to intercede or correct</i> . His <i>decision-making process was thorough</i> . When a defendant had charges in multiple jurisdictions, the judge asked the <i>specifics of the defendant’s existing probation program before granting the plea arrangement suggested by the prosecutor</i> . |
|-----------------------|---|

VOICE

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| Considered voice | Two observers reported that Judge Waterfall <i>allowed everyone time to explain their circumstances and tell their story</i> , and he <i>allowed attorneys the appropriate time to respond</i> . He <i>listened and took what they said into consideration</i> . He gave <i>multiple opportunities to speak</i> by asking, “ <i>Do you have any questions?</i> ” or, “ <i>What happened?</i> ” or, “ <i>Anything you would like me to know?</i> ” When a defendant would not speak to <i>explain her circumstances</i> , he explained, “ <i>You don’t have to tell me what happened, but it sometimes helps me with sentencing.</i> ” |
|------------------|---|

COMMUNICATION

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| Ensures information understood | Three observers reported that Judge Waterfall <i>said many things over again to ensure understanding</i> of the proceedings and about his explanations of his decisions. He <i>probed with questions to clarify</i> and ensure that defendants were <i>agreeing and understanding</i> . One observer was <i>surprised that the verification of the defendant’s knowledge of their rights was not verbalized on guilty pleas</i> , but the judge did show <i>concern that their rights were met in other ways</i> . Observer A reported that Judge Waterfall <i>usually started out by asking if they understood their rights</i> , but in one instance he didn’t ask a defendant with a public defender but <i>merely went to “Here is what you’re charged with.”</i> |
|--------------------------------|--|

| | |
|--------------------------------|--|
| Provides adequate explanations | All observers reported that Judge Waterfall <i>explained his decisions and how the law was being applied</i> , in some cases <i>citing the Utah Code</i> . He was <i>very careful to explain fines</i> , and when a <i>payment system had been asked for explained in detail how the system was to work</i> . He <i>made clear why he reduced some fines or jail time and what would happen if the participant did not follow through</i> . He was <i>very helpful in reviewing the paperwork and explaining what a defendant had to do</i> whose license had been suspended in another state, and she had already <i>paid the fine</i> . He <i>provided information to assist a defendant with his community service</i> . Judge Waterfall <i>explained a restraining order to a very unhappy young defendant and asked him if he had any questions or concerns and gave him time to review and think</i> . The man <i>nodded in understanding and left quietly, seeming to accept that he must follow the law</i> . |
|--------------------------------|--|
