Honorable Douglas Whitlock – Justice Court Judge

Serving Washington County Justice Court

Commission Recommendation: **RETAIN**

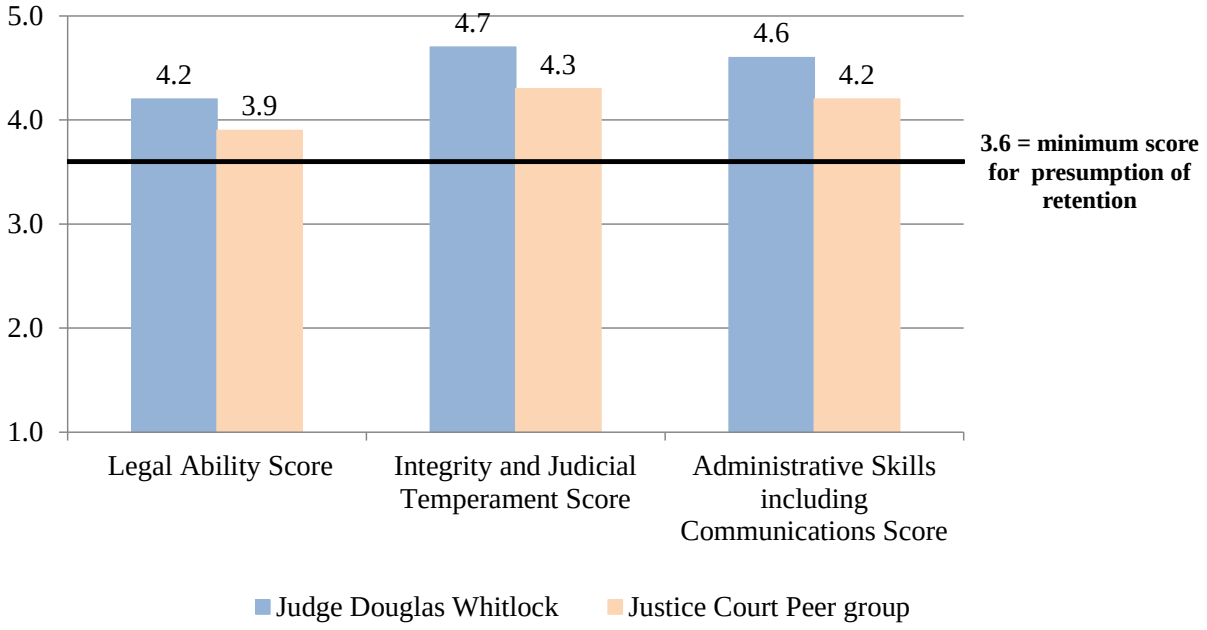
(vote count: 12-0 for retention)

With many years of experience, Judge Douglas Whitlock scores above the average of his justice court peers in integrity and judicial temperament, administrative skills, and procedural fairness and consistent with the average of his peers in legal ability. Survey respondents choose 98% positive words from a list to describe Judge Whitlock, characterizing him as both considerate and polite. They note that he runs a fair and respectful courtroom, ensuring proper behavior by participants without intimidating them. Courtroom observers praise Judge Whitlock's excellent communication skills and efficient courtroom management. They particularly note his patience and enthusiasm in seeking input from courtroom participants and ensuring that they understand court procedures. All observers report they would feel comfortable appearing before him. Of 36 survey respondents answering the retention question, 35 (97%) recommend that Judge Whitlock be retained.

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

Judge Douglas Whitlock was appointed to the Enterprise Justice Court in 1990 where he served on a part-time basis. In 2003, he was appointed by the Washington County Commission to serve as a full-time judge in the Washington County Justice Court. Judge Whitlock was awarded the Justice Court Judge of the Year Award in 2005. In March 2009, he received a Certificate of Legal Studies from the Legal Institute for Justice Court Judges. Judge Whitlock currently serves as a member of the Washington County Domestic Violence Coalition. He has also served on the Utah State Fine & Bail Committee and the Washington County Board of Adjustments.

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



The Honorable Douglas Whitlock

Judicial Performance Evaluation Commission Report

Retention 2016

Table of Contents

I. Survey Report

Survey Results 1
A. How to Read the Results 1
B. Retention Question 2
C. Statutory Category Scores 3
D. Procedural Fairness Score 4
E. Responses to Individual Survey Questions 5
F. Adjective Question Summary 7
G. Attorney Demographics 8
Survey Background and Methods 9
A. Survey Overview 9
B. Evaluation Period 10

II. Courtroom Observation Report

I. Survey Report

Survey Results

A. How to Read the Results

For Judge Douglas Whitlock, 36% of qualified survey respondents submitted surveys. Of those who responded, 38 agreed they had worked with Judge Douglas Whitlock enough to evaluate his performance. This report reflects these 38 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.

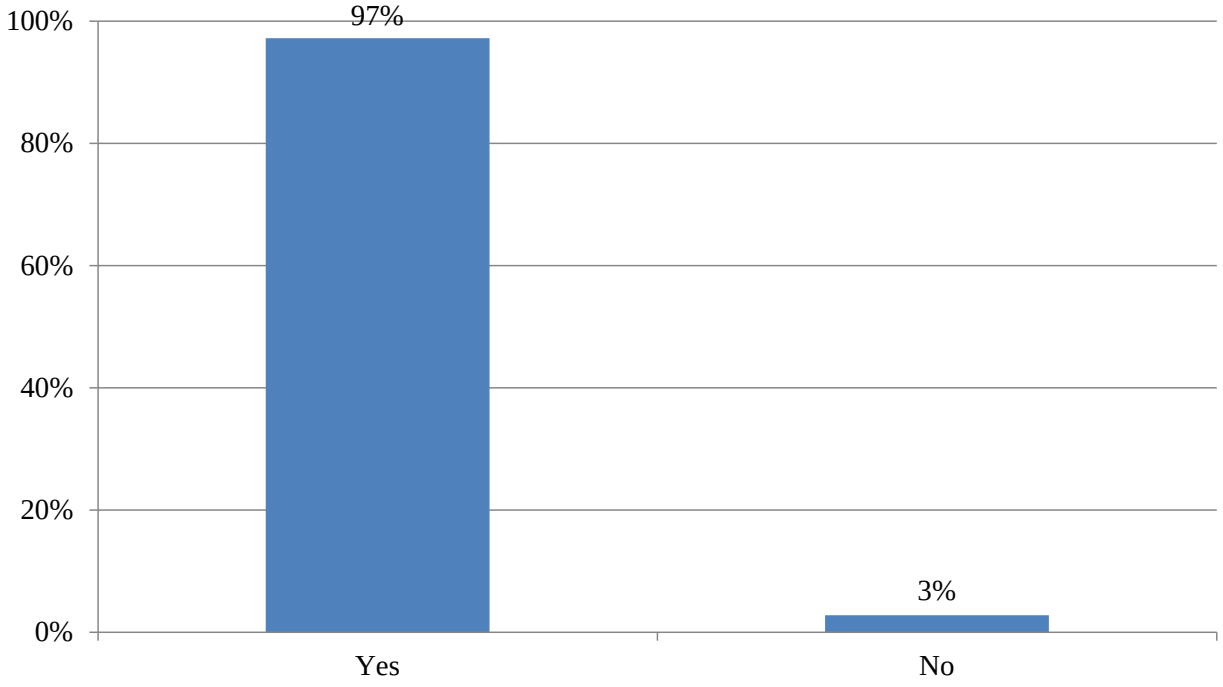
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to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

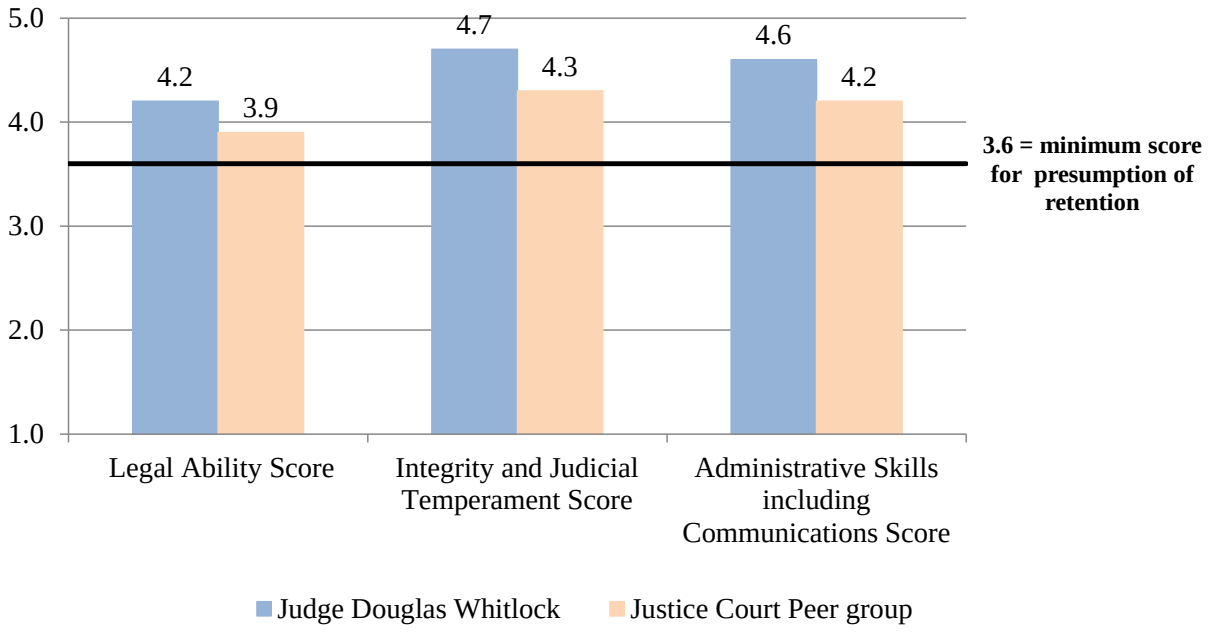
B. Retention Question

Figure A. Would you recommend that Judge Douglas Whitlock be retained?



C. Statutory Category Scores

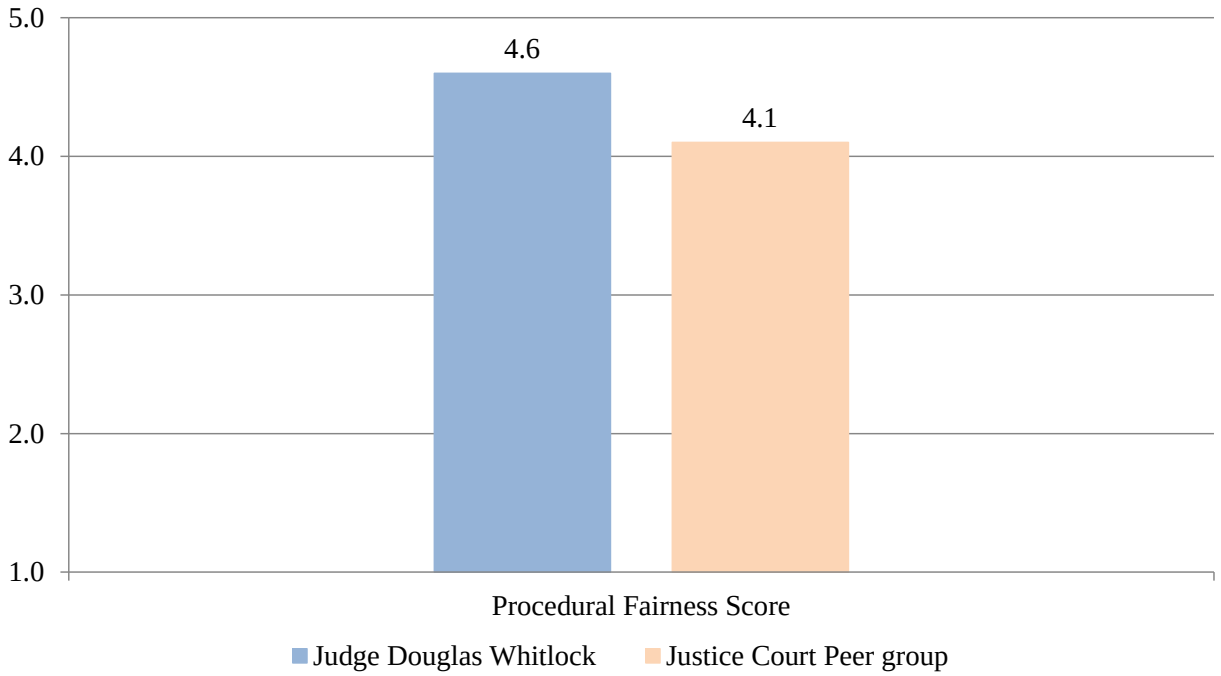
Figure B. Statutory Category Scores



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

D. Procedural Fairness Score

Figure C. Procedural Fairness Score



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.

Table A. Overall Procedural Fairness Determination (for Retention Only)

Category	Judge Douglas Whitlock
Procedural Fairness	Pass

E. Responses to Individual Survey Questions

Table B. Responses to Survey Questions

Category	Question	Judge Douglas Whitlock	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.	4.3	4.0
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.3	3.9
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.3	3.9
Legal Ability	The judge only considers evidence in the record.	4.3	3.9
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.0	3.8
Legal Ability	The judge's written opinions contain a readily understandable, concise ruling	4.1	3.9
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.6	4.3
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.7	4.3
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.7	4.1
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.6	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.	4.8	4.4

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

Table C. Responses to Survey Questions (continued)

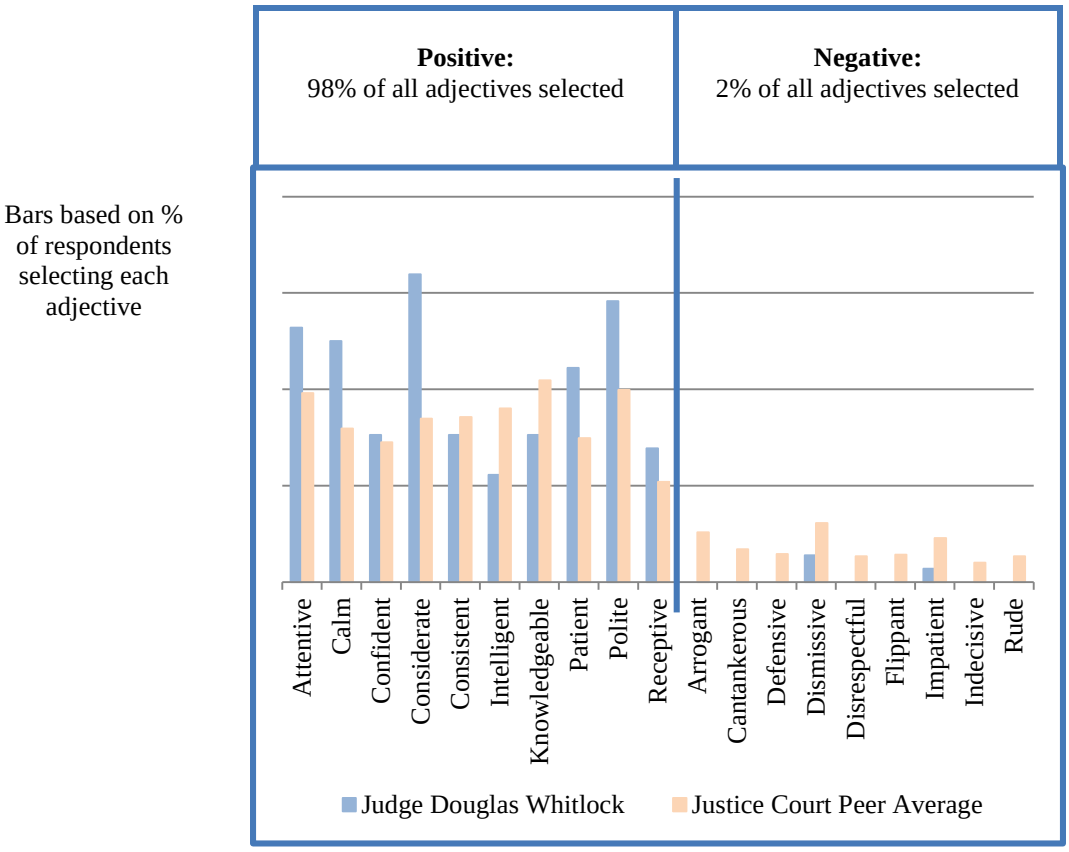
Category	Question	Judge Douglas Whitlock	Justice Court
Administrative Skills	The judge is prepared for court proceedings.	4.6	4.3
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.7	4.1
Administrative Skills	The judge is an effective manager.	4.6	4.1
Administrative Skills	The judge convenes court without undue delay.	4.6	4.1
Administrative Skills	The judge rules in a timely fashion.	4.7	4.3
Administrative Skills	The judge maintains diligent work habits.	4.7	4.3
Administrative Skills	The judge's oral communications are clear.	4.7	4.3
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.6	4.1
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.7	4.1
Procedural Fairness	The judge is fair and impartial.	4.6	4.0
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.6	4.0
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.7	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?

Collections	12%
Domestic	42%
Criminal	88%
Civil	50%
Other	4%

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	31%
6 - 10	42%
11 - 15	12%
16 - 20	-
More than 20	15%

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 DOUGLAS WHITLOCK

Four observers wrote 88 codable units that were relevant to 13 of the 15 criteria. One observer reported that the judge was aware that JPEC observers were present, two observers reported that the judge was not aware, and one did not know if the judge was aware.

Overview

OVERALL ASSESSMENT	• All observers were enthusiastically positive about Judge Whitlock. Two observers additionally offered suggestions (see "Anomalous comments"). • All observers reported that they would feel comfortable appearing before Judge Whitlock.
WIDELY AGREED-UPON THEMES	• All observers variously reported that Judge Whitlock was an active listener, was well-prepared, and exhibited a wealth of knowledge of law and procedure. He started promptly and showed great respect for participants' time, managing cases to minimize inconvenience and delay, and explaining and apologizing for even short delays. He was approachable, patient, caring, and consistently courteous; he acknowledged defendants' intelligence rather than lecturing them about their choices; and his kind and respectful treatment of all was reciprocated. He looked at speakers with attentive body posture, speaking in a loud, clear and non-threatening voice. He heard each repetitious case as an individual situation, and his consistent responses to similar situations were delivered as considered rather than rote opinions. He took defendants' individual difficulties into account with tailored approaches and expressed heartfelt concerns throughout. He gathered information in an unhurried manner, did not rush defendants, and was thorough in assisting those who did not understand the proceedings. He gave participants plenty of opportunity to give their input and asked questions to clarify his understanding. • All observers particularly emphasized that Judge Whitlock was very good at and enjoyed educating defendants about the proceedings. He informed defendants in a complete and thorough manner about court processes, what was required of them, and particularly about the implications of their actions and choices. He ensured defendants understood his requirements and their rights. He carefully and patiently repeated topics if they were not understood, and he continually asked questions to ensure participants' understanding.
MINORITY OBSERVATIONS	• None
ANOMALOUS COMMENTS	• One observer appreciated Judge Whitlock's recognition of the difficulties of a bewildered defendant and his efforts to help her, but hoped the court or the judge could take even further steps to help defendants who are unable to take simple steps on their own (see "Demonstrates concern for individual needs") . • While three observers reported that Judge Whitlock asked questions to clarify his understanding, in marked contrast one observer commented that the judge consistently paid attention to and made notes on witnesses statements during bench trials, but did not ask them clarifying questions as the observer had seen in other courts (see "Considered voice") .

Summary and *exemplar language* of four observers' comments

RESPECT	
Listening & focus	Two observers reported that Judge Whitlock was an *active listener* with both his *eyes and his ears*.

Well-prepared & efficient	Three observers reported that Judge Whitlock was w*ell prepared* and *took time before each case* to reference the *readily available* case history information on his computer. He displayed a *wealth of personal knowledge* of *law and procedure*, as well as *where to find unanswered question*s.
Respect for others' time	Three observers reported that Judge Whitlock *started court promptly* and *explained* and *apologized* for even brief delays. After a teleconference with the jail that had to be conducted at a specific time, he said to those in court, "*Thanks for your patience. I am sorry to keep you waiting.*" In one case *as he prepared to start a video conference he momentarily put the jail on hold* and called a particular defendant, saying, "*I promised I would take you first*," explaining that this *individual had been to court four times and the judge wasn't going to delay him any longer*. He *consistently repeated* to defendants, "*Do you want to take care of this now so that you won't have to come back?"* and he *combined a court appointment with a previously scheduled one so that a defendant wouldn't have to come to court twice*.
Courtesy, politeness, and general demeanor	All observers reported that Judge Whitlock was *competent and caring*, and neither *demanding* nor *passive*. He was *approachable, patient, careful,* and *attentive*, and *ended as strong and as fresh as he began*. He consistently greeted participants *courteously with their proper surnames*, speaking to them *directly in a similar way*. He ended each case by saying, "*Thank you very much,*" and wished each participant *good luck*. He *did not lecture anyone about their poor choices*, but *acknowledged their intelligence and awareness that they had made a wrong decision and now were appearing in court to comply with court orders.* Observers gave many illustrations of Judge Whitlock's *kind and respectful* communications. He *apologized to an out of town participant who had to travel for a traffic offense, saying he would have handled it over the telephone*. He tried to *work with rather than penalize* a defendant whose attorney was found to be tied up in another court, *offering to reset the court date*. One observer felt that the judge *would have liked to converse more with each defendant* if he had time, and another felt that *the heartfelt expression from one departing inmate* when saying, "*Thank you, your Honor*" *summed up the feelings of the majority*.
Body language	Two observers reported that Judge Whitlock always looked at speakers with *good eye contact* and *attentive body posture*.
Voice quality	Two observers reported that Judge Whitlock spoke *clearly and loudly* in a *non-threatening* voice which *could be heard throughout the courtroom*.
Courtroom tone & atmosphere	Three observers reported that the court ran smoothly. The tone was *as much educational* as *penalizing*, giving participants *an understanding of their cases, the proceedings and their right to participate*. He enjoyed *educating participants but did not do so unnecessarily*.
	NEUTRALITY
Consistent and equal treatment	All observers reported that Judge Whitlock *maintained a constant demeanor* with each defendant, and even though the proceedings were *repetitious*, he *listened to each case as an individual situation and gave a considered opinion rather than a rote response*. His recommendations for defendants with *similar situations was the same to each*, and he asked those charged with the *same offenses to pay attention and think about how these factors apply to their own case*. In a case in which an unrepresented defendant had *not presented any evidence contrary* to the prosecution, Judge Whitlock conducted the trial *with care and respect* to all involved, commenting that he *could not make a judgment for the defendant without evidence and counseled the defendant on what he had to do to refute the charges*.
Demonstrates concern for individual needs	Three observers reported that Judge Whitlock took into account *individual differences* and *needs* and *expressed heartfelt concerns throughout*. He *took the time* to let one defendant know that *her case would be handled the same as the others regardless of her beliefs or living arrangements*. When a defendant was having *trouble explaining her unique situation* and was worried about *offending the Apple Valley PD if she took a plea in abeyance*, the judge *gave her time to compose herself* and explained why *it did not matter where she was from or what her beliefs were*.

Demonstrates concern for individual needs *continued*	One observer appreciated that Judge Whitlock *tailored his approach*, in one case recognizing the difficulties of a defendant who *spoke and acted coherently* but was *bewildered and referred to memory loss and lack of clear thinking due to medications*. At the conclusion he suggested she sit down and *ask him any further questions later*. However, the observer hoped the court or the judge could take further steps to help defendants *who may not be able to take simple steps* on their own, for example to *escort her across the hallway* or *ask if she had a friend who could assist*.
Unhurried and careful	Three observers reported that Judge Whitlock was *careful to gather facts in an unhurried manner* and *listened carefully to all sentencing recommendations before choosing the sentence*. He did *not rush participants along*, and he took time to ask questions *if a situation needed clarification*. Judge Whitlock was *very thorough* with a defendant who did not understand his next steps, *instructing the clerk to type up a detailed list of steps to follow* and *instructing the defendant to take the time he needed to study the paper and ask questions about anything he did not understand*.
VOICE	
Considered voice	All observers reported that Judge Whitlock *attempted to get the perspectives of all parties, asking, "Is there anything else you want to say?*" He asked a non-compliant individual, "*What's up?*" and gave her *sufficient opportunity to respond, welcoming her questions or arguments.* Three observers reported that Judge Whitlock gave participants *plenty of opportunity to talk and give their input* and *asked questions to clarify his understanding*. However, in marked contrast one observer commented that while Judge Whitlock *consistently paid attention to witnesses' statements and made notes regarding their testimony, he did not ask clarifying questions of witnesses* as the observer had seen in other courts.
COMMUNICATION	
Ensures information understood	All observers reported that Judge Whitlock *carefully and completely reviewed probation requirements* to ensure defendants *completely understood what they were and why he required them in the sentence*. He ensured that defendants admitting guilt *understood all the rights they were relinquishing*. When it was *very difficult to convey to a defendant what the law required, he continued to ask as he spoke, "Am I confusing you?"* or, *"Is this making any sense?"* or, *"Do you understand*?" With *no apparent frustration* he *carefully, patiently and with no pressure of time* visited the topic of a *plea in abeyance several times*, saying, "*I have to have a plea before I can speak...I am barred by law...this is strict liability," and then explained strict liability*.
Provides adequate explanations	All observers particularly emphasized the complete and thorough manner in which Judge Whitlock informed defendants of all aspects of court processes and what was required of them and why. He explained *mandatory minimum sentences, the plea in abeyance, how to get a public defender*, gave *complete reasons for his sentences*, and gave *detailed and clear instructions* on what defendants needed to do next and *how to be pro-active when approaching the prosecutor to resolve their cases*. He explained why a *proof of insurance letter from the insurance agency* was needed rather than just an insurance card. He explained that the *State Legislature decides* the penalties for certain offenses and so the amount of the *fine was not negotiable*. The unrepresented defendants had *incomplete perceptions of the implications of their decisions*, and Judge Whitlock *took time* and was *very good about educating* the defendants while *demarcating the line over which he must not influence their action.* One observer felt the judge fully satisfied his own words, "*I don't like people leaving here and then being surprised*."