

## **Honorable Kimberly K. Hornak – Juvenile Court Judge**

Serving Salt Lake, Summit, and Tooele counties

**Commission Recommendation: RETAIN**

(vote count: 11-0 for retention)

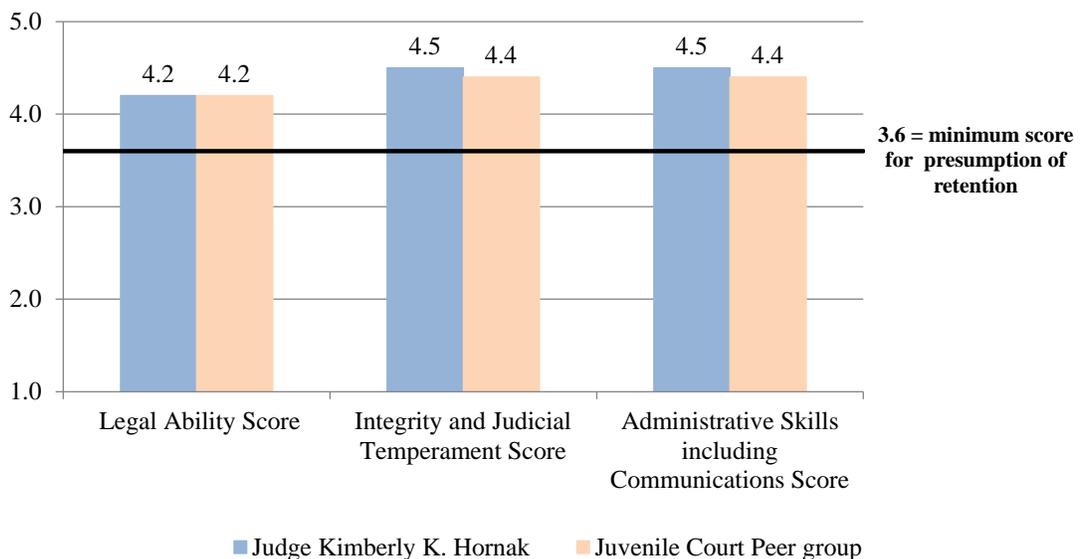


Judge Kimberly Hornak scores consistent with the average of her juvenile court peers in all survey categories. Survey respondents state that she actively listens, considers all options, and treats everyone fairly. They respect and trust her judgment. Of words chosen by respondents from a list to describe her, 98% are positive. Respondents and courtroom observers describe Judge Hornak as an effective communicator who shows genuine concern for the well-being of juveniles and families in her court. However, survey respondents also criticize Judge Hornak for her scheduling and time management, noting that she overbooks her calendar, runs late, and frequently reschedules cases. Courtroom observers view Judge Hornak as prepared, knowledgeable, and approachable. Most report they would feel comfortable appearing before her. Of survey respondents answering the retention question, 97% recommend that Judge Hornak be retained.

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

Judge Kimberly K. Hornak was appointed to the Third District Juvenile Court in 1994. She received her law degree from Gonzaga University College of Law in 1983 and subsequently worked in the Utah Attorney General's Office and as a prosecutor in the Salt Lake County Attorney's Office. Judge Hornak has served on the Court Improvement Committee, the Standing Committee on Judicial Education, the Judicial Ethics Advisory Committee, the Standing Committee on Judicial Outreach, the Sentencing Commission, and the Board of Juvenile Court Judges. She served as the Presiding Judge in the Third District Juvenile Court from 2004- 2007 and on the Utah Judicial Council from 2009- 2015. Judge Hornak currently presides over a juvenile delinquency drug court and a family drug court.

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



For more information about this judge, go to [www.judges.utah.gov](http://www.judges.utah.gov)

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# **The Honorable Kimberly K. Hornak**

**Judicial Performance Evaluation Commission Report**

**Retention 2016**

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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 Kimberly K. Hornak, 41% of qualified survey respondents submitted surveys. Of those who responded, 88 agreed they had worked with Judge Kimberly K. Hornak enough to evaluate her performance. This report reflects these 88 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 "Juvenile 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.

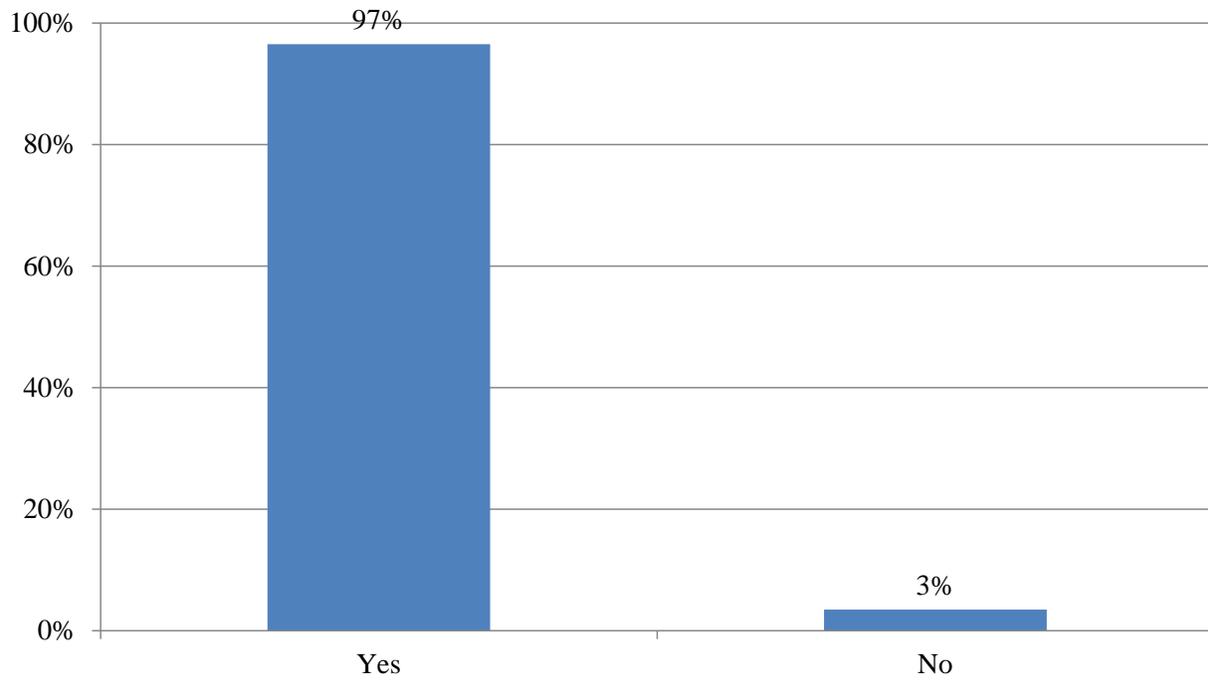
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to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

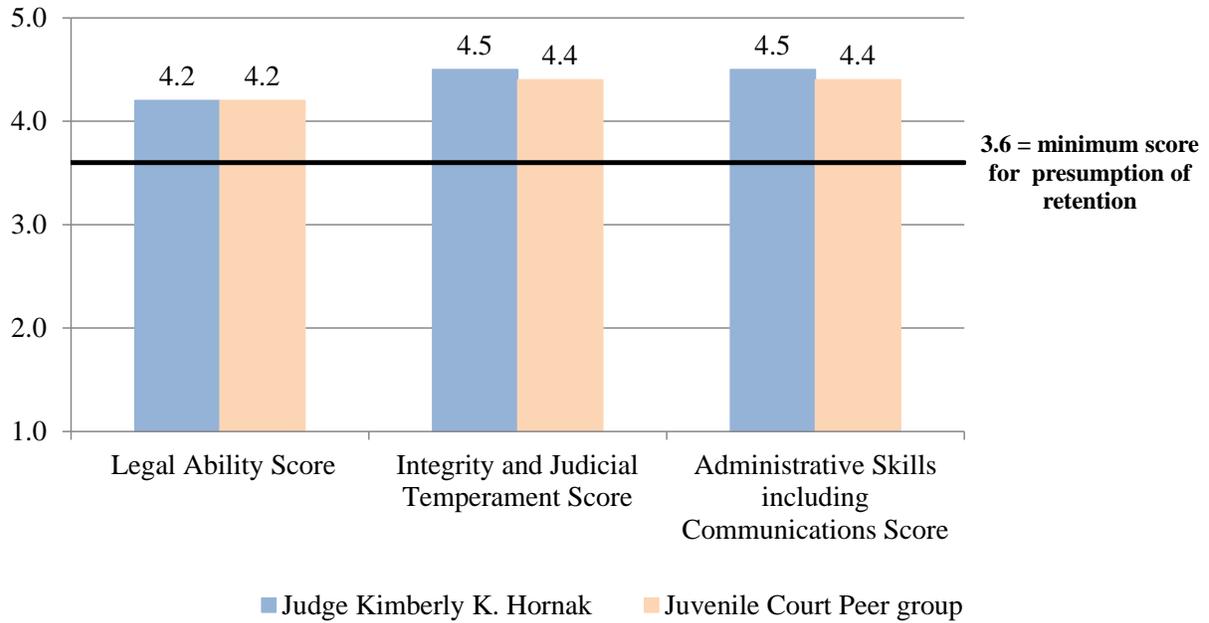
## B. Retention Question

**Figure A. Would you recommend that Judge Kimberly K. Hornak be retained?**



## C. Statutory Category Scores

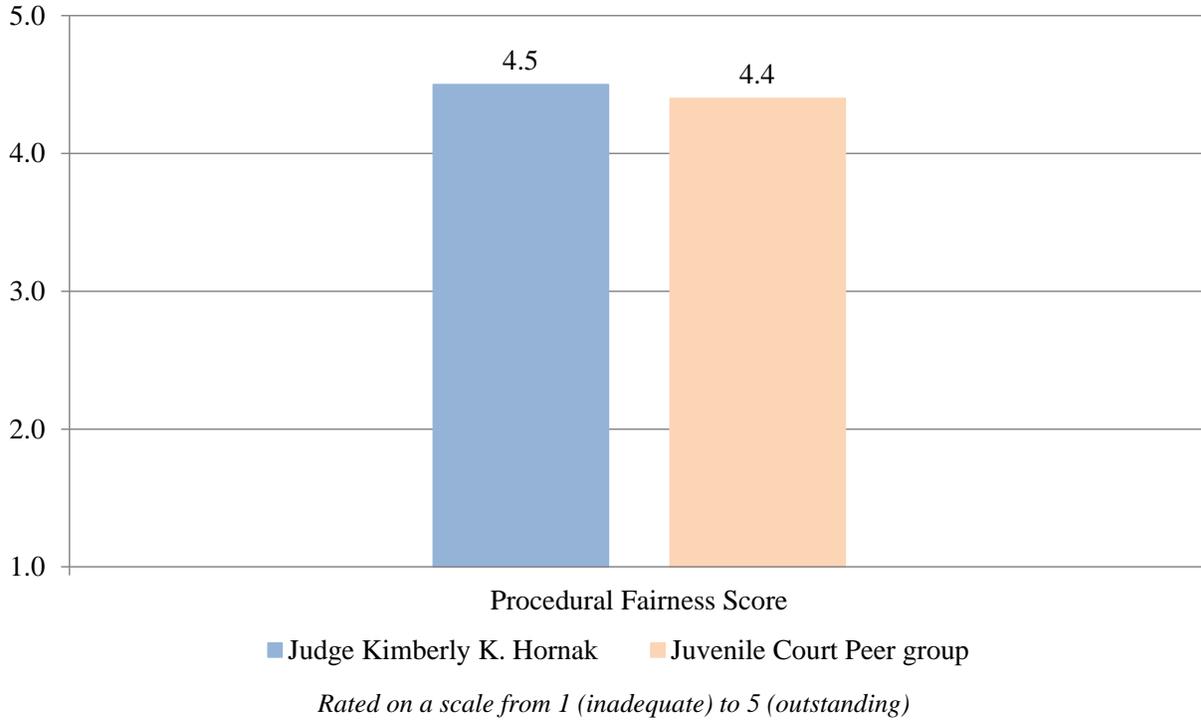
**Figure B. Statutory Category Scores**



*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 Kimberly K. Hornak
Procedural Fairness	Pass

## E. Responses to Individual Survey Questions

**Table B. Responses to Survey Questions**

Category	Question	Judge Kimberly K. Hornak	Juvenile 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	4.3
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.	4.2	4.2
Legal Ability	The judge only considers evidence in the record.	4.0	4.1
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.1	4.2
Legal Ability	The judge's written opinions contain a readily understandable, concise ruling	4.2	4.3
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.6	4.6
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.5	4.6
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.5	4.4
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.2	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.	4.6	4.7

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

**Table C. Responses to Survey Questions (continued)**

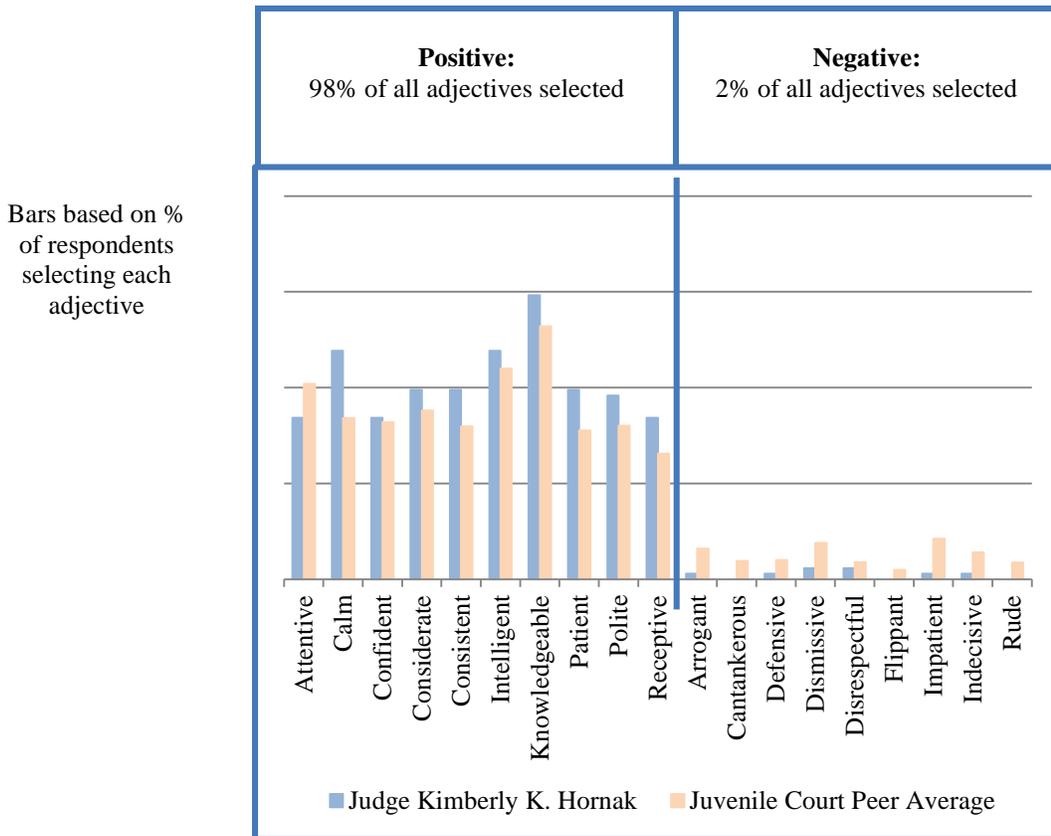
<b>Category</b>	<b>Question</b>	<b>Judge Kimberly K. Hornak</b>	<b>Juvenile Court</b>
Administrative Skills	The judge is prepared for court proceedings.	4.6	4.6
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.6	4.5
Administrative Skills	The judge is an effective manager.	4.3	4.4
Administrative Skills	The judge convenes court without undue delay.	4.2	4.3
Administrative Skills	The judge rules in a timely fashion.	4.5	4.6
Administrative Skills	The judge maintains diligent work habits.	4.5	4.6
Administrative Skills	The judge's oral communications are clear.	4.6	4.6
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.5	4.6
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.5	4.5
Procedural Fairness	The judge is fair and impartial.	4.5	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	4.6

*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	-
Domestic	36%
Criminal	32%
Civil	14%
Other	61%

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	34%
6 - 10	28%
11 - 15	10%
16 - 20	-
More than 20	28%

## Survey Background and Methods

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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 KIMBERLY HORNAK**

Four observers wrote 67 codable units that were relevant to 12 of the 15 criteria. One observer reported that the judge was aware that JPEC observers were present, one observer reported that the judge was not aware, and two did not know if the judge was aware.

### **Overview**

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<b>OVERALL ASSESSMENT</b>	<ul style="list-style-type: none"><li>• Three observers were positive about Judge Hornak, with two observers also expressing reservations or suggestions in a few areas. Observer A expressed stronger reservations and suggestions in several areas.</li><li>• Three observers reported that they would feel comfortable appearing before Judge Hornak. Observer A was uncertain due to her various reservations (“see Minority comments”).</li></ul>
<b>WIDELY AGREED-UPON THEMES</b>	<ul style="list-style-type: none"><li>• All observers variously reported that Judge Hornak was prepared, knowledgeable, and efficient with her time. She was courteous, considerate, polite, and approachable, maintained a good working relationship with her staff, and praised, complimented, and encouraged participants.</li><li>• Three observers particularly emphasized that Judge Hornak showed a genuine interest and deep concern for the welfare of juveniles and their individual situations.</li><li>• Three observers reported that Judge Hornak listened to speakers, but not with active listening skills, and sometimes while also reading documents (see “Listening &amp; focus”).</li></ul>
<b>MINORITY OBSERVATIONS</b>	<ul style="list-style-type: none"><li>• <u>VOICE QUALITY</u> One observer reported approvingly that Judge Hornak used her voice quality to express both excitement or concern, but another commented that her soft spoken voice required concentration to understand and may not be heard at the back of the court.</li><li>• <u>COURTROOM TONE &amp; ATMOSPHERE</u> All observers reported that the atmosphere was calm and comfortable for juveniles to express themselves. However, two observers also felt the courtroom to be a little chaotic, with the judge leaving between cases, sometimes in street dress, sometimes returning late unannounced, and Observer A felt the late arriving attorneys that delayed cases were a poor role model for the juveniles.</li><li>• <u>CONSISTENT AND EQUAL TREATMENT</u> One observer gave an example of Judge Hornak’s concern for consistent fairness, but Observer A reported a distinct difference between the first half of the session, when the judge was perfunctory and did not offer positive comments or praise, and the second half, when she was more interested and transparent.</li><li>• <u>CONSIDERED VOICE</u> Three observers reported that Judge Hornak encouraged participants to speak and showed great skill at drawing out juveniles with open-ended questions, but Observer A suggested that the judge’s yes/no questions without further probing were not the most productive way of getting a response from a juvenile standing before a judge.</li><li>• <u>ENSURES INFORMATION UNDERSTOOD</u> One observer reported that Judge Hornak questioned participants closely for their understanding, but Observer A reported that in one case the judge did not clarify an order that had been misunderstood.</li><li>• <u>PROVIDES ADEQUATE EXPLANATIONS</u> One observer and Observer A reported cases in which Judge Hornak did not provide sufficiently specific information or had to be prompted by attorneys and staff to explain matters to participants.</li></ul>
<b>ANOMALOUS COMMENTS</b>	<ul style="list-style-type: none"><li>• One observer suggested that Judge Hornak’s mannerism of having her hand on her face may put a little barrier between her and those speaking (see “Body language”).</li></ul>

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

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### RESPECT

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Listening & focus	Three observers offered different impressions of Judge Hornak's listening skills. One observer reported that the judge gave <i>her full attention</i> and <i>nodded her head</i> to a staff member who was answering her questions. Another reported that while she <i>appeared to be reading something on her desk while a juvenile was speaking, she was obviously listening</i> . A third observer noted that she did <i>not use the "active listening" skill of rephrasing the previous statement given to her</i> .
Well-prepared & efficient	Two observers reported that Judge Hornak was <i>prepared and knowledgeable</i> about each case, and the <i>proceedings were handled in an efficient, professional manner</i> .
Respect for others' time	Two observers reported that Judge Hornak <i>used the courtroom time in an efficient way</i> by leaving the court <i>when there was time between cases</i> , and when the clerk indicated that a written order could be available at a certain time, the judge <i>added some additional time</i> , thereby reducing pressure on the clerk <i>to do a rush job</i> . However, another observer noted that when a visitor entered the court at a time when the judge had left for a few minutes, asked the bailiff if the judge <i>had five minutes</i> , and went directly up to the judge's chambers, the judge was then delayed and did not return as originally announced, keeping participants waiting.
Courtesy, politeness, and general demeanor	Three observers reported that Judge Hornak was <i>courteous and polite, pleasant, open, and approachable</i> , with a <i>quiet, unassuming demeanor that never showed impatience, sarcasm or annoyance</i> . She maintained a <i>good relationship</i> with court staff and attorneys. In one case Judge Hornak <i>considerately looked away to give "space" and as much privacy as possible</i> to an attorney who had <i>requested time to speak with his clearly agitated client</i> .  Judge Hornak <i>praised and complimented</i> juveniles, saying, " <i>You are doing well. I'm really proud of you,</i> " or, " <i>You are a smart young woman. I know you can do well. I'm always impressed when young people get a job. It speaks very highly of you. I'm really proud of you.</i> " She <i>encouraged</i> others and was <i>consistent in reinforcing positive behaviors</i> .
Body language	Three observers reported that Judge Hornak <i>made eye contact and looked directly</i> at those speaking. One observer commented that the judge <i>often had her hand on her face or under her chin</i> and suggested that this <i>mannerism</i> may put a <i>little barrier between herself and those she is speaking or listening to</i> .
Voice quality	One observer reported that Judge Hornak used her <i>voice quality to express both excitement about a good or excellent report and to express concern</i> . But another commented that her <i>rather soft spoken voice tended to warble</i> , which required <i>concentration to catch all that was said</i> and may cause spectators at the back to have <i>difficulty hearing</i> .
Courtroom tone & atmosphere	All observers reported that the atmosphere was <i>calm, even when delicate matters were being handled</i> , and Judge Hornak created an atmosphere in which <i>the juveniles felt more comfortable to express themselves</i> . The court was <i>bright</i> with artwork, and even though participants were <i>called in</i> , the courtroom <i>remained unlocked</i> . The microphone was set off to the side so that there was no <i>barrier</i> between judge and participants. When the judge was <i>not on the bench the staff engaged in some friendly banter</i> , but when in session the atmosphere was <i>appropriately formal and solemn</i> .  However, two observers additionally expressed reservations. One felt the courtroom to be <i>a little chaotic, starting late</i> , with the judge <i>leaving the bench between cases</i> , sometimes but not always <i>announcing that the court was in recess, sometimes popping out in street dress, and once quickly retreating to get into her robe</i> . Observer A felt that the late arriving attorneys were a <i>poor role model for juveniles</i> . In one case a <i>lawyer sauntered in, baseball hat on and holding a cup of coffee, unconcerned that he was 40 minutes late and unprepared</i> , as indicated by <i>his comments</i> .

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NEUTRALITY

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Consistent and equal treatment      One observer reported that Judge Hornak showed her concern for consistent fairness when asking the *attorneys if they thought it fair for a defendant to not bring her homework from a court-ordered program to court*. In contrast, Observer A reported that in the first half of the session Judge Hornak *lacked a connection to defendants, was perfunctory in her attitude, asked yes/no questions, and did not offer positive comments, praise, or welcoming statements*. But in the second half the judge appeared to be *more interested, patient and transparent*, saying to an attorney, “*Anything you want to say on your client’s behalf?*” or to a defendant, “*I apologize you had that misunderstanding. Protective orders are difficult to understand.*” Observer A was *not sure what triggered this change, but considered inconsistency an issue during her observation*.

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Demonstrates concern for individual needs      Three observers reported that Judge Hornak showed a *genuine interest and deep concern* for the *welfare* of juveniles and their *individual situations*, saying, “*That [the juvenile] is stable is just short of a miracle. I’m worried about contact with her mother,*” or, “*It is very concerning that your Mom has a substance abuse problem and it’s reported that there is a shortage of food in the home. No family member has been in touch. I don’t even know if they know where you are. I’ll save your case over to next week because I need to get a report on your home. It is very concerning.*” She gave *gentle encouragement* to a mother, saying, “*I know your daughter wants to live with you,*” which the observer felt would give the mother motivation to *continue making progress* so that she and her daughter *could live together again*.

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VOICE

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Considered voice      Three observers reported that Judge Hornak *encouraged participants to speak* and was *careful to poll all of the representatives* to ensure they all understood her decision. She asked *open-ended follow-up questions to clarify issues*, and she showed *great skill at drawing out the perceptions and opinions of juveniles*, saying, “*Moving is a big change. Tell me about how you are doing. Tell me about your school,*” and, “*Mom, do you have anything else to say?*” She showed that she *considered information presented*, in one case giving a juvenile *her full attention as she listened to his story and soliciting input from the mother before rendering her decision*.

In stark contrast, Observer A reported that when Judge Hornak asked *yes/no questions* and the juvenile *nodded but gave no verbal response*, the judge *did not probe* to see if he *understood the reason* for his house arrest. Observer A suggested that *yes/no questions* are not the most *productive method of getting a response from a juvenile standing before an authority figure*.

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COMMUNICATION

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Ensures information understood      One observer reported that Judge Hornak questioned juveniles *more closely if their answers were vague*. When a parent *offhandedly remarked* that she could not read, the judge read the termination of parental rights *out loud* to her, *pausing frequently to inquire* if she *understood and the implications of her signature*, regardless of the parent’s *obvious impatience*.

In contrast Observer A reported that Judge Hornak *did not clarify a protective order* that a mother had *apparently misunderstood*, and while the judge later *apologized*, this *may not have solved the problem* of the mother’s misunderstanding

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Provides adequate explanations      One observer reported that Judge Hornak *followed up with questions* if attorneys *missed any elements* regarding the rights waived by defendants pleading guilty, but the observer was also *a little concerned* when the judge was *not specific* in explaining the status of a father’s child support payments when a child was *released to the father’s custody*. Observer A felt that the judge should not have had to be *prompted* by both attorneys and professional staff to ask participants *if they had any questions* or to be prompted to *explain* to a juvenile who had difficulty understanding *what it meant to leave a location what “run” and “not going to school” meant, as these were the reasons he was back in detention*.

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