



COMMISSION ON JUDICIAL PERFORMANCE

The Honorable Merlin G. Wheeler

2008 Judicial Performance Survey



June 18, 2008

Honorable Merlin G. Wheeler
Lyon County Courthouse
430 Commercial
Emporia, KS 66801

Dear Judge Wheeler:

In 2007 the Kansas Commission on Judicial Performance began conducting surveys of people who had sufficient experience with a judge to form an opinion about his or her judicial performance. The surveys were conducted by Talmey-Drake Research and Strategy, Inc., which attempted to contact over 66,500 people who had experience with Kansas judges and justices who will stand for retention in 2008. Over 9,000 people responded, 1,871 to the attorney survey and 7,789 to the non-attorney survey.

This report contains the results of those who responded to your survey. In addition to this introduction, the report is divided into five main sections.

- **Attorney Results & Comments:** This section contains graphs displaying the average grade you received overall (the combined average from questions 1a through 8f), for each section and for each question. Following the graphs are a series of tables showing the percentage distribution of responses to each question. Attorney respondents were also asked to comment about your performance. These comments have been transcribed, and in some instances redacted to eliminate respondent identifying information. A copy of the attorney questionnaire is at the back of this report.
- **Non-attorney Results & Comments:** Similar to the Attorney section, this portion of the report contains graphs (again including the overall average of questions 1a through 7d on the non-attorney questionnaire), and the percentage distribution of responses by non-attorneys to each substantive question in the survey. The non-attorney respondents were also asked to comment about your performance. Again, these comments have been transcribed, and in some instances redacted to eliminate respondent identifying information. A copy of the non-attorney questionnaire is also at the back of this report.
- **Appellate Judges:** This section contains the results of one question asked of Court of Appeals judges and Supreme Court justices regarding the overall performance of district judges.

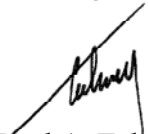
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Hon. Merlin G. Wheeler
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- **Methodology:** The third section of the report discusses the methodology of the survey.
- **Questionnaires:** And the final section provides copies of the questionnaires that were used.

If you have any questions about the survey or other aspects of the Judicial Performance program please contact Randy Hearrell, Executive Director of the Kansas Commission on Judicial Performance, at 785-296-8949 or randy.hearrell@ksjc.state.ks.us

Best regards,



Paul A. Talme
President

enc:

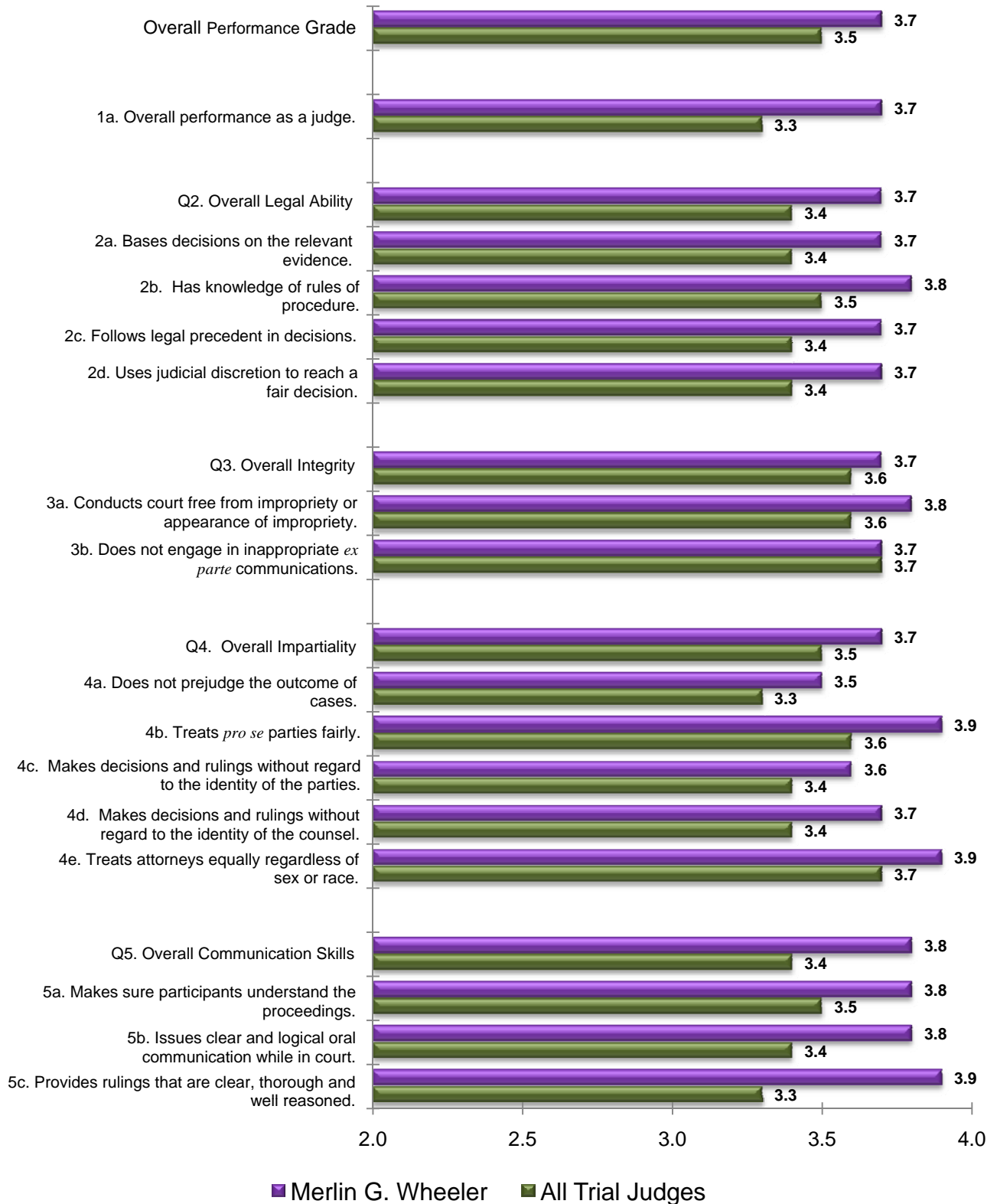
Attorney Survey

(Sample Size 25)

Judge Merlin G. Wheeler

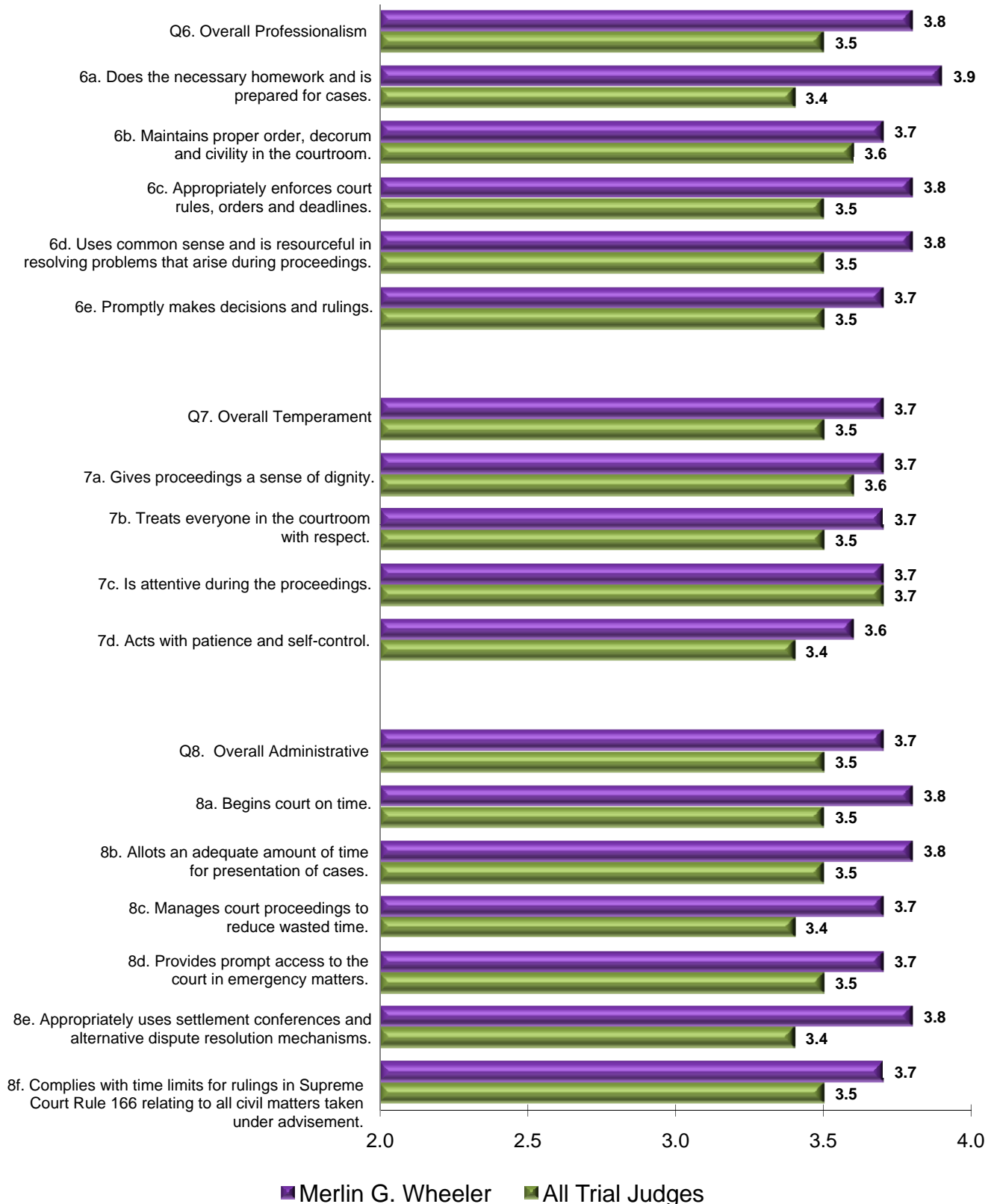
Survey of Attorneys Regarding Trial Judges

Comparison of Averages Q1 - Q5



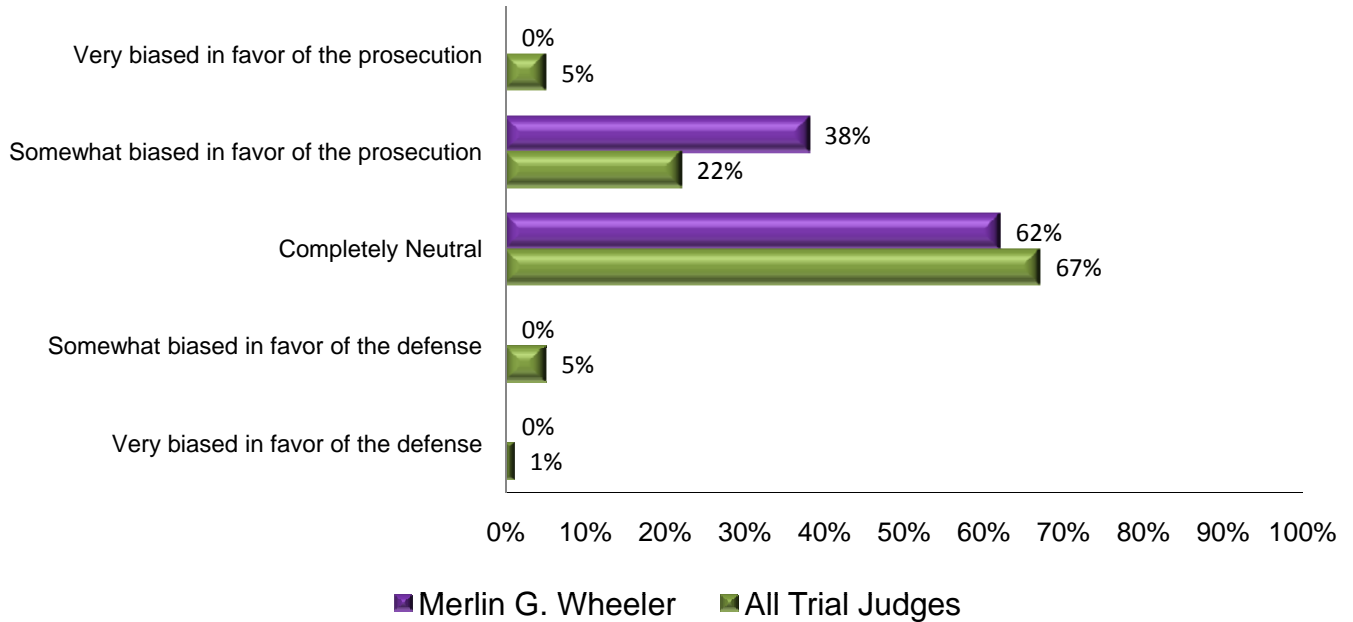
Judge Merlin G. Wheeler

Comparison of Averages Q6 - Q8

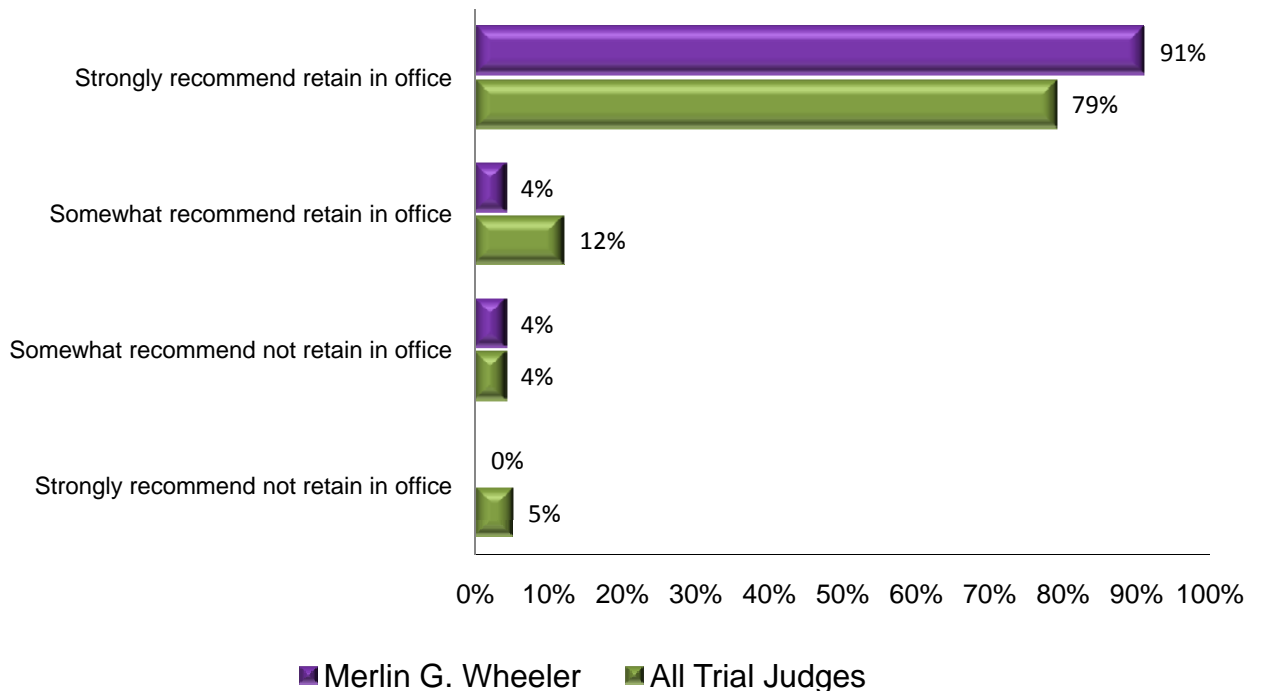


Judge Merlin G. Wheeler

Q9 Biased in favor of prosecution/defense.



Q10. How strongly do you recommend that Judge Wheeler be retained or not retained in office?



Survey of Attorneys Regarding Trial Judges

Judge Merlin G. Wheeler Sample Size = 25							Average	
	A	B	C	D	Fail	DK/NA	Merlin G. Wheeler	All Trial Judges
1. Performance Grade:								
1a. Overall performance as a judge.	79%	13%	0%	4%	0%	4%	3.7	3.3
2. Legal Ability:								
2a. Bases decisions on the relevant evidence.	75%	17%	4%	0%	0%	4%	3.7	3.4
2b. Has knowledge of rules of procedure.	83%	8%	4%	0%	0%	4%	3.8	3.5
2c. Follows legal precedent in decisions.	71%	21%	4%	0%	0%	4%	3.7	3.4
2d. Uses judicial discretion to reach a fair decision.	71%	17%	8%	0%	0%	4%	3.7	3.4
Overall Legal Ability							3.7	3.4
3. Integrity:								
3a. Conducts court free from impropriety or appearance of impropriety.	83%	8%	0%	4%	0%	4%	3.8	3.6
3b. Does not engage in inappropriate ex parte communications.	75%	17%	0%	0%	4%	4%	3.7	3.7
Overall Integrity							3.7	3.6
4. Impartiality:								
4a. Does not prejudice the outcome of cases.	58%	25%	13%	0%	0%	4%	3.5	3.3
4b. Treats pro se parties fairly.	71%	4%	0%	0%	0%	25%	3.9	3.6
4c. Makes decisions and rulings without regard to the identity of the parties.	67%	17%	13%	0%	0%	4%	3.6	3.4
4d. Makes decisions and rulings without regard to the identity of counsel.	75%	13%	4%	4%	0%	4%	3.7	3.4
4e. Treats attorneys equally regardless of sex or race.	75%	13%	0%	0%	0%	13%	3.9	3.7
Overall Impartiality							3.7	3.5
5. Communication Skills:								
5a. Makes sure participants understand the proceedings.	79%	17%	0%	0%	0%	4%	3.8	3.5
5b. Issues clear and logical oral communication while in court.	79%	17%	0%	0%	0%	4%	3.8	3.4
5c. Provides rulings that are clear, thorough and well reasoned.	83%	13%	0%	0%	0%	4%	3.9	3.3
Overall Communication Skills							3.8	3.4
6. Professionalism:								
6a. Does the necessary homework and is prepared for cases.	83%	13%	0%	0%	0%	4%	3.9	3.4
6b. Maintains proper order, decorum and civility in the courtroom.	75%	13%	8%	0%	0%	4%	3.7	3.6
6c. Appropriately enforces court rules, orders and deadlines.	75%	21%	0%	0%	0%	4%	3.8	3.5
6d. Uses common sense and is resourceful in resolving problems that arise during proceedings.	83%	8%	4%	0%	0%	4%	3.8	3.5
6e. Promptly makes decisions and rulings.	71%	21%	4%	0%	0%	4%	3.7	3.5
Overall Professionalism							3.8	3.5

Judge Merlin G. Wheeler							Average	
	A	B	C	D	Fail	DK/NA	Merlin G. Wheeler	All Trial Judges

7. Temperament:

7a. Gives proceedings a sense of dignity.	75%	17%	4%	0%	0%	4%	3.7	3.6
7b. Treats everyone in the courtroom with respect.	79%	4%	8%	4%	0%	4%	3.7	3.5
7c. Is attentive during the proceedings.	71%	17%	8%	0%	0%	4%	3.7	3.7
7d. Acts with patience and self-control.	63%	29%	0%	4%	0%	4%	3.6	3.4
Overall Temperament							3.7	3.5

8. Administrative:

8a. Begins court on time.	75%	21%	0%	0%	0%	4%	3.8	3.5
8b. Allots an adequate amount of time for presentation of cases.	79%	17%	0%	0%	0%	4%	3.8	3.5
8c. Manages court proceedings to reduce wasted time.	67%	25%	0%	0%	0%	8%	3.7	3.4
8d. Provides prompt access to the court in emergency matters.	50%	21%	0%	0%	0%	29%	3.7	3.5
8e. Appropriately uses settlement conferences and alternative dispute resolution mechanisms.	50%	17%	0%	0%	0%	33%	3.8	3.4
8f. Complies with time limits for rulings in Supreme Court Rule 166 relating to all civil matters taken under advisement.	54%	13%	4%	0%	0%	29%	3.7	3.5
Overall Administrative							3.7	3.5

Overall Average Grade: 3.7 3.5

Questions 9 & 10	Merlin G. Wheeler	All Trial Judges
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9. Biased in favor of prosecution/defense.

Very biased in favor of the prosecution	0%	5%
Somewhat biased in favor of the prosecution	38%	22%
Completely Neutral	62%	67%
Somewhat biased in favor of the defense	0%	5%
Very biased in favor of the defense	0%	1%

10. How strongly do you recommend that Judge be retained or not retained in office?

Strongly recommend retain in office	91%	79%
Somewhat recommend retain in office	4%	12%
Somewhat recommend not retain in office	4%	4%
Strongly recommend not retain in office	0%	5%

Appellate Judge Survey

(Sample Size 16)

Survey of Appellate Judges Regarding District Judges

Judge Merlin G. Wheeler Sample Size = 16							Average	
	A	B	C	D	Fail	DK/ NA	Merlin G. Wheeler	All Trial Judges

Grade Judge Wheeler in terms of overall performance as a judge. 25% 44% 19% 0% 0% 13% 3.1 3.2

Merlin G. Wheeler

Appellate Judge Comments

Comments about Judge Wheeler

Respondent

Comments

1

A fine judge. strong, steady, with a good temperament.

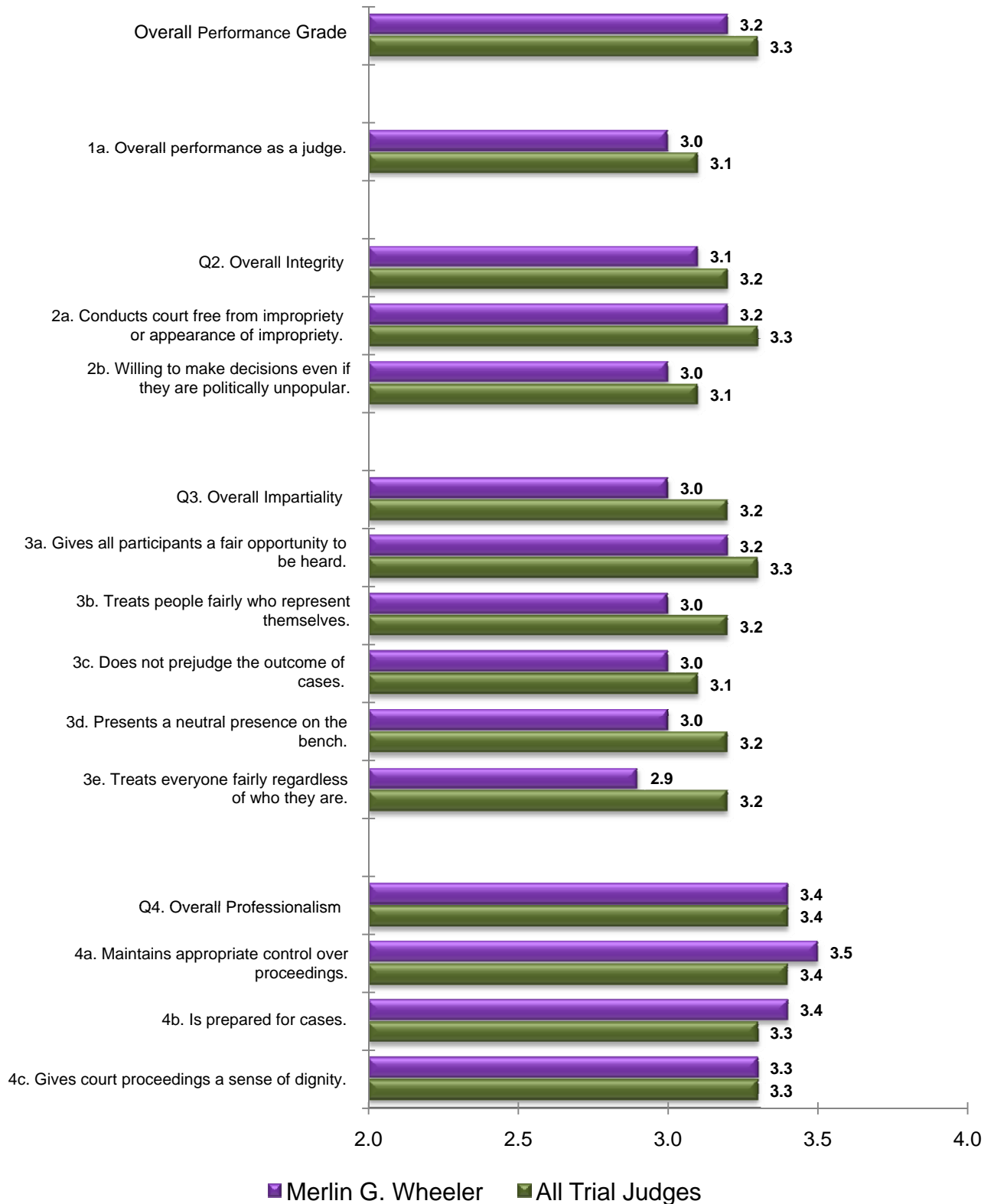
Non-Attorney Survey

(Sample Size 135)

Judge Merlin G. Wheeler

Survey of Non-Attorneys Regarding Trial Judges

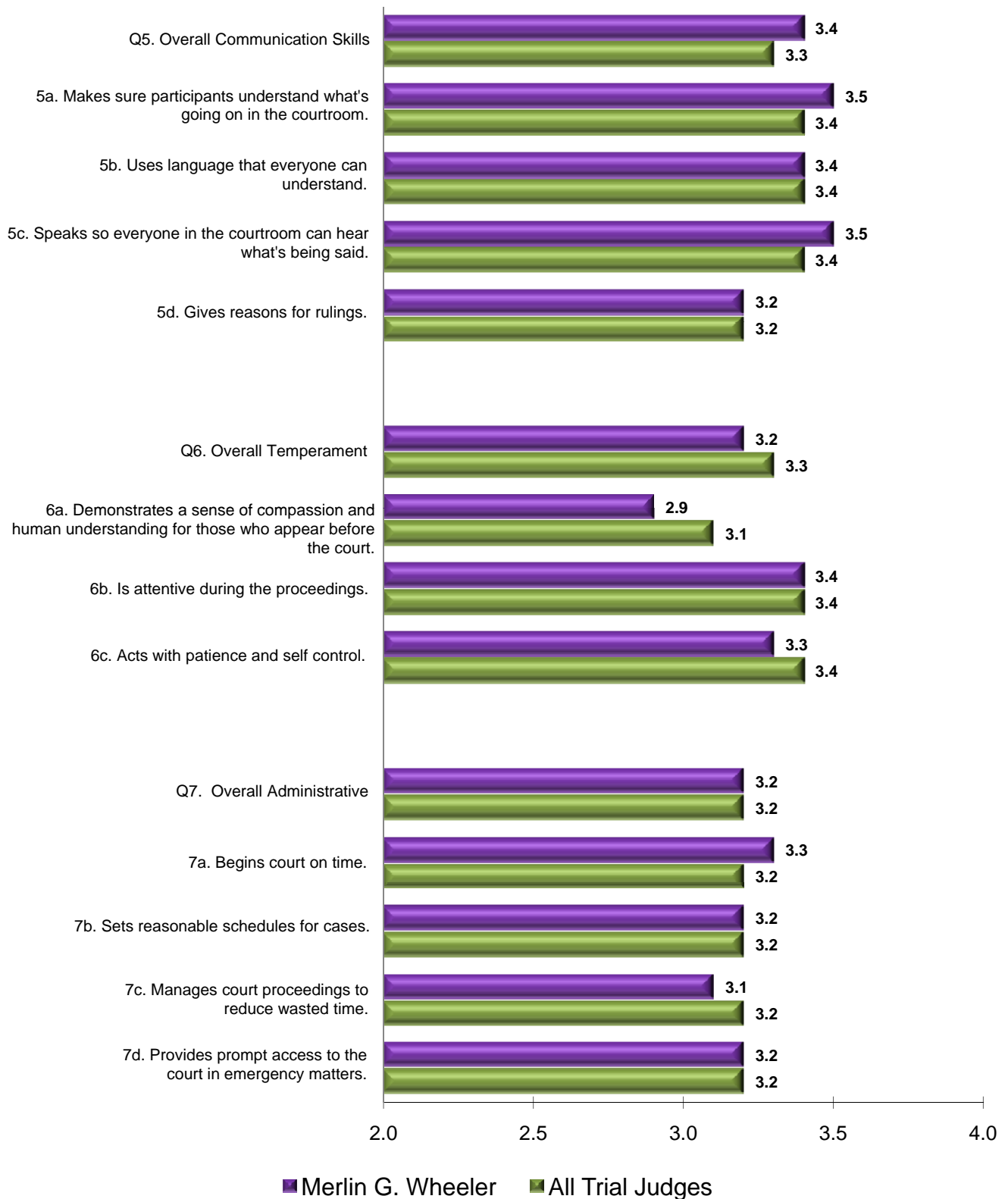
Comparison of Averages Q1 - Q5



Judge Merlin G. Wheeler

Non-Attorney Survey

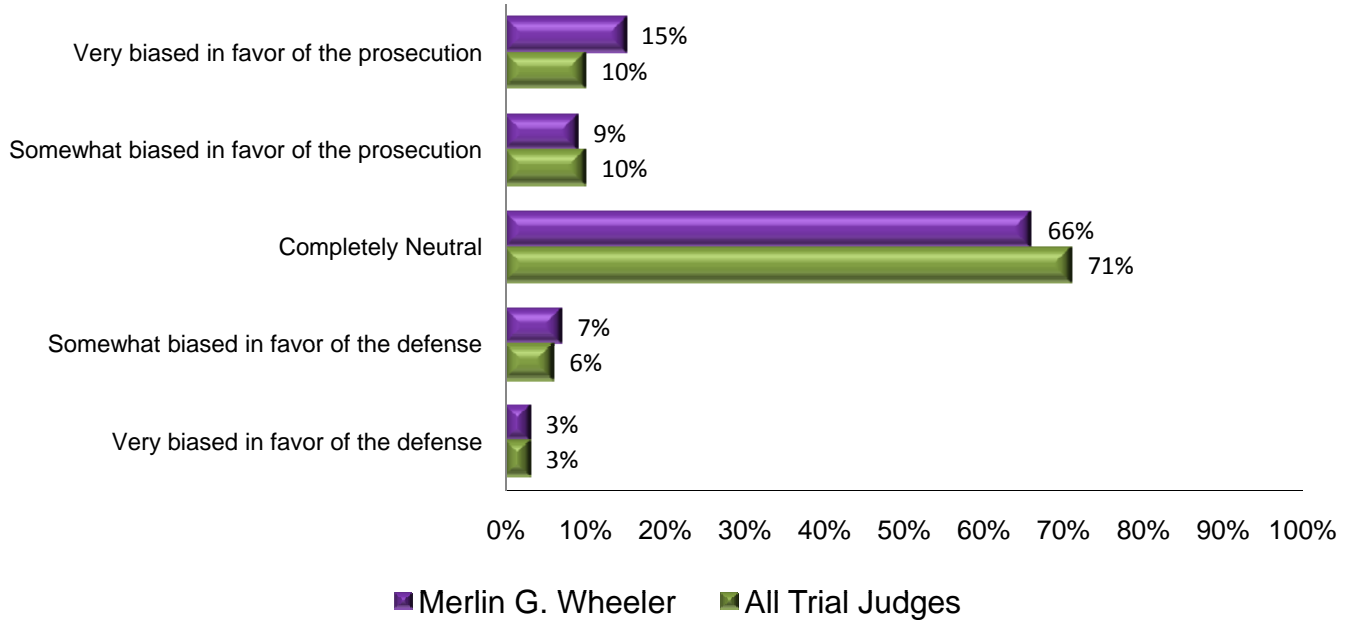
Comparison of Averages Q6 - Q8



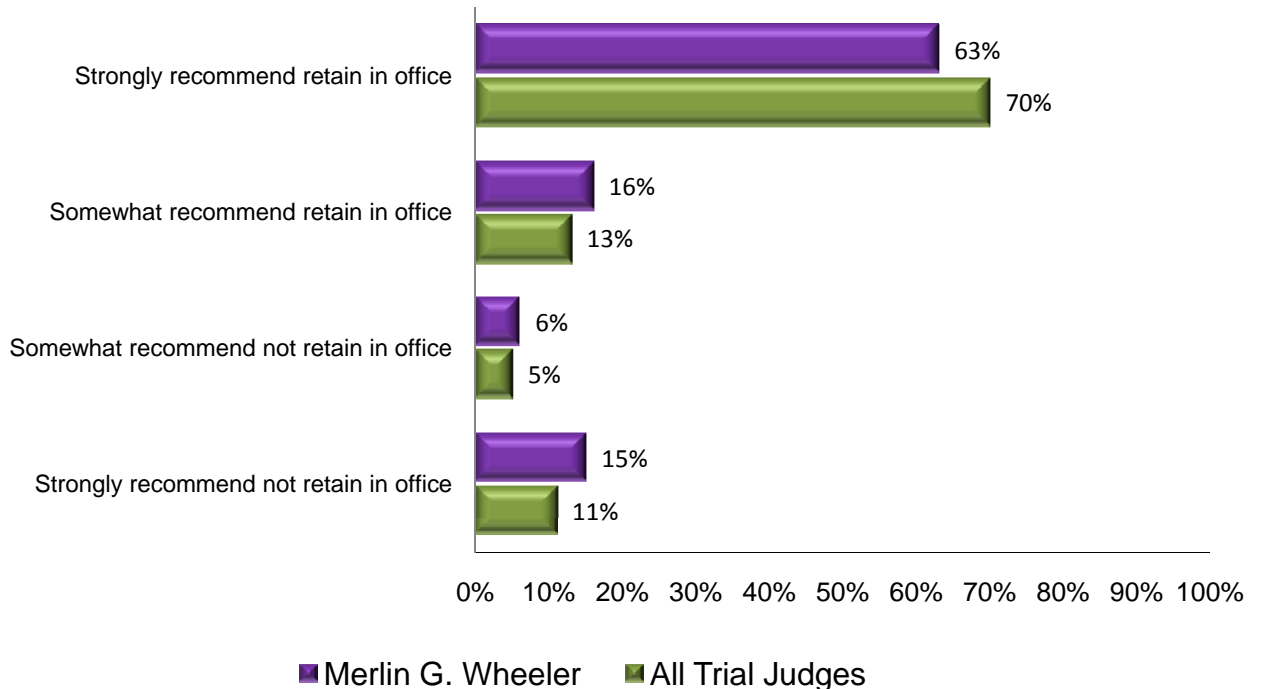
Judge Merlin G. Wheeler

Non-Attorney Survey

Q8 Biased in favor of prosecution/defense.



Q9. How strongly do you recommend that Judge Wheeler be retained or not retained in office?



Survey of Non-Attorneys Regarding Trial Judges

Judge Merlin G. Wheeler

Sample Size = 135

Average

A	B	C	D	Fail	DK/NA	Merlin G. Wheeler	All Trial Judges
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1. Performance Grade:

1a. Overall performance as a judge.	44%	26%	13%	6%	7%	4%	3.0	3.1
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2. Integrity:

2a. Conducts court free from impropriety or appearance of impropriety.	52%	17%	16%	2%	5%	8%	3.2	3.3
2b. Willing to make decisions even if they are politically unpopular.	35%	19%	13%	3%	6%	24%	3.0	3.1

Overall Integrity							3.1	3.2
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3. Impartiality:

3a. Gives all participants a fair opportunity to be heard.	52%	23%	8%	7%	5%	5%	3.2	3.3
3b. Treats people fairly who represent themselves.	39%	13%	5%	4%	8%	32%	3.0	3.2
3c. Does not prejudge the outcome of cases.	43%	15%	9%	3%	10%	19%	3.0	3.1
3d. Presents a neutral presence on the bench.	49%	22%	8%	8%	8%	5%	3.0	3.2
3e. Treats everyone fairly regardless of who they are.	43%	23%	9%	5%	9%	10%	2.9	3.2

Overall Impartiality							3.0	3.2
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4. Professionalism:

4a. Maintains appropriate control over proceedings.	62%	21%	11%	1%	1%	4%	3.5	3.4
4b. Is prepared for cases.	56%	22%	11%	2%	2%	7%	3.4	3.3
4c. Gives court proceedings a sense of dignity.	57%	20%	10%	2%	5%	7%	3.3	3.3

Overall Professionalism							3.4	3.4
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5. Communication Skills:

5a. Makes sure participants understand what's going on in the courtroom.	66%	15%	12%	1%	2%	4%	3.5	3.4
5b. Uses language that everyone can understand.	61%	24%	9%	2%	2%	2%	3.4	3.4
5c. Speaks so everyone in the courtroom can hear what's being said.	68%	19%	6%	2%	2%	3%	3.5	3.4
5d. Gives reasons for rulings.	56%	16%	12%	5%	5%	6%	3.2	3.2

Overall Communication Skills							3.4	3.3
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6. Temperament:

6a. Demonstrates a sense of compassion and human understanding for those who appear before the court.	43%	26%	11%	4%	12%	4%	2.9	3.1
6b. Is attentive during the proceedings.	60%	21%	11%	4%	2%	2%	3.4	3.4
6c. Acts with patience and self control.	55%	25%	9%	2%	4%	6%	3.3	3.4

Overall Temperament							3.2	3.3
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7. Administrative:

7a. Begins court on time.	53%	27%	8%	4%	2%	7%	3.3	3.2
7b. Sets reasonable schedules for cases.	43%	27%	9%	3%	3%	15%	3.2	3.2
7c. Manages court proceedings to reduce wasted time.	41%	25%	10%	4%	4%	16%	3.1	3.2
7d. Provides prompt access to the court in emergency matters.	29%	17%	5%	1%	3%	45%	3.2	3.2

Overall Administrative							3.2	3.2
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Overall Average Grade:							3.2	3.3
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Judge Merlin G. Wheeler
Questions 8 & 9

Merlin G.
Wheeler

All Trial
Judges

8. Biased in favor of prosecution/defense.

Very biased in favor of the prosecution	15%	10%
Somewhat biased in favor of the prosecution	9%	10%
Completely Neutral	66%	71%
Somewhat biased in favor of the defense	7%	6%
Very biased in favor of the defense	3%	3%

9. How strongly do you recommend that Judge be retained or not retained in office?

Strongly recommend retain in office	63%	70%
Somewhat recommend retain in office	16%	13%
Somewhat recommend not retain in office	6%	5%
Strongly recommend not retain in office	15%	11%

Methodology

Methodology

Sample: The databases of names and addresses of the people who had likely been in each of the surveyed trial judge's courtroom were provided by the Johnson County Courts, the Shawnee County Courts and the county courts that had merit selected judges standing for retention in 2008 and were using the Full Court case management system. These three sources provided name and address data of people who were associated with cases that closed in 2007, and in some instances prior to 2007.

The name and address data from the different data sources was then combined, duplicates were removed and addresses were corrected. Depending on the available number of names and the count of surveys already received for a particular judge, either all or a random sample of names were drawn. Included in the data cleaning was the identification of potential respondents in the sample who had appeared in more than one judge's courtroom. Where a person had been in more than one judge's courtroom, the selection criteria for which judge he or she would be sent a questionnaire was generally: first, for the judge in whose courtroom the potential respondent had been in most often, and second, the judge with the smallest sample of the judges in whose courtroom the potential respondent had appeared.

Survey: Each non-attorney surveyed was mailed an initial postcard informing the person that he or she would be receiving a questionnaire. Two to three weeks after the post card was mailed, the potential respondent was sent a personalized introductory letter and a questionnaire with a postage-paid return envelope. Those who did not respond to the first questionnaire were then sent a sent follow-up postcard. If the person did not respond after the follow-up postcard, a second questionnaire and letter were sent and in some instances a second follow-up postcard was sent after the second letter and questionnaire.

Sampled attorneys were first sent a letter providing a Web address where they could take the attorney survey and informing them that they would also be sent an e-mail with a link to the survey. Approximately one week later, they were sent the e-mail, and a follow-up e-mail one week after the first if they had not completed the survey by then. Attorneys who did not respond to the e-mail, were mailed a questionnaire, followed by a reminder postcard, followed by a second questionnaire. Attorneys who had been sampled for judges with small samples, and who did not respond to either the online survey or the mail survey were telephoned, and were requested to complete the survey by phone. An additional sample of attorneys who had been before judges with small attorney samples, but who were not in the original sample for one of these small-sample judges were also called and asked to complete a telephone interview about a small-sample judge. In all, 309 interviews were completed by telephone.

Questionnaire: The questionnaire used in the 2008 Non-Attorney Survey Regarding Trial Judges asked respondents to use a grade of A, B, C, D, or F (Fail) to assess the judge's performance in six different areas: Integrity, Impartiality, Professionalism, Communications Skills, Temperament and Administrative. Respondents were also asked to rate the judge's overall performance as a judge. These grades were then converted to a numerical value where A = 4, B = 3, C = 2, D = 1 and Fail = 0. Respondents were also asked to indicate if they thought the judge was biased for the prosecution or for the defense in criminal cases, and how strongly they thought the judge should be retained or not retained.

The questionnaire used in the 2008 Attorney Survey Regarding Trial Judges asked respondents to use a grade of A, B, C, D, or F (Fail) to assess the judge's performance in seven different areas: Legal Ability, Integrity, Impartiality, Communications Skills, Professionalism, Temperament, and Administrative. Attorneys were also asked to grade the judge's overall performance as a judge. These grades were then converted to a numerical value where A = 4, B = 3, C = 2, D = 1 and Fail = 0. Respondents were also asked to indicate if they thought the judge was biased for the prosecution or for the defense in criminal cases, and how strongly they thought the judge should be retained or not retained.

Results: The tables on the next pages show the percentage distribution of results for all respondents to the surveys of attorneys and non-attorneys regarding trial judges.

Survey of Attorneys Regarding Trial Judges

All Trial Judges 2008 Sample Size = 1871							Average Grade
	A	B	C	D	Fail	DK/NA	

1. Performance Grade:

1a. Overall performance as a judge.	53%	29%	9%	4%	1%	4%	3.3
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2. Legal Ability:

2a. Bases decisions on the relevant evidence.	55%	24%	8%	4%	1%	8%	3.4
2b. Has knowledge of rules of procedure.	60%	25%	7%	2%	1%	6%	3.5
2c. Follows legal precedent in decisions.	52%	23%	8%	4%	1%	12%	3.4
2d. Uses judicial discretion to reach a fair decision.	56%	24%	8%	4%	2%	7%	3.4
Overall Legal Ability							3.4

3. Integrity:

3a. Conducts court free from impropriety or appearance of impropriety.	74%	13%	4%	2%	2%	5%	3.6
3b. Does not engage in inappropriate ex parte communications.	69%	14%	4%	2%	1%	11%	3.7
Overall Integrity							3.6

4. Impartiality:

4a. Does not prejudice the outcome of cases.	55%	20%	9%	4%	2%	10%	3.3
4b. Treats pro se parties fairly.	43%	12%	4%	1%	1%	39%	3.6
4c. Makes decisions and rulings without regard to the identity of the parties.	59%	20%	8%	3%	2%	10%	3.4
4d. Makes decisions and rulings without regard to the identity of counsel.	59%	20%	7%	3%	2%	10%	3.4
4e. Treats attorneys equally regardless of sex or race.	69%	13%	3%	1%	1%	12%	3.7
Overall Impartiality							3.5

5. Communication Skills:

5a. Makes sure participants understand the proceedings.	61%	22%	7%	2%	0%	8%	3.5
5b. Issues clear and logical oral communication while in court.	60%	22%	8%	3%	1%	5%	3.4
5c. Provides rulings that are clear, thorough and well reasoned.	53%	25%	9%	5%	2%	6%	3.3
Overall Communication Skills							3.4

6. Professionalism:

6a. Does the necessary homework and is prepared for cases.	57%	22%	8%	2%	1%	9%	3.4
6b. Maintains proper order decorum and civility in the courtroom.	68%	19%	4%	2%	1%	6%	3.6
6c. Appropriately enforces court rules, orders and deadlines.	60%	23%	7%	2%	1%	8%	3.5
6d. Uses common sense and is resourceful in resolving problems that arise during proceedings.	62%	20%	7%	2%	2%	7%	3.5
6e. Promptly makes decisions and rulings.	62%	22%	6%	2%	1%	6%	3.5
Overall Professionalism							3.5

All Trial Judges 2008							Average Grade
	A	B	C	D	Fail	DK/NA	

7. Temperament:

7a. Gives proceedings a sense of dignity.	67%	18%	5%	2%	2%	5%	3.6
7b. Treats everyone in the courtroom with respect.	68%	15%	6%	3%	2%	5%	3.5
7c. Is attentive during the proceedings.	72%	16%	5%	1%	0%	5%	3.7
7d. Acts with patience and self-control.	63%	19%	7%	4%	2%	5%	3.4
Overall Temperament							3.5

8. Administrative:

8a. Begins court on time.	62%	23%	6%	2%	1%	6%	3.5
8b. Allots an adequate amount of time for presentation of cases.	59%	24%	6%	2%	1%	8%	3.5
8c. Manages court proceedings to reduce wasted time.	56%	23%	8%	3%	2%	8%	3.4
8d. Provides prompt access to the court in emergency matters.	43%	15%	4%	1%	1%	36%	3.5
8e. Appropriately uses settlement conferences and alternative dispute resolution mechanisms.	35%	14%	5%	2%	1%	43%	3.4
8f. Complies with time limits for rulings in Supreme Court Rule 166 relating to all civil matters taken under advisement.	36%	11%	4%	1%	1%	48%	3.5
Overall Administrative							3.5

Overall Average Grade: 3.5

Questions 9 & 10	Average Grade
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9. Biased in favor of prosecution/defense.

Very biased in favor of the prosecution	5%
Somewhat biased in favor of the prosecution	22%
Completely Neutral	67%
Somewhat biased in favor of the defense	5%
Very biased in favor of the defense	1%

10. How strongly do you recommend that Judge be retained or not retained in office?

Strongly recommend retain in office	79%
Somewhat recommend retain in office	12%
Somewhat recommend not retain in office	4%
Strongly recommend not retain in office	5%

Survey of Non-Attorneys Regarding Trial Judges

All Trial Judges 2008

Sample Size = 7789

	A	B	C	D	Fail	DK/NA	Average Grade
1. Performance Grade:							
1a. Overall performance as a judge.	49%	26%	11%	6%	4%	4%	3.1
2. Integrity:							
2a. Conducts court free from impropriety or appearance of impropriety.	54%	23%	9%	4%	3%	7%	3.3
2b. Willing to make decisions even if they are politically unpopular.	40%	20%	9%	5%	4%	21%	3.1
Overall Integrity							3.2
3. Impartiality:							
3a. Gives all participants a fair opportunity to be heard.	58%	19%	8%	5%	5%	5%	3.3
3b. Treats people fairly who represent themselves.	42%	14%	6%	3%	5%	28%	3.2
3c. Does not prejudge the outcome of cases.	48%	17%	9%	5%	7%	15%	3.1
3d. Presents a neutral presence on the bench.	54%	20%	9%	6%	5%	6%	3.2
3e. Treats everyone fairly regardless of who they are.	55%	17%	8%	5%	7%	8%	3.2
Overall Impartiality							3.2
4. Professionalism:							
4a. Maintains appropriate control over proceedings.	62%	21%	8%	2%	2%	5%	3.4
4b. Is prepared for cases.	55%	21%	9%	4%	3%	8%	3.3
4c. Gives court proceedings a sense of dignity.	57%	20%	10%	4%	4%	5%	3.3
Overall Professionalism							3.4
5. Communication Skills:							
5a. Makes sure participants understand what's going on in the courtroom.	59%	21%	9%	3%	3%	5%	3.4
5b. Uses language that everyone can understand.	60%	22%	9%	2%	2%	4%	3.4
5c. Speaks so everyone in the courtroom can hear what's being said.	61%	21%	9%	3%	2%	5%	3.4
5d. Gives reasons for rulings.	51%	20%	9%	5%	5%	9%	3.2
Overall Communication Skills							3.3
6. Temperament:							
6a. Demonstrates a sense of compassion and human understanding for those who appear before the court.	50%	21%	10%	6%	7%	6%	3.1
6b. Is attentive during the proceedings.	58%	21%	10%	3%	2%	6%	3.4
6c. Acts with patience and self control.	58%	21%	9%	4%	2%	6%	3.4
Overall Temperament							3.3
7. Administrative:							
7a. Begins court on time.	50%	24%	11%	5%	4%	6%	3.2
7b. Sets reasonable schedules for cases.	46%	23%	10%	3%	3%	15%	3.2
7c. Manages court proceedings to reduce wasted time.	47%	23%	11%	4%	3%	12%	3.2
7d. Provides prompt access to the court in emergency matters.	33%	13%	6%	2%	3%	42%	3.2
Overall Administrative							3.2
Overall Average Grade:							3.3

Questions 8 & 9Average
Grade

8. Biased in favor of prosecution/defense.

Very biased in favor of the prosecution.	10%
Somewhat biased in favor of the prosecution	10%
Completely Neutral.	71%
Somewhat biased in favor of the defense.	6%
Very biased in favor of the defense.	3%

9. How strongly do you recommend that Judge be retained or not retained in office?

Strongly recommend retain in office	70%
Somewhat recommend retain in office	13%
Somewhat recommend not retain in office	5%
Strongly recommend not retain in office	11%

Response Rate:

The estimated cooperation rate is calculated as the number of completed questionnaires divided by the number of eligible respondents who actually received a questionnaire (total completed divided by total sent minus undeliverable or not applicable). The table on the next page shows the total number of questionnaires sent (mailed, e-mailed, telephoned), and completed by respondent type. The table presents the estimated overall cooperation rate as well as the cooperation rate by the different types of respondents. The true cooperation rates are likely considerably higher than shown because of the relatively high percentage of people who were mailed questionnaires about judges who they had not observed in court. This is due, in part, to many cases being disposed of without the parties having appeared in court, questionnaires being sent based on some very old cases, and the data including all law enforcement officers who were subpoenaed in a case, not just those who appeared.

Responses by Type

Role Type	Total Sent	No Response	Undeliverable N/A	Other No Response	Complete	Coop Rate
Attorneys						
<u>Criminal</u>						
Defense Attorney	1,137	577	66	0	494	46.1%
District Attorney	216	91	5	0	120	56.9%
Other Attorney	55	13	5	0	37	74.0%
<u>Civil</u>						
Litigant Attorney	2,888	1,567	262	8	1,051	40.0%
Other Attorney	386	182	34	1	169	48.0%
Total Attorneys	4,682	2,430	372	9	1,871	43.4%
Non-attorneys						
<u>Criminal</u>						
Defendant	14,278	8,411	4,517	87	1,263	12.9%
Witness	7,998	4,609	2,244	37	1,108	19.3%
Law Enforcement	2,493	1,057	589	11	836	43.9%
Victim	1,486	953	337	6	190	16.5%
Other	3	2	0	0	1	33.3%
<u>Civil</u>						
Litigant	23,798	13,178	8,241	147	2,232	14.3%
Witness	1,729	834	715	18	162	16.0%
Other	8,083	4,017	3,122	103	841	16.9%
Jurors	1,278	534	43	7	694	56.2%
Employees	705	142	93	8	462	75.5%
Total Non-attorneys	61,851	33,737	19,901	424	7,789	18.6%
Total:	66,533	36,167	20,273	433	9,659	20.9%

Projectability: Most surveys seen by the public are surveys that are intended to be projectable, that is the results from the sample of people surveyed can be used to estimate a percentage or value of the population sampled *with a known probability of error*. For example, a pre-election poll of 500 likely Kansas voters is used to estimate the percentage of voters who will vote for Candidate A on election day, plus or minus some number of percentage points. The plus or minus amount is usually what is known as the 95%-confidence interval (the known probability of error), or what the media often refers to as the margin-of-error.

The Kansas Judicial Performance Evaluation Survey is not projectable with a known probability of error because the results are calculated from a self-selecting sample that is self-selecting based on the content and subject matter of the survey. In other words, the potential respondent knows the purpose and content of the survey, and based on that, decides whether to respond to the survey.

While projectability within a known probability of error is a highly desirable attribute of a survey, it is often not feasible to achieve. Commercial market research often uses nonprojectable (and small) samples – the most well known of which are for focus groups. Moreover, the federal courts have long accepted, and do not expect, projectable samples for market confusion surveys used in trademark litigation. In other words, one can still use the results of the Judicial Performance Evaluation Survey to estimate how everyone who has observed a judge in the courtroom would grade him or her, just not with a known probability of error.

The Judicial Performance Evaluation Survey is a valuable means, perhaps the only practical means, for the Kansas Commission on Judicial Performance to have a summary of structured interviews with a number of people who have courtroom familiarity with the judge being evaluated, and who most often – albeit not always – are responding out of a desire to improve the performance of their state's judicial system.

Merlin G. Wheeler

Responses by Type

<i>Role Type</i>	<i>Total Sent</i>	<i>No Response</i>	<i>Undeliverable/ Not Applicable</i>	<i>Other Non-Responses</i>	<i>Completes</i>	<i>Coop Rate</i>
Attorneys						
<u>Criminal</u>						
Defense Attny	7	3	0	0	4	57.1%
District Attorney	6	4	0	0	2	33.3%
<u>Civil</u>						
Other Attny	2	1	1	0	0	0.0%
Litigant Attny	40	18	3	0	19	51.4%
Total Attorneys	55	26	4	0	25	49.0%
Non-attorneys						
<u>Criminal</u>						
Witness	150	83	44	0	23	21.7%
Law Enforcement	60	27	12	0	21	43.8%
Victim	16	7	3	0	6	46.2%
Defendant	77	51	17	0	9	15.0%
<u>Civil</u>						
Other	110	63	37	1	9	12.3%
Witness	17	13	4	0	0	0.0%
Litigant	381	221	109	2	49	18.0%
Jurors	26	17	0	0	9	34.6%
Employees	12	0	3	0	9	100.0%
Total Non-attorneys	849	482	229	3	135	21.8%
Appellate Judges	18	2	0	0	16	88.9%
Grand Total:	922	510	233	3	176	25.5%

Questionnaires

12. And what would you say are Judge _____'s weaknesses?

13. Is there anything else that you would like to say about Judge _____?

Thank you for your time in completing this questionnaire. Please place it in the self-addressed, postage paid envelope provided, and place it in the mail. Your participation in this survey is very much appreciated.



KANSAS COMMISSION ON JUDICIAL PERFORMANCE

Evaluation of Judge _____

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade the judge on the following by circling the appropriate letter grade. (If you feel that you don't have experience with the judge in a specific area, or just don't know, please circle "dk/na" for Don't Know/Not Applicable.)

1. Overall:

- a. In general, how would you grade Judge _____ in terms of overall performance as a Judge..... A B C D F dk/na

2. Legal Ability:

- a. Bases decisions on the relevant evidence..... A B C D F dk/na
- b. Has knowledge of rules of procedure..... A B C D F dk/na
- c. Follows legal precedent in decisions..... A B C D F dk/na
- d. Uses judicial discretion to reach a fair decision ... A B C D F dk/na

3. Integrity:

- a. Conducts court free from impropriety or appearance of impropriety..... A B C D F dk/na
- b. Does not engage in inappropriate *ex parte* communications. A B C D F dk/na

4. Impartiality:

- a. Does not prejudice the outcome of cases. A B C D F dk/na
- b. Treats *pro se* parties fairly. A B C D F dk/na
- c. Makes decisions and rulings without regard to the identity of the parties. A B C D F dk/na
- d. Makes decisions and rulings without regard to the identity of counsel. A B C D F dk/na
- e. Treats attorneys equally regardless of sex or race..... A B C D F dk/na

5. Communication Skills:

- a. Makes sure participants understand the proceedings..... **A B C D F dk/na** 1
 - b. Issues clear and logical oral communications while in court **A B C D F dk/na** 2
 - c. Provides rulings that are clear, thorough and well reasoned..... **A B C D F dk/na** 3
- 6. Professionalism:**
- a. Does the necessary "homework" and is prepared for cases **A B C D F dk/na** 4
 - b. Maintains proper order, decorum and civility in the courtroom. **A B C D F dk/na** 5
 - c. Appropriately enforces court rules, orders and deadlines..... **A B C D F dk/na** 6
 - d. Uses common sense and is resourceful in resolving problems that arise during proceedings. **A B C D F dk/na** 7
 - e. Promptly makes decisions and rulings **A B C D F dk/na** 8

7. Temperament:

- a. Gives proceedings a sense of dignity..... **A B C D F dk/na** 1
- c. Treats everyone in the courtroom with respect... **A B C D F dk/na** 2
- d. Is attentive during the proceedings. **A B C D F dk/na** 3
- e. Acts with patience and self control..... **A B C D F dk/na** 4

8. Administrative:

- a. Begins court on time. **A B C D F dk/na** 1
- b. Allots an adequate amount of time for presentation of cases. **A B C D F dk/na** 2
- c. Manages court proceedings to reduce wasted time..... **A B C D F dk/na** 3
- d. Provides prompt access to the court in emergency matters..... **A B C D F dk/na** 4
- e. Appropriately uses settlement conferences and alternative dispute resolution mechanisms..... **A B C D F dk/na** 5
- f. Effectively uses pretrial procedures to narrow and define the issues. **A B C D F dk/na** 6
- g. Complies with time limits for rulings in Supreme Court Rule 166 relating to all civil matters taken under advisement **A B C D F dk/na** 7

9. If you have observed Judge _____ in a **criminal case**, would you say the judge is:

- Very biased in favor of the prosecution..... 1
- Somewhat biased in favor of the prosecution 2
- Completely neutral..... 3
- Somewhat biased in favor of the defense..... 4
- Very biased in favor of the defense 5
- Undecided or don't know enough to say.....

10. Keeping in mind your responses to each of the previous questions, how strongly do you recommend that Judge _____ be retained in office, or not be retained in office?

- Strongly recommend retain in office..... 1
- Somewhat recommend retain in office 2
- Somewhat recommend not retain in office..... 3
- Strongly recommend not retain in office..... 4
- Undecided or don't know enough to make recommendation

Though your name will never be associated with your answers, because the judge will see a typed transcript of the comments that you and others write, it is important that you do not include information in the comments below that would unintentionally identify you as the author.

11. What would you say are Judge _____'s strengths?

5. Communication Skills

- a. Makes sure participants understand what's going on in the courtroom..... **A B C D F dk/na**
- b. Uses language that everyone can understand. **A B C D F dk/na**
- c. Speaks so everyone in the courtroom can hear what's being said..... **A B C D F dk/na**
- d. Gives reasons for rulings. **A B C D F dk/na**

6. Temperament:

- a. Demonstrates a sense of compassion and human understanding for those who appear before the court..... **A B C D F dk/na**
- b. Is attentive during the proceedings..... **A B C D F dk/na**
- c. Acts with patience and self control..... **A B C D F dk/na**

7. Administrative::

- a. Begins court on time **A B C D F dk/na**
- b. Sets reasonable schedules for cases **A B C D F dk/na**
- c. Manages court proceedings to reduce wasted time..... **A B C D F dk/na**
- d. Provides prompt access to the court in emergency matters **A B C D F dk/na**

8. If you have observed Judge _____ in a **criminal case**, would you say the judge is:

- Very biased in favor of the prosecution 1
- Somewhat biased in favor of the prosecution 2
- Completely neutral..... 3
- Somewhat biased in favor of the defense 4
- Very biased in favor of the defense 5
- Undecided or don't know enough to say.....

9. Keeping in mind your responses to each of the previous questions, how strongly do you recommend that Judge **LName** be retained in office, or not be retained in office?

- Strongly recommend retain in office..... 1
- Somewhat recommend retain in office..... 2
- Somewhat recommend not retain in office..... 3
- Strongly recommend not retain in office..... 4
- Undecided or don't know enough to make recommendation.....

Though your name will never be associated with your answers, because the judge will see a typed transcript of the comments that you and others write, it is important that you do not include information in the comments below that would unintentionally identify you as the author.

10. If a friend of yours was scheduled to appear before Judge _____ as a party in either a civil or criminal case and asked you for advice, what would you tell your friend about Judge _____?

11. What would you say are Judge _____'s strengths?

12. And what would you say are Judge _____'s weaknesses?
