

March 14, 2002

Judge Henry E. Nieto
Colorado State Judicial Bldg.
2 East 14th Ave.
Denver, CO 80203



Dear Judge Nieto:

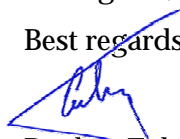
Every two years the Colorado Judicial Performance Commission conducts a survey of attorneys who have had cases with opinions authored by Court of Appeals judges or Supreme Court justices who face a retention vote in the next general election, and a second survey concerning these judges and justices is conducted among all of the State's trial judges.

This report contains the results of these two surveys. In addition to this introduction, the report is divided into four main sections:

- **Results:** This section contains the average and percentage distribution of responses to each substantive numerical question in the survey. It is divided into two subsections, one for the results of the attorney survey and one for the results of the trial-judges survey.
- **Comments:** Respondents were also asked to comment about each judge or justice. These comments have been transcribed, and in some instances redacted to eliminate respondent identifying information. Again this section has been divided into two subsections, one for attorney comments and one for trial -judge comments.
- **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 methodology and how the survey was conducted, please feel free to contact me at 303-443-5300, and for any other questions you might have about the survey please call the Director of the Colorado Judicial Performance Program, Michelle Stermer, at 303-837-3665.

Best regards,



Paul A. Talmey
President

enc:

Judge Henry E. Nieto

Attorney Survey

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>Fail</u>	<u>Number Responding</u>	<u>Average Grade</u>	<u>Letter Grade</u>
Being fair and impartial toward both sides of the case.	63%	11%	8%	6%	11%	98	3.1	B
Writing opinions that are well written and understandable.	46%	25%	13%	10%	5%	99	3.0	B
Managing cases efficiently and with minimal delay.	42%	37%	17%	3%	1%	76	3.2	B
Issuing opinions in a timely manner.	44%	36%	13%	6%	1%	89	3.2	B
Having knowledge of the rules of evidence and procedure.	57%	23%	9%	5%	5%	77	3.2	B
Making decisions without regard to possible criticism.	53%	21%	10%	4%	13%	78	3.0	B
Making the correct decision based upon the law and facts.	46%	19%	13%	10%	12%	104	2.8	B-
Being prepared for oral argument.	49%	27%	9%	11%	5%	82	3.0	B
Asking thoughtful questions in oral argument.	51%	21%	12%	9%	7%	81	3.0	B
Treating parties equally regardless of race, sex or economic status.	73%	11%	5%	1%	9%	75	3.4	B+
Being courteous toward attorneys.	64%	18%	13%	3%	2%	88	3.4	B+
Not engaging in ex parte communications.	87%	6%	2%	2%	4%	53	3.7	A-

Judge Henry E. Nieto

Attorney Survey

Do you recommend that Judge Nieto be retained in office or not be retained in office?

Retain in office 75%

Do not retain in office 17%

No opinion. 8%

Judge Henery E. Nieto

Trial Judge Survey

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>Fail</u>	<u>Number Responding</u>	<u>Average Grade</u>	<u>Letter Grade</u>
Being fair and impartial toward both sides of the case.	63%	30%	6%		1%	134	3.5	B+
Writing opinions that are well written and understandable.	50%	38%	11%	1%	1%	146	3.4	B+
Managing cases efficiently and with minimal delay.	51%	40%	7%	1%	1%	86	3.4	B+
Issuing opinions in a timely manner.	58%	33%	9%		1%	92	3.5	B+
Having knowledge of the rules of evidence and procedure.	69%	24%	6%		1%	141	3.6	B+
Making decisions without regard to possible criticism.	72%	22%	4%	1%	1%	140	3.6	B+
Making the correct decision based upon the law and facts.	58%	30%	10%	1%	1%	147	3.4	B+
Being prepared for oral argument.	69%	24%	5%		2%	58	3.6	B+
Asking thoughtful questions in oral argument.	67%	18%	12%		2%	49	3.5	B+
Willingness to undertake administrative responsibilities.	70%	23%	5%		2%	64	3.6	B+
Being courteous toward attorneys.	75%	19%	3%		2%	93	3.7	A-
Not engaging in ex parte communications.	87%	10%	1%		1%	70	3.8	A-
Willingness to help other judges and justices.	77%	20%	1%	1%	1%	81	3.7	A-
Treating parties equally regardless of race, sex or economic status.	86%	10%	2%		2%	121	3.8	A-

Judge Henery E. Nieto

Trial Judge Survey

Do you recommend that Judge Nieto be retained in office or not be retained in office?

Retain in office 89%

Do not retain in office 1%

No opinion. 10%

Methodology

Sample: The Colorado Judicial Department provided Talmey-Drake Research & Strategy, Inc. with a list of cases heard and closed during the two years prior to the summer of 2001 by the three Court of Appeals judges and one Supreme Court justice standing for retention in November 2002. Talmey-Drake Research was also provided with the list of the 268 trial-court judges.

Two surveys were conducted, one among attorneys who had opinions authored by one of the three Court of Appeals judges or the Supreme Court justice, and a second survey of all trial judges.

Questionnaire: Copies of the two questionnaires used are provided at the end of this report. Respondents were asked to use a grade of A, B, C, D, or F (Fail) to assess the justice's or judge's performance in a number of different areas. These grades were then converted to a numerical value where A = 4, B = 3, C = 2, D = 1 and Fail = 0.

Response: The response rate is calculated as the number of completed questionnaires divided by the number of eligible respondents who actually received a questionnaire. The following table shows the total number of questionnaires mailed, completed, non-responses & refusals, undeliverables and other responses. The table presents the overall response rate as well as the response rate by the different types of respondents.

<u>Respondents</u>	<u>Total Sent</u>	<u>Completed</u>	<u>Refused/ Nonre- sponse</u>	<u>Unde- livered</u>	<u>Other</u>	<u>Response Rate</u>
Attorneys	1215	470	406	138	201	53.7%
Trial Judges	268	189	48	0	31	79.7%

A similar table showing the response count and cooperation rate for your survey is provided at the end of this methodology section.

Results: The results of the Survey are in two main sections: Results and Comments. Within each main section are two subsections, one for each general type of respondent, attorney or trial judge.

Results: This section shows the percentage distribution of grades you received on each of the substantive questions plus the retain/do not retain question. An average grade point for each graded question is computed and shown in the results section. A letter grade is also assigned to each grade point according to the following scale.

A = 4.00 **B = 3.00 to 3.33** **C = 2.00 to 2.33** **D = 1.00 to 1.33**
A— = 3.68 to 3.99 **B— = 2.67 to 2.99** **C— = 1.67 to 1.99** **D— = 0.67 to 0.99**
B+ = 3.34 to 3.66 **C+ = 2.34 to 2.66** **D+ = 1.34 to 1.66** **Fail = 0.00 to 0.67**

Comments: Each respondent was encouraged to comment on the judge’s performance. This section contains these comments – again divided between results from attorneys and trial judges.

Sampling Error:

All sample surveys are subject to what is known as sampling error – the extent to which the results of the sample survey may differ from what would be obtained if the entire population being surveyed had been interviewed. The size of the sampling error is almost entirely due to the number of people interviewed for the survey and the variance of responses.

The table below shows the extent of sampling error (95%-confidence interval) for various sizes of random samples and sample percentage results.

	Sample Size					
	<u>25</u>	<u>50</u>	<u>100</u>	<u>150</u>	<u>200</u>	<u>300</u>
Percentages near 10% or 90%	± 11.8%	± 8.3%	± 5.9%	± 4.8%	± 4.2%	± 3.4%
Percentages near 20% or 80%	± 15.7%	± 11.1%	± 7.8%	± 6.4%	± 5.5%	± 4.5%
Percentages near 30% or 70%	± 18.0%	± 12.7%	± 9.0%	± 7.3%	± 6.4%	± 5.2%
Percentages near 40% or 60%	± 19.2%	± 13.6%	± 9.6%	± 7.8%	± 6.8%	± 5.5%
Percentages near 50%	± 19.6%	± 13.9%	± 9.8%	± 8.0%	± 6.9%	± 5.7%

For example, suppose a reported percentage is 80% in a sample size of 150, then one could expect that 95% of the time that a random sample of the same size and collected the same way would include the true population percentage within the range of 80% plus or minus 6.4%.

Averages such as grade points also have a 95% confidence interval, however it is not so easily displayed in a table as confidence intervals about a percentage. Suffice it to say that the confidence interval about a score generally increases with smaller sample size.

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Survey Disposition Report

	<u>Total Sent</u>	<u>Completes</u>	<u>Refusals & Nonresponse</u>	<u>Undeliv-erables</u>	<u>Other Response</u>	<u>Response Rate</u>
Attorney	269	109	99	26	35	52.4%
Judge	268	185	48		31	78.1%

1. 'Other Response' predominately includes people who sent back a survey saying they did not appear in the courtroom, and people who are deceased, or otherwise incapable of responding, and people who could not recall the experience.

2. The Response Rate is calculated using the following formula:
$$\frac{\text{Completes}}{(\text{Total Sent} - \text{Undeliverables} - \text{Other Responses})}$$