



Commission on
Judicial Performance

The Honorable Robert M. Russel
2006 Judicial Performance Survey

April, 26 2006

The Honorable Robert M. Russel
Colorado Court of Appeals
Colorado State Judicial Bldg.
2 East 14th Ave.
Denver, Co. 80203



Dear Judge Russel:


Every two years the Colorado Judicial Performance Commission conducts a survey of attorneys who have had cases with opinions authored or co-authored by those appellate court judges who face a retention vote in the next general election, and a second survey among all the State's judges and justices.

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

- **Attorney Results & Comments:** This section contains graphs displaying the average grade you received overall (the combined average from questions 2a through 2l) 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.
- **Survey of Judges Results & Comments:** Similar to the Attorney section, this portion of the report contains graphs (again including the overall average of questions 1 through 10 on the Survey of Judges questionnaire), the percentage distribution of responses by the trial judges to each substantive question in the survey. The judges 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 Survey of Judges questionnaire is also at the back of this report.
- **Methodology:** The fourth 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 ext 1, and for any other questions you might have about the survey please call the Director of the Colorado Judicial Performance Program, Jane Howell, at 303-837-3665.

Best regards,



Paul A. Talmey
President

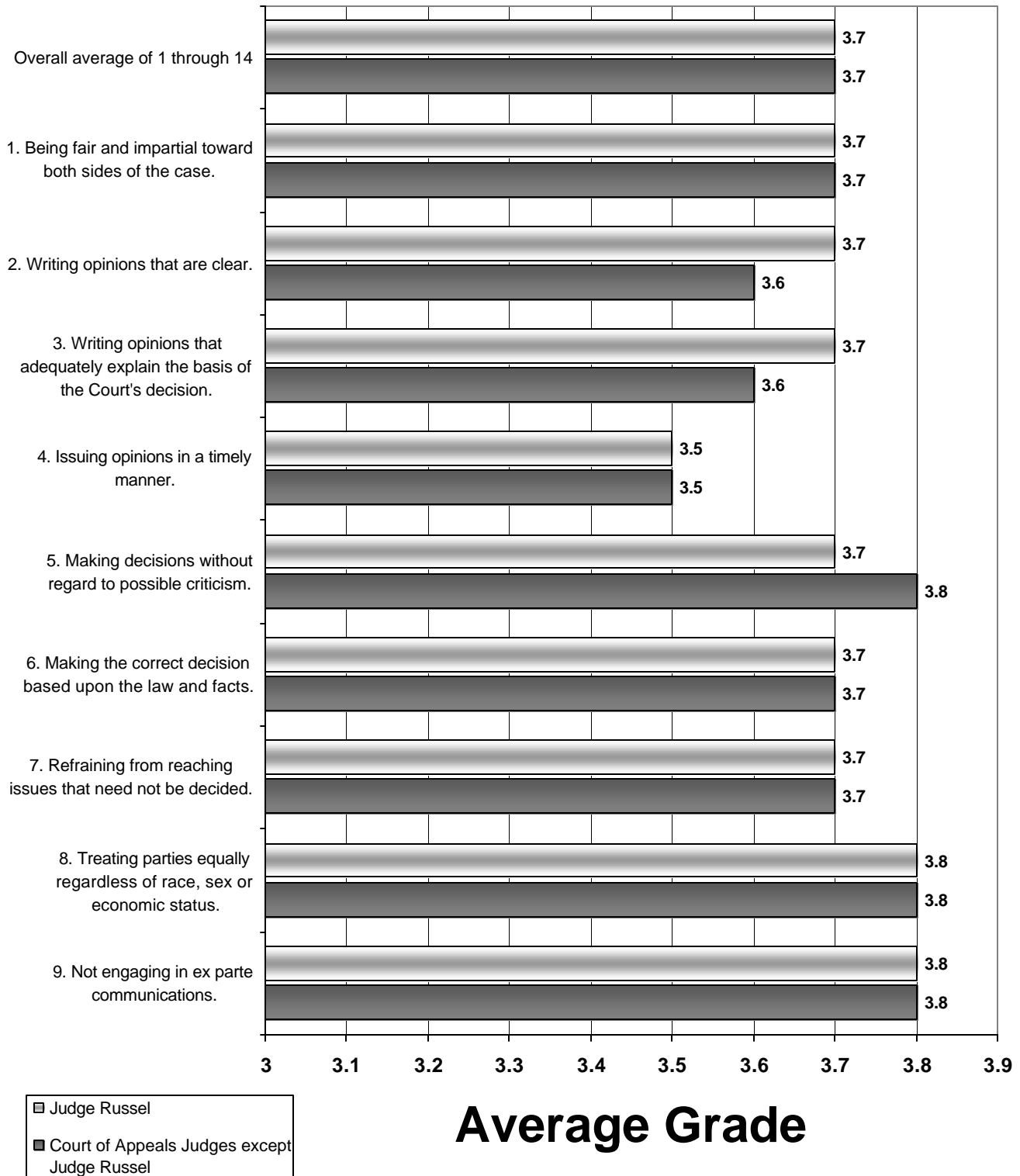
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Survey of Judges

Robert M. Russel

Survey of Judges

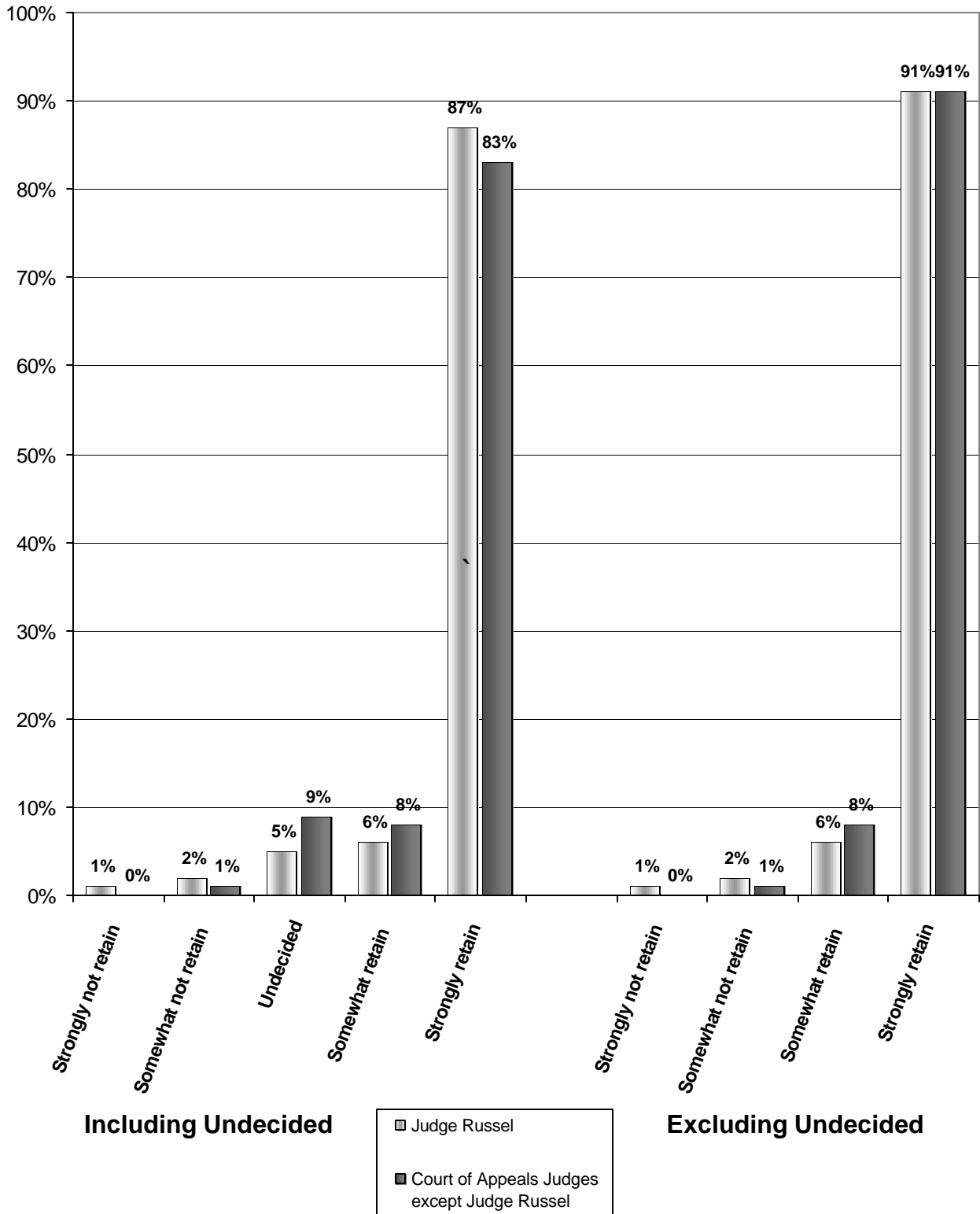
Average Grades: Questions 1 through 9 and Overall Average



Robert M. Russel

Survey of Judges

Retention Recommendation



Robert M. Russel

Survey of Judges

1. How would you grade Judge Russel on "Being fair and impartial toward both sides of the case?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	65%	61%
B	15%	16%
C	3%	3%
D	1%	0%
Fail	1%	
No Grade	15%	20%
<hr/>		
Average	3.7	3.7
Letter Grade	A-	A-

Robert M. Russel

Survey of Judges

2. How would you grade Judge Russel on "Writing opinions that are clear?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	70%	57%
B	18%	28%
C	2%	4%
D	1%	0%
Fail		
No Grade	8%	11%
<hr/>		
Average	3.7	3.6
Letter Grade	A-	B+

Robert M. Russel

Survey of Judges

3. How would you grade Judge Russel on "Writing opinions that adequately explain the basis of the Court's decision?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	72%	60%
B	17%	27%
C	1%	2%
D	1%	0%
Fail		
No Grade	8%	11%
<hr/>		
Average	3.7	3.6
Letter Grade	A-	B+

Robert M. Russel

Survey of Judges

4. How would you grade Judge Russel on "Issuing opinions in a timely manner?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	38%	39%
B	27%	25%
C	3%	4%
D	1%	1%
Fail		
No Grade	31%	32%
<hr/>		
Average	3.5	3.5
Letter Grade	B+	B+

Robert M. Russel

Survey of Judges

5. How would you grade Judge Russel on "Making decisions without regard to possible criticism?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	68%	65%
B	13%	15%
C	3%	2%
D	1%	0%
Fail		
No Grade	14%	17%
<hr/>		
Average	3.7	3.8
Letter Grade	A-	A-

Robert M. Russel

Survey of Judges

6. How would you grade Judge Russel on "Making reasoned decision based upon the law and facts?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	72%	66%
B	16%	20%
C	2%	3%
D	2%	1%
Fail		
No Grade	8%	10%
<hr/>		
Average	3.7	3.7
Letter Grade	A-	A-

Robert M. Russel

Survey of Judges

7. How would you grade Judge Russel on "Refraining from reaching issues that need not be decided.?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	62%	57%
B	18%	21%
C	3%	3%
D		0%
Fail	1%	
No Grade	17%	19%
<hr/>		
Average	3.7	3.7
Letter Grade	A-	A-

Robert M. Russel

Survey of Judges

8. How would you grade Judge Russel on "Treating parties equally regardless of race, sex or economic status?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	66%	64%
B	8%	10%
C	2%	2%
D	1%	
Fail		
No Grade	23%	24%
<hr/>		
Average	3.8	3.8
Letter Grade	A-	A-

Robert M. Russel

Survey of Judges

9. How would you grade Judge Russel on "Not engaging in ex parte communications?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	50%	50%
B	8%	8%
C	2%	1%
D		
Fail		
No Grade	40%	41%
<hr/>		
Average	3.8	3.8
Letter Grade	A-	A-

Robert M. Russel

Survey of Judges

10. Do you recommend that Judge Russel be retained in office or not be retained in office?

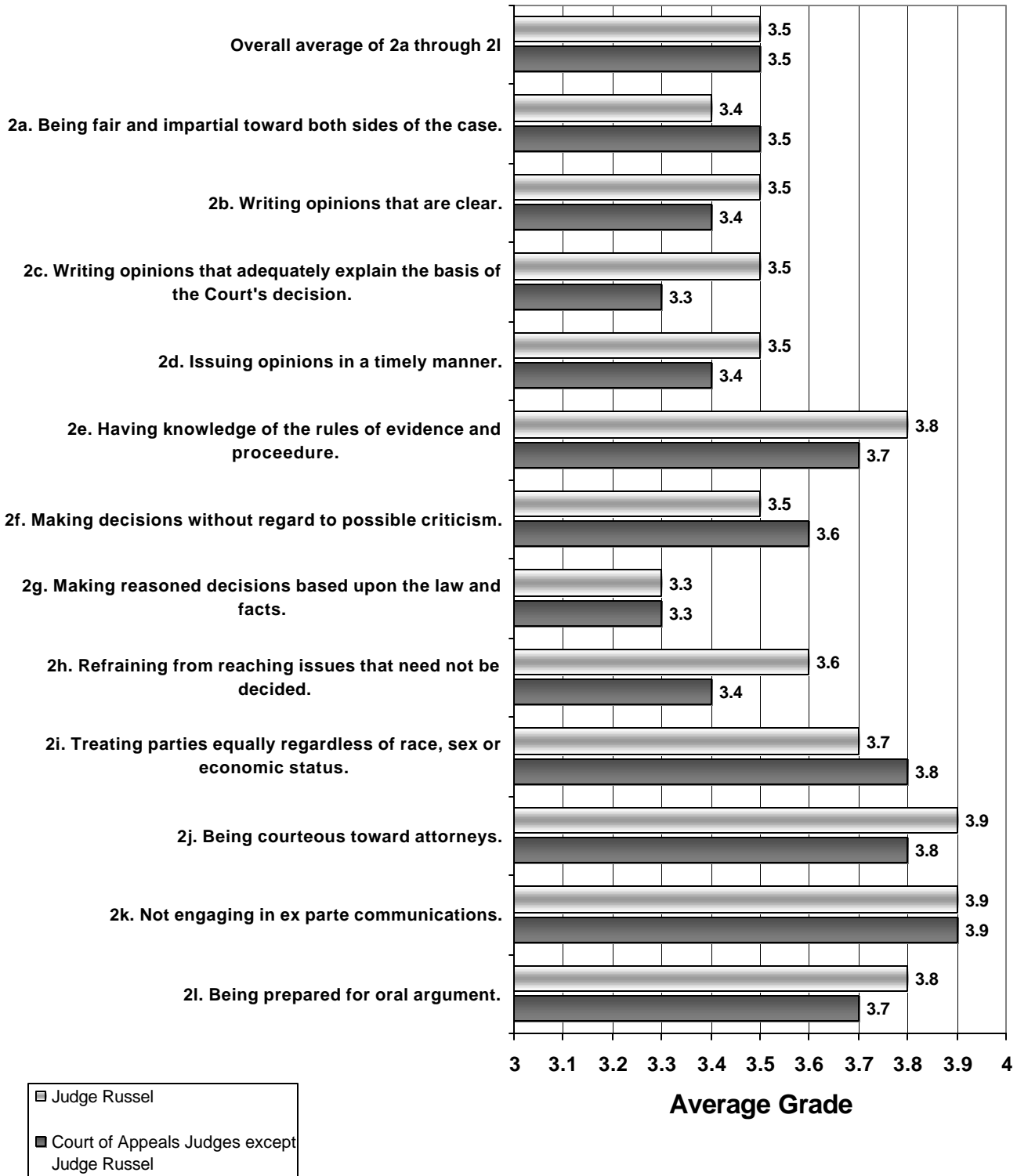
		Judge Russel	Court of Appeals Judges except Judge Russel
Strongly Recommend Retain in office	91%	91%	
Somewhat Recommend Retain in office	6%	8%	
Somewhat Recommend Not Retain in office	2%	1%	
Strongly Recommend Not Retain in office	1%	0%	

Attorney Survey

Robert M. Russel

Attorney Survey

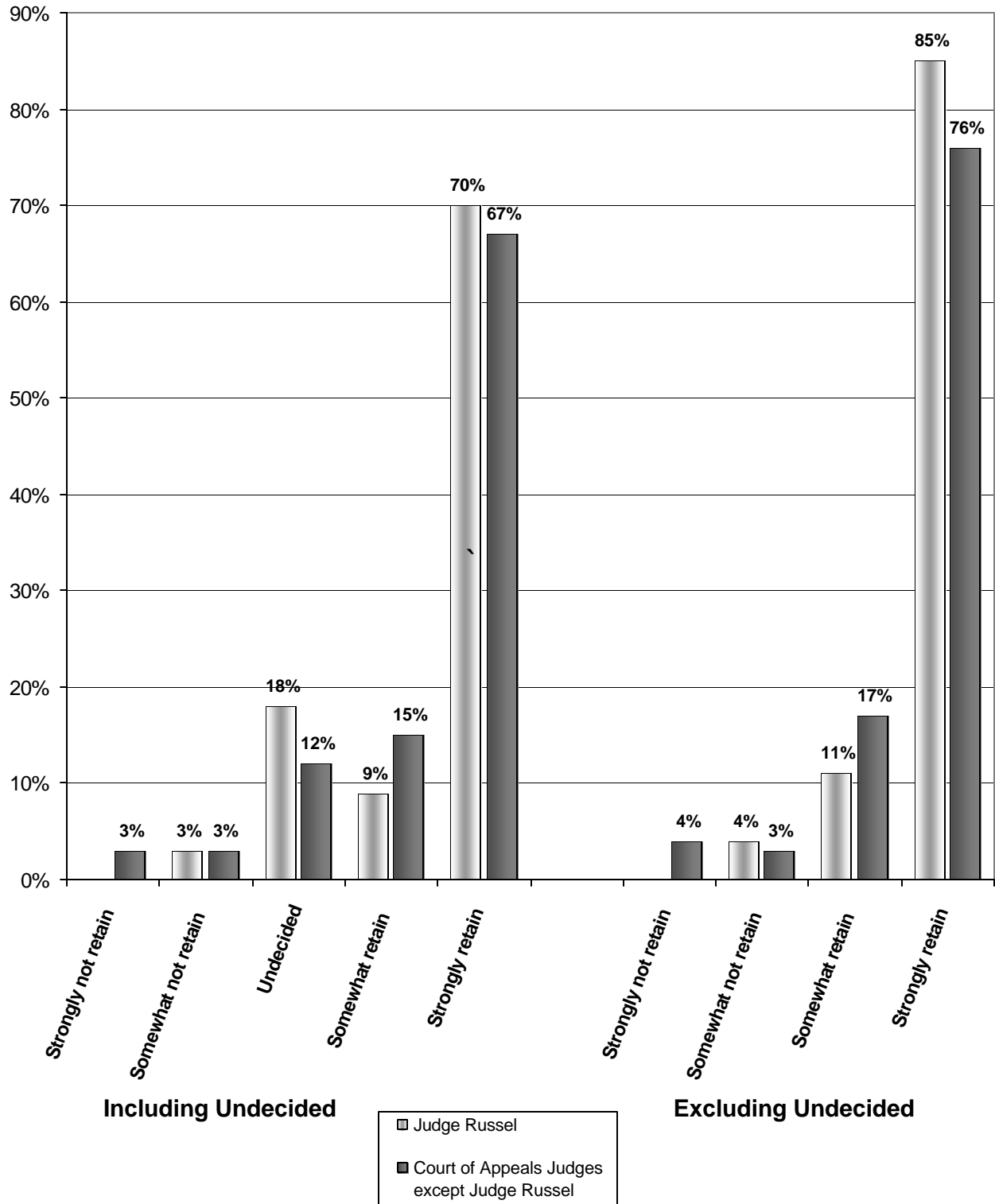
Average Grades: Questions 2a through 2l and Overall Average



Robert M. Russel

Attorney Survey

Retention Recommendation



Robert M. Russel

Attorney Survey

2a. How would you grade Judge Russel on "Being fair and impartial toward both sides of the case?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	61%	59%
B	18%	16%
C	18%	8%
D		3%
Fail		
No Grade	3%	13%
<hr/>		
Average	3.4	3.5
Letter Grade	B+	B+

Robert M. Russel

Attorney Survey

2b. How would you grade Judge Russel on "Writing opinions that are clear?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	70%	55%
B	18%	24%
C	6%	10%
D	6%	4%
Fail		
No Grade		7%
<hr/>		
Average	3.5	3.4
Letter Grade	B+	B+

Robert M. Russel

Attorney Survey

2c. How would you grade Judge Russel on "Writing opinions that adequately explain the basis of the Court's decision?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	73%	54%
B	12%	24%
C	12%	11%
D	3%	6%
Fail		
No Grade		7%
<hr/>		
Average	3.5	3.3
Letter Grade	B+	B

Robert M. Russel

Attorney Survey

2d. How would you grade Judge Russel on "Issuing opinions in a timely manner?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	64%	50%
B	21%	30%
C	9%	9%
D	3%	2%
Fail		1%
No Grade	3%	9%
<hr/>		
Average	3.5	3.4
Letter Grade	B+	B+

Robert M. Russel

Attorney Survey

2e. How would you grade Judge Russel on "Allowing parties to present their arguments and answer questions?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	73%	45%
B	9%	12%
C	3%	4%
D		
Fail		
No Grade	15%	39%
<hr/>		
Average	3.8	3.7
Letter Grade	A-	A-

Robert M. Russel

Attorney Survey

2f. How would you grade Judge Russel on "Making decisions without regard to possible criticism?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	55%	45%
B	6%	15%
C	6%	6%
D	6%	1%
Fail		
No Grade	27%	33%
<hr/>		
Average	3.5	3.6
Letter Grade	B+	B+

Robert M. Russel

Attorney Survey

2g. How would you grade Judge Russel on "Making reasoned decisions based upon the law and facts?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	61%	54%
B	18%	24%
C	12%	9%
D	9%	6%
Fail		2%
No Grade		6%
<hr/>		
Average	3.3	3.3
Letter Grade	B	B

Robert M. Russel

Attorney Survey

2h. How would you grade Judge Russel on "Refraining from reaching issues that need not be decided?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	63%	52%
B	19%	17%
C	6%	6%
D		4%
Fail		2%
No Grade	13%	20%
<hr/>		
Average	3.6	3.4
Letter Grade	B+	B+

Robert M. Russel

Attorney Survey

2i. How would you grade Judge Russel on "Treating parties equally regardless of race, sex or economic status?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	61%	53%
B	9%	6%
C	6%	3%
D		
Fail		
No Grade	24%	38%
<hr/>		
Average	3.7	3.8
Letter Grade	A-	A-

Robert M. Russel

Attorney Survey

2j. How would you grade Judge Russel on "Being courteous toward attorneys?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	82%	47%
B	3%	11%
C	3%	2%
D		
Fail		
No Grade	12%	40%
<hr/>		
Average	3.9	3.8
Letter Grade	A-	A-

Robert M. Russel

Attorney Survey

2k. How would you grade Judge Russel on "Not engaging in ex parte communications?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	55%	45%
B		3%
C	3%	1%
D		
Fail		
No Grade	42%	51%
<hr/>		
Average	3.9	3.9
Letter Grade	A-	A-

Robert M. Russel

Attorney Survey

2I. How would you grade Judge Russel on "Being prepared for oral argument?"

	Judge Russel	Court of Appeals Judges except Judge Russel
A	72%	37%
B	6%	12%
C	3%	2%
D		
Fail		
No Grade	19%	48%
<hr/>		
Average	3.8	3.7
Letter Grade	A-	A-

Robert M. Russel

Attorney Survey

3. Do you recommend that Judge Russel be retained in office or not be retained in office?

	Judge Russel	Court of Appeals Judges except Judge Russel
Strongly Recommend Retain in office	85%	76%
Somewhat Recommend Retain in office	11%	17%
Somewhat Recommend Not Retain in office	4%	3%
Strongly Recommend Not Retain in office		4%

Methodology

Methodology

Sample: The Colorado Judicial Department provided Talmey-Drake Research & Strategy, Inc. with names and addresses of attorneys who, in the previous 12 months, had a case decided by the Colorado Court of Appeals, of which the decision had been authored or co-authored by one of the six Court of Appeals judges up for a retention vote in 2006. Talmey-Drake Research was also provided with the list of Colorado judges and justices.

Two surveys were conducted, one among attorneys who had opinions authored or co-authored by one of the six Court of Appeals judges facing a retention vote in 2006, and a second survey of all Colorado judges and justices.

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 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 for each survey as well as the response rate for your surveys.

Overall Response Rate						
<u>Respondent Type</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	405	160	2	40		43.8%
Judges	266	154		35		66.7%

Response Rate for Judge Russel						
<u>Respondent Type</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	73	34	0	13		56.7%
Judges	266	154		35		66.7%

Results:

The results of the Survey are in two main sections: Attorney Respondents and Judge Respondents. Within each main section are three subsections: graphs displaying average grades for each section and question, the percentage distribution of grades, and respondent comments.

Graphs: The graphs visually display the overall average numerical grades received for all grade questions, each section and each question compared to the combined averages for all the other Court of Appeals judges for which surveys in 2006 were conducted.

Percentage Distribution of Grades: This section shows the percentage of each grade received on each question plus the bias, sentencing and retention questions. 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

This section also includes a comparative column of results showing the results for that question for all other Court of Appeals judges for which surveys were conducted in 2006.

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

Questionnaires

Additional Comments



Commission on Judicial Performance
Appellate Questionnaire

<p>Evaluation of [JUDGE NAME]</p>

1. Which of the following types of cases have you appealed in which Judge *[Name]* authored or co-authored the decision? *(Please circle all that apply.)*

Civil.....	1
Criminal.....	2
Domestic.....	3
Juvenile.....	4
Other	5

2. Using a grade scale, where an “A” is excellent along with B, C, D or F for fail, please grade the Judge [Name] on the following. If, for a specific question you feel that you do not have enough information to grade Judge [Name], please circle the number indicating “Can’t Grade.”

	A	B	C	D	F	Can't Grade
a. Being fair and impartial toward each side of the case.	4	3	2	1	0	9
b. Writing opinions that are clear.	4	3	2	1	0	9
c. Writing opinions that adequately explain the basis of the Court’s decision.	4	3	2	1	0	9
d. Issuing opinions in a timely manner.	4	3	2	1	0	9
e. Allowing parties to present their arguments and answer questions.	4	3	2	1	0	9
f. Making decisions without regard to possible criticism.	4	3	2	1	0	9
g. Making reasoned decisions based upon the law and facts.	4	3	2	1	0	9
h. Refraining from reaching issues that need not be decided.	4	3	2	1	0	9
i. Treating parties equally regardless of race, sex or economic status.	4	3	2	1	0	9
j. Being courteous toward attorneys.	4	3	2	1	0	9
k. Not engaging in ex parte communications.	4	3	2	1	0	9
l. Being prepared for oral argument.	4	3	2	1	0	9

3. Comments about Judge [Name]’s relating to any of your responses to the previous questions?

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

- Strongly recommend [he/she] be retained in office 5
- Somewhat recommend [he/she] be retained in office 4
- Undecided or don’t know enough to make recommendation 3
- Somewhat recommend [he/she] not be retained in office 2
- Strongly recommend [he/she] not be retained in office 1

And why do you think that way about retaining or not retaining Judge [Name] ?

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

Please use back page for any additional comments.

Please write comments you would like to make about Judge Robert M. Russel in the space below. If you would like to make more comments than space allows, feel free to attach a sheet with additional comments.

**Please mail the completed questionnaire in the enclosed postage-paid envelope.
Thank you.**



Commission on Judicial Performance

Survey of Colorado Judges

Please answer the enclosed questions about each of the five Court of Appeals judges who are standing for retention in November 2006. For questions 1 through 10 please grade each of the judges using a grade scale where an “A” indicates you believe the judge or justice is doing excellent on that aspect of his or her job, a “D” indicates that you believe he or she is doing poorly on that aspect of the job and an “F” indicates that you believe the judge or justice is failing at that task. B’s and C’s indicate that you believe the judge or justice is performing between excellent and poor on the particular task.

If, for a specific question, you feel that you do not have enough information to grade the judge on the task, or for some reason feel that you cannot grade him or her on the item, please circle the number that indicates “no grade.”

Thank you.

1. Being fair and impartial toward each side in a case.

	A	B	C	D	F	No Grade
Judge Russell E. Carparelli.....	4	3	2	1	0	6
Judge Janice B. Davidson.....	4	3	2	1	0	6
Judge Alan M. Loeb.....	4	3	2	1	0	6
Judge Jose D.L. Marquez.....	4	3	2	1	0	6
Judge Robert M. Russel.....	4	3	2	1	0	6

2. Writing opinions that are clear.

	A	B	C	D	F	No Grade
Judge Russell E. Carparelli.....	4	3	2	1	0	6
Judge Janice B. Davidson.....	4	3	2	1	0	6
Judge Alan M. Loeb.....	4	3	2	1	0	6
Judge Jose D.L. Marquez.....	4	3	2	1	0	6
Judge Robert M. Russel.....	4	3	2	1	0	6

3. Writing opinions that adequately explain the basis of the Court's decision.

	A	B	C	D	F	No Grade
Judge Russell E. Carparelli.....	4	3	2	1	0	6
Judge Janice B. Davidson.....	4	3	2	1	0	6
Judge Alan M. Loeb.....	4	3	2	1	0	6
Judge Jose D.L. Marquez.....	4	3	2	1	0	6
Judge Robert M. Russel.....	4	3	2	1	0	6

4. Issuing opinions in a timely manner.

	A	B	C	D	F	No Grade
Judge Russell E. Carparelli.....	4	3	2	1	0	6
Judge Janice B. Davidson.....	4	3	2	1	0	6
Judge Alan M. Loeb.....	4	3	2	1	0	6
Judge Jose D.L. Marquez.....	4	3	2	1	0	6
Judge Robert M. Russel.....	4	3	2	1	0	6

C. Please write comments you would like to make about Judge Alan M. Loeb in the space below. If you would like to make more comments than space allows, feel free to attach a sheet with additional comments.

D. Please write comments you would like to make about Judge Jose D. L. Marquez in the space below. If you would like to make more comments than space allows, feel free to attach a sheet with additional comments.

Continued on Back Page

A. Please write comments you would like to make about Judge Russell E. Carparelli in the space below. If you would like to make more comments than space allows, feel free to attach a sheet with additional comments.

B. Please write comments you would like to make about Judge Janice B. Davidson in the space below. If you would like to make more comments than space allows, feel free to attach a sheet with additional comments.

5. Making decisions without regard to possible criticism.

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>F</u>	<u>No Grade</u>
Judge Russell E. Carparelli.....	4	3	2	1	0	6
Judge Janice B. Davidson.....	4	3	2	1	0	6
Judge Alan M. Loeb.....	4	3	2	1	0	6
Judge Jose D.L. Marquez	4	3	2	1	0	6
Judge Robert M. Russel.....	4	3	2	1	0	6

6. Making reasoned decisions based upon the law and facts.

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>F</u>	<u>No Grade</u>
Judge Russell E. Carparelli.....	4	3	2	1	0	6
Judge Janice B. Davidson.....	4	3	2	1	0	6
Judge Alan M. Loeb.....	4	3	2	1	0	6
Judge Jose D.L. Marquez	4	3	2	1	0	6
Judge Robert M. Russel.....	4	3	2	1	0	6

7. Refraining from reaching issues that need not be decided.

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>F</u>	<u>No Grade</u>
Judge Russell E. Carparelli.....	4	3	2	1	0	6
Judge Janice B. Davidson.....	4	3	2	1	0	6
Judge Alan M. Loeb.....	4	3	2	1	0	6
Judge Jose D.L. Marquez	4	3	2	1	0	6
Judge Robert M. Russel.....	4	3	2	1	0	6

8. Treating parties equally regardless of race, sex or economic status.

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>F</u>	<u>No Grade</u>
Judge Russell E. Carparelli.....	4	3	2	1	0	6
Judge Janice B. Davidson.....	4	3	2	1	0	6
Judge Alan M. Loeb.....	4	3	2	1	0	6
Judge Jose D.L. Marquez.....	4	3	2	1	0	6
Judge Robert M. Russel.....	4	3	2	1	0	6

9. Not engaging in *ex parte* communications.

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>F</u>	<u>No Grade</u>
Judge Russell E. Carparelli.....	4	3	2	1	0	6
Judge Janice B. Davidson.....	4	3	2	1	0	6
Judge Alan M. Loeb.....	4	3	2	1	0	6
Judge Jose D.L. Marquez.....	4	3	2	1	0	6
Judge Robert M. Russel.....	4	3	2	1	0	6

10. Recommend to be retained/not retained in office.

	<u>Judge Carparelli</u>	<u>Judge Davidson</u>	<u>Judge Loeb</u>
Strongly recommend to retain	5	5	5
Somewhat recommend to retain...	4	4	4
Undecided or don't know enough to make recommendation.....	3	3	3
Somewhat recommend not retain.	2	2	2
Strongly recommend not retain	1	1	1

	<u>Judge Marquez</u>	<u>Judge Russel</u>
Strongly recommend to retain.....	5	5
Somewhat recommend to retain...	4	4
Undecided or don't know enough to make recommendation.....	3	3
Somewhat recommend not retain.	2	2
Strongly recommend not retain	1	1