



**CO L O R A D O**

**Office of Judicial  
Performance Evaluation**

Judicial Branch

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The Honorable Diana L. Terry  
2016 Judicial Performance Survey Report  
Appellate Court

Conducted by:



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# Summary of Results

For Judge Diana L. Terry, 222 qualified survey respondents submitted surveys. Of those who responded, 125 agreed they had worked with Judge Terry enough to evaluate her performance. This report reflects these 125 responses.

Respondents rated judges on various questions using an A to F for fail scale, in which the grades were then converted to the following numerical scores: A= 4, B=3, C=2, D=1 and Fail=0. An average score of 4.0 is the highest possible score and a 0.0 is the lowest possible score.

## Overall Score

Figure 1

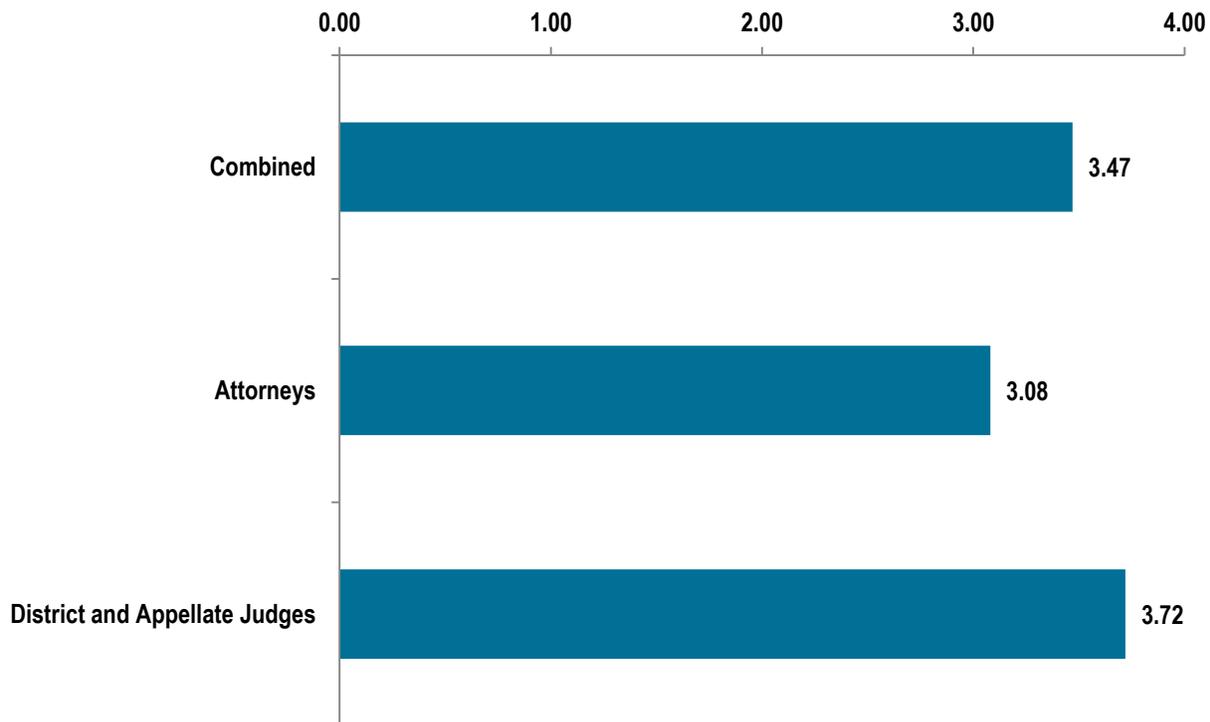


Table 1

| Judge Diana L. Terry Overall Scores |          |           |                               |
|-------------------------------------|----------|-----------|-------------------------------|
|                                     | Combined | Attorneys | District and Appellate Judges |
| Overall Grade                       | 3.47     | 3.08      | 3.72                          |

## Retention Scores

Figure 2

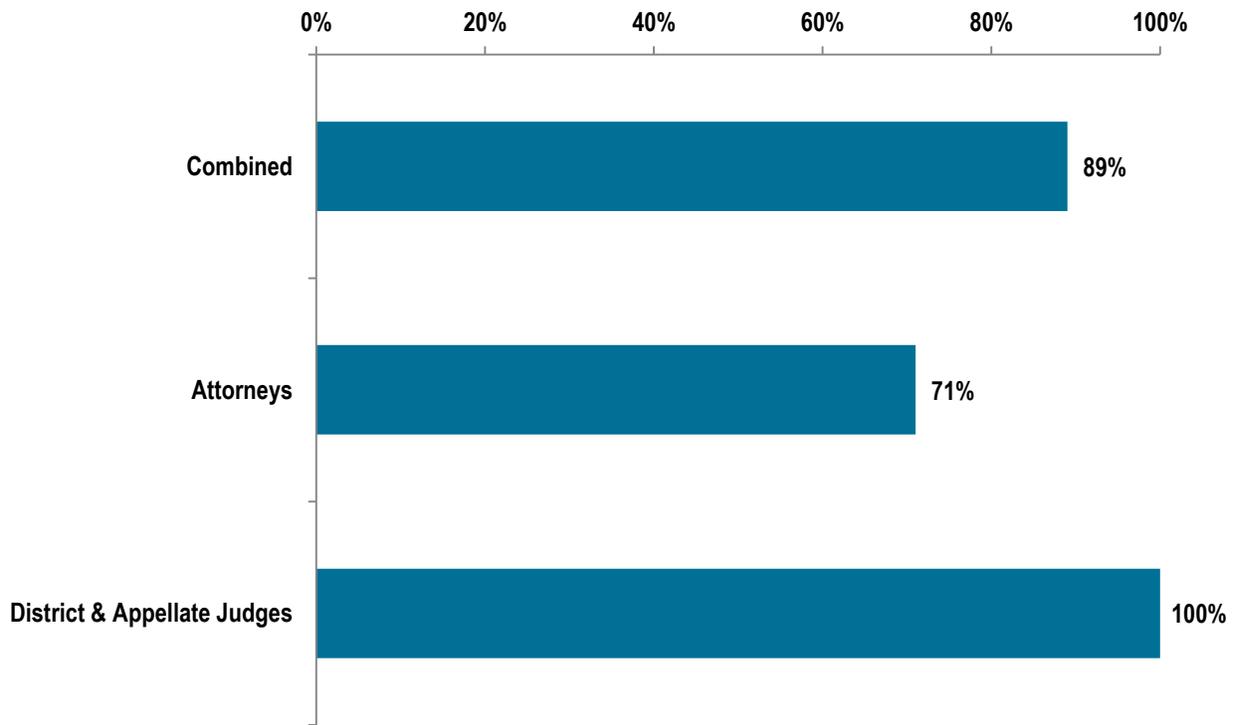


Table 2

| Judge Diana L. Terry Overall Retention Scores |          |           |                             |
|---|----------|-----------|-----------------------------|
|   | Combined | Attorneys | District & Appellate Judges |
| % Recommending Retention                      | 89%      | 71%       | 100%                        |

## Individual Category Scores

Table 3

| Judge Diana L. Terry Overall Category Scores |           |                               |
|--|-----------|-------------------------------|
| Area   | Attorneys | District and Appellate Judges |
| General                                      | 3.18      | 3.72                          |
| Writing                                      | 2.98      | N/A                           |

## Respondent Characteristics

**Table 4: Response Rates**

| Group                         | Total Sent | Undeliverable or Not Applicable* | Complete | Response Rate | % Without sufficient knowledge** |
|-------------------------------|------------|----------------------------------|----------|---------------|----------------------------------|
| Attorneys                     | 276        | 10                               | 49       | 43%           | 57%                              |
| District and Appellate Judges | 211        | 0                                | 76       | 51%           | 30%                              |

\*Undeliverable or Not Applicable surveys are those that were returned as undeliverable, the person no longer works at the address provided, or the respondent is deceased

\*\*The percent without sufficient knowledge are those that said they had insufficient experience to evaluate the judge or justice

# Survey of Attorneys

## Methodology and How to Read Results

For Judge Terry, 114 qualified survey respondents submitted surveys. Of those who responded, 49 agreed they had worked with Judge Terry enough to evaluate her performance. This report reflects these 49 responses. The survey results are divided into two sections: General Evaluation and Writing.

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 "Appellate Judges" on the charts.

### a. Response rates

During the 2015 administration, a total of 13,709 survey invitations were sent to 5,482 attorneys inviting them to evaluate judges and justices standing for retention in 2016. On average, each attorney was asked to evaluate 2.5 judges. 3,738 surveys were completed with an additional 1,818 responses where the attorney indicated that they did not have enough experience with the judge to be comfortable evaluating him or her. The response rate for the survey was 42% and the survey completion rate (the number of those familiar enough to evaluate the judge divided by the total number of attorney responses including those indicating they did not have sufficient familiarity to evaluate the judge) was 67%.

A total of 161 invitations were sent to 27 staff attorneys working in the appellate courts. Of these, 81 surveys were completed and an additional 11 indicated that they did not have enough experience with the judge to be comfortable evaluating him or her. The response rate for the survey was 57% and the survey completion rate (the number of those familiar enough to evaluate the judge divided by the total number of attorney responses including those indicating they did not have sufficient familiarity to evaluate the judge) was 88%.

### b. Methodology

The 2015 attorney survey was conducted online beginning on September 16, 2015 and closed on February 22<sup>nd</sup> 2016. Attorneys were first mailed a pre-notification letter sent on September 16, 2015 informing them about the survey and providing a link and login information to access the survey online. Next, a series of three email invitations were sent on September 24<sup>th</sup>, September 30<sup>th</sup>, and October 14<sup>th</sup>. Reminder calls were placed to the offices of selected attorneys in an attempt to increase response rates between November 12<sup>th</sup> and December 1<sup>st</sup>. Additional invitations were sent upon request during the reminder calls.

Appellate staff attorneys received the same survey as other attorneys, but were invited separately with a series of email invitations starting with the initial invite on October 5th, 2015 and followed with reminders on October 14<sup>th</sup> and 22<sup>nd</sup>.

To further increase response rates, an additional cycle of data collection took place in January and February 2016. Invitations were e-mailed to attorneys who had appeared before judges standing for retention in the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2015. The initial invitations were sent on January 19<sup>th</sup> and reminders were sent on January 29<sup>th</sup> and February 3<sup>rd</sup>.

**c. Questions:**

Respondents evaluated judges on 6 aspects of judicial performance using a grade scale of A, B, C, D, or F. These grades were then converted to a numerical score where A = 4, B = 3, C = 2, D = 1 and Fail = 0. Those that indicated that they were familiar with the Judge's written opinions were asked to rate the judge in an additional six areas related to the Judge's writing skills. In a final question, respondents were asked to indicate how strongly they would recommend that the judge or justice be retained or not retained in office. For this evaluation cycle, the "Don't know enough to make a recommendation" response category was excluded from the retention question.

**d. Analysis:**

Letter grades were then converted to a numerical score where A = 4, B = 3, C = 2, D = 1 and Fail = 0 for analysis. The overall score is calculated by averaging the responses to all questions answered. This score will have the same numerical range as the individual questions from zero to four.

The overall average will be reported for each judge along with the average scores for the judge's peers. In addition, the report will include the distribution of responses for each question. That is, the percentage of attorneys that assigned a rating of A, B, C, D, and F.

**e. Comments:**

Respondents were also asked what they considered to be the judge or justice's strengths and weaknesses. By statute, these comments are confidential and only provided to the judge and the District Commission on Judicial Performance. They are not released to the public when the rest of the report is released.

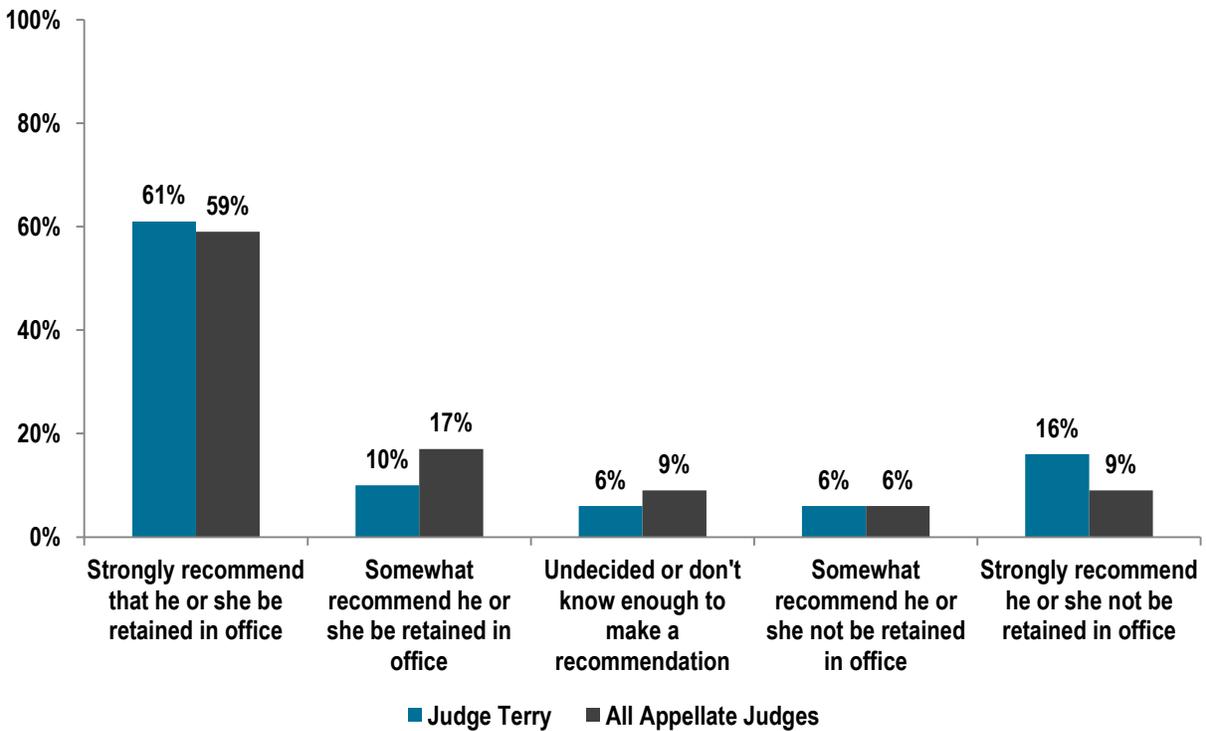
## Retention

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

Table 5

| Judge Diana L. Terry |     |
|----------------------|-----|
| Total Retain         | 71% |
| Neither              | 6%  |
| Total Not Retain     | 22% |

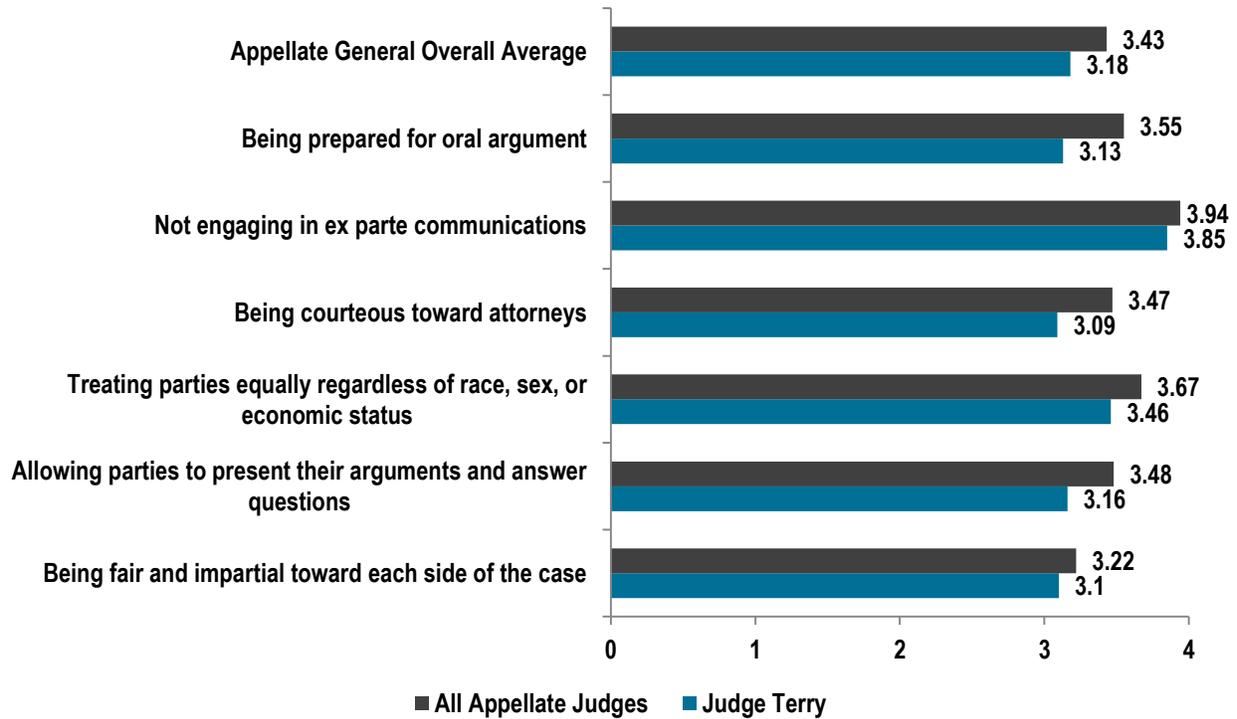
Figure 3



## General Evaluation

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge Terry on the following. If, for a specific question you feel that you do not have enough information to grade the judge, please check DK/NA for Don't Know/Not Applicable.

Figure 4



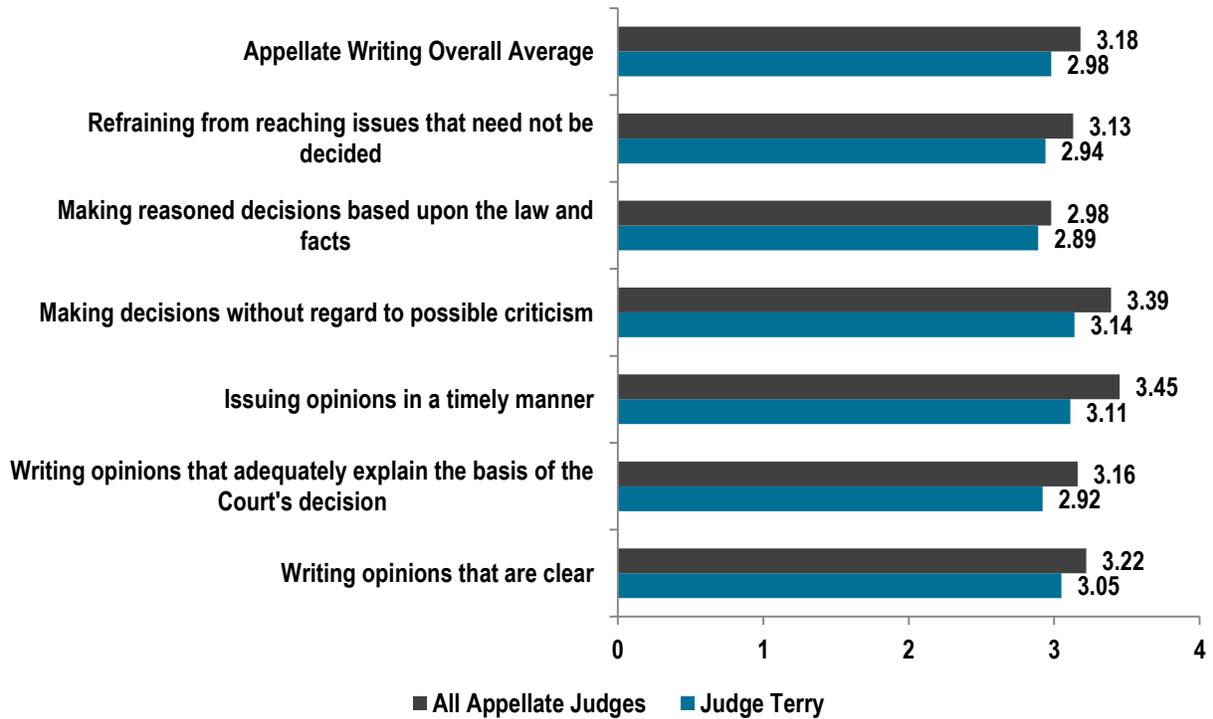
**Table 6**

| <b>Appellate General</b>   |          |          |          |          |             |              |                        |                             |
|--|----------|----------|----------|----------|-------------|--------------|------------------------|-----------------------------|
| <b>Judge Diana L. Terry</b>  | <b>A</b> | <b>B</b> | <b>C</b> | <b>D</b> | <b>Fail</b> | <b>DK/NA</b> | <b>Overall Average</b> | <b>All Appellate Judges</b> |
| <b>Number of Responses: 49</b>                                       |          |          |          |          |             |              |                        |                             |
| Being fair and impartial toward each side of the case                | 57%      | 16%      | 12%      | 8%       | 6%          | --           | 3.1                    | 3.22                        |
| Allowing parties to present their arguments and answer questions     | 55%      | 14%      | 8%       | 10%      | 4%          | 8%           | 3.16                   | 3.48                        |
| Treating parties equally regardless of race, sex, or economic status | 57%      | 14%      | 8%       | 2%       | 2%          | 16%          | 3.46                   | 3.67                        |
| Being courteous toward attorneys                                     | 59%      | 8%       | 10%      | 14%      | 4%          | 4%           | 3.09                   | 3.47                        |
| Not engaging in ex parte communications                              | 51%      | --       | 4%       | --       | --          | 45%          | 3.85                   | 3.94                        |
| Being prepared for oral argument                                     | 54%      | 21%      | 4%       | 6%       | 8%          | 6%           | 3.13                   | 3.55                        |
| <b>Appellate General Overall Average</b>                             |          |          |          |          |             |              | <b>3.18</b>            | <b>3.43</b>                 |

## Writing

Using a grade scale, where an "A" is excellent along with B, C, D or F for fail, please grade Judge Terry on the following. If, for a specific question you feel that you do not have enough information to grade the judge, please check DK/NA for Don't Know/Not Applicable.

Figure 5



**Table 7**

| <b>Appellate Writing</b>   |          |          |          |          |             |              |                        |                             |
|--|----------|----------|----------|----------|-------------|--------------|------------------------|-----------------------------|
| <b>Judge Diana L. Terry</b>  | <b>A</b> | <b>B</b> | <b>C</b> | <b>D</b> | <b>Fail</b> | <b>DK/NA</b> | <b>Overall Average</b> | <b>All Appellate Judges</b> |
| <b>Number of Responses: 40</b>   |          |          |          |          |             |              |                        |                             |
| Writing opinions that are clear  | 50%      | 25%      | 10%      | 10%      | 5%          | --           | 3.05                   | 3.22                        |
| Writing opinions that adequately explain the basis of the Court's decision | 48%      | 23%      | 13%      | 10%      | 8%          | --           | 2.92                   | 3.16                        |
| Issuing opinions in a timely manner  | 53%      | 10%      | 15%      | 3%       | 8%          | 13%          | 3.11                   | 3.45                        |
| Making decisions without regard to possible criticism                      | 45%      | 23%      | 13%      | 3%       | 5%          | 13%          | 3.14                   | 3.39                        |
| Making reasoned decisions based upon the law and facts                     | 54%      | 18%      | 5%       | 3%       | 18%         | 3%           | 2.89                   | 2.98                        |
| Refraining from reaching issues that need not be decided                   | 43%      | 23%      | 5%       | 3%       | 13%         | 15%          | 2.94                   | 3.13                        |
| <b>Appellate Writing Overall Average</b>                                   |          |          |          |          |             |              | <b>2.98</b>            | <b>3.18</b>                 |

# Survey of District and Appellate Judges

## Methodology and How to Read Results

For Judge Terry, 108 qualified survey respondents submitted surveys. Of those who responded, 76 agreed they had worked with Judge Terry enough to evaluate her performance. This report reflects these 76 responses.

### a. Response rates

For the inter-appellate evaluation, invitations were sent via email to all 28 Supreme Court justices and Court of Appeals judges. Judges and justices not standing for retention in 2016 were invited to evaluate all their appellate peers standing for retention. Appellate Judges and Justices standing for retention in 2016 were invited to evaluate their fellow judges up for retention, but not themselves. Of these, 23 responded and 21 completed the survey. The response rate was 82% and the completion rate was 91%.

District judges were invited to evaluate their peers standing for retention on the Court of Appeals or Supreme Court via email. For this survey all district judges were sent invitations to evaluate the 11 Court of Appeals judges or Supreme Court justices standing for retention. A total of 1,983 survey invitations were sent and 613 responded and 611 completed the survey. The overall response rate was 31% and the completion rate was 99%.

### b. Methodology

Both District Judges and fellow members of the Supreme Court or Court of Appeals were asked to evaluate the appellate judges and justices standing for retention in 2016.

The evaluation of appellate judges and justices standing for retention by their peers in the appellate courts began with an email invitation sent on January 6<sup>th</sup>. A reminder email was sent on January 13<sup>th</sup> to those who had not yet responded.

The evaluation of appellate judges and justices by their peers in the district courts began with an email invitation sent on November 10<sup>th</sup>. A reminder email was sent on November 23<sup>rd</sup> to those who had not yet responded.

### c. Questions

Both groups of judges providing appellate evaluations answered the same questions. The survey consisted of a series of 9 questions where the respondent was asked to rate the judges performance with an A through F letter grade. They were then asked how strongly they do or do not recommend the judge or justice for retention and given an opportunity to provide any written comments.

**d. Analysis**

Letter grades were then converted to a numerical score where A = 4, B = 3, C = 2, D = 1 and Fail = 0 for analysis. The overall score is calculated by averaging the responses to all questions answered. This score will have the same numerical range as the individual questions from zero to four.

The overall average will be reported for each judge along with the average scores for the judge's peers. In addition, the report will include the distribution of responses for each question. That is, the percentage of attorneys that assigned a rating of A, B, C, D, and F.

**e. Comments**

Respondents were given the option to leave supporting comments in a box next to where they graded each judge. By statute, these comments are confidential and only provided to the judge and the District Commission on Judicial Performance. They are not released to the public when the rest of the report is released.

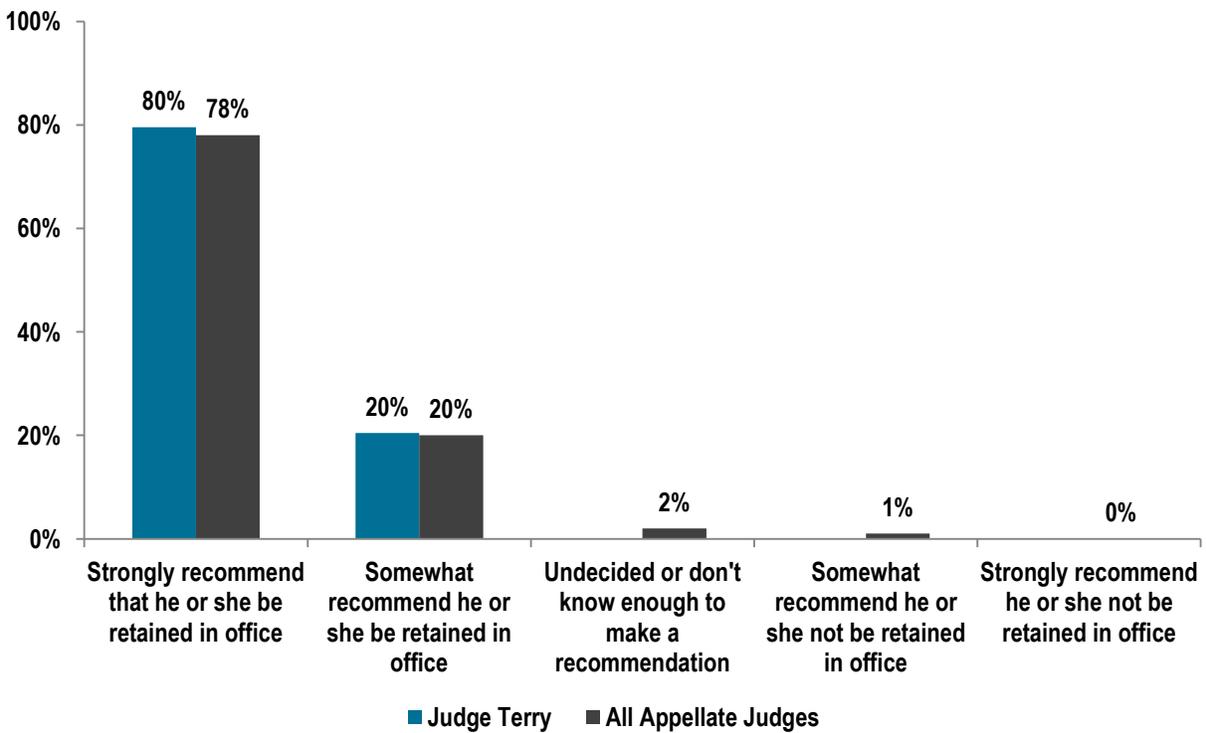
## Retention

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

Table 8

| Judge Diana L. Terry |      |
|----------------------|------|
| Total Retain         | 100% |
| Neither              | 0%   |
| Total Not Retain     | 0%   |

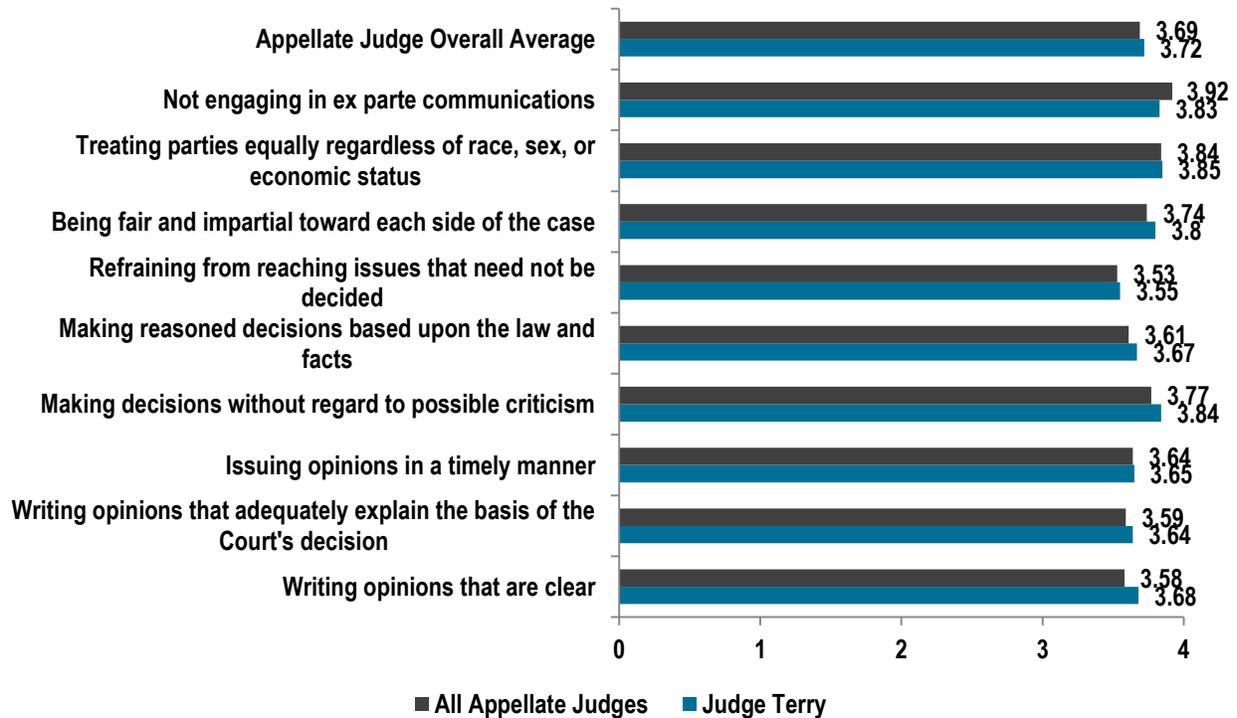
Figure 6



## Individual Questions

Using a grade scale, where "A" is excellent along with B, C, D, or F for fail, please grade the following appellate judges on each aspect by selecting the appropriate letter grade. If you feel that you don't have enough information about a judge to mark a specific grade, please select "No Grade".

Figure 7



**Table 9**

| <b>Appellate Individual Questions</b>                                      |          |          |          |          |             |              |                        |                             |
|--|----------|----------|----------|----------|-------------|--------------|------------------------|-----------------------------|
| <b>Judge Diana L. Terry</b>  | <b>A</b> | <b>B</b> | <b>C</b> | <b>D</b> | <b>Fail</b> | <b>DK/NA</b> | <b>Overall Average</b> | <b>All Appellate Judges</b> |
| <b>Number of Responses: 76</b>   |          |          |          |          |             |              |                        |                             |
| Writing opinions that are clear  | 73%      | 23%      | 5%       | --       | --          | --           | 3.68                   | 3.58                        |
| Writing opinions that adequately explain the basis of the Court's decision | 70%      | 23%      | 7%       | --       | --          | --           | 3.64                   | 3.59                        |
| Issuing opinions in a timely manner  | 68%      | 16%      | 5%       | 2%       | --          | 9%           | 3.65                   | 3.64                        |
| Making decisions without regard to possible criticism                      | 86%      | 11%      | 2%       | --       | --          | --           | 3.84                   | 3.77                        |
| Making reasoned decisions based upon the law and facts                     | 77%      | 19%      | --       | 5%       | --          | --           | 3.67                   | 3.61                        |
| Refraining from reaching issues that need not be decided                   | 66%      | 16%      | 14%      | --       | --          | 5%           | 3.55                   | 3.53                        |
| Being fair and impartial toward each side of the case                      | 84%      | 11%      | 5%       | --       | --          | --           | 3.8                    | 3.74                        |
| Treating parties equally regardless of race, sex, or economic status       | 82%      | 9%       | 2%       | --       | --          | 7%           | 3.85                   | 3.84                        |
| Not engaging in ex parte communications                                    | 77%      | --       | 2%       | --       | 2%          | 18%          | 3.83                   | 3.92                        |
| Appellate Judge Overall Average  |          |          |          |          |             |              | 3.72                   | 3.69                        |