



Commission on Judicial Performance

The Honorable Brian D. Boatright 2014 Judicial Performance Survey Report Supreme Court





March 26, 2014

The Honorable Brian D. Boatright
Colorado Supreme Court
2 East 14th Avenue
Denver, CO 80202

Dear Justice Boatright:

I am pleased to make available to you the attached copy of your 2014 Judicial Performance Survey Report. This report includes the survey results from two important stakeholder groups: 1) attorneys who have had cases heard before the Supreme Court in which you authored an opinion, concurrence, or dissent; and 2) district judges and appellate judges. It's important to note that Supreme Court non-attorney employees were also asked to evaluate you (using the non-attorney survey), but the results are not included in this report due to the very low number of completed surveys.

In addition to this introduction, the report is divided into five main sections:

1. A brief summary of the results of the two surveys.
2. The numerical results of the survey of attorneys in both tabular and graphical form. In addition to the numerical results, this section also contains comments attorneys made about your judicial performance. In some instances the comments have been redacted to eliminate respondent identifying information. A copy of the attorney questionnaire is included in the final section of this report.
3. The numerical results of the survey of district judges and appellate judges in both tabular and graphical form, and any comments the judges might have made about your judicial performance. In some instances the comments have been redacted to eliminate respondent identifying information. A copy of the district/appellate judge questionnaire is in the final section of this report.
4. The fourth section of the report discusses the methodology of the surveys.
5. The final section provides copies of the questions or questionnaires that were used for each survey.

Hon. Brian D. Boatright

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If you have any questions about the methodology and how the survey was conducted, please feel free to contact me at 505-821-5454 or by email at sanderoff@rpinc.com (please put the words "Judicial Performance" in the subject line), and for any other questions you might have about the survey please call the Executive Director of the Office of Judicial Performance Evaluation, Kent Wagner, at 303-928-7779.

Best regards,

A handwritten signature in black ink that reads "Brian Sanderoff". The signature is written in a cursive style with a large initial "B" and a stylized "S".

Brian Sanderoff
President

enc:

Summary of Results

Respondents rated judges on various questions using an A to F scale, in which the grades were then converted to numerical scores: A= 4, B=3, C=2, D=1 and F=0. An average score of 4.0 is the highest possible score and a 0.0 is the lowest possible score. Attorneys assigned Justice Brian D. Boatright an overall average grade of 3.31, and the district judges and appellate judges assigned Justice Boatright an overall average grade of 3.76, resulting in a combined average grade of 3.54.

Justice Boatright Average Grades			
	Combined	Attorneys (All Years)	District and Appellate Judges
Overall Grade	3.54	3.31	3.76
Sample Size	-	64	117

Table 1

The attorney results presented in this report are based on data collected from 2005 through 2013. (See Methodology section for description of sampling process.) The table below shows Justice Boatright's overall average grades from attorneys for each year in which survey results are available. Provisional justices will not have samples for the years prior to their appointment.

Average Attorney Grades by Year		
Year	Justice Boatright	
	Average Score	Sample Size
2005	NA	NA
2006	NA	NA
2007	NA	NA
2008	NA	NA
2009	NA	NA
2010	NA	NA
2011	NA	NA
2012	3.21	37
2013	3.44	27
All Years	3.31	64

Table 2

**Survey of Attorneys Regarding
Justice Brian D. Boatright
(Sample Size 64)**

Survey of Attorneys Regarding Supreme Court Justices

Justice Brian D. Boatright Sample Size = 64							Average (0.0 to 4.0 scale)
	A	B	C	D	Fail	DK/NA	Justice Boatright

Question 2:

2a. Being fair and impartial toward each side of the case.	49%	21%	11%	6%	3%	10%	3.18
2b. Allowing parties to present their arguments and answer questions.	68%	14%	6%	0%	2%	10%	3.63
2c. Treating parties equally regardless of race, sex or economic status.	59%	8%	8%	2%	3%	21%	3.48
2d. Being courteous toward attorneys.	70%	17%	5%	0%	0%	8%	3.71
2e. Not engaging in ex parte communications.	59%	5%	0%	0%	0%	37%	3.93
2f. Being prepared for oral argument.	38%	13%	14%	5%	5%	25%	3.00
Question 2 Average Grade							3.49

Question 3:

3a. Writing opinions that are clear.	54%	25%	11%	4%	7%	0%	3.14
3b. Writing opinions that adequately explain the basis of the Court's decision.	57%	18%	11%	4%	11%	0%	3.07
3c. Issuing opinions in a timely manner.	43%	21%	25%	4%	0%	7%	3.12
3d. Making decisions without regard to possible criticism.	64%	7%	11%	7%	4%	7%	3.31
3e. Making reasoned decisions based upon the law and facts.	54%	11%	21%	4%	11%	0%	2.93
3f. Refraining from reaching issues that need not be decided.	46%	21%	18%	0%	4%	11%	3.20
Question 3 Average Grade							3.13

Overall Average Grade: 3.31

Note: Respondents rated judges on various questions using an A to F scale, in which the grades were then converted to numerical scores: A=4, B=3, C=2, D=1 and F=0. An average score of 4.0 is the highest possible score and a 0.0 is the lowest possible score. 'DK/NA' = Don't Know / Not Applicable.

Survey of Attorneys Regarding Supreme Court Justices

Justice Brian D. Boatright

Percentage

Justice Boatright

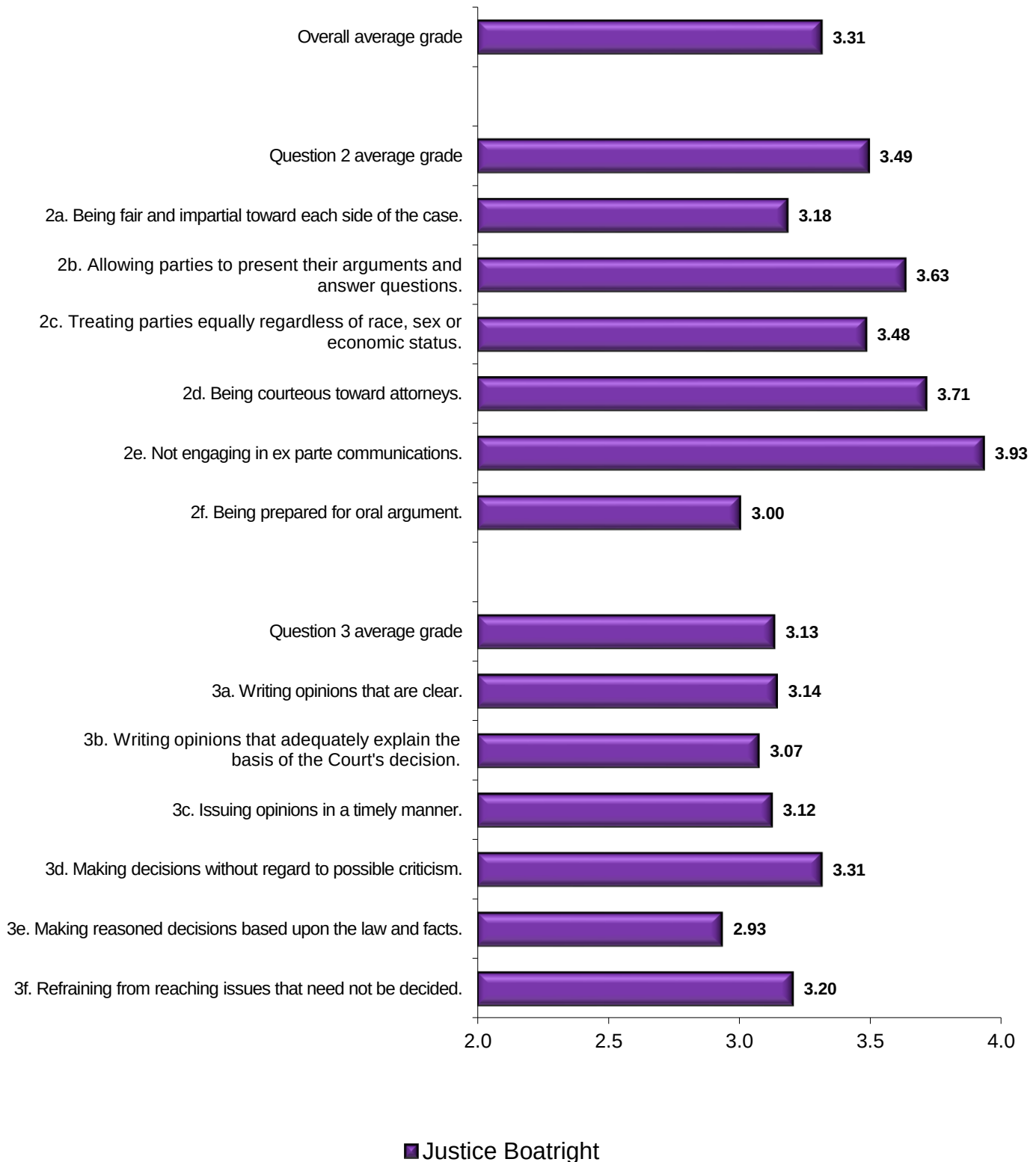
How strongly do you recommend that Justice Boatright be retained in office, or not be retained in office?

Strongly recommend retain	47%
Recommend retain	19%
Neither recommend nor not recommend retain	19%
Recommend not retain	5%
Strongly recommend not retain	10%
Total Retain	66%
Neither	19%
Total Not Retain	15%

Justice Brian D. Boatright

Survey of Attorneys Regarding Supreme Court Justices

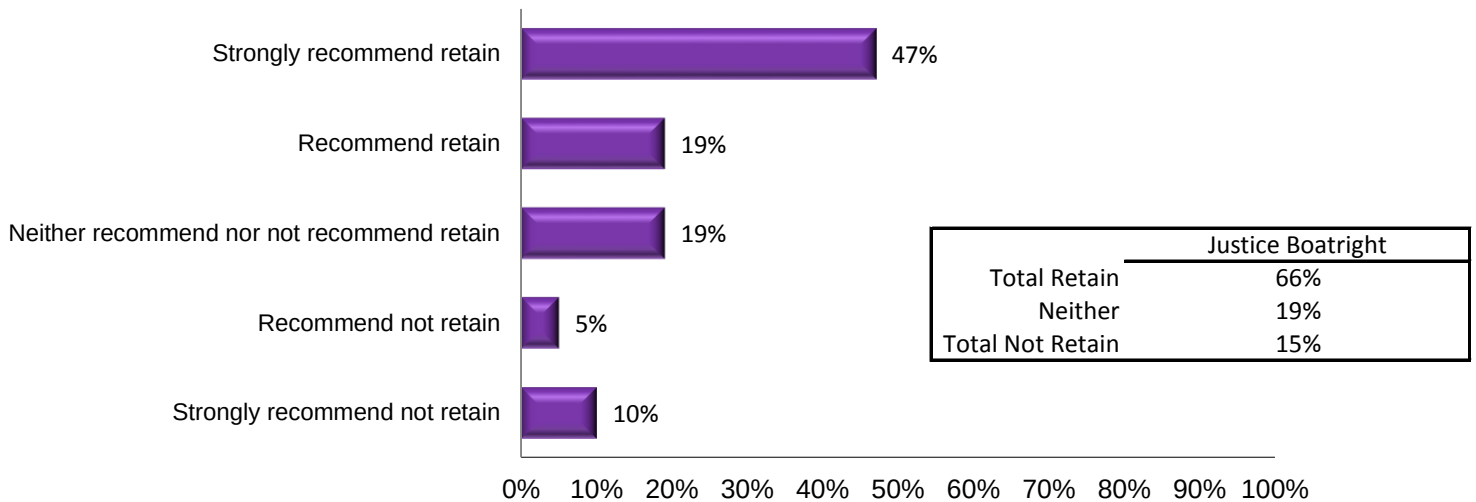
Average Grades



Justice Brian D. Boatright

Survey of Attorneys Regarding Supreme Court Justices

Q6. How strongly do you recommend that Justice Boatright be retained or not retained in office?



**Survey of District and Appellate
Judges Regarding
Justice Brian D. Boatright
(Sample Size 117)**

Survey of District and Appellate Judges Regarding Supreme Court Justices

Justice Brian D. Boatright Sample Size = 117							Average
	A	B	C	D	Fail	DK/NA	Justice Boatright
1. Being fair and impartial toward each side in a case.	76%	13%	1%	0%	0%	10%	3.83
2. Writing opinions that are clear.	66%	19%	4%	0%	0%	10%	3.69
3. Writing opinions that adequately explain the basis of the Court's decision.	70%	21%	1%	0%	0%	9%	3.75
4. Issuing opinions in a timely manner.	42%	21%	5%	2%	0%	30%	3.47
5. Making decisions without regard to possible criticism.	68%	18%	0%	0%	0%	14%	3.79
6. Making reasoned decisions based upon the law and facts.	71%	21%	0%	0%	0%	8%	3.77
7. Refraining from reaching issues that need not be decided.	62%	19%	1%	0%	0%	18%	3.74
8. Treating parties equally regardless of race, sex or economic status.	78%	8%	0%	0%	0%	15%	3.91
9. Not engaging in ex parte communications.	62%	6%	0%	0%	0%	32%	3.91
Overall Average Grade:							3.76

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

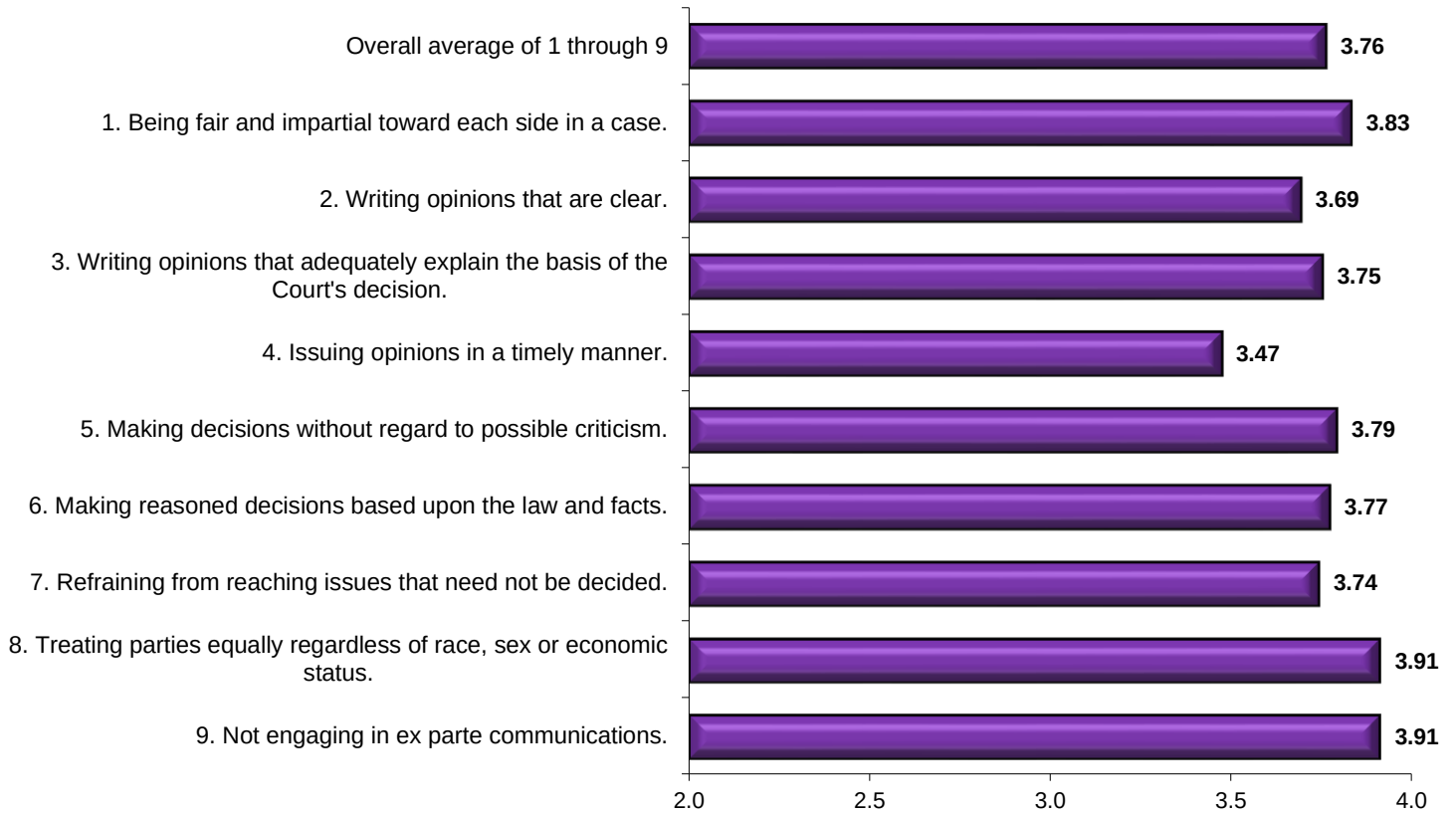
Strongly recommend retain	84%
Recommend retain	13%
Neither recommend nor not recommend retain	2%
Recommend not retain	1%
Strongly recommend not retain	0%
Total Retain	97%
Neither	2%
Total Not Retain	1%

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

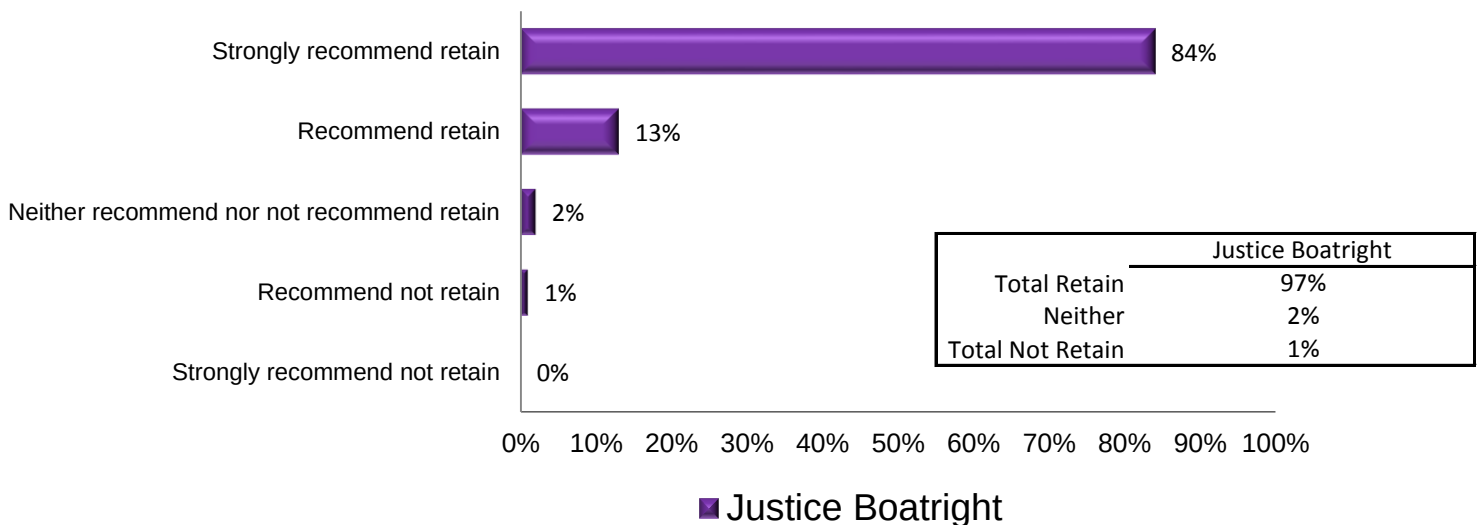
Justice Brian D. Boatright

Survey of District and Appellate Judges Regarding Supreme Court Justices

Average Grades



Q10. Recommend to be retained/not retained in office.



Methodology

Methodology

The results shown in the 2014 Judicial Performance Survey Report are based on the survey of Attorneys Regarding Appellate Judges and the survey of District Judges and Appellate Judges Regarding Appellate Judges. Below is a description of the methodologies used for these two surveys.

I Attorneys Regarding Supreme Court Justices

a. Sample:

The Attorneys Regarding Supreme Court Justices sample comes from a list of Supreme Court opinions provided by the Clerk of the Supreme Court. This list included the names of the attorneys associated with the cases and the names of the justices who authored opinions, concurrences or dissents for those cases.

Only judges and justices that are due to receive a retention evaluation in 2014 were evaluated during this reporting cycle. The intent was to increase the number of completed attorney evaluations for each judge and justice by excluding those not due to receive a retention evaluation in 2014. The number of possible judges and justices that attorney respondents could evaluate was 10.

Attorneys are first mailed a letter inviting them to complete the survey online. The letter provides the link to the online survey, as well as a unique password to access the survey. Approximately one week later, attorneys are sent an email invitation to complete the online survey, which also provides the Web address and their unique password. About a week after the first email is sent, a reminder email is sent, providing the same information. Potential respondents who do not complete the survey after the second email are then telephoned and asked to either complete the survey by phone, or to complete it online.

Since 2010, the Judicial Performance Survey reports are based on a moving average, or rolling sample, of data collected over a period of time equal to the justice's or judge's term of office: ten years for a Supreme Court justice and eight years for a COA judge. To use a Supreme Court justice as an example: as survey data is collected it is pooled together for ten years. After ten years, as new data is added to the judge's survey results, the oldest data in the pool will be deleted.

b. Questions:

Respondents evaluated justices and judges on 12 aspects of judicial performance using a grade scale of A, B, C, D, or F. (See Questionnaire section.) These grades were then converted to a numerical score where A = 4, B = 3, C = 2, D = 1 and Fail = 0. The A through F scale was chosen because it is almost universally recognized and understood. This makes it easy for respondents to complete their questionnaire, and for the public to interpret the results.

Respondents were also asked to indicate how strongly they would recommend that the judge 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.

c. Analysis:

The Attorneys Regarding Supreme Court Justices section first shows a table of the percentage distribution for each of the A through F questions, including “don’t know/not applicable” responses. The column on the far right shows the justice’s average grade for each question.

The overall question averages are calculated by adding up the averages for each question and dividing by the number of questions.

The next table shows the percentage distribution of the responses to the question about recommending retention.

The next page displays the question averages in horizontal bar-graph form. The percentage distribution to the retention question is then presented in the graph on the next page.

The last part of the Attorneys Regarding Supreme Court Justices section of the report lists the comments the attorneys made about the justice’s strengths and weaknesses.

d. Comments:

Respondents were also asked what they considered to be the justice’s strengths and weaknesses. By statute, these comments are confidential and only provided to the justice and the State Commission on Judicial Performance. They are not released to the public when the rest of the report is released. Before being given to the justice and the Commission, an attempt is made to redact all respondent identifying information from the comments.

The number to the left of each comment refers to the same attorney respondent in both the strengths section and the weaknesses section.

Most spelling and typographical errors have been corrected.

e. Cooperation Rate:

From 2005 through 2013, the overall cooperation rate for the Attorneys Regarding Supreme Court Justices Survey is calculated as the number of completed survey-evaluations divided by the number of possible evaluations, resulting in an overall cooperation rate of 27.1% for Justice Boatright. Undeliverable surveys have been excluded from the cooperation rates.

Looking at only the 2013 results, the cooperation rate for Justice Boatright is 28.4%.

A table of Justice Boatright's cooperation rate is shown below. This cooperation rate is based on data collected from 2012 through 2013.

	Requested Evaluations	No Response	Undeliv- erable/Not Applicable	Completed Evaluations	Cooperation Rate
Justice Boatright	290	172	54	64	27.1%

II District Judges and Appellate Judges Regarding Appellate Judges

a. Sample:

One-hundred seventy-one (171) district judges and 27 appellate judges (Supreme Court and Court of Appeals) were sent a questionnaire asking them to evaluate the appellate judges eligible to stand for retention in November 2014.

b. Questions:

The questionnaire consisted of nine A through F questions, plus the retention recommendation question (see Questionnaire section). The A through F responses were converted to numerical scores where A = 4, B = 3, C = 2, D = 1 and Fail = 0.

c. Analysis:

The District Judges and Appellate Judges Regarding Supreme Court Justices section shows a table of the percentage distribution for the nine questions, including "don't know/not applicable" responses. The column to the right shows the justice's average grade for each question.

The overall averages are calculated by adding up the averages for each question and dividing by the number of questions.

The next table shows the percentage distribution of the responses to the question about recommending retention.

The following page displays the question averages in horizontal bar-graph form and the percentage distribution to the retention question in bar-graph form.

The last part of the District Judges and Appellate Judges Regarding Supreme Court Justices section lists the comments district and appellate judges wrote about the justice.

d. Comments:

In addition to the A through F questions, the district judge and appellate judge respondents were given the opportunity to write a comment about each appellate judge. By statute, these comments are confidential and only provided to the appellate judge and the State Commission on Judicial Performance. They are not released to the public when the rest of the report is released. Before being given to the appellate judge and the Commission, an attempt is made to redact all respondent identifying information from the comments. An effort has been made to correct spelling and typographical errors.

e. Cooperation Rate:

In 2014, 198 questionnaires were mailed (171 district judges and 27 appellate judges) and 117 were returned, though not all appellate judges were evaluated in every returned questionnaire.

Questionnaires

Colorado Judicial Performance

Attorneys Regarding Appellate Judges Survey Questions

1. *[This question asked for each judge evaluated.]* Which of the following types of cases have you appealed to the **[Court of Appeals/Supreme Court]** in which **[Judge/Justice Last Name]** authored the decision, concurred or dissented? *(Please check 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 **[Judge/Justice Last Name]** on the following. If, for a specific question you feel that you do not have enough information to grade the judge/justice, please check DK/NA for Don't Know/Not Applicable.

- a. Being fair and impartial toward each side of the case.
- b. Allowing parties to present their arguments and answer questions.
- c. Treating parties equally regardless of race, sex or economic status.
- d. Being courteous toward attorneys.
- e. Not engaging in ex parte communications.
- f. Being prepared for oral argument.

Would you say you are sufficiently knowledgeable about **[Judge/Justice Last Name]'s** legal writings to have formed an opinion about them?

Yes (Ask Q3a to Q3f)

No (Skip to Q4)

Don't know (Skip to Q4)

3. Please evaluate **[Judge/Justice Last Name]** on the following topics.

- a. Writing opinions that are clear.
- b. Writing opinions that adequately explain the basis of the Court's decision.
- c. Issuing opinions in a timely manner.
- d. Making decisions without regard to possible criticism.
- e. Making reasoned decisions based upon the law and facts.
- f. Refraining from reaching issues that need not be decided.

4. What would you say are **[Judge/Justice Last Name]'s** strengths?

5. What would you say are *[[Judge/Justice Last Name]]*'s weaknesses?

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

Strongly recommend retain in office.....	5
Recommend retain in office	4
Neither recommend nor not recommend retain in office.....	3
Recommend not retain in office	2
Strongly recommend not retain in office	1

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



Commission on Judicial Performance

Please answer the enclosed questions about the two Supreme Court Justices and the two Court of Appeals Judges who are eligible to stand for retention in November 2014. For questions 1 through 9 please grade each of the judges using a grade scale where an "A" is excellent along with B, C, D or F for fail.

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.

BAR CODE GOES HERE

[illegible]

- B. Please write comments you would like to make about Justice Monica M. Márquez in the space below. If you would like to make more comments than space allows, feel free to attach a sheet with additional comments.**

[illegible]

- 4. Issuing opinions in a timely manner.**

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>F</u>	<u>No Grade</u>
Justice Brian D. Boatright.....	4	3	2	1	0	6
Justice Monica M. Márquez.....	4	3	2	1	0	6
Judge Maria Teresa Fox	4	3	2	1	0	6
Judge Alan M. Loeb.....	4	3	2	1	0	6

- 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>
Justice Brian D. Boatright.....	4	3	2	1	0	6
Justice Monica M. Márquez.....	4	3	2	1	0	6
Judge Maria Teresa Fox	4	3	2	1	0	6
Judge Alan M. Loeb.....	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>
Justice Brian D. Boatright.....	4	3	2	1	0	6
Justice Monica M. Márquez.....	4	3	2	1	0	6
Judge Maria Teresa Fox.....	4	3	2	1	0	6
Judge Alan M. Loeb.....	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>
Justice Brian D. Boatright.....	4	3	2	1	0	6
Justice Monica M. Márquez.....	4	3	2	1	0	6
Judge Maria Teresa Fox	4	3	2	1	0	6
Judge Alan M. Loeb.....	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>
Justice Brian D. Boatright.....	4	3	2	1	0	6
Justice Monica M. Márquez.....	4	3	2	1	0	6
Judge Maria Teresa Fox	4	3	2	1	0	6
Judge Alan M. Loeb.....	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>
Justice Brian D. Boatright.....	4	3	2	1	0	6
Justice Monica M. Márquez.....	4	3	2	1	0	6
Judge Maria Teresa Fox	4	3	2	1	0	6
Judge Alan M. Loeb.....	4	3	2	1	0	6

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

	<u>Justice Boatright</u>	<u>Justice Márquez</u>
Strongly recommend to retain	5	5
Recommend to retain.....	4	4
Neither recommend retain nor not retain	3	3
Recommend not retain	2	2
Strongly recommend not retain	1	1

	<u>Judge Fox</u>	<u>Judge Loeb</u>
Strongly recommend to retain	5	5
Recommend to retain.....	4	4
Neither recommend retain nor not retain	3	3
Recommend not retain	2	2
Strongly recommend not retain	1	1