



## Commission on Judicial Performance

---

### **The Honorable Michael L. Bender** 2010 Judicial Performance Survey Report Supreme Court

March 25, 2010



The Honorable Michael L. Bender  
Colorado State Judicial Bldg.  
2 East 14th Avenue  
Denver, CO 80203

Dear Justice Bender:

I am pleased to make available to you the attached copy of your 2010 Judicial Performance Survey Report. The report is based on two surveys relating to how you are seen carrying out the performance of your office: One of attorneys who have had cases heard before the Supreme Court, and a second survey of district judges regarding Supreme Court justices who are standing for retention in November, 2010.

The methodology underlying these surveys has changed somewhat since the last reports were issued in 2009. A few minutes perusing the methodology section toward the end of this report should inform you of the relevant changes, and provide you with a methodological context to better interpret your survey results.

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

- A brief summary of the results of the two surveys.
- 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 at the back of this report.
- The numerical results of the survey of district judges in both tabular and graphical form. In addition to the numerical results, this section also contains comments these judges made on the subject of your judicial performance. In few instances the comments have been redacted to eliminate respondent identifying information. A copy of the district judge questionnaire is at the back of this report.
- The fourth section of the Report discusses the methodology of the surveys.
- The final section provides copies of the questions or questionnaires that were used for each survey.

Hon. Justice Michael L. Bender  
March 25, 2010  
Page 2



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 or by email at [talmey@talmeyresearch.com](mailto:talmey@talmeyresearch.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, Jane Howell, at 303-866-6465.

Best regards,

A handwritten signature in blue ink, appearing to read 'Paul A. Talmey', is written over a faint, light blue rectangular stamp. The signature is fluid and cursive.

Paul A. Talmey  
President

enc:

# **Summary of Results**

Attorneys assigned Justice Michael L. Bender an overall average grade<sup>1</sup> of 3.36, and District Judges assigned Justice Bender an overall average grade of 3.36 resulting in a combined grade of 3.36. The average combined grade for all Supreme Court Justices standing for retention was 3.39. The combined average grade is computed as the total of the overall average from the attorney survey plus the overall average from the district judge survey, divided by two.

Justice Bender Average Grades			
	Combined	Attorney	District Judge
Overall Grade	3.36	3.36	3.36
Sample Size	-	175	133

Table 1

The results presented in this report are based on data collected from 2005 through 2009. (See Methodology section for description of sampling process.) Table 2 shows Justice Bender's overall average grades from attorneys for each of these years.

Justice Bender Average Attorney Grades by Year					
	2005	2006	2007	2008	2009
Overall Grade	3.47	3.00	3.44	3.36	3.36
Sample Size	8	18	47	48	54

Table 2

---

<sup>1</sup> The overall average grade for the attorney and district judge surveys are computed by summing the average grade for each A through F question and dividing by the number of questions. See the tables in each of the survey sections.

**Survey of Attorneys Regarding  
Justice Michael L. Bender  
(Sample Size 175)**

## Survey of Attorneys Regarding Appellate Judges

Justice Michael L. Bender Sample Size = 175							Average	
	A	B	C	D	Fail	DK/NA	Justice Bender	All Supreme Court Justices Excluding Justice Bender

### Question 2:

2a. Being fair and impartial toward each side of the case.	57%	23%	7%	5%	7%	1%	3.18	3.16
2b. Allowing parties to present their arguments and answer questions.	59%	22%	8%	4%	1%	6%	3.42	3.44
2c. Treating parties equally regardless of race, sex or economic status.	74%	9%	3%	2%	2%	10%	3.67	3.57
2d. Being courteous toward attorneys.	66%	17%	6%	3%	3%	5%	3.48	3.52
2e. Not engaging in ex parte communications.	65%	2%	2%	1%	1%	30%	3.86	3.78
2f. Being prepared for oral argument.	62%	20%	4%	2%	2%	9%	3.52	3.43
<b>Question 2 Average Grade</b>							3.52	3.48

### Question 3:

3a. Writing opinions that are clear.	49%	35%	9%	5%	2%	0%	3.25	3.12
3b. Writing opinions that adequately explain the basis of the Court's decision.	51%	32%	8%	5%	4%	0%	3.20	3.08
3c. Issuing opinions in a timely manner.	48%	26%	11%	2%	2%	11%	3.31	3.32
3d. Making decisions without regard to possible criticism.	56%	23%	9%	3%	1%	8%	3.42	3.24
3e. Making reasoned decisions based upon the law and facts.	50%	22%	12%	5%	12%	0%	2.95	2.83
3f. Refraining from reaching issues that need not be decided.	47%	21%	8%	6%	6%	12%	3.09	2.88
<b>Question 3 Average Grade</b>							3.20	3.08

<b>Overall Average Grade:</b>	<b>3.36</b>	<b>3.28</b>
-------------------------------	-------------	-------------

## Survey of Attorneys Regarding Appellate Judges

### Justice Michael L. Bender

Sample Size = 175

#### Percentage

Justice Bender

All Supreme  
Court Justices  
Excluding  
Justice Bender

6. How strongly do you recommend that Justice Bender be retained in office, or not be retained in office?

*[Percentages excluding undecided responses.]*

Strongly recommend retain	65%	63%
Somewhat recommend retain	17%	16%
Somewhat recommend not retain	7%	9%
Strongly recommend not retain	10%	11%
Total Retain	82%	79%
Total Not Retain	17%	20%

*[Percentages including undecided responses.]*

Strongly recommend retain	63%	59%
Somewhat recommend retain	16%	15%
Undecided or Don't Know	4%	7%
Somewhat recommend not retain	7%	9%
Strongly recommend not retain	10%	10%
Total Retain	79%	74%
Undecided/Don't Know	4%	7%
Total Not Retain	17%	19%

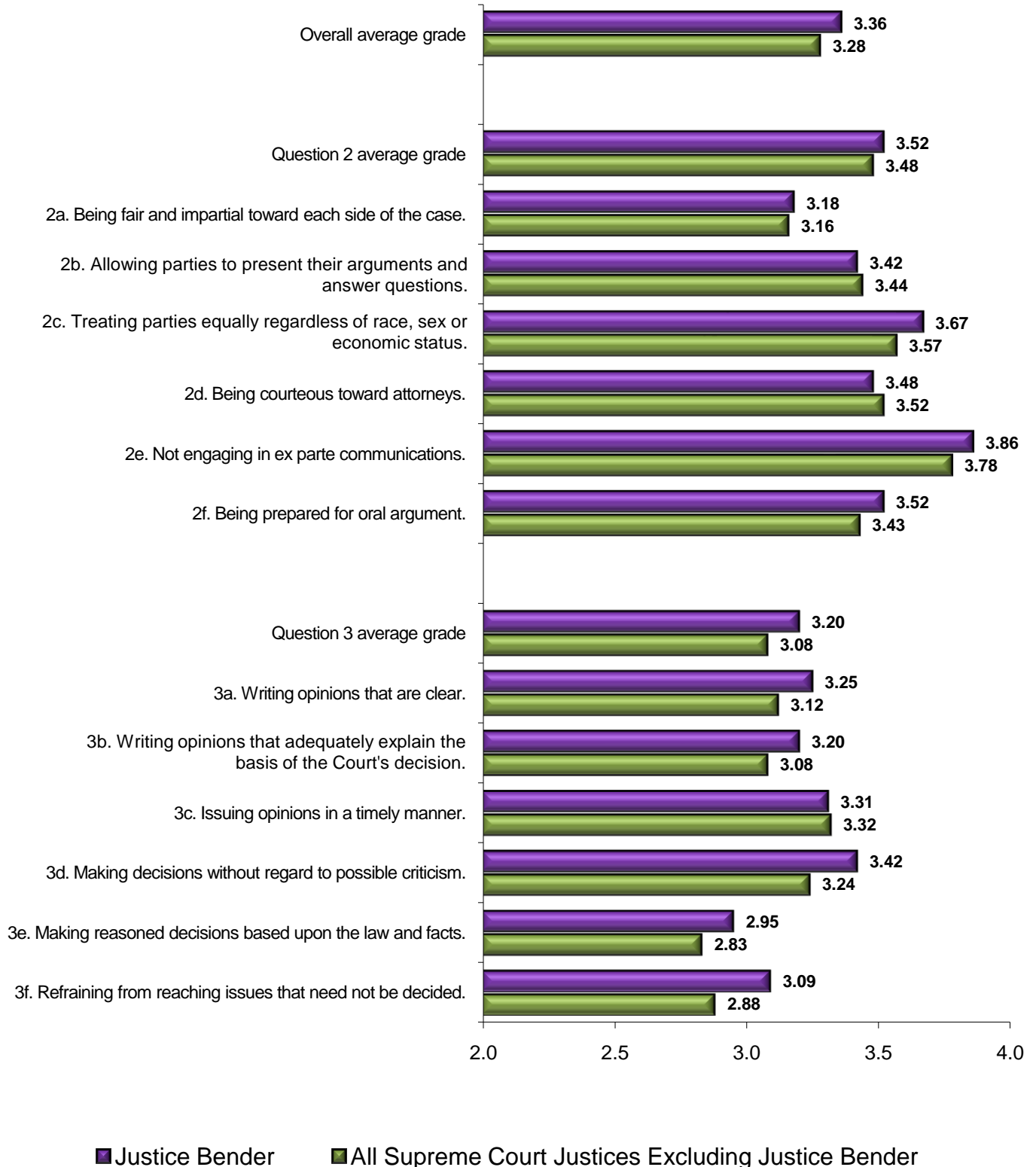
---

# Justice Michael L. Bender

## Survey of Attorneys Regarding Appellate Judges

---

### Average Grades



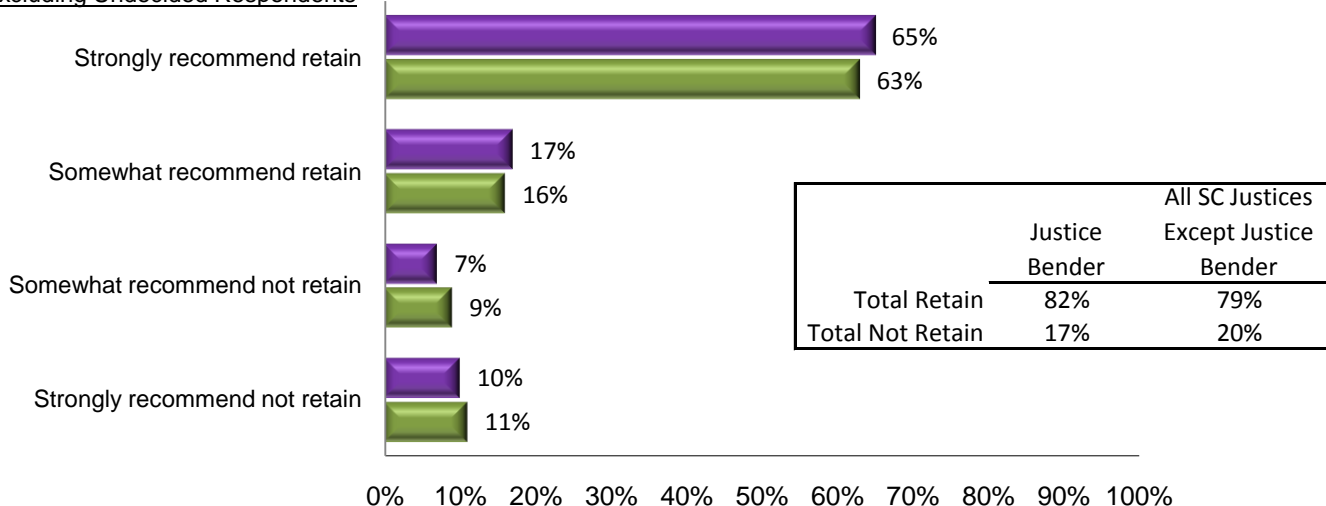


# Justice Michael L. Bender

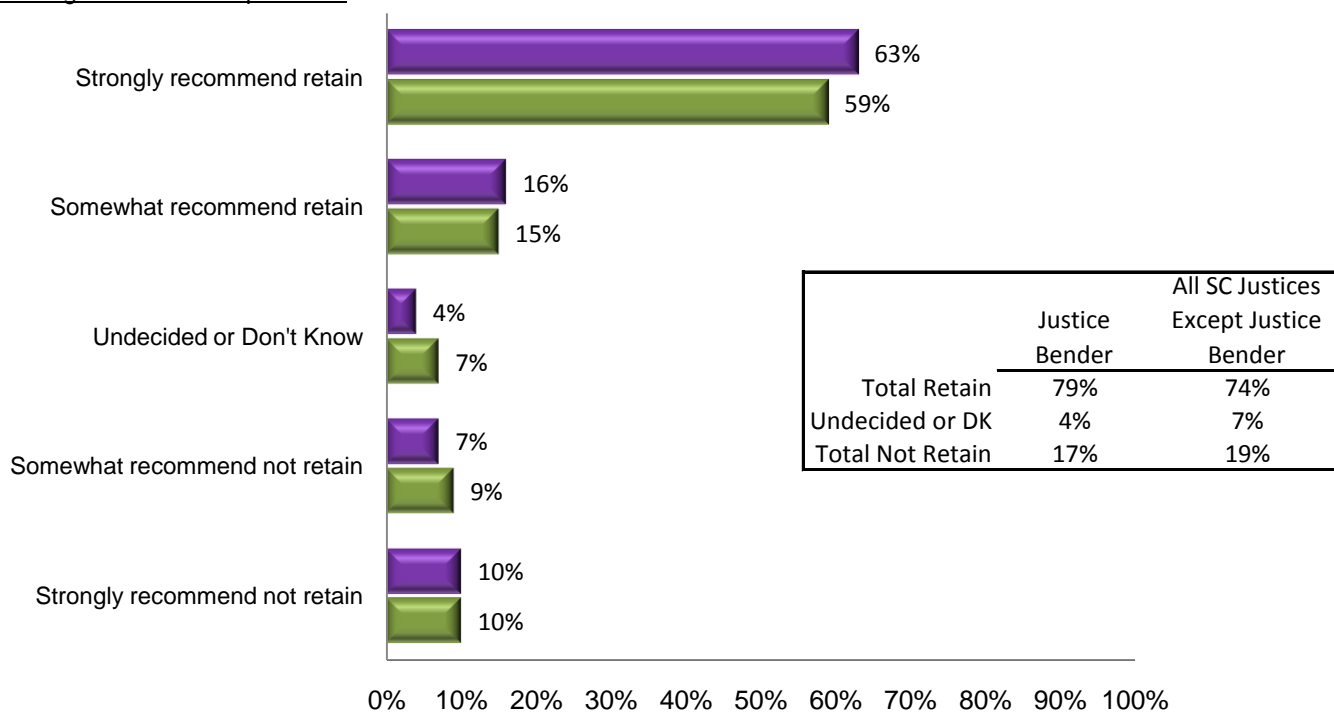
## Survey of Attorneys Regarding Appellate Judges

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

### Excluding Undecided Respondents



### Including Undecided Respondents



■ Justice Bender
 ■ All Supreme Court Justices Excluding Justice Bender

**Survey of District Judges Regarding  
Justice Michael L. Bender  
(Sample Size 133)**

## Survey of District Judges Regarding Appellate Judges

Justice Michael L. Bender Sample Size = 133							Average	
	A	B	C	D	Fail	DK/NA	Justice Bender	All SC Retention Justices Excluding Justice Bender
1. Being fair and impartial toward each side in a case.	49%	24%	8%	9%	1%	9%	3.24	3.47
2. Writing opinions that are clear.	51%	28%	12%	5%	1%	4%	3.27	3.38
3. Writing opinions that adequately explain the basis of the Court's decision.	57%	21%	12%	5%	2%	4%	3.32	3.47
4. Issuing opinions in a timely manner.	34%	23%	6%	4%	1%	31%	3.26	3.29
5. Making decisions without regard to possible criticism.	62%	15%	2%	4%	3%	15%	3.51	3.61
6. Making reasoned decisions based upon the law and facts.	49%	25%	10%	6%	4%	5%	3.16	3.40
7. Refraining from reaching issues that need not be decided.	38%	26%	9%	5%	4%	18%	3.07	3.35
8. Treating parties equally regardless of race, sex or economic status.	72%	7%	1%	4%	2%	15%	3.66	3.75
9. Not engaging in ex parte communications.	46%	2%	2%	1%	2%	48%	3.74	3.81
<b>Overall Average Grade:</b>							<b>3.36</b>	<b>3.50</b>

## Survey of District Judges Regarding Appellate Judges

### Justice Michael L. Bender

Sample Size = 133

#### Percentage

Justice Bender

All SC  
Retention  
Justices  
Excluding  
Justice Bender

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

*[Percentages excluding undecided responses.]*

Strongly recommend retain	69%	75%
Somewhat recommend retain	18%	16%
Somewhat recommend not retain	8%	6%
Strongly recommend not retain	5%	2%
Total Retain	87%	91%
Total Not Retain	13%	8%

*[Percentages including undecided responses.]*

Strongly recommend retain	67%	71%
Somewhat recommend retain	17%	15%
Undecided or Don't Know	3%	6%
Somewhat recommend not retain	8%	6%
Strongly recommend not retain	5%	2%
Total Retain	84%	86%
Undecided/Don't Know	3%	6%
Total Not Retain	13%	8%

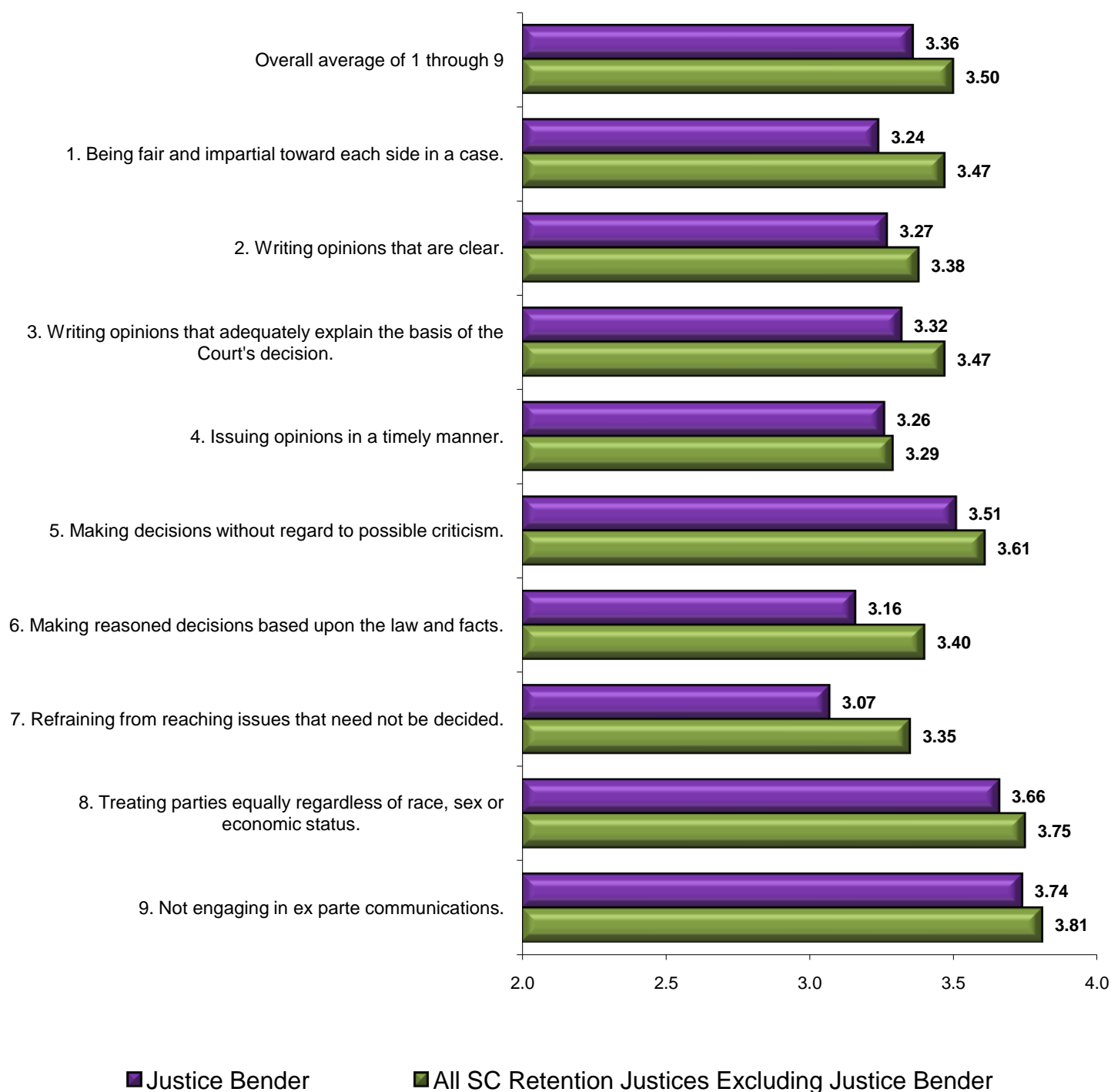
---

## Justice Michael L. Bender

### Survey of District Judges Regarding Appellate Judges

---

#### Average Grades

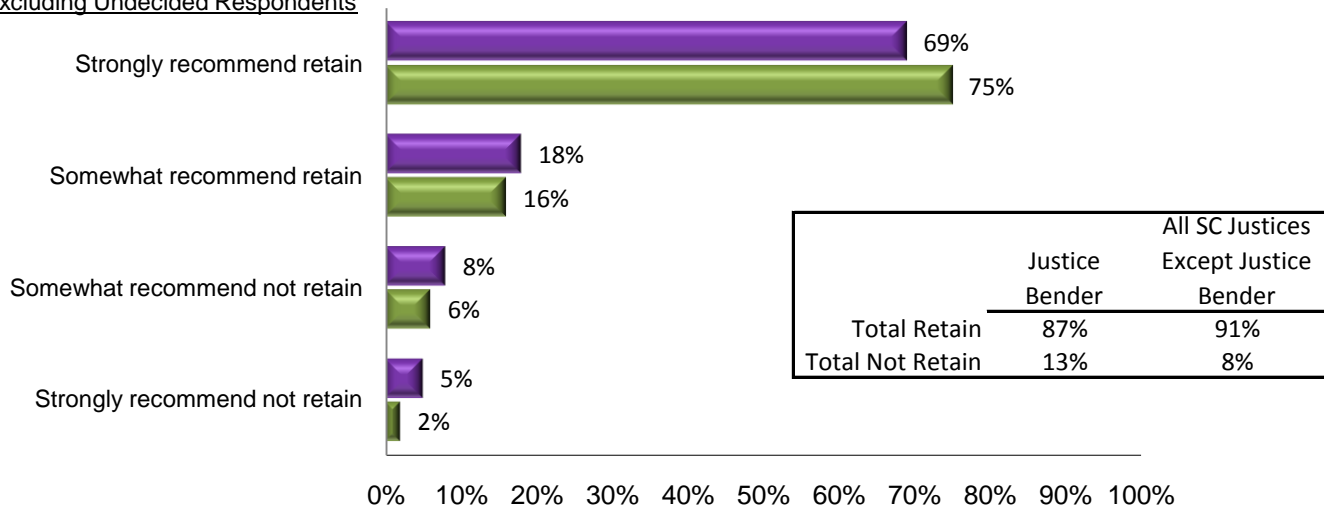


# Justice Michael L. Bender

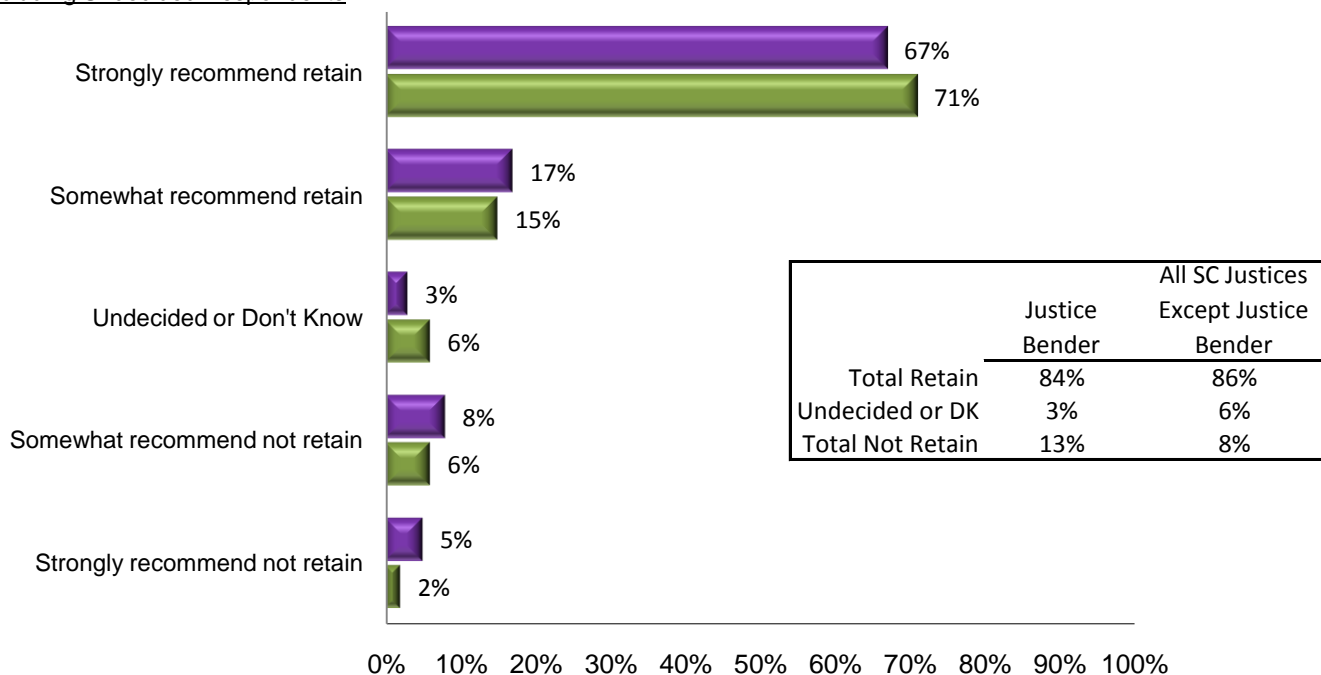
## Survey of District Judges Regarding Appellate Judges

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

### Excluding Undecided Respondents



### Including Undecided Respondents



■ Justice Bender
 ■ All SC Retention Justices Excluding Justice Bender

# Methodology

# **Methodology**

The results shown in the 2010 Judicial Performance Survey Report are based on two surveys<sup>1</sup>: The survey of Attorneys Regarding Appellate Judges and the survey of District Judges Regarding Appellate Judges. Below is a description of the methodology of the two surveys.

## **I Attorneys Regarding Appellate Judges**

### **a. Sample:**

The Attorneys Regarding Appellate Judges sample comes from a list of issued Supreme Court opinions provided by the Clerk of the Supreme Court and a similar list of Court of Appeals opinions provided by the Clerk of the Court of Appeals. These lists included the names of the attorneys associated with the cases and the names of the judges who authored opinions, concurrences or dissents for those cases.

i. **Prior to 2009**, the survey of Attorneys Regarding Appellate Judges was conducted using paper questionnaires mailed to the attorneys' offices. All attorneys from the Supreme Court opinions list and the Court of Appeals opinions list were assigned to evaluate justices or judges subject to the following rules applied in the order shown.

1. No attorney would be asked to evaluate the same justice or judge in a 24-month period.
2. Attorneys would only be asked to evaluate justices or judges who had written an opinion, concurrence or dissent in one of their cases.
3. If an attorney was eligible to evaluate both a Supreme Court justice and a Court of Appeals judge, the attorney was assigned to evaluate the justice.
4. If at this point there were still several justices or judges the attorney could potentially evaluate, the attorney was assigned the justice or judge with whom he or she had had the most cases with opinions issued during the sampling time frame.
5. If there were still several justices or judges the attorney could evaluate, he or she was either randomly assigned to one of them, or assigned to the justice or judge with the smallest sample in order to even out sample sizes.

Attorneys were mailed a questionnaire, and if they did not respond they were sent a reminder postcard followed by a second questionnaire and in some cases a second reminder postcard. Questionnaires were barcoded, and if an attorney mailed back two questionnaires, the second one was deleted from the data file. Attorneys who did not

---

<sup>1</sup> A third survey was attempted of Supreme Court and COA non-attorney employees. Talmey-Drake Research received lists of 21 Supreme Court employees and 15 Court of Appeals employees. No justice or judge had more than one completed survey-evaluation, and therefore the results are not reported.



complete the second request were then telephoned and asked to complete the survey by phone.

ii. In 2009 the Attorneys Regarding Appellate Judges Survey moved from being a paper survey mailed to potential respondents to an online survey. Moving the survey to online permitted asking individual attorneys to evaluate up to seven Supreme Court justices or COA judges, and with the exception of the effects of the modified assignment rules 1 through 5 below, it became a survey of all attorneys who had cases before either the Supreme Court or the Court of Appeals. Allowing an attorney to evaluate up to seven justices or judges, entailed slightly modifying the assignment rules:

1. No attorney would be asked to evaluate the same justice or judge in a 24-month period.
2. Attorneys would only be asked to evaluate justices or judges who had written an opinion, concurrence or dissent in one of their cases.
3. The list of seven justices or judges could include both justices and judges. If an attorney had more than seven possible justices or judges he or she could potentially evaluate, Supreme Court justices were assigned to that attorney first.
4. If there were more than seven justices or judges who could be assigned to the attorney, the attorney was assigned the justices or judges with whom he or she had had the most cases with opinions issued during the sampling time frame.
5. If there were still more than seven justices or judges the attorney could evaluate, justices or judges were either randomly assigned to available list slots or were assigned to the justices or judges with the smallest sample sizes.

Attorneys were first mailed a letter about the online survey to let them know that they would soon receive an email with a link to the survey. The Web address of the survey and a password were included in the letter if the attorney wanted to complete the survey immediately. A week after the first email was sent, a follow-up email was sent. Potential respondents who did not complete the survey after the second email were then telephoned and asked to either complete the survey then by phone, or to please complete it online.

iii. In 2010 rule #2 above was changed so that an attorney would be asked to evaluate all seven justices if the case was heard by the Supreme Court, and the full three-judge panel if the case was heard by the Court of Appeals – not just the justices or judges who had written the opinion, concurrences or dissents. Because some of the survey questions refer specifically to the justice’s or judge’s legal writing, a question was added to the questionnaire asking “Would you say you are sufficiently knowledgeable about Justice/Judge’s legal writings to have formed an opinion about them?” If the respondent answered “No” or “Don’t Know” to this question he or she was not asked about the justice’s or judge’s writings. A copy of the list of the Attorney Regarding Appellate Judges questions is reprinted in the last section of this report.

In addition to attorneys who had cases before either the Supreme Court or Court of Appeals, COA staff attorneys were also surveyed in 2010.

The results shown in the 2010 Judicial Performance Survey Report for the Attorneys Regarding Appellate Judges survey are based on the combined data collected from January 2005 through early February 2010 for those questions that have been consistently asked during that time period.

Starting in 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, eight years for a COA judge, six years for a district judge and four years for a county judge. To use a district judge as an example: as survey data is collected it is pooled together for six years. After six years, as new data is added to the judge's survey results in the first quarter of the seventh year, the oldest quarter of data in the pool is deleted.

The current data for all judges only goes back as far as 2005 – or the year the judge took the bench – therefore the rolling of the data only affects the county judge sample in the 2010 reports.

**b. Questions:**

The survey questions asked respondents to use a grade of A, B, C, D, or F to assess the justice or judge's performance on twelve aspects of judicial performance (See Questionnaire section.) These grades were then converted to a numerical scores 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.

In a final question, respondents were asked to indicate how strongly they would recommend that the justice or judge be retained or not retained in office.

**c. Comments:**

In addition to the A through F questions, respondents were also asked what they considered to be the justice's or judge's strengths and what they considered to be the justice's or judge's weaknesses. By statute these comments are confidential and only provided to the justice or 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 justice or judge and the Commission, an attempt is made to redact all respondent identifying information from the comments.

Since 2005 there have been changes to the number of comment questions, though the strengths and weaknesses questions have been asked in every survey.

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 fixed, but where the respondent entered a comment in all upper or all lower case, or without punctuation, the comment was not corrected.

**d. Analysis:**

The Attorneys Regarding Appellate Judges section first shows a table of the percentage distribution for each of the A through F questions, including “don’t know” responses. The next column to the right shows the justice’s average grade for each question. For comparison purposes, averages were also computed for all Supreme Court justices, excluding the report-justice – but including Supreme Court justices who are not eligible to stand for retention in 2010 – and are shown in the furthest right column on the page. Tables showing the percentage distribution for all questions for all seven justices are located at the end of this methodology section.

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 first column of percentages is for the report-justice and the second column displays the percentages for all Supreme Court justices, excluding the report-justice. The percentages are shown both including and excluding “don’t know/undecided” responses.

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 third part of the Attorneys Regarding Appellate Judges section of the report lists the comments the attorney made about the judge’s strengths and weaknesses.

**e. Cooperation Rate:**

The overall response rate for the Attorneys Regarding Appellate Judges Survey is calculated as the number of completed survey-evaluations (Supreme Court plus Court of Appeals) divided by the number of possible evaluations. An equivalent response rate for an individual justice or judge is computed as the number of completed survey-evaluations for that justice or judge divided by the number of possible evaluations that could have been completed for the judge or justice.

A table of the overall response rate and the response rate for Justice Bender is shown below.

	<b>Requested Evaluations</b>	<b>No Response</b>	<b>Undeliverable</b>	<b>Completed Evaluations</b>	<b>Cooperation Rate</b>
<b>Justice Bender</b>	827	647		175	21.2%
<b>All Supreme Court Justice</b>	3408	2693	25	689	20.4%
<b>All Appellate Judges (SC and COA)</b>	5471	4430	43	997	18.4%

The cooperation rate in the table above is based on the percent of survey-evaluations completed, and not the percent of attorneys who responded with at least one completed evaluation. From 2005 to 2010 a total of 3,712 attorneys were asked to participate in the Attorneys Regarding Appellate Judges Survey and on average to evaluate 4.6 justices or judges each—a total of 17,075 potential attorney evaluations. One thousand three hundred and eighty (1,380) attorneys responded (37.2%) with one or more survey evaluations. The average number of judges evaluated per attorney was 2.5.

## **II District Judges Regarding Appellate Judges**

### **a. Sample:**

All district judges and appellate judges (Supreme Court and Court of Appeals) were sent a questionnaire in January 2010 asking them to evaluate the four Supreme Court justices and five Court of Appeals judges standing for retention in 2010.

### **b. Questions:**

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

### **c. Comments:**

In addition to the A through F questions, respondents were asked to write a comment about each justice and judge. By statute these comments are confidential and only provided to the justice or 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 justice or 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.

**d. Analysis:**

The District Judges Regarding Appellate Judges section first shows a table of the percentage distribution for each of the A through F questions, including “don’t know” responses. The next column to the right shows the justice’s or judge’s average grade for each question. For comparison purposes, averages were also computed for the other three retention Supreme Court justices’ combined results, and are shown in the furthest right column on the page. Tables showing the percentage distribution for all questions for the four Supreme Court retention justices are located at the end of this methodology section.

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 first column of percentages is for the report-justice and the second column displays the percentages for the other three Supreme Court retention justices combined. The percentages are shown both including and excluding “don’t know/undecided” responses.

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 third part of the Attorneys Regarding Appellate Judges lists the comments district and appellate justices and judges wrote about the report-justice.

**e. Cooperation Rate:**

One hundred and eighty-eight (188) questionnaires were mailed (7 Supreme Court, 22 Court of Appeals and 159 district judges) and 137 were returned, though not all nine justices and judges were evaluated in every returned questionnaire.

## **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 Colorado voters is used to estimate the percentage of voters who will vote for Candidate A versus Candidate B 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.

Neither the Attorneys Regarding Appellate Judges nor the District Judges Regarding Appellate Judges is 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 justice or 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 Judicial Performance Commissions 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 our state's judicial system.

## Survey of Attorneys Regarding Appellate Judges

All Supreme Court Justices Sample Size = 2162							
	A	B	C	D	Fail	DK/NA	Average Grade

### Question 2:

2a. Being fair and impartial toward each side of the case.	56%	20%	9%	6%	6%	3%	3.16
2b. Allowing parties to present their arguments and answer questions.	60%	21%	8%	3%	2%	6%	3.43
2c. Treating parties equally regardless of race, sex or economic status.	68%	9%	4%	2%	3%	14%	3.59
2d. Being courteous toward attorneys.	65%	19%	6%	3%	2%	5%	3.51
2e. Not engaging in ex parte communications.	57%	4%	2%	1%	1%	36%	3.79
2f. Being prepared for oral argument.	58%	19%	7%	2%	2%	10%	3.44
<b>Question 2 Average Grade</b>							<b>3.49</b>

### Question 3:

3a. Writing opinions that are clear.	49%	28%	14%	6%	4%	1%	3.14
3b. Writing opinions that adequately explain the basis of the Court's decision.	48%	27%	12%	7%	5%	1%	3.09
3c. Issuing opinions in a timely manner.	50%	25%	9%	2%	3%	11%	3.32
3d. Making decisions without regard to possible criticism.	55%	18%	11%	4%	4%	8%	3.27
3e. Making reasoned decisions based upon the law and facts.	48%	19%	14%	9%	10%	0%	2.85
3f. Refraining from reaching issues that need not be decided.	42%	20%	14%	6%	8%	10%	2.90
<b>Question 3 Average Grade</b>							<b>3.10</b>

**Overall Average Grade: 3.29**

Survey of Attorneys Regarding Appellate Judges	
All Supreme Court Justices	
Sample Size = 2162	Average Grade

6. How strongly do you recommend that the Justice be retained in office, or not be retained in office?

*[Percentages excluding undecided responses.]*

Strongly recommend retain	64%
Somewhat recommend retain	16%
Somewhat recommend not retain	9%
Strongly recommend not retain	11%
Total Retain	80%
Total Not Retain	20%

*[Percentages including undecided responses.]*

Strongly recommend retain	59%
Somewhat recommend retain	15%
Undecided or Don't Know	6%
Somewhat recommend not retain	8%
Strongly recommend not retain	10%
Total Retain	74%
Undecided/Don't Know	6%
Total Not Retain	18%



Survey of District Judges Regarding Appellate Judges							
All 2010 Supreme Court Retention Justices Sample Size = 137							
	A	B	C	D	Fail	DK/NA	Average Grade

1. Being fair and impartial toward each side in a case.	56%	21%	7%	5%	0%	10%	3.41
2. Writing opinions that are clear.	52%	28%	10%	4%	1%	6%	3.35
3. Writing opinions that adequately explain the basis of the Court's decision.	58%	24%	9%	3%	1%	6%	3.43
4. Issuing opinions in a timely manner.	33%	25%	5%	4%	0%	32%	3.28
5. Making decisions without regard to possible criticism.	63%	14%	3%	2%	2%	15%	3.58
6. Making reasoned decisions based upon the law and facts.	52%	26%	8%	5%	1%	8%	3.34
7. Refraining from reaching issues that need not be decided.	43%	24%	9%	4%	1%	19%	3.28
8. Treating parties equally regardless of race, sex or economic status.	72%	7%	3%	2%	1%	16%	3.73
9. Not engaging in ex parte communications.	46%	3%	1%	0%	1%	49%	3.79

---

**Overall Average Grade: 3.47**

## Survey of District Judges Regarding Appellate Judges

### All 2010 Supreme Court Retention Justices

Sample Size = 137

Average  
Grade

10. Recommend retain/not retain.

*[Percentages excluding undecided responses.]*

Strongly recommend retain	74%
Somewhat recommend retain	16%
Somewhat recommend not retain	7%
Strongly recommend not retain	3%
Total Retain	90%
Total Not Retain	10%

*[Percentages including undecided responses.]*

Strongly recommend retain	70%
Somewhat recommend retain	16%
Undecided or Don't Know	5%
Somewhat recommend not retain	6%
Strongly recommend not retain	3%
Total Retain	86%
Undecided/Don't Know	5%
Total Not Retain	9%

# 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 justice, please check DK/NS for Don't Know/Not Sure.

- 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 Justice Roy Bean 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 **(Last Name)**'s strengths?

---



---



---

5. What would you say are Judge (*Last Name*)'s weaknesses?

---

---

---

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

Strongly recommend <b>the judge</b> be retained in office .....	5
Somewhat recommend <b>the judge</b> be retained in office.....	4
Undecided or don't know enough to make recommendation.....	3
Somewhat recommend <b>the judge</b> not be retained in office .....	2
Strongly recommend <b>the judge</b> not be retained in office .....	1



## Commission on Judicial Performance

Please answer the enclosed questions about each of the four Supreme Court justices and the five Court of Appeals judges who are eligible to stand for retention in November 2010. 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.

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

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>F</u>	<u>No Grade</u>
Justice Michael L. Bender.....	4	3	2	1	0	6
Justice Alex J. Martinez .....	4	3	2	1	0	6
Justice Mary J. Mullarkey.....	4	3	2	1	0	6
Justice Nancy E. Rice.....	4	3	2	1	0	6
Judge Sean Connelly.....	4	3	2	1	0	6
Judge John Daniel Dailey.....	4	3	2	1	0	6
Judge Richard L. Gabriel.....	4	3	2	1	0	6
Judge Nancy J. Lichtenstein.....	4	3	2	1	0	6
Judge David J. Richman .....	4	3	2	1	0	6

2. Writing opinions that are clear.

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>F</u>	<u>No Grade</u>
Justice Michael L. Bender.....	4	3	2	1	0	6
Justice Alex J. Martinez .....	4	3	2	1	0	6
Justice Mary J. Mullarkey.....	4	3	2	1	0	6
Justice Nancy E. Rice.....	4	3	2	1	0	6
Judge Sean Connelly.....	4	3	2	1	0	6
Judge John Daniel Dailey.....	4	3	2	1	0	6
Judge Richard L. Gabriel.....	4	3	2	1	0	6
Judge Nancy J. Lichtenstein.....	4	3	2	1	0	6
Judge David J. Richman .....	4	3	2	1	0	6

H. Please write comments you would like to make about Judge Nancy J. Lichtenstein in the space below. If you would like to make more comments than space allows, feel free to attach a sheet with additional comments.

---

---

---

---

---

---

---

---

---

---

I. Please write comments you would like to make about Judge David J. Richman 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.**

F. Please write comments you would like to make about Judge John Daniel Dailey in the space below. If you would like to make more comments than space allows, feel free to attach a sheet with additional comments.

---

---

---

---

---

---

---

---

---

---

---

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

---

---

---

---

---

---

---

---

---

---

---

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

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>F</u>	<u>No Grade</u>
Justice Michael L. Bender .....	4	3	2	1	0	6
Justice Alex J. Martinez .....	4	3	2	1	0	6
Justice Mary J. Mullarkey.....	4	3	2	1	0	6
Justice Nancy E. Rice .....	4	3	2	1	0	6
Judge Sean Connelly .....	4	3	2	1	0	6
Judge John Daniel Dailey.....	4	3	2	1	0	6
Judge Richard L. Gabriel.....	4	3	2	1	0	6
Judge Nancy J. Lichtenstein.....	4	3	2	1	0	6
Judge David J. Richman .....	4	3	2	1	0	6

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 Michael L. Bender .....	4	3	2	1	0	6
Justice Alex J. Martinez .....	4	3	2	1	0	6
Justice Mary J. Mullarkey.....	4	3	2	1	0	6
Justice Nancy E. Rice .....	4	3	2	1	0	6
Judge Sean Connelly .....	4	3	2	1	0	6
Judge John Daniel Dailey.....	4	3	2	1	0	6
Judge Richard L. Gabriel.....	4	3	2	1	0	6
Judge Nancy J. Lichtenstein.....	4	3	2	1	0	6
Judge David J. Richman .....	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>E</u>	<u>No Grade</u>
Justice Michael L. Bender.....	4	3	2	1	0	6
Justice Alex J. Martinez .....	4	3	2	1	0	6
Justice Mary J. Mullarkey.....	4	3	2	1	0	6
Justice Nancy E. Rice.....	4	3	2	1	0	6
Judge Sean Connelly.....	4	3	2	1	0	6
Judge John Daniel Dailey.....	4	3	2	1	0	6
Judge Richard L. Gabriel.....	4	3	2	1	0	6
Judge Nancy J. Lichtenstein.....	4	3	2	1	0	6
Judge David J. Richman .....	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>E</u>	<u>No Grade</u>
Justice Michael L. Bender.....	4	3	2	1	0	6
Justice Alex J. Martinez .....	4	3	2	1	0	6
Justice Mary J. Mullarkey.....	4	3	2	1	0	6
Justice Nancy E. Rice.....	4	3	2	1	0	6
Judge Sean Connelly.....	4	3	2	1	0	6
Judge John Daniel Dailey.....	4	3	2	1	0	6
Judge Richard L. Gabriel.....	4	3	2	1	0	6
Judge Nancy J. Lichtenstein.....	4	3	2	1	0	6
Judge David J. Richman .....	4	3	2	1	0	6

D. Please write comments you would like to make about Justice Nancy E. Rice in the space below. If you would like to make more comments than space allows, feel free to attach a sheet with additional comments.

---

---

---

---

---

---

---

---

---

---

E. Please write comments you would like to make about Judge Sean Connelly 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 Justice Alex J. Martinez in the space below. If you would like to make more comments than space allows, feel free to attach a sheet with additional comments.

---

---

---

---

---

---

---

---

---

---

- C. Please write comments you would like to make about Justice Mary J. Mullarkey in the space below. If you would like to make more comments than space allows, feel free to attach a sheet with additional comments.

---

---

---

---

---

---

---

---

---

---

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 Michael L. Bender .....	4	3	2	1	0	6
Justice Alex J. Martinez .....	4	3	2	1	0	6
Justice Mary J. Mullarkey.....	4	3	2	1	0	6
Justice Nancy E. Rice .....	4	3	2	1	0	6
Judge Sean Connelly .....	4	3	2	1	0	6
Judge John Daniel Dailey.....	4	3	2	1	0	6
Judge Richard L. Gabriel.....	4	3	2	1	0	6
Judge Nancy J. Lichtenstein.....	4	3	2	1	0	6
Judge David J. Richman .....	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 Michael L. Bender .....	4	3	2	1	0	6
Justice Alex J. Martinez .....	4	3	2	1	0	6
Justice Mary J. Mullarkey.....	4	3	2	1	0	6
Justice Nancy E. Rice .....	4	3	2	1	0	6
Judge Sean Connelly .....	4	3	2	1	0	6
Judge John Daniel Dailey.....	4	3	2	1	0	6
Judge Richard L. Gabriel.....	4	3	2	1	0	6
Judge Nancy J. Lichtenstein.....	4	3	2	1	0	6
Judge David J. Richman .....	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>E</u>	<u>No Grade</u>
Justice Michael L. Bender.....	4	3	2	1	0	6
Justice Alex J. Martinez .....	4	3	2	1	0	6
Justice Mary J. Mullarkey.....	4	3	2	1	0	6
Justice Nancy E. Rice.....	4	3	2	1	0	6
Judge Sean Connelly.....	4	3	2	1	0	6
Judge John Daniel Dailey.....	4	3	2	1	0	6
Judge Richard L. Gabriel.....	4	3	2	1	0	6
Judge Nancy J. Lichtenstein.....	4	3	2	1	0	6
Judge David J. Richman .....	4	3	2	1	0	6

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

	<u>Justice Bender</u>	<u>Justice Martinez</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

	<u>Justice Mullarkey</u>	<u>Justice Rice</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

10. [Continued]

	<u>Judge Connelly</u>	<u>Judge Dailey</u>	<u>Judge Gabriel</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 Lichtenstein</u>	<u>Judge Richman</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

A. Please write comments you would like to make about Justice Michael L. Bender in the space below. If you would like to make more comments than space allows, feel free to attach a sheet with additional comments.

---

---

---

---

---

---

---

---

---

---