

**Honorable Mark R. DeCaria – District Court Judge**

Serving Davis, Morgan and Weber counties



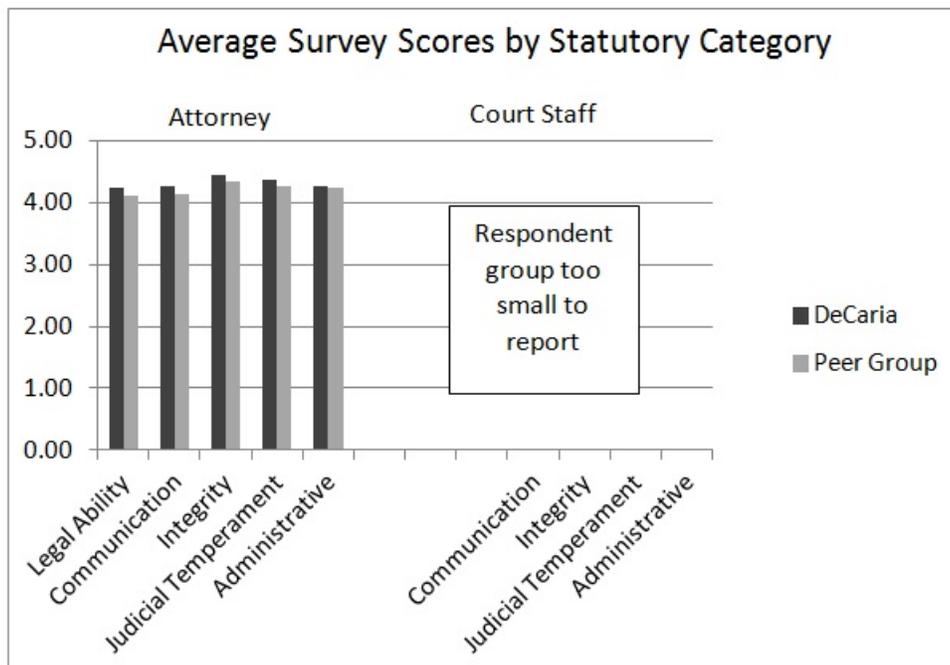
The commission recommends by a vote of 12 – 0  
TO RETAIN Judge Mark DeCaria

Judge Mark DeCaria, though recently appointed in 2009, scored higher than the average of other district court judges in all five survey categories. His commitment to self-improvement is demonstrated by a marked increase in his survey results since his midterm evaluation. Attorneys most often described him as attentive, considerate and polite. Five courtroom observers also evaluated Judge DeCaria, noting his orderly courtroom and model demeanor. They applauded his demonstrated consideration of all arguments offered, his courtesy and patience, and his commitment to acting in the best interest of courtroom participants. Attorney and juror comments were also extremely positive. Of the 50 attorneys who responded to the retention question, 46 (96%) recommended that Judge DeCaria be retained.

The commission reviewed surveys and courtroom observation reports in addition to verifying that Judge DeCaria has met all time standards, judicial education requirements, and discipline standards established by the judicial branch.

Judge Mark R. DeCaria was appointed to the Second District Court in 2009 by Governor Jon M. Huntsman, Jr. He graduated from the University of Utah and completed a juris doctorate degree at Hamline University School of Law in Minnesota. Judge DeCaria has served as Weber County Attorney for the past 15 years, working as Deputy County Attorney, Ogden City prosecutor, and in private practice prior to these positions. He is a founding member of the Weber Morgan Domestic Violence Coalition and a member of the committee that created the Weber County Drug Court.

**This judge has met all minimum performance standards established by law.**



## Survey Overview

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Attorneys, court staff and jurors were surveyed about the judge's performance. Survey categories included questions about the judge's legal ability, judicial temperament, integrity, communication skills, and administrative skills. Summarized results for all applicable respondent groups appear below. A judge must score a 3.0 on 80% of the individual questions to pass the minimum performance standard.

### A. Attorney Survey Overview:

Total Respondents: 50

1. "Should this judge be retained?"

Response*	Number	Percent of Total
YES	46	96%
NO	2	4%

\*2 Respondent(s) did not answer the retention question

2. Statutory Category Scores:

Attorney	DeCaria	Peer Avg.	% of Peer Avg.
Legal Ability	4.24	4.11	103%
Communication	4.26	4.13	103%
Integrity	4.45	4.35	102%
Judicial Temperament	4.37	4.27	102%
Administrative	4.28	4.24	101%

3. Average trials before this Judge: 2.06

4. Area of primary practice:

Collections: 5 Domestic: 18 Criminal: 19 Civil: 27 Other: 2

### B. Court Staff Survey Overview: Respondent group too small to report

### C. Juror Survey Overview: Respondent group too small to report

## Survey Scores

### Attorney Survey Scores:

Below are listed: 1) the attorney survey questions; 2) a checkmark to show that the judge met or exceeded the statutory “pass” of 3.0, or an “x” to indicate the judge scored below 3.0 on that question; 3) the judge’s average score on each question; 4) the average score on each question of all judges on the same level of court; and 5) the judge’s average score as a percent of the peer group average score.

A judge must receive an average score of at least 3.0 on 80% of the questions to meet minimum performance standards.

Attorney Question	Statutory Pass: 3.0	DeCaria	Peer Avg.	% of Peer Avg.
The Judge makes sound rulings.	✓	4.20	4.01	105%
The judge properly applies the rules of civil procedure.	✓	4.28	4.14	103%
The judge properly applies the rules of criminal procedure.	✓	4.39	4.14	106%
The judge properly applies the rules of evidence.	✓	4.15	4.12	101%
The judge's sentencing fits the offenses.	✓	4.28	4.01	107%
The judge makes appropriate findings of facts.	✓	4.11	4.07	101%
The judge appropriately applies the laws to the facts.	✓	4.22	4.06	104%
The judge follows legal precedent.	✓	4.29	4.12	104%
The judge only considers evidence in the record.	✓	4.12	4.08	101%
The judge's written decisions are clear and logical.	✓	4.15	4.09	101%
The judge's written opinions offer meaningful legal analysis.	✓	4.20	4.06	104%
The judge was fair and impartial.	✓	4.39	4.21	104%
The judge avoids impropriety and the appearance of impropriety.	✓	4.45	4.41	101%
The judge avoids improper ex parte communications.	✓	4.52	4.49	101%
The judge's behavior demonstrated equal treatment of all persons or classes of persons.	✓	4.44	4.36	102%
The judge appears to consider both sides of an argument before rendering a decision.	✓	4.43	4.26	104%
The judge holds attorneys accountable for inappropriate conduct.	✓	4.19	3.97	106%
The judge's oral communication while in court is clear and logical.	✓	4.43	4.26	104%
The judge promotes public trust and confidence in the courts through his or her conduct on the bench.	✓	4.49	4.29	105%
The judge respects the time of the participants and understands the personal and financial costs they may be incurring.	✓	4.23	4.15	102%
The judge is prepared for argument and hearings.	✓	4.28	4.29	100%
The judge treats all attorneys with equal courtesy and respect.	✓	4.50	4.39	102%
The judge rules in a timely manner.	✓	4.16	4.24	98%
The judge realistically manages his or her calendar.	✓	4.34	4.20	103%
The judge convened court without undue delay.	✓	4.33	4.28	101%
The judge provides the parties due process; namely, advance notice of issues to be heard an adequate opportunity to prepare and a meaningful opportunity to be heard.	✓	4.40	4.32	102%
The judge acts to ensure that linguistic/cultural differences or disabilities do not unfairly limit access to the justice system.	✓	4.44	4.48	99%

## Adjective Summary

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Survey respondents were asked to select adjectives that best described the judge. Results are shown from each respondent group. The adjectives highlighted in green are “positive” adjectives, while those in red are “negative.”

<b>M. DeCaria</b>	
<b>Attorney</b>	
Attentive	28
Calm	22
Confident	10
Considerate	28
Consistent	13
Intelligent	20
Knowledgeable	25
Patient	25
Polite	28
Receptive	16
Arrogant	1
Cantankerous	1
Defensive	2
Dismissive	2
Disrespectful	1
Flippant	1
Impatient	2
Indecisive	1
Rude	0

Positive	215
Negative	11
Positive	95%

## REPORT OF COURTROOM OBSERVATIONS FOR JUDGE MARK DECARIA

Five observers wrote 98 codable units that were relevant to 13 of the 17 criteria. Two observers reported that the judge was not aware that JPEC observers were present (three did not comment).

### Overview

WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none"> <li>• All observers were positive about Judge DeCaria.</li> <li>• All observers particularly noted that Judge DeCaria actively encouraged all participants to fully voice their needs and perspectives, and demonstrated his consideration in his decisions of all arguments offered. One observer felt this was Judge DeCaria’s strongest trait.</li> <li>• All observers reported Judge DeCaria’s orderly courtroom and his conversational and compassionate as well as serious and firm demeanor. Three observers also reported Judge DeCaria was courteous and patient even in the face of challenging court participants, went to great lengths to act in participants’ best interests, and in drug court encouraged and expressed genuine concern for all participants.</li> <li>• All observers reported Judge DeCaria explained the rationale and consequences of his rulings and the special characteristics of drug court, and three observers also described Judge DeCaria’s thoroughness in ensuring his explanations were understood.</li> <li>• Two observers reported that they would feel comfortable appearing before Judge DeCaria (three did not comment).</li> </ul>
MINORITY OBSERVATIONS	<ul style="list-style-type: none"> <li>• Two observers reported that Judge DeCaria was very even handed in all situations.</li> </ul>
ANOMALOUS COMMENTS	<ul style="list-style-type: none"> <li>• Two courtroom characteristics were noted as very minor: one observer noted the lack of a farewell when defendants left court, and another mentioned a persistently noisy door clasp.</li> </ul>

<i>Numerical ratings:</i>	<i>Observer 1</i>	<i>Observer 2</i>	<i>Observer 3</i>	<i>Observer 4</i>	<i>Observer 5</i>
Neutrality	5	5	4	4	5
Respect	5	5	-	4	5
Ability to earn trust	5	5	4	4	5
Skill at providing voice	5	4	5	4	5

### Summary and *exemplar language* of five observers’ comments

<i>RESPECTFUL BEHAVIORS</i>	
Well-prepared & efficient	Three observers reported that Judge DeCaria was <i>very prepared</i> with <i>each person’s folder ready</i> . He had a <i>very busy calendar</i> and <i>things ran smoothly</i> .
Respectful behavior generally	Two observers reported that Judge DeCaria offered encouragement and congratulations in drug court, saying “Let me be the first one to welcome you into the program ... I wish you much success”, and coming down off the bench to shake hands and say “I’m so proud of what you’ve accomplished”. He was <i>especially sympathetic with a Hispanic participant</i> who spent time with police <i>because he looked like a gang member</i> , saying “I’m sorry that you had to go through that.”

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*RESPECTFUL TONE*

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Courtesy, politeness and patience      Three observers reported that Judge DeCaria was courteous *even to a lawyer the observer felt was being obnoxious*, and listened calmly to an angry and irritated participant. *As an afternoon of more than 50 people wore on, he treated each person as though they were the first one to be seen.* A striking example of courtesy was to a participant who lied about the need to attend a non-existent funeral. Judge De Caria *never raised his voice or lost control of his emotions but simply informed the defendant of the consequences of lying to the court.*

One observer reported that *Judge DeCaria is amazing!* but noted that he *stood out from other judges in not bidding any type of farewell to most defendants. It wasn't a big deal, just noticeable.*

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Courtroom tone & atmosphere      All observers reported that Judge DaCaria's style was both *conversational and compassionate but firm when necessary*, with a *serious demeanor that is very appropriate for drug court.*

Four observers reported with approval the *order in the courtroom*, which one described as the *most in order of any she had witnessed.* The *chatting of staff and attorneys was kept mostly to a whisper, and one lady was removed for "out of control crying".* Someone *texting was corrected quickly*, and the judge *maintained decorum even with the clapping and hugging and mood of celebration* as drug court participants *proudly reported days clean or mistake free.*

One observer reported two small distractions: a *small waist level door with a noisy clasp* that everyone entering or exiting had to deal with it, and when one of the *bailiffs was eating sunflower seeds* the observer was kept *worrying about where the shells were going.*

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Body language      Two observers reported that Judge DeCaria looked each participant *in the eye and smiled often when appropriate.*

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*NEUTRALITY*

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Consistent and equal treatment      Two observers reported that Judge DeCaria was *very even handed* in all situations. In drug court the judge *truly considered and struggled with all aspects of a case*, eventually taking a *recess with the whole team* before giving a defendant a *second chance with some zero tolerance conditions.* He told participants politely but firmly who only had marginally positive drug tests that *penalties are to spur compliance* and if he *made one exception the program would lose its meaning.*

One observer noted approvingly that the judge did not unfairly move ahead of others an *attorney who was getting antsy*, simply saying, "Yes, it's been a busy day today".

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Acts with concern for individual needs      Three observers reported that Judge DeCaria went to great lengths to act in participants' best interest within the confines of the law, for example for a participant *with a good job and positive drug test* saying "I'll do almost anything to keep someone from losing their job" and worked out a penalty that would *not jeopardize his job.*

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Expresses concern for the individual      Three observers reported that Judge DeCaria *was actively engaged* and expressed *genuine interest in each person*, congratulating those doing well and encouraging struggling participants that they have a *wonderful support group with the counselors and the group sessions*, and saying "I want you to do well, these people can help you break the grip". One observer noted *you could see the disappointment in his demeanor when someone relapsed.*

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Unhurried and careful      Two observers reported that Judge DeCaria *kept things moving, yet gave everyone sufficient time and never tried to hurry anyone along or rush through the recitation of rights.*

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*VOICE*

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Considered voice	<p>All observers reported that Judge DeCaria <i>not only allowed but encouraged</i> every defendant <i>without exception</i> to voice <i>their needs and perspectives</i>, and he <i>listened carefully and considered their arguments in his decisions</i>. For example, on listening patiently to why a defendant needed two days to secure an apartment lease or risk homelessness on release, Judge De Caria consulted with the prosecutor and the defendant was taken into custody with the provision that he would be released for two days to secure his lease.</p> <p>In drug court the judge <i>seemed in tune to what would get participants talking, starting a case by asking THEM to give an update</i>, saying “Tell me what’s going on with you, what are we going to talk about today”. However the <i>rules were very clear</i> and the judge <i>did not allow the participants’ personal problems to interrupt their [drug court] program</i>.</p> <p>One observer considered that giving voice <i>to be Judge De Caria’s strongest trait</i>, noting that <i>he truly listened to all arguments ... and even if his decision might not be what was hoped for, I think it would be fair</i>.</p>
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*COMMUNICATION*

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Communicates clearly	<p>Two observers reported that Judge DeCaria was <i>good at communicating</i> and <i>used clear and simple language</i>.</p>
Ensures information understood	<p>Three observers reported that Judge DeCaria ensured defendants waiving their rights <i>understood what they were giving up</i>, and checked with defense attorneys to ensure they were <i>making an informed decision</i>. In drug court he made sure that a participant <i>understood what it would mean to opt out of the program</i>, and he went to great lengths to ensure that <i>new people completely understood that the “The Agreement” was a contract with him and the drug court, giving one defendant 30 minutes to read and understand it before discussing and drilling him on the content</i>.</p>
Provides adequate explanations	<p>All observers reported that Judge DeCaria always explained <i>why he was ruling a certain way, made very clear when defendants had to appear and the consequences if they didn’t, and explained the law to those who were confused, taking extra time to discuss a “Plea in Abeyance”</i>. He explained to a woman with no prior record <i>why her charges were significant and merited a suspended sentence</i>. A man who was entering the drug court program <i>received a thorough explanation of what the program was about and what would be required</i>.</p> <p>A number of inmates who were <i>politely told they were not eligible for drug court program were escorted out without a reason being given</i>. The observer wondered if the <i>inmates knew why they were being rejected and whether this should have been officially stated</i>.</p>

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