IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MATTHEW CHANDLER,

Petitioner,

v. **No. 33,252**

HON. LESLIE C. SMITH,

Respondent,

and

HON. MICHAEL T. MURPHY,

Real party in interest.

ORDER AND OPINION DENYING MOTION TO RECUSE

This matter has come before me on a motion filed by prosecutor Matthew Chandler in the name of the State of New Mexico seeking to have me recuse myself from "all current and future proceedings, rulings, opinions, deliberations, and consultations" regarding his ongoing efforts to prosecute District Judge Michael T. Murphy in the Third Judicial District. Under the law, recusal motions must be decided by the judicial officer to whom they are directed, *State v. Riordan*, 2009-NMSC-022, ¶ 6, 146 N.M. 281, 209 P.3d 773 (confirming that the motion to recuse "rests within the discretion of the . . . judge" to whom the motion was

directed), and *Laird v. Tatum*, 409 U.S. 824, 839 n.7 (1972) (addressing a motion for recusal of United States Supreme Court Justice Rehnquist and his reasons for denying it)—subject to review for abuse of judicial discretion, *Riordan*, 2009-NMSC-022, ¶ 6, or denial of due process, *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009) (holding recusal required on due process grounds).

After due consideration of the current motion and its attached exhibits, the relevant true facts, and the controlling principles of law, I conclude that the request that I remove myself from this case is not supported in fact or in law and must be **DENIED**.

I. INTRODUCTION

Although motions requesting that a judicial officer recuse from performing his or her judicial duties in a duly assigned case usually are decided by the judge whose recusal is requested without the necessity of a written opinion setting forth the reasoning for denial of the motion, courts have recognized that there are circumstances that call for such an exposition. This is particularly so where the motion is based on widely publicized misstatements about the true facts or misrepresentations of the applicable legal principles. *See, e.g.*, United States Supreme Court Justice Rehnquist's opinion in *Laird* (setting forth his reasons for

rejecting a recusal motion based on a prior public expression of his views on the central legal issue in a specific case that later came before him), and United States Supreme Court Justice Scalia's opinion in *Cheney v. U.S. Dist. Court for Dist. of Columbia*, 541 U.S. 913 (2004) (setting forth his reasons for rejecting a recusal motion based on his prior personal contacts with a named party to the case). For reasons of government transparency and to avoid unwarranted public doubts about the integrity of our judicial system, I believe this case calls for a thorough disclosure of the facts and law that require denial of the motion to recuse.

In addressing the merits or lack of merits of the recusal motion, I will first set forth in Section II the most important principles of law applicable to the recusal analysis and in Section III address the true factual circumstances in this case, to which those legal rules must be applied.

II. THE CONTROLLING LEGAL STANDARDS

A. A judge should recuse from participating in a case when "the judge's impartiality might reasonably be questioned."

The legal standards governing recusals in New Mexico are similar to those recognized in federal and other state courts and are to be found in two primary New Mexico legal resources, the New Mexico Code of Judicial Conduct and prior written judicial opinions. The recusal provisions of the Code provide in their

entirety:

21-400. Disqualification.

A. **Recusal.** A judge is disqualified and shall recuse himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(1) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a witness concerning it;

(3) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child, wherever residing, or any other member of the judge's family residing in the judge's household has an economic interest in the subject matter of the controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;

(4) the judge acted in an official capacity in any inferior court;

(5) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(a) is a party to the proceeding, or an officer, director or trustee of a party;

(b) is acting as a lawyer in the proceeding;

(c) is known by the judge to have a more than *de minimis* interest that could be substantially affected by the proceeding; or

(d) is to the judge's knowledge likely to be a material witness in the proceeding;

(6) the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to:

(a) an issue in the proceeding; or
(b) the controversy in the proceeding.

The only provisions of this governing recusal rule that arguably could apply in this case, even under the version of the facts in the motion to recuse, are contained within the requirements of Rule 21-400(A) and (A)(1) that a judge should recuse when "the judge's impartiality might reasonably be questioned, including but not limited to instances where . . . the judge has a personal bias or prejudice concerning a party or a party's lawyer." That very general language has been interpreted and applied over the years in a large number of judicial precedents, none of which ever has determined that recusal is required in the circumstances that exist in this case. Before addressing those specific factual circumstances, it would be helpful to set forth several controlling principles of the case law that are central to the recusal analysis.

B. A judge has a duty not to abdicate his or her responsibility to preside unless there is a sound factual and legal basis for recusal.

The first and most fundamental principle is that a judge has a duty to do his or her job, unless there is a principled reason to decline to do so. Rule 21-300 of the Code of Judicial Conduct requires as a matter of judicial ethics that "[a] judge shall hear and decide matters assigned to the judge except those in which

disqualification is required." New Mexico judicial precedents have emphasized that "recusal is reserved for compelling constitutional, statutory, or ethical reasons because a judge has a duty to *sit* where *not disqualified* which is equally as strong as the duty to *not sit* where *disqualified*." *State v. Hernandez*, 115 N.M. 6, 20, 846 P.2d 312, 326 (1993) (internal quotation marks and citations omitted). The federal courts are in clear accord with New Mexico law:

> In furthering the policy of public confidence in the impartiality of the judicial process, a court faced with a motion [for recusal] must recuse itself where valid reasons are presented, and must not recuse itself where the proffered reasons are not valid.

Ramirez v. Elgin Pontiac GMC, Inc., 187 F.Supp. 2d 1041, 1044-45 (N.D. Ill. 2002) (citing *New York City Hous. Dev. Corp. v. Hart*, 796 F.2d 976, 981 (7th Cir. 1986)).

C. Viable challenges to a judge's impartiality must be reasonable.

The controlling standard in Code provision 21-400 (A) provides that a judge should recuse from a case when under the relevant circumstances the judge's impartiality "might reasonably be questioned." The case law has made it clear that the word "reasonably" has significance. In determining reasonableness, the inquiry is not made from the perspective of "a hypersensitive or unduly suspicious person." *Hook v. McDade*, 89 F.3d 350, 354 (7th Cir. 1996) (internal quotation marks and citations omitted). Rather, "[t]he objective, reasonable person

standard . . . is intended to promote public confidence in the impartiality of the judicial process." *In re African-American Slave Descendants Litigation*, 307 F. Supp. 2d 977, 983 (N.D. Ill. 2004).

D. The decision whether a judge's impartiality might reasonably be questioned must be made on the basis of the true facts, and not on mere allegations, falsehoods, rumors, or unsupported suspicions.

The standard a judge must apply in deciding whether to step down from an assigned case "is an objective one, made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances." *Microsoft Corp. v. United States*, 530 U.S. 1301, 1302 (2000) (rejecting recusal). In short, it is important to speak truth to falsity. A decision on whether a judge's impartiality can reasonably be questioned "is to be made in light of the facts as they existed, and not as they were surmised or reported." *Cheney*, 541 U.S. at 914 (rejecting recusal). No matter how widely circulated or publicized, "inaccurate and uninformed opinion cannot determine the recusal question." *Id.* at 924. This fundamental principle is beyond dispute and has been stated and restated in judicial precedents in the case law of New Mexico and other state and federal jurisdictions throughout the United States. It was perhaps most throughly explained by *In re Drexel Burnham Lambert Inc.*, 861 F.2d 1307, 1309 (2d Cir. 1988):

> It is axiomatic that a judge may not preside over a case when his impartiality might reasonably be questioned. In deciding the sensitive question of whether to recuse a judge, the test of impartiality is what a reasonable person, knowing and understanding all the facts and circumstances, would believe. It is for that reason that we cannot adopt a per se rule holding that when someone claims to see smoke, we must find that there is fire. That which is seen is sometimes merely a smokescreen. Judicial inquiry may not therefore be defined by what appears in the press. If such were the case, those litigants fortunate enough to have easy access to the media could make charges against a judge's impartiality that would effectively veto the assignment of judges. Judge-shopping would then become an additional and potent tactical weapon in the skilled practitioner's arsenal. Instead, the sensitive issue of whether a judge should be disqualified requires a careful examination of those relevant facts and circumstances to determine whether the charges reasonably bring into question a judge's impartiality.

E. Attacks on a judge cannot themselves create cause to recuse unless the attacks cause the judge to become so personally embroiled as to be unable to be fair and impartial in deciding the issues.

The issue of whether a judge is required to recuse for an appearance of impropriety after being attacked or threatened is "whether an objective, disinterested observer, fully informed of the underlying facts, would entertain significant doubt that justice would be done absent recusal." *Riordan*, 2009-NMSC-022, ¶ 11 (internal quotation marks and citations omitted). In *Riordan*, this Court rejected the argument of a criminal defendant that a judge was required to recuse after she became aware that the defendant had threatened to

assault the judge with a deadly weapon, confirming the principle that a party cannot drive a judge off the bench by threatening the judge. *Id.* ¶ 13. *Riordan* expressly adopted the requirement of federal cases that recusal is not justified unless the facts and circumstances of the case demonstrate that the party's threatening behavior actually "has resulted in actions by the judge which might be viewed by an objective, disinterested observer as evidencing bias." *Id.* ¶ 14 (internal quotation marks and citations omitted). As *Riordan* recognized, to hold otherwise would be to permit a party to engage in improper judge shopping simply by making an attack on the assigned judge in order "to obtain a recusal." *Id.* ¶ 10. The same fundamental principle must apply in all cases of attacks or threats against a judge, whether they be physical attacks, reputational attacks, or attacks on a judge's integrity.

F. A judge's opinion or perceived opinion of a lawyer is not cause for recusal unless the opinion would make the judge unable to be fair and impartial to the lawyer's client.

This Court has emphasized that a judge not only is permitted to make judgments about the conduct and integrity of lawyers, there is an "official obligation" on the judge's part to do so. *United Nuclear Corp. v. Gen. Atomic Co.*, 96 N.M. 155, 249, 629 P.2d 231, 325 (1980). A judge must "observe the

stratagems" of lawyers, "perceive their efforts to sway him" or her, and "penetrate through the surface of their remarks to their real purposes and motives." *Id.* (internal quotation marks and citations omitted). Judges often know of the reputation, the integrity, and the credibility of lawyers appearing before them, either on the basis of what has happened in the current case or what has been learned in the past. Every lawyer walks into a courtroom cloaked in his or her professional reputation. All experienced lawyers and judges know this unavoidable reality.

Not surprisingly, the law has recognized that a judge's evaluations or feelings about an attorney are "insufficient to disqualify a judge" unless a "bias or prejudice toward an attorney is of such a degree as to adversely affect the interest of the client." *Martinez v. Carmona*, 95 N.M. 545, 550, 624 P.2d 54, 59 (Ct. App. 1980). I am acutely conscious of that principle in addressing the recusal question before me. Given the conduct of counsel for the State that is addressed in Exhibit A1 and the other matters set forth in this opinion and order, it is fair to say that I am disappointed and concerned, as any judge should be. However, it is important to remember that by virtue of his selection by a prosecutor in a distant district, the prosecutor here represents the State of New Mexico in these proceedings. The State and its citizens are entitled to have a fair determination of the issues presented on

their behalf, and I am confident that I am not so personally embroiled that I will be biased against the State itself. We, as judges, routinely keep our impressions and opinions about particular attorneys from affecting the rights of the parties they represent. Just recently, this Court handed down an opinion reversing two lower courts in favor of a party whose lawyer had to be publicly chastised by us for his knowing misrepresentations of what happened in the lower court.

Although I have made no public comment about this prosecutor or his conduct, the United States Supreme Court has specifically emphasized that critical comments about counsel formed during the current or even prior proceedings "do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 555 (1994) (rejecting recusal arguments).

G. A judge must keep an open mind, not an empty mind.

There is no question that a judge should maintain an open mind until a case before him or her is finally decided. But courts and legal commentators alike have recognized that there is no prohibition against a judge's thinking about issues and having preliminary thoughts before a matter is presented for final resolution. "A decision-maker need not suspend his mental processes until all the evidence is in.

An empty mind is not the same as an open mind, nor is a preliminary inclination the same as a final decision." *Suggs v. C.W. Transport, Inc.*, 421 F. Supp. 58, 62 (N.D. Ill. 1976). *See also* Donald R. Lundberg, *The Zone of Personal Privacy for Judges and Lawyers*, 54-MAY RES GESTAE, 27 (2011) ("An open mind is not an empty mind, and there is no prohibition on judges thinking about the law and reaching tentative conclusions about questions of law that have not yet been decided."). In the perceptive words of the eminent federal jurist Judge Jerome Frank, quoted with approval by this Court in *United Nuclear*, 96 N.M. at 249, 629 P.2d at 325 (1980) (rejecting recusal argument), "Impartiality is not gullibility. Disinterestedness does not mean child-like innocence." *In re J.P. Linahan, Inc.*, 138 F.2d 650, 654 (2d Cir. 1943) (rejecting recusal argument). "An 'open mind,' in the sense of a mind containing no preconceptions whatever, would be a mind incapable of learning anything." *Id.* at 652.

III. THE TRUE FACTS RELEVANT TO THE RECUSAL ISSUES

I will now turn to the facts—the true facts—relevant to a determination of whether my recusal is called for in this case. Because of the extent of the factual misrepresentations in the motion to recuse, it has been necessary to take considerable time and effort to gather all appropriate specifics and supporting

documentation. In light of the seriousness of the false allegations, I have determined that it is incumbent on me to go to the length of setting those matters forth here in sufficient detail so that anyone who is interested in making an independent determination of the true facts may have a more substantial basis for doing so.

There are five separate allegations contained in the motion to recuse, and each will be addressed here separately.

A. The facts regarding my designation of Judge Robinson from the adjacent 6th Judicial District to preside over grand jury proceedings relating to Judge Murphy after all judges in the 3rd Judicial District had recused

The first allegation by Mr. Chandler of a purported appearance of impropriety on my part is in Paragraphs 2-7 of his motion to recuse and relates to my designation of District Judge J.C. Robinson to exercise judicial responsibilities in connection with the scheduled grand jury proceedings. In order to understand the full import of the extraordinarily candid affidavit of Mr. Chandler's former deputy prosecutor Kirk Chavez that is attached hereto as Exhibit A1, some background context would be helpful.

First, it is important to put to rest the suggestion in the motion's Paragraph 4 that the timing of my March 17, 2011, designation of Judge Robinson, allegedly

the day after Mr. Chandler had a conversation with defense counsel that I knew nothing about, is somehow suspicious. At 8:12 A.M. on March 17, my paralegal sent to me the e-mail attached as Exhibit A2, telling me that court staff attorney (Norman) Osborne and Chief Judge Driggers of the 3rd Judicial District in Las Cruces urgently needed to speak to me about an undisclosed matter. I immediately called them and learned that Mr. Chandler had served a grand jury target notice on Judge Michael Murphy, that all judges in the 3rd District would have to recuse, and that it was therefore necessary for me, as Chief Justice, to exercise my constitutional responsibility to designate an out-of-district judge to exercise judicial responsibilities in connection with the grand jury proceedings. I went through the routine process described in the e-mail attached as Exhibit A8 to locate a nearby judge who was not conflicted and who could properly handle the matter, and then prepared and signed, on the very same day that I had received the request, the Order Designating Judge that is attached as Exhibit A3.

Second, I did not collude with defense counsel Michael Stout or anyone else in my selection of Judge Robinson, an experienced judge and former elected District Attorney who had not only not been appointed by Governor Bill Richardson, but who had actively campaigned against and defeated a Richardson

judicial appointee to attain his position on the court. At the time I designated Judge Robinson, I not only had never spoken with defense counsel in the case, I had no idea who defense counsel might be or if counsel was yet retained. After I talked to Judge Robinson and satisfied myself that there were no reasons that would make it inappropriate to designate him, I prepared and signed the designation order and asked my paralegal to fax the order to Judge Robinson, the Third Judicial District, and Mr. Chandler. Her handwritten notes reflecting my instructions are attached as Exhibit A4, and they contain no reference to Mr. Stout or any other defense attorney because even after I had prepared the designation order I still did not know who might represent Judge Murphy. I called Mr. Chandler to advise him of Judge Robinson's designation and to ask if he knew whether Judge Murphy had an attorney, and he advised me that Mr. Stout was defense counsel. We looked up Mr. Stout's fax number in the State Bar Directory, and my paralegal then faxed copies of the designation order to all concerned before the end of business on the same day, March 17. I heard nothing from either side for the next five days.

Then, on March 22, my paralegal notified me that she had received an ex parte call from Mr. Chandler's deputy prosecutor Kirk Chavez, advising that he would be e-mailing a "confidential pleading" directly to my chambers and that if we

wanted more details we could "phone and get more information." I advised my paralegal that I would not be returning the ex parte telephone call because I deemed it improper to do so. Her handwritten notes of Mr. Chavez's phone message are attached as Exhibit A5.

Later that same day, I received from Mr. Chandler's office the e-mail attached as Exhibit A6, which included as an attachment the unfiled but purportedly proposed "Motion to Withdraw Designation of Judge" that is attached as Exhibit A7. According to the e-mail, the State was asking "that the State be allowed to file this [motion] in the currently sealed record held in Dona Ana County," and the e-mail further recited that "the State will not file this motion in that particular court record until we receive your permission."

I had several concerns about the e-mail and its attachment. First, it was an improper ex parte communication behind the back of defense counsel, who was not copied on the message or the attachment, attempting to have me make a ruling requested by the prosecution. Second, it reflected at the least a misunderstanding of the process by which the Chief Justice routinely designates out-of-district judges in general and the process by which I had designated Judge Robinson in particular. I addressed those concerns by sending to "all counsel" the e-mail attached as

Exhibit A8, which fully addressed all the allegations in the purportedly proposed motion. The account in my e-mail was factually accurate when I sent it on March 22, it is still true today, and I see no need to discuss its contents further in the text of this order.

In Paragraphs 6 and 7 of the motion to recuse, Mr. Chandler represents that the reason the State never filed the purported proposed motion to challenge Judge Robinson's designation was because I had "denied [it] within hours." That statement is factually incorrect, as can be readily seen in Paragraph 4 of Exhibit A8, in which I set out "the proper procedure for challenging a judge designated by the Chief Justice" and concluded by saying explicitly:

> If anyone thinks he has specific good faith grounds on which to challenge the legality of Judge Robinson's service, that challenge should be made according to the rule of law by filing a motion in this cause. You do not have to seek my permission to do so. I am not presiding over this case and should not do so under New Mexico law. Any other responsibilities I have would be exercised only when and if a matter is filed properly in this Court.

Mr. Chandler's office never followed those established legal procedures nor, to my knowledge, ever made any lawful effort to file a proper motion in any court. At the time, I thought he never did so because he realized that his suspicions and insinuations of collusion were unfounded, as indicated in his reply e-mail (Exhibit A9) in which he said, "Chief Justice Daniels, On behalf of the state, we appreciate

your timely response, explanation of your involvement, and clarification of the process."

At least I thought the propriety of my designation of Judge Robinson was resolved until more than a half year later, when Mr. Chandler filed the current motion to recuse, recycling the same suggestions. I knew for a fact that I had never had any contact with defense counsel or anyone else about my potential choice of a judge to handle the now long-past grand jury proceedings and was puzzled as to why Mr. Chandler would persist in making such accusations. The answer was provided a week ago by the information in the affidavit of Mr. Chandler's former deputy prosecutor Kirk Chavez—attached to this order as Exhibit A1.

As Mr. Chavez states in his own words, the allegations by Mr. Chandler of impropriety on my part, or Judge Robinson's part, or defense counsel's part were neither factually based nor made in good faith. Mr. Chandler's former deputy prosecutor candidly admits that he and Mr. Chandler knew they "had no facts to support [their] conclusion that Judge Robinson's political affiliation would dictate how he would rule in the case" (Paragraph 12); that they were doing so as a "judge shopping" tactic to pressure me into appointing "a more conservative, and hopefully Republican judge" (Paragraphs 14 and 15); that they "had no facts whatsoever, or any evidence of any kind that Chief Justice Daniels had colluded with Mr. Stout in

the appointment of Judge Robinson" (Paragraph 19); that they "believed that the accusation of collusion alone would apply enough pressure on the Chief Justice to withdraw the appointment of Judge Robinson" (Paragraph 20); that "Mr. Chandler and [Mr. Chavez] both agreed that at least the accusation, which [they] knew was not supported by any facts or evidence, was in a document that would one day be made public" (Paragraph 22); that their "actions were intended to curve the playing-field to have a judge that would be more favorable to the prosecution of Judge Murp[h]y be appointed to the case" (Paragraph 23); and that he and Mr. Chandler "were aware that [their] actions impugned the reputations and integrity of Chief Justice Daniels and Michael Stout, however [they] decided to utilize that strategy to hopefully gain an advantage in the case" (Paragraph 24).

The unfounded allegations in the previous, unfiled, purported proposed motion were in fact "one day made public" in the current motion to recuse. They were legally and factually insufficient to remove the duly-assigned district judge from the case, and they cannot be allowed to succeed now in removing a duly-elected Supreme Court Justice from performing his constitutional duties.

B. The facts regarding my address to an educational meeting of the state's judges in which I emphasized the need to follow the rule of law and not engage in out-of-court speculative comments

The allegations in Paragraph 13 of motion to recuse relates to introductory

comments I made at the June 6-8, 2011, annual continuing judicial education program put on by the Judicial Education Center for judges of the District Courts, the Court of Appeals, and the Supreme Court. Even with the selective quotation of brief parts of my remarks out of proper context, it is impossible to find the impropriety that the motion suggests. The motion states that the quotations come from a political blog, nmpolitics.net, that had requested and obtained a video of my comments from the Judicial Education Center. That blog also included a one-click link to the full video and audio recording of my complete verbatim comments to my fellow judges, which I now have had fully transcribed and attached to this order as Exhibit B1. The one-page transcription is short enough that there is no need to repeat much of it here.

Any fair reading of what I actually said would belie the implication that I had made some improper comment about the facts of any particular case or any other matter pending in our courts. Even though my extemporaneous comments were unscripted, I stand by everything I said and would not change a single word if I had it to do all over again.

The audience, composed of many dedicated and honorable judges, did not contain a single judge who was facing any charges. Before the conference, the Justices of the Supreme Court had determined that even though any judges facing

charges must be afforded the constitutionally guaranteed presumption of innocence in their court proceedings, it would create an appearance of impropriety for judges facing misconduct charges to participate in this training session along with other judges who might have official duties to perform in processing their cases. Nothing in my comments referred to the truth or falsity of the charges in the Murphy case itself. The state's largest newspaper had just published an editorial that said the entire state judiciary was under a "dark cloud" of suspicions about all judges as a result of the questions raised by both in-court and out-of-court claims relating to some judges by name and others by insinuation. A lot of good people who serve the citizens and their justice system faithfully and honorably have had their good names tarnished, not by proper in-court allegations, but by out-of-court unsupported speculations that they have had no fair opportunity to respond to. There were also rumors and accusations about the motivation and credibility of Mr. Chandler and his witnesses. In my remarks, I was emphasizing that we as judges must not let the extrajudicial suspicions, rumors and innuendo, "far beyond the allegations in the particular case involving one defendant that is now pending in one of the districts in the state," detract from performing our sworn responsibilities and providing the calm in the middle of the storm that courts must maintain. There is nothing in what I said that could make any reasonable person believe that I was advocating

unfairness or bias on the part of anyone.

> And we all know that we will apply the rule of law at every level throughout our courts. And we all know that the rule of law means that no person, no public official, no citizen is above the requirement of obedience to the law and that no person, no public official, no citizen is beneath the protections of the law. And we will stand by that, and we will apply it, and we will come through this, and I think we will be able to hold our heads high.

Those comments are consistent with what I told the *Albuquerque Journal* in declining to make out-of-court public comments on pending matters, which the motion recites as some kind of improper comment in Paragraph 15. *See* Exhibit D2. In declining to comment out of court, as I routinely do, I said simply, "[b]ecause of the requirements of ethics rules, the only statements I can make about particular cases that may come before the courts can be made only through decisions based on in-court evidence and application of the rule of law." I stand by that statement and will continue to do so. In fact, I will not be able to make any future public comment about the matters that I have found necessary to address judicially in this filed opinion and order.

C. The facts regarding the unauthorized use of my name in a recorded conversation between Judge Schultz and her friend Laura Garcia

Until recently, I knew nothing of the conversation between a person named Laura Garcia and her apparent friend, Judge Lisa Schultz, that Mr. Chandler

indicates in Paragraph 14 of his motion was secretly recorded by Judge Schultz at some unknown date, nor did I know anything about the topics they appear to have been discussing. The taped conversation, which was private until publicly released by Mr. Chandler, covers a range of gossip, which may or may not be true, about the personal lives and reputations of a number of people. Nothing in the conversation appears to be relevant to the Murphy prosecution, and I see no need to republish its contents as an exhibit to this order. I will refer only to the one fleeting hearsay reference to me, which also is unrelated to the Murphy prosecution.

A few weeks ago, I was called by a newsperson who told me Mr. Chandler had released the contents of the conversation to the media. When I was asked to comment on the use of my name by one of the participants in the conversation, I reluctantly had to tell the newsperson that it would be inappropriate for me to make a public statement, for the same reasons I had told the same newspaper I could not comment in the statement set forth in the motion's Paragraph 15. The public release of this taped out-of-court conversation and its resulting prominent coverage in the news media resulted in the unsupported insinuation that I had somehow had a conversation with Governor Richardson about what appears to have been a pending Judicial Standards Commission matter against Judge Schultz.

The truth is that Governor Richardson never once tried to talk to me about

any matter before Judicial Standards. Governor Richardson never once tried to talk to me about any case of any kind expected to come before the New Mexico Supreme Court. Governor Richardson never once tried to talk to me about any case pending in any judicial body in the state. I have never engaged and would never engage in any such discussions. The only discussions he and I ever had that related to my work on the Court were the perfectly appropriate communications that I would have with both the legislative and executive branches about judicial system funding and judicial reform legislation.

A simple check with the staff and members of the Judicial Standards Commission will confirm that in my four years on the New Mexico Supreme Court, I have never once tried to talk to any of them about a case before them, except through the proper processes of the law in open court and on the record when they have filed requests for discipline in our Court in the normal course of the law. No such filing ever happened with regard to any case involving Judge Schultz, and if she ever had any such case before the Commission, it has never come before me.

As a final observation, not only was I not ever contacted by Governor Richardson about the matters in the surreptitiously taped conversation, but there are several very good reasons to believe that Governor Richardson never made the statements that allegedly indicated an intent to try to talk to me. According to Mr.

Chandler's transcription (I have never been provided a copy of the actual tape), Laura Garcia claims she talked to Governor Richardson for "about an hour" about helping Judge Schultz and that during that hour-long discussion the following exchange occurred between her and the Governor: "And so he listened and he listened and he says, 'well, I'm going to talk to Chuck.' And, I thought, who the hell is Chuck? What a goof. And then he goes, 'um, thats uh, Chief Justice Daniels.'"

I must assume that Judge Schultz did not believe that her friend Laura was really conspiring with the Governor to get the Chief Justice to intervene corruptly on Judge Schultz's behalf, or she surely would have objected in some fashion instead of just laughing and saying, "wow," as appears in Mr. Chandler's transcription.

This whole hearsay account lacks the ring of truth to me as well. I've never known anyone to be able to get Governor Richardson's ear for a whole hour. More importantly, if you're going to be a name-dropper, you at least ought to get the names right. In all the years I have known him as a Congressman, Ambassador to the United Nations, Secretary of Energy, and two-term Governor of the State of New Mexico, Bill Richardson never once ever called me or referred to me as "Chuck." He always referred to me by the nickname "Charlie," as do most of the

people I know. Some people do call me "Chuck," primarily those with a connection dating back to my days at law school decades ago. Governor Richardson was never one of those people, as anyone who ever heard him refer to me can confirm. In any event, even if he had really dropped my name (and inexplicably used a name he had never used before or since in referring to me), there is not and could not be a shred of evidence that I was ever contacted by him, nor is there any reason to believe that any of the matters in the taped private conversation would have anything to do with any of the matters I have been called upon to deal with or may in the future be called upon to deal with in connection with the pending prosecution of Judge Murphy.

D. The facts regarding an unexpected encounter outside a Buffalo Thunder meeting room in which Mr. Chandler eavesdropped on part of my phone conversation with my staff and then initiated an ex parte confrontation about his interpretation of the part he overheard

Paragraphs 16-23 of the motion to recuse relate to Mr. Chandler's eavesdropping on part of a telephone conversation I had with one of my Court staff members outside a conference room at the Buffalo Thunder resort on July 28, 2011.

Mr. Chandler's account of the event is so inaccurate that I find it necessary to set the record straight here. I did not record it, but if any recording exists, it will verify that the motion misstates what I actually said and what happened. The

quotation marks in the motion give the false impression that my actual words are being quoted, when the reality is that the motion inaccurately relates both my actual words and the tenor of my comments. In attributing to me statements that I never made, the motion suggests that I must have received certain details about Judge Murphy's arrest from someone other than Chief Judge Driggers. I did not.

The true facts are these. Along with two legislative staff members, I had been invited to address a July 28, 2011, meeting of the State's district attorneys at Buffalo Thunder at 1 PM. The three of us rode to the conference together. Either during the ride or just prior to getting in the car, in one of the five cell phone contacts I had with my Court staff between 11:33 AM and 12:41 PM that are reflected in the records at Exhibit D1, I was advised of a hearsay rumor that Judge Murphy supposedly had been rearrested, but no specific information was available to verify this preliminary and vague report. As I was entering the Buffalo Thunder building at 12:55, I received a call from Chief Judge Driggers of the 3rd Judicial District Court, the first call I had received that day from anyone in the Las Cruces area and the first time I had received any confirmation of Judge Murphy's arrest. He advised that he needed to pass on to me that a police officer had come to his office to notify him as Chief Judge of the District that one of his judges had just been arrested on new charges. He said he would summarize all the information that

had been given him orally by the officer, essentially that Judge Murphy had been arrested at his home and that he was charged with bribery. As Chief Judge Driggers recounted the report to him from the officer, the charges were based on a conversation with Judge Lisa Schultz the previous year in which Judge Murphy told her that if she would vote for Judge Driggers to be Chief Judge in the meeting among the judges of the District to select a successor to retiring Judge Valentine, she would be able to get the transfer to a different division of the court that Judge Valentine had not approved. My cell records indicate that the whole conversation took just four minutes. This was simply a notification to me as Chief Justice and required no action on my part since there had been no fact-finding processes in the lower courts and none of the charges against Judge Murphy had arrived in our Court for consideration.

Before entering the meeting room, in which the state's district attorneys, with the possible exception of Mr. Chandler, were waiting for my arrival, I had to return a call to one of my court staff members to obtain some information for the meeting and to report the information Chief Judge Driggers appropriately had reported to me as Chief Justice. Since it was a confidential call involving court business, I walked a distance down the hallway to an unoccupied area where I believed I could have a private conversation. At the conclusion of the nine minute conversation, mostly

regarding another matter, I relayed as fully as I recalled the partial information I had received from Chief Judge Driggers about Judge Murphy's new charges. When I concluded the conversation and walked back toward the meeting room, I passed a column protruding from the wall that had concealed Mr. Chandler's presence from me. To the best of my knowledge, he had not been behind the column when I had passed that area to find a seemingly private area for my phone call, and I never saw him at any point during the conversation. Contrary to his allegations in his motion, I never did set foot in the coffee shop off to one side of the hallway, and I am quite certain nobody in that coffee shop, or anyone else but Mr. Chandler, overheard any of my phone call. Because budget cuts have required me to work without the support of a Chief Justice's Administrative Assistant, the first Chief who has had to do so in decades, I have had to rely heavily on cell phone communication, trying to find a location free from eavesdroppers when I discuss any sensitive Court business.

When I passed by the column and first saw Mr. Chandler, he angrily initiated an ex parte conversation with me about his impression of what I had meant in my discussion with my staff member. I tried to assure him that it was not intended to be a public call and that I had been having what I thought was a confidential and private conversation with a court staff member and had gone down the hall to do so

in what I thought was an area that would be free from eavesdroppers. He seemed very upset and wanted to talk about his impression of my impression of either the facts or the legal theories involved in his case. He referred to one of my comments in the telephone conversation, where, in response to a question by my staff member as to whether I was having second thoughts about wanting to be a judge after I had told him of the reported theory underlying Judge Murphy's arrest, I laughed and replied that sometimes I wonder whether I might be accused of wrongdoing if I put my left shoe on first instead of my right when I get dressed in the morning. It is not the first time I had observed that judges face more exacting scrutiny. In fact, that very morning the *Albuquerque Journal* published a page-one article in which I had been quoted as saying that judges know they will be held to higher standards of conduct than other people. *See* Exhibit D2.

I tried to assure Mr. Chandler that I had not made any predetermination of the complete facts of his case, which I did not yet know and which I would never be called on to decide as an appellate judge, that I had not predecided any other matters that might come before me in the future, and that all the information I had received at that point was an informal and incomplete hearsay summary. He offered to show me the allegations in the arrest warrant he had in his file. Contrary to the assertion in his motion that I asked to see what he had, I did just the opposite.

When he offered to show it to me, I replied that there was no case before my Court at that point and no reason for me to be reviewing the warrant. And it was not Mr. Chandler who ended the ex parte contact; I ended it. With some difficulty, I broke off the conversation by emphasizing that we both had our jobs to do, that I would presume he would do his job properly and that he could be assured I would do mine properly and make no predetermination of any future rulings I may be called on to make. I then went into the meeting room and met with the other district attorneys.

The next day, I flew to Atlanta for a five-day meeting of the National Conference of Chief Justices. On the next work day, which was a Monday, I e-mailed to counsel on both sides of the Murphy case a full report of the ex parte contact in the message attached as Exhibit D3, because I did not think it should wait until my return to New Mexico. Mr. Chandler responded by e-mailing back a request that I recuse from the case. I did not engage in further communication on the matter, because I did not think it necessary for me to tell him again that if he wanted to remove a judge, he needed to follow the procedures of the law and file a proper motion.

There are two matters that I will address regarding this incident. The first is whether any content of my conversation with my court staff member is cause for my removal from the case. The second is whether the fact that the conversation was

overheard by Mr. Chandler creates grounds for recusal.

As to the first matter, as set forth in Section IIG of this order, the requirement that judges keep an open mind until a final decision is made does not require them to keep an empty mind. The fact is that judges routinely start thinking about the potential issues in upcoming cases from the time they first hear about them, from any source. Judges inevitably come to the bench and to each case with opinions about the law. I practiced law for 38 years before coming to the bench and was a full-time law professor at two law schools in the areas of criminal law and procedure and professional ethics. If Mr. Chandler perceived that I had questions about the viability of the legal theories implicit in the partial report I had received about Judge Murphy's June 28 arrest, he certainly is entitled to that perception. I had never heard of such a legal theory in a bribery case. But "'a judge's views on legal issues may not serve as the basis for motions to disqualify.'" *Recusal: Analysis of Case Law Under 28 U.S.C. §§ 455 & 144*, 23 (Fed. Jud. Ctr. 2002) (quoting *United States v. Wilkerson*, 208 F.3d 794, 797 (9th Cir. 2000)). In fact, it is not uncommon for this Court to give notice to attorneys before we even hear a case that we have preliminary questions about on one or more of the potentially dispositive issues and ask the attorneys to address them. But any questions I might have at any point along the way are simply the beginning of the process, and not the

end. During the process, we also often discuss the potential issues with our staff members. If Mr. Chandler had been listening outside my office window to such a discussion, surely the same conversation would not have been grounds for my recusal.

This gets to the second matter, whether the fact that Mr. Chandler overheard the same conversation in a public building changes the analysis. It does not, and the motion does not cite a single legal authority or precedent in support of such a theory. In *Laird*, 409 U.S. at 830-36, recusal of Justice Rehnquist of the United States Supreme Court was determined inappropriate where he had previously publicly testified before a Senate committee about his views on the legal issues in that very case, which was mentioned by name during the testimony. Nothing in my conversation with my staffer approaches that level of public disclosure in *Laird* or similar comments by United Supreme Court Justices on issues or cases that can be expected to come before them in the future. *See* Exhibit D4. My intent had been to have a private conversation, and I took what I thought were sufficient precautions to do so. If Mr. Chandler overheard the personal conversation, whether intentionally or accidentally, there is no precedent or other provision of the law which stands for the proposition that his doing so turns proper comments into improper comments.

E. The facts regarding my selection as a Supreme Court Justice: I did not pay anything in exchange for either my merit-based recommendation from the nonpartisan Judicial Nominating Commission or my appointment to the Court by the Governor.

The motion to recuse suggests, in Paragraphs 8 through 12, that I should remove myself from the Murphy case because there have been out-of-court hearsay speculations by one or more people that my wife or I bought my way onto the bench, including a rumor that we paid a million dollars to do so. The suggestion is patently false, and there is no evidence to support it, as could have been confirmed through the most minimal investigation.

I have become aware that one or more people have circulated the speculation that certain candidates did not get the appointment because my wife or I must have obtained my appointment with money paid to some unknown person at some unknown time. We have shrugged off those rumors, realizing that there is no way to keep people from that kind of groundless gossip.

The actual facts are these. I was one of seven applicants from a crowded field who were unanimously recommended to the Governor by the bipartisan Nominating Commission. While the Commission considered a great deal of information about my qualifications for the position, a brief summary can be found on the Supreme Court website at http://nmsupremecourt.nmcourts.gov/bios/daniels.htm. I will not

repeat those qualifications here, but they ought to confirm for any fair-minded person that I did not need to buy my way into this position. I never paid and never would have paid a penny to anyone to obtain the Commission's recommendation, and I am confident the Commissioners' integrity is such that they would have reported any attempt of this type to law enforcement.

I also never paid a penny to the Governor or anyone else to obtain my appointment. All seven finalists were required to submit additional information to the Governor, along with the written materials he had already received from the Commission, and to go through a personal interview with him before he made his final selection. Neither he nor anyone else ever suggested that I make any kind of payment in connection with the application, and in fact, there was no discussion with him about anything related to money. During the only occasion I talked to him about my candidacy, the interview with him and his staff counsel that all applicants went through, he focused on my qualifications and my commitment to working hard in the job. In his official statement announcing my appointment after he had made his decision, he said, "I chose Charles Daniels for the Supreme Court given his keen intellect, outstanding reputation and unwavering commitment to uphold the rule of law." *See* Exhibit E1. The motion does not identify in which respect the Governor was supposedly lying about his reasons for appointing me. Certainly, no one at the

time expressed concern that the Governor's stated reasons were suspicious or unsound. *See, e.g.*, Exhibits E2 and E3.

Over the years, both my wife and I have contributed to causes, candidates, and charities we considered worthy of our support, believing we should put our money where our mouths are. We have never asked for a single thing in return. And we always strictly followed campaign contribution and reporting laws, making lawful contributions on the record with checks or credit cards and never exceeding contribution limits. We have gone back over those records and confirmed that the last contribution we had made to Governor Richardson was a perfectly routine and lawful contribution in connection with his run for the presidency in February of 2007, a full eight months before he appointed me to the Supreme Court. That did not disqualify me from becoming a candidate for appointment because there has never been a law that prohibits one from being a candidate for appointment to government service simply because he or she had been a lawful campaign contributor or other supporter of the appointing elected official.

At the time of that last contribution or at any time before it, I had no intention of applying for a position on the Court. In fact, I repeatedly had resisted suggestions by a large number of people over the last 25 years that I should apply to serve on the Court. When the seat I now occupy became vacant in September

2007 as a result of the passing of my friend and colleague Justice Pamela Minzner, I again resisted suggestions that I apply, and I urged several well qualified people to apply instead. I have retrieved and reviewed my e-mail communications from that month to refresh my recollection as to the exact date when I decided to seek a seat, and I can say with confidence that it was the night of September 11-12, 2007, just a few days before the deadline for submitting applications. As reflected by the e-mails attached at Exhibit E4, up until that night I was declining suggestions that I apply, and then I had to let people know that I had changed my mind and would apply after all.

The historical records I have reviewed also confirm that my approach in seeking the position was totally inconsistent with the approach that would have been taken by someone who wanted the job so much he would have paid money to get it. *See, e.g.*, Exhibits E5 and E6.

For those who are willing to believe—or simply allege—the worst about someone despite the absence of factual support, even this information will not stop them from doing so. But under our system of law, it is fundamentally important that the accuser in a court proceeding support his allegations with credible facts. This final shot at forcing my recusal misses the mark as widely as the other four in the motion to recuse. Just as five times nothing is still nothing, five misses cannot be

added together to become a hit.

IV. THE MOTION'S LEGAL CITATIONS

The motion to recuse cites several case precedents as purported legal authorities, none of which support recusal in this situation. For example, in *Caperton*, 556 U.S. 868, a coal mine operator suffered a $50 million verdict against it in a lower court, after which it contributed $3 million to the campaign of a candidate for a seat on the Supreme Court that would hear its appeal. The $3 million eclipsed all the money contributed to the candidate from all sources. The candidate won the election and then provided the decisive vote to overturn the verdict against the coal mine. All of those facts were clearly established in the record, and the question before the Supreme Court was whether those true facts created an appearance of impropriety that would require recusal. By a 5-4 split, the Court concluded that it did. Nothing like that is presented in this case. No one has ever contributed millions to me or my campaign. I have never taken even one penny in campaign funds from any party appearing before me. In my only partisan election, I expressly declined to accept any campaign contributions whatsoever from anyone other than the members of the law firm my wife founded and the law firm I had founded and been a member of for more than thirty years, and I have always followed a strict policy of recusing myself from any case involving anyone

in either of those firms as lawyers or parties. *See* Exhibit F1. *Caperton* is simply inapplicable to this case.

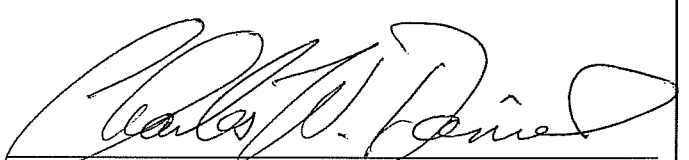
The other cases cited in the motion are similarly inapplicable to the actual circumstances of this case, involving a judge who charged the defendant with a crime and then presided at the trial and sentencing on those charges (*In re Murchison*, 349 U.S. 133 (1955)); a judge who violated the law in taking bail bonds, in unlawfully revoking the bond, in improperly demanding the surrender of the receipt for the bond, and in being rude to citizens appearing in his court (*In re Romero*, 100 N.M. 180, 668 P.2d 296 (1983)); a judge who decided before a legally required probation revocation hearing that he was going to revoke a defendant's probation and who made arrangements with the detention facility before the hearing to receive the defendant (*State v. Pacheco*, 85 N.M. 778, 780, 517 P.2d 1304, 1306 (Ct. App. 1973)); and a judge who, among other improprieties, used his judicial position and title to intervene with police officers and with a lower court judge in criminal cases involving his own son and his son's friends (*In re Ramirez*, 2006-NMSC-021, ¶¶ 4-10, 139 N.M. 529, 135 P.3d 230). They provide no precedential support for the recusal requested in this case.

V. CONCLUSION

Unsupported attacks made on the integrity of judges are not only insufficient

to require recusal, they prejudice the administration of justice by causing our citizens to have unjustified doubts about the fairness of their judicial system. Unprincipled accusations place an indelible stain on the reputations of the falsely accused judicial officers, but even more importantly for our society, they tarnish the luster of justice itself. The unfounded attack on Judge Robinson's integrity that has been publicly repeated in the current motion never had any factual or legal basis, and I must conclude that the motion's challenges to my fitness to perform my judicial duties are equally unsupported.

The motion to recuse is hereby **DENIED**.



CHARLES W. DANIELS, Chief Justice

Exhibit A1

AFFIDAVIT

I, Kirk Chavez, swear and affirm that the following facts are true and correct, to the best of my memory:

1. In early 2011, I was employed at the Ninth Judicial District Attorney's Office, under the direction of Matthew Chandler, District Attorney.
2. In late March or early April of 2011, Mr. Chandler requested I come to his office where he informed me that I was going to be named Special Prosecutor in the prosecution of The Honorable Judge Michael Murphy.
3. Mr. Chandler informed me that a Grand Jury had been convened to hear the matter.
4. Mr. Chandler also informed me that a Grand Jury Judge needed to be appointed by the New Mexico Supreme Court because all judges in the Las Cruces area had recused themselves from presiding over the matter.
5. Mr. Chandler told me that the Supreme Court would appoint a judge to oversee the matter.
6. Pending the Supreme Court's appointment, Mr. Chandler told me that Michael Stout, Judge Murphy's Defense Attorney, had called him and requested that they both agree to have a Silver City judge preside over the matter.
7. Mr. Chandler told me that he had denied Mr. Stout's request.
8. After a day or so after Mr. Stout made his request for a Silver City judge, the New Mexico Supreme Court, acting through Chief Justice Charles Daniels, appointed The Honorable J.C. Robinson from Silver City.
9. When Chief Justice Daniels notified our office of the appointment of Judge Robinson, he did so in a telephone call to Mr. Chandler.
10. Mr. Chandler told me that he had secretly recorded the call with Chief Justice Daniels.
11. Afterwards, both Mr. Chandler and I attempted to think of a way to get Judge Robinson removed from the case because we were concerned that Judge Robinson, a Democrat from southern New Mexico would not look favorably upon our case. Furthermore, we were aware that Judge Robinson knew Michael Murphy in some capacity, and that Judge Robinson, at times, sat by designation in Las Cruces cases.
12. We had no facts to support our conclusion that Judge Robinson's political affiliation would dictate how he would rule in the case, other than our own belief that it would.
13. We then crafted a Motion requesting that Justice Daniels withdraw the name of Judge Robinson as presiding judge and asked for an appointment of another judge.
14. We added language that we wanted a judge that was not so geographically aligned with Las Cruces, as Silver City was, but in truth

we were hoping the Chief Justice would appoint a more conservative, and hopefully Republican judge to preside over the matter.

15. We took part in what is normally called by attorneys as "judge shopping."
16. In our motion asking Justice Daniels to withdraw the name of Judge Robinson, we indicated that we were troubled that Mr. Stout had requested a Silver City judge only days before Justice Daniels appointed a Silver City Judge to preside over the matter.
17. We intended this remark to be a direct implication that Justice Daniels and Mr. Stout had colluded with each other to appoint Judge Robinson to act as Grand Jury Judge.
18. Both Mr. Chandler and I were highly aware of the gravity of the claim that we were implying against Chief Justice Daniels, however we decided to make the claim anyway.
19. We had no facts whatsoever, or any evidence of any kind that Chief Justice Daniels had colluded with Mr. Stout in the appointment of Judge Robinson. We knew we had no facts or evidence of any kind to support such a statement. (As a matter of fact, we knew prior to the appointment of Judge Robinson, that an appointment from the Silver City area was likely since it borders the Las Cruces judicial district.)
20. However, we believed that the accusation of collusion alone would apply enough pressure on the Chief Justice to withdraw the appointment of Judge Robinson.
21. To our surprise, Chief Justice Daniels did not withdraw the name of Judge Robinson.
22. Mr. Chandler and I both agreed that at least the accusation, which we knew was not supported by any facts or evidence, was in a document that would one day be made public.
23. Our actions were intended to curve the playing-field to have a judge that would be more favorable to the prosecution of Judge Murpjy be appointed to the case.
24. Furthermore, both Mr. Chandler and I were aware that our actions impugned the reputations and integrity of Chief Justice Daniels and Michael Stout, however we decided to utilize that strategy to hopefully gain an advantage in the case.

I swear, under oath, that the above facts are, to the best of my ability, the truth as best I can recall. I understand that I may be punished, under penalty of law, for any lies contained within this document.

Kirk Chavez
October 17, 2011

Subscribed & Sworn to before me this 17th day of October, 2011 by Kirk Chavez.

Notary Public
11/2/12 EXP.

Exhibit A2

From: "Phyllis A. Russo" <suppar@nmcourts.gov>
To: "Charles Daniels" <supcwd@nmcourts.gov>
Sent: Thursday, March 17, 2011 8:12:58 AM
Subject: Urgent need to phone the 3rd Judicial District Court

Caller was Roman Osborne with Chief Judge Driggers standing by. Mr. Osborne did not describe the matter but indicated the need to speak with you immediately.
Direct number for Roman Osborne: 575 523-8219
Number for Judge Driggers: 575 523-8262
--
Phyllis Russo
Appellate Paralegal
Supreme Court of New Mexico
505 827-4889

Exhibit A3

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

In the Matter of the
Dona Ana County Grand Jury
Convened on March 1, 2011

No. D-0307-CR-2011-1G, Subfile CS-2011-07

ORDER DESIGNATING JUDGE

WHEREAS, it appears that it is necessary for the Chief Justice to appoint an out-of-district judge to exercise judicial responsibilities over all matters in Dona Ana County Cause No. D-307-CR-2011-1G, Subfile CS-2011-07, pursuant to Article VI, Sections 3 and 15, of the Constitution of the State of New Mexico;

NOW, THEREFORE, IT IS ORDERED that the Honorable J. C. Robinson, District Judge, Sixth Judicial District, Silver City, New Mexico, is hereby appointed to preside over all matters in Subfile CS- 2011-07 of Cause No. D-0307-CR-2011-1G.

IT IS FURTHER ORDERED, pursuant to the statutory requirements of NMSA 1978, § 31-6-1 (2003) *et seq.*, that this order shall be filed under seal.

DONE at Santa Fe, New Mexico, this 17th day of March, 2011.

CHARLES W. DANIELS, Chief Justice

Exhibit A4

Matt Chandler DA

J.C. Robinson Judge

C.J. Driggers

Norman Osborne

re order designating Judge J.C. Robinson

fax directly to Judge Driggers' Chambers

575 528 8328

Exhibit A5

Kirk Chavez* —
Special prosecutor in the 3/24 grand jury sitting in Las Cruces** —
just phoned. He will be emailing you a confidential pleading and asks that you file it — or a ~~separate~~ document related to it — "in open chambers."
He said this term should clarify what is needed, but we can phone and get more information

Last week
** You ordered Judge J.C. Robinson to preside.

*575 769 2246 phone

Exhibit A6

----- Original Message -----
From: "Jeanette Garriga" <JGarriga@da.state.nm.us>
To: supcwd@nmcourts.gov
Cc: suppar@nmcourts.gov, "Matthew Chandler" <MChandler@da.state.nm.us>, "Kirk Chavez" <KChavez@d
Sent: Tuesday, March 22, 2011 2:53:17 PM
Subject: Motion Pleading: D-307-CR-2011-1G, Subfile CS-2011-07

Justice Daniels,

As Deputy DA Kirk Chavez discussed with your assistant earlier, attached is the motion for your review. Mr. Chavez requests that the State be allowed to file this in the currently sealed record held in Dona Ana County. Please note that the State will not file this motion in that particular court record until we receive your permission. If you have any questions, please contact Mr. Chandler or Mr. Chavez at 575.769.2246.

Thank you,

Jeanette Garriga

Administrative Assistant to Matthew Chandler

Ninth Judicial District Attorney's Office

417 Gidding, Suite 200

Clovis, New Mexico 88101

575.769.2246 (phone)

575.769.3198 (fax)

Exhibit A7

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE
DONA ANA COUNTY GRAND JURY
CONVENED ON MARCH 1, 2011

No. D-307-CR-2011-1G, Subfile CS-2011-07

MOTION TO WITHDRAW DESIGNATION OF JUDGE

"It is axiomatic that "[a] fair trial in a fair tribunal is a basic requirement of due process." Caperton v. Massey Coal Co., Inc., 566 U.S. _____ , 2009 WL 3806071 (2009), *quoting* In re Murchison, 349 U.S. 133, 136 (1955).

COMES NOW, Matthew Chandler and Kirk Chavez, Special Prosecutors, and hereby requests that the Honorable Chief Justice Daniels withdraw his designation of the Honorable Judge J.C. Robinson to preside over the above-captioned cause. The State provides the following grounds for support of this motion:

1. The above-captioned cause number, which has been placed under seal, involves an investigation regarding an allegation that a member of the judiciary in southern New Mexico solicited monies, directly or indirectly, from individual(s) who were wanting to become judicial nominees.
2. A grand jury has been convened to hear this matter and a target notice has been sent to the Defendant in this matter.
3. Attorney Michael Stout contacted the State on behalf of the target to discuss the investigation, but has yet to officially enter his appearance.
4. On March 16, 2011, Mr. Stout, in telephone discussions with the special prosecutor, suggested "a judge" from Silver City, New Mexico should be appointed to preside over this investigation and case, should an indictment come from the grand jury.

5. The special prosecutor did not agree to a judge from Silver City.

6. On March 17, 2011, Honorable Chief Justice Charlie Daniels called the special prosecutor and advised that he was issuing an order designating Judge J.C. Robinson, a jurist located in Silver City, New Mexico, to preside over this matter.

7. The state agrees with the Order insofar as that Honorable Chief Justice Daniels has the authority under Article VI, Sections 3 and 15 of the New Mexico Constitution to designate a judge in this matter and that all judges within New Mexico's Third Judicial District would be per se disqualified since the target of the grand jury is a sitting judge in that district.

8. However, because of the nature of this case, the court should avoid any appearance of impropriety, and the state argues that the designation of a judge from the exact locale that Mr. Stout requested at least gives off such an appearance.

9. The state understands that Chief Justice Daniels was requested to designate a judge per the chief clerk of the third judicial district court, and did so by appointing a judge from a surrounding district. It is assumed that Chief Justice Daniels made this appointment without knowing any details or facts related to the case.

10. However, the state asserts that this is exactly why a hearing in this case is needed. So that Chief Justice may be briefed on the facts to such a degree that an amended order of designation may be more appropriate and fair to **all** parties.

11. Because of the nature of these proceedings, the state would encourage Chief Justice Daniels use its power under Article VI, Section 15(C) and seek a retired judge from New Mexico's Supreme Court, Court of Appeals, or any other state judicial district other than the third judicial district to hear such a matter.

12. To have one active sitting judge presiding over another active sitting judge's criminal case, with allegations such as these and where the districts of both judges are so closely aligned should give pause to the Chief Justice. The state is under a good faith belief that the appointed judge, District Judge Robinson, presides and/or presided over matters in New Mexico's Third Judicial District's Court within the past four (4) years and has knowledge and possibly even a professional relationship with the target.

14. The state believes that Chief Justice Daniels should consider other jurists who may not be so connected to the judge who is the target of this grand jury investigation, and perhaps even a judge who is no longer actively sitting, i.e. attending retreats with other judges, as well as conferences, or sitting within the target judge's district as a pro tem judge when called upon, or vice versa, as this would seem to be the more appropriate action in this case.

14. The state will not 'judge shop', however, the state does request that the judge designated to preside over this matter should be far more removed from the situations and facts than the current designee. Which judge that is, the state respectfully leaves in the hands of the Chief Justice Daniels and New Mexico's Supreme Court.

THEREFORE, the state prays New Mexico's Supreme Court withdraw its original designation and order a new designation of a fit and able retired jurist pursuant to its given authority under Article VI, Section 15 of the New Mexico Constitution.

RESPECTFULLY SUBMITED:

Matthew Chandler
Special Prosecutor

Kirk Chavez
Special Prosecutor

Exhibit A8

From: "Justice Charles Daniels" <supcwd@nmcourts.gov>
To: "Jeanette Garriga" <JGarriga@da.state.nm.us>, "Matthew Chandler" <MChandler@da.state.nm.us>, "Kirk Chavez" <KChavez@da.state.nm.us>, "Michael Stout" <mlstout@nm.net>
Cc: suppar@nmcourts.gov
Sent: Tuesday, March 22, 2011 4:46:13 PM
Subject: Re: Motion Pleading: D-307-CR-2011-1G, Subfile CS-2011-07

Counsel (all counsel):

In response to the attached proposed motion I received this afternoon from ADA Kirk Chavez:

1. All parties, personally or through counsel, should be copied on all correspondence and pleadings in this matter, unless the matter fits within one of the narrow and extraordinary categories of matters that permit ex parte communications with the court. Mr. Stout, if you have not yet entered an appearance in sealed subfile CS-2011-07 of D-0307-CR-2011-1G, you should do immediately. If you are not in a position to enter an appearance, advise opposing counsel and the court ASAP so they will know whether to communicate with the target as a pro se litigant.

2. My role as Chief Justice in this matter is extremely limited at this stage. Under Article 6, Section 3 of the New Mexico constitution, I must designate an out of district judge to preside over a matter when all the judges of the district are ineligible. I never hold hearings or poll counsel to ask whom they would like in the case. It is my responsibility and my responsibility alone. I became involved in this case when I was contacted by the Third Judicial District and was notified that all judges in the district, quite appropriately, could not serve as grand jury judge, trial judge, or in any other capacity, in this matter. I was advised by that court of the identity of the target, that the local district attorney had quite properly handed this matter over to an out of district prosecutor, and that Mr. Chandler would be representing the state. At that time, I had no information about the identity of defense counsel or potential defense counsel. Frankly, it was of no significance to me.

3. Although I have never been called on to justify my thinking process in selecting an out of district judge, a chore I perfrom several times each week in a myriad of situations, I will share with you my thinking process, to dispel the suggestions in the draft motion that my designation of Judge Robinson in this case allegedly creates "an appearance of impropriety." There are three factors that are generally uppermost in my mind when I set about to designate an out of district judge, and that I specifically considered in this case: (1) physical proximity of the judge to the district where the case must be handled; (2) suitability of the judge to handle that particular kind of case; and (3) absence of any known disqualifying factors. In this case, (1) I narrowed my focus to judges in the three judicial districts directly adjoining the district in which the case was pending, a category which included Judge J.C. Robinson; (2) I narrowed the search further by attempting to identify judges who understood the specialized areas of grand jury law and procedure, which to my personal knowledge, included only two judges, of which Judge Robinson had the most experience as a prosecutor and lawyer, both as an elected district attorney who had presented cases to a number of grand juries and as a defense attorney before he went on the bench, and who had the most experience as a judge; and (3) I placed my first call to Judge Robinson, confirmed my impression that he had significant background in grand jury matters, and then after finding out

his willingness to accept designation as a grand jury judge, disclosed in confidence the name of the target and had a focused discussion with him to make sure that he was not aware of any factor I was not aware of that would disqualify him from serving. Being satisfied that there was no reason not to appoint him, I therefore decided to do so and contacted Mr. Chandler and the clerk and chief judge of the third district to notify them of my decision. It was in the discussion with Mr. Chandler, after I had made my decision to designate Judge Robinson, that I first learned that the defense attorney in the case was Michael Stout. Mr. Chandler neither mentioned to me any previous conversations with Mr. Stout about where to find a new judge nor indicated that he thought Judge Robinson was inappropriate for appointment in this case. I therefore prepared and executed the designation order and e-mailed it to all concerned. To this date, I have never had a single word of conversation with Mr. Stout or the target about this case in any respect. If Mr. Stout in fact had a conversation with the special prosecutor about wanting a judge from the Silver City area, it is news to me and certainly had no impact in my decision. To the extent anyone suggests such an undisclosed conversation taints my designation of Judge Robinson or his acceptance of the designation with an "appearance of impropriety," the suggestion is unfounded in fact and unfair to both Judge Robinson and myself.

4. Under New Mexico law, the proper procedure for challenging a judge designated by the Chief Justice is not by a motion requesting the Chief Justice to designate someone else instead or by judge-shopping or by peremptory excusals. Rule 5-105 NMRA provides the procedure to disqualify for cause ("Any judge designated by the chief justice may not be excused except pursuant to Article VI, Section 18 of the New Mexico Constitution") and Rule 5-106 provides an avenue to request that a judge recuse ("No district judge shall sit in any action in which the judge's impartiality might reasonably be questioned under the provisions of the Constitution New Mexico or the Code of Judicial Conduct"). If anyone thinks he has specific good faith grounds on which to challenge the legality of Judge Robinson's service, that challenge should be made according to the rule of law by filing a motion in this cause. You do not have to seek my permission to do so. I am not presiding over this case and should not do so under New Mexico law. Any other responsibilities I have would be exercised only when and if a matter is filed properly in this Court. And I will neither copy Judge Robinson on this e-mail nor send the proposed motion to him, because at this point it is not filed before him and until and unless it is, it calls for no judicial action on his part.

5. Counsel should be aware that in cases where a New Mexico judge is a defendant in a case that calls for judicial resolution, it is neither unusual or inappropriate that the presiding judge may know the defendant judge. It is an unfortunate necessity on occasion. We have to rise above those kinds of personal or professional relationships, and we do it all the time. The Justices on this Court, for example, must judge and remove from office judges we know or impose a wide range of other discipline, despite the fact that we have known them personally or professionally. It is part of doing our job.

Chief Justice Charles W. Daniels
New Mexico Supreme Court
Phone 505-827-4889
[redacted]

Exhibit A9

Zimbra suppar@nmcourts.gov

± Font size ±

Re: Motion Pleading: D-307-CR-2011-1G, Subfile CS-2011-07

From : Justice Charles Daniels <supcwd@nmcourts.gov> Tue, Mar 22, 2011 05:16 PM

Subject : Re: Motion Pleading: D-307-CR-2011-1G, Subfile CS-2011-07

To : Michael Stout <mlstout@nm.net>

Cc : Jeanette Garriga <JGarriga@da.state.nm.us>, Kirk Chavez <KChavez@da.state.nm.us>, suppar@nmcourts.gov, Matthew Chandler <MChandler@da.state.nm.us>

Responses from both counsel noted.

Chief Justice Charles W. Daniels
New Mexico Supreme Court
Phone 505-827-4889
[redacted]

----- Original Message -----
From: "Michael Stout" <mlstout@nm.net>
To: "Matthew Chandler" <MChandler@da.state.nm.us>
Cc: "Justice Charles Daniels" <supcwd@nmcourts.gov>, "Jeanette Garriga" <JGarriga@da.state.nm.us>, "Kirk Chavez" <KChavez@da.state.nm.us>, suppar@nmcourts.gov
Sent: Tuesday, March 22, 2011 5:09:55 PM
Subject: Re: Motion Pleading: D-307-CR-2011-1G, Subfile CS-2011-07

Dear Chief Justice Daniels and counsel,

I represent the target in this matter. I am out of the country, but I'll have my office prepare an entry of appearance in the sealed matter.

Please let me know of anything further requested of me.

Thank you.

Michael Stout

On Mar 22, 2011, at 4:58 PM, Matthew Chandler wrote:

> Chief Justice Daniels,
>
> On behalf of the state, we appreciate your timely response, explanation of your involvement, and clarification of the process.
>
> Respectfully,
>
> Matthew Chandler
>
> ---
>
> **From:** Justice Charles Daniels [mailto:supcwd@nmcourts.gov]
> **Sent:** Tuesday, March 22, 2011 4:46 PM
> **To:** Jeanette Garriga; Matthew Chandler; Kirk Chavez; Michael Stout
> **Cc:** suppar@nmcourts.gov
> **Subject:** Re: Motion Pleading: D-307-CR-2011-1G, Subfile CS-2011-07
>
> Counsel (all counsel):
>
> In response to the attached proposed motion I received this afternoon from ADA Kirk Chavez:
>
> 1. All parties, personally or through counsel, should be copied on all correspondence and pleadings in this matter, unless the matter fits within one of the narrow and extraordinary categories of matters that permit ex parte communications with the court. Mr. Stout, if you have not yet entered an appearance in sealed subfile CS-2011-07 of D-0307-CR-2011-1G, you should do immediately. If you are not in a position to enter an appearance, advise opposing counsel and the court ASAP so they will know whether to communicate with the target as a pro se litigant.

Exhibit B1

Verbatim Transcription of Relevant Portions of Chief's June 8 Recorded Opening Remarks at the Annual New Mexico Judicial Conclave and Continuing Judicial Education Program

. . . and I just want to speak for a moment about an unseen presence in the room. I mentioned the dark clouds. I took that from a Journal editorial that talked about a dark cloud hanging over the New Mexico judiciary as a result of some of the things that have been in the news lately. By our professions and by the oaths we took, we can't make extrajudicial comments—commenting, speculating, theorizing about allegations that have been made and the truth or falsity of them. We can't make speculations about what might come out of this because, day in, day out in our courts throughout the state, we've dedicated ourselves to the proposition that we will only decide those things by the rule of law—by consideration of evidence, by applying the rules of law through established legal processes—because we owe it to the people we serve. And we shouldn't make prejudgments and we shouldn't even be seen as hinting at prejudgments. So even though we have to keep quiet while all the controversy swirls around us and other people pontificate and speculate and engage in innuendo and all kinds of speculation about what may or may not come out of it all, we have to make sure that the processes of law continue because that's what we've dedicated ourselves to. And we all know that we will apply the rule of law at every level throughout our courts. And we all know that the rule of law means that no person, no public official, no citizen is above the requirement of obedience to the law and that no person, no public official, no citizen is beneath the protections of the law. And we will stand by that, and we will apply it, and we will come through this, and I think we will be able to hold our heads high. Some of us have been discouraged by the widespread innuendo far beyond the allegations in the particular case involving one defendant that is now pending in one of the districts in the state. I think when this is all over with, there won't be any comment about a dark cloud over the judiciary, because I think we will respond to this in a responsible way, and we will do it in the same way we do our jobs day in, day out throughout our careers on the bench. I look forward to spending time with my colleagues here over the next few days. Let's learn together. Let's have fellowship together.

We will be at that fine Court of Appeals [moving to discussion of scheduled evening reception at Court of Appeals building] . . . .

Exhibit D1

7/27/11 5:54 PM Incoming [redacted]
7/27/11 6:26 PM Albuquerque, [redacted] -
7/28/11 11:33 AM Santa Fe, NM 505-827-4802 2 -
7/28/11 12:08 PM Albuquerque, NM 505-341-2683 1 -
7/28/11 12:12 PM Santa Fe, NM 505-470-3183 1 -
7/28/11 12:13 PM Santa Fe, NM 505-827-4832 1 -
7/28/11 12:14 PM Santa Fe, NM 505-470-3047 5 -
7/28/11 12:26 PM Incoming 505-470-3047 1 -

STAFF
MVD NOW
STAFF
STAFF
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STAFF

Total voice use: 565 minutes
Total voice charges: $0.00 Show All Columns

Date Time Destination Number Call Type Minutes
7/28/11 12:26 PM Santa Fe, NM 505-690-1294 1 -
7/28/11 12:41 PM Incoming 505-470-3183 1 -
7/28/11 12:55 PM Incoming 575-523-8200 4 -
7/28/11 1:03 PM Santa Fe, NM 505-470-3183 9 -
7/28/11 1:11 PM Santa Fe, NM 505-470-3183 1 -
7/28/11 3:47 PM [redacted] -
7/28/11 4:15 PM [redacted]
7/28/11 4:45 PM [redacted]
7/28/11 4:51 PM [redacted]
7/28/11 5:10 PM [redacted]
7/28/11 8:11 PM [redacted]
7/28/11 9:00 PM [redacted] Help Tip (F) T-Mobile to T-Mobile call
Minutes used when you call another T-Mobile customer on your T-Mobile phone. More specifically, minutes used on directly dialed calls between T-Mobile phones on the T-Mobile USA network. (Calls to VoiceMail and other T-Mobile service numbers are not included.) 3 -
7/29/11 9:21 AM [redacted]
7/29/11 9:39 AM
7/29/11 10:16 AM
7/29/11 10:33 AM
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7/29/11 12:52 PM Vm Retrieval 123 (G) Help Tip (G) VoiceMail call
Minutes used when you use your T-Mobile phone to check your voicemail messages. 1 -
7/29/11 2:04 PM Vm Retrieval 123 (G) Help Tip (G) VoiceMail call
Minutes used when you use your T-Mobile phone to check your voicemail messages. 2 -
7/29/11 2:07 PM [redacted]

LFC
STAFF
J. DRIGGERS
STAFF
STAFF
[redacted]

Exhibit D2

ALBUQUERQUE JOURNAL

NEW MEXICO'S LEADING NEWSPAPER

THURSDAY MORNING, JULY 28, 2011

Leslie Linthicum

UP FRONT

N.M. Judges Must Walk The Talk

New Mexico's judiciary is red in the face — and it's not because of the sun.

The 26-year career of a state district judge in Albuquerque comes to an end this week as he fights charges that he raped a prostitute in his home. Another state judge in Las Cruces is facing trial for allegedly attaching price tags to judicial seats. And a Court of Appeals judge resigned recently after being popped for DWI.

And that's just in the past six months.

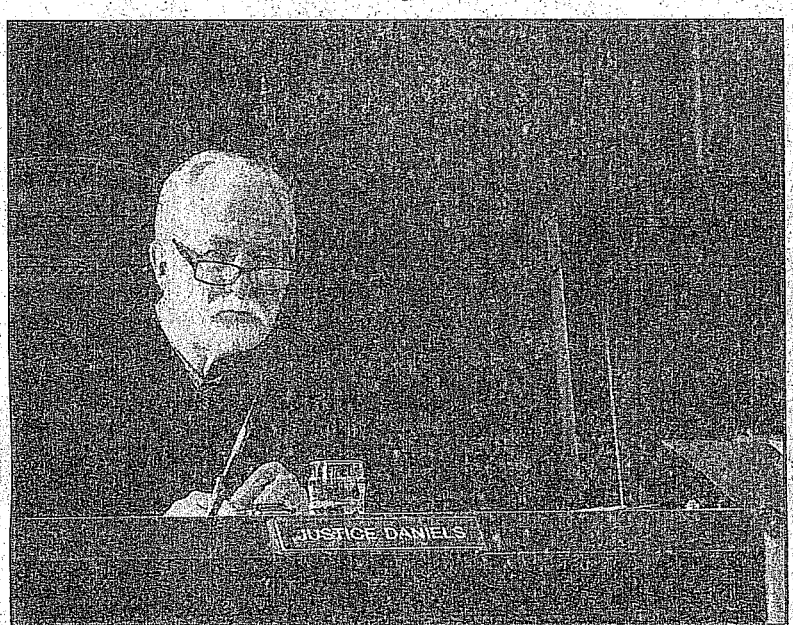
If you want to go back a couple of years, you'll find judges using cocaine, fixing parking tickets, living improperly in subsidized housing and making a gift of a sex manual to a young attorney.

Every profession has its bad apples and dummies. And even bright and well-meaning people make mistakes.

But we hire judges for their good judgment. It's right there in the job title. Judges aren't only expected to have common sense; they're expected to have *uncommon* sense. We don't expect them to be superhuman, just smarter and better than us.

Statistically, do New Mexico judges mess up more than others in other professions or other lines of public service? Despite the

See JUDGES on PAGE A3



JUSTICE DANIELS

"I think we take this job knowing that we're held to a higher standard and that we'll suffer greater consequences if we have a human failing."

NEW MEXIC
SUPREME COUR
CHIEF JUSTIC
CHARLES W. DANIEL

Judges Must Walk the Talk

from PAGE A1

recent headlines, I doubt it. But when even a few judges end up in handcuffs looking up at the bench rather than down from it, the entire system suffers a crisis of confidence.

New Mexico's top judge in the midst of this morass is Charles W. Daniels, the chief justice of the Supreme Court. It would be unethical and improper for him to prejudge or make comments on any particular case, and Daniels made that clear when I called him last week to talk over the effects of scandal on an institution.

"Because of the requirements of ethics rules, the only statements I can make about particular cases that may come before the courts can be made only through decisions based on in-court evidence and application of the rule of law," he said.

Fair enough. But in general, is it fair of us to hold judges to higher standards than we hold bankers or roofers or even other public figures?

Daniels stated the obvious — civil and criminal laws apply to judges just like they do to any other citizen. You break 'em, and you pay the consequences. But he agreed we should expect more of judges than just obeying the law.

"I think we take this job knowing that we're held to a higher standard and that we'll suffer greater consequences if we have a human failing," Daniels said. "We should be held to a higher standard, and we know that if we commit some of those human errors, as human beings sometimes do, it can mean the end of our careers."

It may also mean a stain on the courthouse.

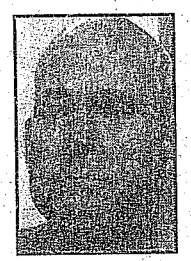
"Not only does someone stumbling and falling affect that judge and that judge's family; it affects people's perception of the judiciary as a whole and it undermines their faith in their institutions," Daniels said. "And I think having confidence in the judiciary when you walk into a courthouse is really important."

These are the recent confidence-shaking cases Daniels can't talk about:

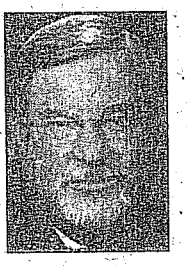
In Doña Ana County, an investigation into allegations from one judge that another judge said he paid for his seat on the bench and recommended would-be judges do the same resulted in the indictment of state District Judge Mike Murphy on bribery charges.

In Albuquerque, state District Judge Albert S. "Pat" Murdoch was arrested and charged with raping a prostitute at his home and intimidating a witness.

Accept for a moment that Murphy and Murdoch, as their lawyers avow, were the victims of false accusations and that they will be cleared of the charges.



MURDOCH: Accused of raping a prostitute



MURPHY: Indicted on bribery charges

ROBLES: Pleaded guilty to DWI and resigned

We're still left with Murdoch, the chief judge in the criminal division, engaging in some sort of relationship in his home with a woman who says she sells sex. He did the right thing and announced this week that he will retire on Friday.

In the Las Cruces courthouse case, the facts will either bear out that one judge was soliciting bribes or, if he wasn't, that another judge was making false accusations of bribery. Either is a stain on the bench.

The case of Court of Appeals Judge Robert Robles was less ambiguous. He drove very drunk, nearly hit a police car, pleaded guilty to DWI and resigned.

In an official reprimand to Robles from the Supreme Court, Daniels and his colleagues put a fine point on the issue of adhering to the highest moral conduct even when the robes come off at the end of the day.

"A judge's conduct of personal behavior must be beyond reproach," the justices wrote. "Improper conduct which may be overlooked when committed by the ordinary citizen, or even a lawyer, cannot be overlooked when it is committed by a judge."

We rely on judges to make important decisions — who gets custody of the kids, who's lying and who's telling the truth, how many years someone will spend locked up — but they're obviously not infallible. We don't employ computers to carry out justice, after all. We choose men and women — men and women who may be susceptible to bad days, loneliness, drinking problems, short tempers, braggadocio, risk taking and the rest of the menu that is the human condition.

We probably shouldn't be shocked when human beings act human, but we also shouldn't tolerate the arbiters of the law breaking it.

UpFront is a daily front-page news and opinion column. Comment directly to Leslie at 823-3914 or llinthicum@abqjournal.com. Go to www.abqjournal.com/letters/new to submit a letter to the editor.

Exhibit D3

----- Forwarded Message -----
From: "Justice Charles Daniels" <supcwd@nmcourts.gov>
To: "Matthew Chandler" <MChandler@da.state.nm.us>, "Michael Stout" <mlstout@nm.net>
Sent: Monday, August 1, 2011 5:38:53 AM
Subject: Contacts with courts

Counsel:

I am currently in Atlanta attending the National Conference of Chief Justices through Wednesday evening, but I wanted to communicate to you without delaying until I get back to New Mexico.

On Thursday afternoon, before I left New Mexico, I had an unexpected ex parte contact with Mr. Chandler that I have determined I should disclose to all counsel. I had been invited to address a meeting of the State's district attorneys at Buffalo Thunder. As I was entering the building, I was notified by cell phone of 3rd District Court Judge Michael Murphy's arrest on new charges and was given an incomplete and hearsay account of the charges that allegedly had originally been summarized to the judge notifying me by a law enforcement officer. This was simply a notification to me as Chief Justice and required no action on my part, since there have been no fact-finding processes in the lower courts and none of the charges against Judge Murphy have arrived in our Court for consideration on whatever issues may or may not come before our Court in the future. Before entering the meeting room, I had to return a call to one of my court staff members. Since it was a confidential call involving court business, I walked a distance down the hallway to an area where I believed I could have a private conversation. At the conclusion of the conversation, which was primarily about another matter, I relayed the information I had at that point about Judge Murphy's arrest. When I concluded the conversation and walked back toward the meeting room, I passed a column protruding from the wall that had concealed Mr. Chandler's presence from me. I had not seen him there when I had passed that area to find a seemingly private area for my phone call. He confronted me about my phone call, which he apparently had heard in part from behind the column. He said "I can't believe what I just heard. You were talking about my case, weren't you?" I tried to assure him that it was not intended to be a public call and that I had been having what I thought was a confidential and private conversation with a court staff member and had gone done the hall to do so in what I thought was a safe area that would be free from eavesdroppers. He seemed very upset and kept wanting to talk about his impression of my impression of either the facts or the legal theories involved in his case. He referred to one of my comments in the telephone conversation, that sometimes I wonder whether I might be accused of wrongdoing if I put my left shoe on first instead of my right. I tried to assure him that I had not made any predetermination of any matters that may or may not come before me in the future and that all the information I had received at that point was an informal hearsay summary. He asked if I would like to see the arrest warrant. I replied that there was no case before my Court at that point and no reason for me to be reviewing the warrant. I concluded the conversation by emphasizing that we both had our jobs to do, that I would presume he would do his properly and that he could be assured I would do mine properly and make no predetermination of any future rulings I may be called on to make. I then went into the meeting room and met with the other district attorneys.

This is the second ex parte contact with me related to the prosecution of Judge Murphy. The first is referenced in the e-mail to all counsel attached at the end of this message. As with that contact, I am disclosing this last contact to all counsel. And as with the first one, I am presuming that no one has acted in any premeditated manner to improperly influence a judicial action on my part. But whatever may have been the intent, it is important for all of us to avoid any unauthorized ex parte contacts with any judicial officer, not only the judge before whom the case is now pending, but any judge who may in the future be called on to take any judicial action.

We all have important roles to perform, and whatever our differing responsibilities and perspectives may be, we each have to perform those roles within the parameters of the legal process and the rule of law. I am confident that we can do so.

Chief Justice Charles W. Daniels
New Mexico Supreme Court
Phone 505-827-4889
[redacted]

Exhibit D4

September 14, 2010 1:46 PM

Stephen Breyer Questions Right to Burn Quran

By Lucy Madison

During an appearance on ABC's Good Morning America this morning, Supreme Court Justice Stephen Breyer addressed the recent controversy over a Florida pastor's plan to hold a Quran-burning rally on the anniversary of the September 11 terrorist attacks, saying he wasn't convinced the First Amendment would protect such an action if the case were brought to the court in the future.

"Holmes said it doesn't mean you can shout 'fire' in a crowded theater," Breyer told George Stephanopoulos during the GMA interview, referring to Supreme Court Justice Oliver Wendell Holmes, Jr., who wrote the opinion in a 1919 Supreme Court decision that addressed Freedom of Speech. "Well, what is it? Why? Because people will be trampled to death. And what is the crowded theater today? What is the being trampled to death?"

Breyer, who was on the show to promote his new book, "Making Our Democracy Work: A Judge's View," said that questions about the changing definition of free speech in the internet age will "be answered over time in a series of cases which force people to think carefully."

"That's the virtue of cases," he said. "And not just cases. Cases produce briefs, briefs produce thought. Arguments are made. The judges sit back and think. And most importantly, when they decide, they have to write an opinion, and that opinion has to be based on reason. It isn't a fake."

"It's a 'rickety system,' Breyer added, but it has functioned "fairly well" so far.

Breyer also took the opportunity during his appearance to advise incoming Supreme Court Justice Elena Kagan as to handling the pressures of her new job. "Of course, you're nervous. I mean, for quite awhile, your cases now -- they're going to be final. There's no one to appeal to," he said. "She will be nervous. But don't worry about it."

U.S. Supreme Court

Scalia Lumps Kelo Decision with Dred Scott and Roe v. Wade

Posted Oct 19, 2011 8:05 AM CDT
By Debra Cassens Weiss

Justice Antonin Scalia predicted Monday that the Supreme Court's decision in *Kelo v. City of New London* will be overturned.

Speaking to students at the Chicago-Kent School of Law, Scalia criticized the decision allowing the city of New London to use eminent domain to seize property for economic development, the Chicago Sun-Times reports. "I do not think that the *Kelo* opinion is long for this world," Scalia said.

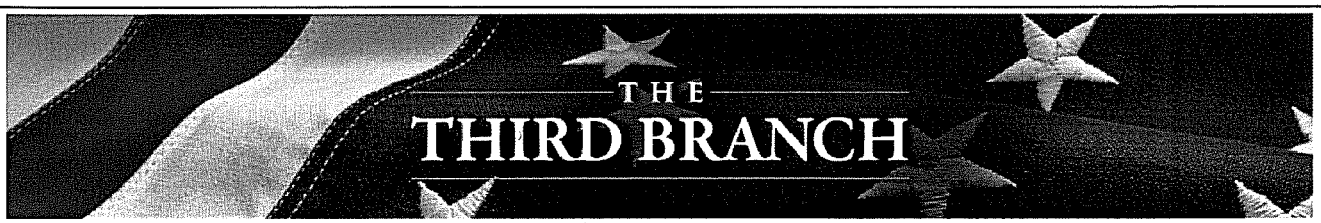
Scalia ranked Kelo among the top cases in which the court made a mistake of political judgment, according to the Sun-Times account. The others were the *Dred Scott v. Sanford* decision in favor of a slave owner and the *Roe v. Wade* decision finding a constitutional right to abortion.

"My court has, by my lights, made many mistakes of law during its distinguished two centuries of existence," Scalia said. "But it has made very few mistakes of political judgment, of estimating how far ... it could stretch beyond the text of the Constitution without provoking overwhelming public criticism and resistance. *Dred Scott* was one mistake of that sort. *Roe v. Wade* was another. ... And *Kelo*, I think, was a third."

Hat tip to How Appealing.

Prior coverage:

ABAJournal.com: "Connecticut Justice Apologized to Kelo Plaintiff at a Private Gathering"



FEBRUARY 2011

Judiciary Pays Tribute to Judge John M. Roll

On January 8, 2011, Chief Judge John Roll of the U.S. District Court for the District of Arizona was among six people shot and killed in Tucson while attending a constituent gathering sponsored by Representative Gabrielle Giffords. Roll, who was appointed to the federal bench in 1991, had served as chief judge of the district since 2006. In the wake of his death, flags were lowered at federal courthouses across the county and thousands of people—many of whom had worked with him—paid tribute to Judge Roll's life and mourned his passing. A few of the statements are included here.

"The violence in Arizona today has senselessly taken six lives and inflicted tragic loss on dedicated public servants and their families. We in the Judiciary have suffered the terrible loss of one of our own. Chief Judge John Roll was a wise jurist who selflessly served Arizona and the nation with great distinction, as attorney and judge, for more than 35 years. I express my deepest condolences to his wife Maureen and his children, as well as the other victims and their families. Chief Judge Roll's death is a somber reminder of the importance of the rule of law and the sacrifices of those who work to secure it.

Chief Justice John Roberts, Jr.

"All of us in the Ninth Circuit court family were shocked and terribly saddened to learn today of the death of Chief District Judge John M. Roll. Our hearts go out to his family and to all of the families of those killed or injured in this senseless tragedy.

Judge Roll was a widely respected jurist, a strong and able leader of his court, and a kind, courteous and sincere gentleman. He worked tirelessly to improve the delivery of justice to the people of Arizona. He was always upbeat, optimistic, enthusiastic, and positive in his outlook. He touched many lives.

Chief Judge Alex Kozinski,
U.S. Court of Appeals for the Ninth Circuit

"John has been my friend and colleague for over thirty years. My first memory of him is 30 years ago when I began as Assistant US Attorney preparing for the trial of one of my first cases in Tucson, Arizona. Despite his busy schedule, John went out of his way, with ultimate kindness, to assist me in the preparation. As the Chief of the District, he has always expressed the same kindness to all who needed it while exquisitely performing his judicial responsibilities. I really miss him.

Chief Judge Roslyn Silver
U.S. District Court for the District of Arizona

"The Federal Judiciary and the country suffered a grievous loss

in the death of Chief Judge John Roll of the District of Arizona, a tireless champion of equal justice and the rule of law. Judge Roll led one of the nation's busiest federal trial courts with great distinction. He was a dear friend and respected colleague, and he devoted himself to improving the administration of justice. I know I speak for every member of the federal court family as I express my heartfelt sadness and extend to Judge Roll's family our deepest sympathies.

James Duff
Director, Administrative
Office of the U.S. Courts

"Just being associated with John Roll made you want to be a better person. He led by example, treating everyone, regardless of their station, with genuine respect and dignity. He was warm, funny, optimistic, empathetic, passionate about what he believed, always fair and equitable. He loved his wife, his sons, his grandchildren, his mother-in-law, and his extended family without bounds. He enjoyed hearing about your family as much as he liked talking about his own. He was disciplined and worked extremely hard in a fraternity of hard workers. His unbounded energy and love for life and the law will not soon be equaled.

Richard H. (Rick) Weare
District Court Executive/Clerk
U.S. District Court for the District of Arizona

"I have worked for Chief Judge Roll for 19 years, ever since he was appointed to the bench. Many people say he is the 'hardest working judge.' Well, I know he is! He worked very hard, but it was always for the good of the Judiciary and the District of Arizona, so all of his staff were more than willing to work by his side. We all miss him.

He couldn't have been a nicer boss—always a 'please' and 'thank you' and such a gentleman—every time I went into his office for dictation or questions, he would stand up when I entered.

He was chief judge for the District of Arizona for nearly five years and took no reduction in caseload. Yet, every year he personally read 350+ law clerk applications. He always hired two term law clerks. Of course this involved training on both of our parts, but he always wanted to give as many intelligent young lawyers this opportunity as possible. Judge Roll was the best example and mentor to each of them and we all remain a close family today. Almost all of them flew from all over the United States to be present at his funeral Mass and to comfort his wife Maureen.

Katy Higgins
Judicial Assistant to Judge John Roll

"Judge Roll was many things to many different people. He was a great judge, colleague, husband, father, and friend. But I'll always remember him as a kind and patient mentor. On a daily basis he went out of his way to ask my opinion on legal issues and to include me in all facets of the judicial process. The Judge always made me feel as though I played an essential role in keeping his chambers and courtroom running. When we would discuss a case, he would,

Exhibit E1

STATE OF NEW MEXICO
GOVERNOR BILL RICHARDSON

For immediate release
Oetober 17, 2007

Contact: Caitlin Kelleher
505.476.2299

Governor Bill Richardson Appoints Charles W. Daniels to New Mexico Supreme Court

SANTA FE – Governor Bill Richardson has appointed Albuquerque lawyer Charles W. Daniels to serve as a Justice on the New Mexico Supreme Court.

"Charles Daniels exemplifies the qualities necessary to serve on New Mexico's highest court," said Governor Richardson. "I am confident that Charles Daniels' leadership, work ethic and impeccable integrity will be a tremendous asset to the state Supreme Court."

Charles Daniels replaces Justice Pamela B. Minzner, who passed away in August after a distinguished career on the bench.

Mr. Daniels has been a senior partner of the Friedman, Boyd, Daniels, Hollander, Goldberg and Ives law firm in Albuquerque for more than thirty years. Daniels was admitted to the New Mexico Bar in 1969.

"I chose Charles Daniels for the Supreme Court given his keen intellect, outstanding reputation and unwavering commitment to uphold the rule of law," Governor Bill Richardson said.

Daniels grew up in Albuquerque. He and his wife, attorney Randi McGinn live in Albuquerque.

Charles Daniels earned his bachelors degree in fine arts from the University of Arizona. Daniels graduated first in his class at the University of New Mexico School of Law and served as a Prettyman Fellow at Georgetown University Law Center where he received a masters of law degree in trial advocacy. He also served as a Professor at the University of New Mexico School of Law.

Daniels has been recognized by his legal peers with the highest Martindale-Hubbell "AV" ratings, he is a member of the Bar Register of Preeminent Lawyers and has been recognized as one of the "Best Lawyers in America," for the past two decades.

Exhibit E2

ALBUQUERQUE JOURNAL

T.M. PEPPERDAY, Publisher 1926-1956
C. THOMPSON LANG, Publisher 1956-1971

T.H. LANG, Publisher
Kent Walz, Editor
An Independent Newspaper

Published at Journal Center, 7777 Jefferson NE
Albuquerque, NM 87109-4343, by the Journal Publishing Co.

Black Robes And Running Shoes

When the college student walked into the recruiting office one frigid day in the '60s, his main concern was whether he would be stationed someplace warm. So the Air Force sent Charles Daniels to Greenland.

Daniels didn't have to ask about the political climate of his newest assignment. Gov. Bill Richardson's appointment of Daniels to the New Mexico Supreme Court on Wednesday is less a hiring than an endorsement and head start on one of the rare races for a court seat. It could become a hotly contested race in the 2008 Democratic primary or the general or both.

The election is part of New Mexico's hybridized judicial reform: After the governor fills a vacancy by picking a judge from a list of qualified candidates sent to him by a selection committee, the appointee is thrown back into the political fray. Some of the pols who thrived under the old system tend to sit out the merit-based selection phase of the process and jump in come campaign time. And the apolitical lawyers who are drawn to the merit selection bracket sometimes lack the instincts and connections of a campaigner.

Daniels looks like a hybrid appointee for a hybrid system. In addition to being a highly qualified selection, he sounds like a campaigner right out of the chute: "I intend to run and run vigorously."

Like the late Justice Pamela Minzner whose seat he takes, Daniels was a law professor at the University of New Mexico and possesses a keen legal mind. He is at home in a courtroom, where he's made a successful career representing criminal defendants.

Daniels will bring an excellent set of legal skills to the state's highest court come November, and drive and determination to the ensuing political campaign. Underneath the black robes, running shoes.

Exhibit E3

THE SANTA FE
NEW MEXICAN

Tuesday, October 23, 2007

The West's Oldest Newspaper
Founded 1849
Robin M. Martin,
Editor and Publisher
Robert M. McKinney,
Editor and Publisher, 1949-2001

William W. Waters,
Editorial Page Editor

Robert Dean,
Managing Editor

202 E. Marcy St. • Santa Fe, N.M. 87501

State's new justice a good choice

Charles Daniels, on his merits as lawyer and judicial scholar, was among the strongest names we heard from members of the legal profession when state Supreme Court Justice Pamela Minzner passed away in late August. Last week Daniels emerged from a pack of 15 aspiring justices as Gov. Bill Richardson's choice to succeed Minzner.

The governor made a good call on legal *and* political grounds.

A University of New Mexico law graduate, tops in his class, with a master's in law from Georgetown, Daniels has practiced and taught law during a distinguished career covering more than 30 years.

He's politically cool as well — and that's really important in a state where our merit-selected judges must face partisan opposition in the first set of elections after being appointed to the bench.

It's a ridiculous requirement: Judicial appointees have to get past a high-level screening committee before they're even considered by the governor. But their election opponents only have to be lawyers; no demands that they're vaguely qualified to sit on the bench — only that they can win an election or two.

This rule has been especially cruel to Republican appointees, whose party is outnumbered statewide by about 3-2, and 3-1 here in Northern New Mexico. Many a decent judge has been beaten by many a lesser lawyer — and the people of their district, or the whole state, have been poorly served by political opportunists.

Who knows what Daniels might face in next June's Democratic primary, or a year from November — but we get the impression that he'll do more than merely speak in lofty legal terms about his accomplishments on our state's highest court. He's been a contributor to Gov. Bill Richardson's political campaigns, and he knows what it'll take to wage one. He'll run, he says — and run vigorously.

The fact that he's the selection of our overwhelmingly re-elected governor should cool the ardor of some Democrats who might otherwise decide to cash in on careers kissing babies or whatever else they've done to make themselves feel especially electable.

And Republicans, however vengeful they might feel about their judges being elected out of office, are likely to bow to the principle of merit selection, and one nicely made this time. It would have taken a really bad appointment for a GOP lawyer to beat that justice in a statewide election — and Daniels doesn't match that description.

He has spent much of his career in criminal defense — something some Republican politicians love to equate with criminal advocacy while ignoring defense as an integral part of the justice system. Daniels might argue that giving his utmost on behalf of defendants much of society might consider criminals just because they've been charged is a matter of lawyerly duty — but his service as champion of the down and out might burnish his populist credentials.

While he shouldn't *have* to run for the office to which he's just been appointed, that's the state of the law in New Mexico. We're encouraged not only by Charles Daniels' capabilities, but also by his willingness and readiness to do so.

Exhibit E4

From: Charles Daniels
To: [redacted]
Subject: RE: NM Sup. Ct.
Date: Wednesday, September 12, 2007 1:16:00 PM

I'll be in touch. Thanks.

From: [redacted]
Sent: Wednesday, September 12, 2007 10:52 AM
To: Charles Daniels
Subject: RE: NM Sup. Ct.

Charlie,

I understand your dilemma about the quality of life you now have as compared business of the Court, but your ability to contribute to the development to NM Constitutional law would be truly extraordinary. Gender politics aside, you are perfect for the position. I am willing to offer whatever humble assistance I can provide, but I am sure that you have a solid handle on the political end of things.

Let me know if I can be of assistance.

[redacted]

From: Charles Daniels [mailto:CWD@FBDLAW.com]
Sent: Wednesday, September 12, 2007 1:02 AM
To: [redacted]
Subject: RE: NM Sup. Ct.

[redacted]

To follow up on our previous communications, I have talked to some others and am now seriously considering submitting my application before Monday's deadline. In the statistically unlikely event I get past the big hurdles ahead and am the one who fills the position, I will give the job every bit of effort and dedication it deserves. Thanks for the encouragement.

Charlie

From: Charles Daniels
Sent: Tuesday, September 04, 2007 9:49 AM
To: [redacted]
Cc: [redacted]
Subject: RE: NM Sup. Ct.

[redacted]

I agree on your goal, but I have serious doubts as to whether I have the best party clout to be the needed opposition against [redacted] at the convention. Unlike some other good people, I have no burning desire to put on the robes, despite Randi's constant urging and despite my own consideration of applying before Ed Chavez stepped up to do it the last time arounde. I may be the wrong gender for this slot, as well. On a personal note, I also would have to decide if my own personal sacrifice of my freedom to live my life in the way I have come to enjoy is truly necessary in order to prevent a bad candidate taking the slot. I appreciate your faith in me and will treat your request seriously. I will get back to you after I talk to a few people about the best way for all of us to proceed.

From: Charles Daniels [mailto:CWD@FBDLAW.com]
Sent: Wednesday, September 12, 2007 1:05 AM
To: [redacted]
Subject: RE: [redacted] Supreme Court

It looks like I may have to eat those words. After some serious discussions and reflections, I am leaning toward submitting an application before the Monday deadline.

From: Charles Daniels
Sent: Wednesday, September 05, 2007 8:59 PM
To: [redacted]
Subject: RE: [redacted] Supreme Court

I am not planning to be nominated, but thanks anyway. There are a lot of people who really want it, and a few of them would be good justices. I'm not interested in having people stand when I enter the room and call me Your Eminence and all of that stuff.

From: [redacted]
Sent: Wednesday, September 05, 2007 6:56 PM
To: [redacted]
Subject: [redacted] Supreme Court

I hope we send condolences to the Minzner family, she was a great first woman Justice and a kind person.

As much as it would hurt to lose him from this list – is there any reason not to nominate Charles Daniels? Also, does anyone have information to share on the process and where we are at so far?

[redacted]
Attorney at Law
[redacted]

From: Charles Daniels
Sent: Friday, September 07, 2007 2:37 PM
To: [redacted]
Subject: RE: Supreme Court?

I only get interested when I think I could do some good up there. Right now, I am not sure I could, and I certainly don't want it for the lifestyle. I'll think about it and let you know.

From: [redacted]
Sent: Friday, September 07, 2007 2:33 PM
To: Charles Daniels
Subject: Supreme Court?

Charlie,

You and I have talked a few times about your interest in a supreme court position. Long ago you indicated the job wouldn't be one you'd want. Later you said you would be interested in the position in order to right some wrongs. More recently (in Ruidoso) you said you were not interested, especially in light of the treatment of [redacted] by the process.

What did you decide? If you are applying I will help and support you however I can. If you are not . . . I'll do something else.

Let me know. Thanks.

[redacted]

From: Charles Daniels
To: [redacted]
Subject: RE: Possible new day job
Date: Wednesday, September 12, 2007 5:40:10 AM

The 2 upcoming big hurdles:

Getting put on the short list by the Selection Commission. I understand there are going to be a lot of applicants.

Getting picked from the short list by the Governor to fill the one vacancy.

After that, keeping the seat in the primary and general elections, in which history has shown there will be opposition.

From: [redacted]
Sent: Wednesday, September 12, 2007 1:31 AM
To: Charles Daniels
Subject: Re: Possible new day job

OK! I'll think about it! What are the two big hurdles?

[redacted]

> ----- Original Message -----
> **From:** Charles Daniels
> **To:** [redacted]
> **Sent:** Wednesday, September 12, 2007 12:35 AM
> **Subject:** Possible new day job
>
> I'm thinking about applying for the vacancy on the NM Supreme Court. In the unlikely event I make it past the first 2 big hurdles and get the initial appointment, will you guys still let me be your bass player?

From: Charles Daniels
To: [redacted]
Subject: RE: Eating my words
Date: Wednesday, September 12, 2007 2:20:00 PM

I will get it in today or tomorrow. I have put in calls to [redacted] and [redacted] to let them know and to try to work together in getting a good list out of the commission.

From: [redacted]
Sent: Wednesday, September 12, 2007 9:50 AM
To: Charles Daniels
Subject: RE: Eating my words

I am delighted to hear you are seriously considering putting your name in -- I will be even more delighted when you do.

[redacted]

From: Charles Daniels [mailto:CWD@FBDLAW.com]
Sent: Wednesday, September 12, 2007 12:57 AM
To: [redacted]
Subject: Eating my words

Since I couldn't talk [redacted] into applying for the Supreme Court vacancy, and for other reasons I now find sufficiently persuasive, I am now thinking seriously about submitting my own application for the Supreme Court vacancy. In the unlikely event I make it through the big hurdles that would lie ahead, I will still do the CLE. As usual. Once you get the hook in and say yes, I try not to wriggle off.

From: [redacted]
To: Charles Daniels
Subject: RE: I"m applying for the Supreme Court vacancy
Date: Thursday, September 13, 2007 4:27:03 PM

Charlie, the Court would be lucky to have you! If there is anything I can do to assist, please let me know.

From: Charles Daniels
Sent: Wed 9/12/2007 8:19 AM
To: Everyone (IN MY LAW FIRM)
Subject: I'm applying for the Supreme Court vacancy

I wanted you all to hear it here first. Given the large number of applicants, the numerical odds are that I'll still be here after the Commission and governor winnow the list down to one name.

Charles W. Daniels
Freedman Boyd Daniels Hollander Goldberg & Ives, P.A.
20 First Plaza, Suite 700
Albuquerque, NM 87102
505 842-9960 office
505 362-6514 cell
505 842-0761 fax
www.fbdlaw.com

From: Charles Daniels
To: [redacted]
Subject: Supreme Court vacancy--eating my words
Date: Wednesday, September 12, 2007 2:29:00 PM

I just wanted to correct my own inaccurate prediction on the listerve several days ago. Despite the fact that I still am not attracted by the thought of having people stand when I enter the room and call me Your Eminence, I have decided to submit my application for the current vacancy. There is a lot of good that can be done in this important job.

There are some other applicants whom I would be delighted to see named to the position, and my own candidacy is not intended to reflect otherwise. I will not run against the candidate who is ultimately selected by the Governor from the commission's recommendations. If by chance I should be the one to survive the first two major hurdles and receive the appointment, I will be coming to a community near you to work on the third major hurdle.

Subject: [redacted] The Supreme Court vacancy

List: [redacted] **Sent by:** < Randi McGinn > **Search**

Dear Listmates:

Just wanted to pass on my husband, Charles Daniels, decision to apply for the Supreme Court vacancy left by our friend and mentor, Pam Minzner. This decision came after a number of people, including some on this list, approached him about seeking the position.

His announcement on the [redacted] listserve was as follows:

From: Charles Daniels
Sent: Wednesday, September 12, 2007 2:30 PM
To: [redacted]
Subject: Supreme Court vacancy

Despite the fact that I still am not attracted by the thought of having people stand when I enter the room and call me Your Eminence, I have decided to submit my application for the current vacancy. There is a lot of good that can be done in this important job.

There are some other applicants whom I would be delighted to see named to the position, and my own candidacy is not intended to reflect otherwise. I will not run against the candidate who is ultimately selected by the Governor from the commission's recommendations. If by chance I should be the one to survive the first two major hurdles and receive the appointment, I will be coming to a community near you to work on the third major hurdle.

-Randi

MCML

From: [redacted]
Sent: Thursday, September 13, 2007 8:47 AM
To: [redacted] General Membership List
Subject: RE: [redacted] The Supreme Court vacancy

List: [redacted] Sent by: [redacted] Search

When I learned that he finally agreed to seek this position, I thought about how difficult it is to move from an advocate's role to that of a decisionmaker on the State's Highest Court, and understood better why he waited. I urged him to do so the last time around, but he felt that now-Justice Chavez was highly qualified, should get the appointment, and chose not to do so.

Now that he has practiced civil and criminal law for 38 years and taught for many of those years, no doubt including many on this listserv, with his breadth of experience here and nationally which gives him a solid perspective on New Mexico law, and his long-running and effective efforts to improve the quality of the New Mexico bench and bar for years, I think he should be a near-unanimous choice for the position. i hope most [redacted] members will agree.

[redacted]

From: [redacted]
To: Charles Daniels
Subject: Re: The reason for my call
Date: Thursday, September 13, 2007 6:55:53 PM

Charlie,

I am extremely delighted at your decision to become a candidate for the Supreme Court. I appreciate your understanding of my efforts to help [redacted] As you are aware, I did not know you were going to enter the race. I want to assure you that my family and I are committed to helping you in every manner possible. My father and I have always held both you and your wife in the highest regards and will continue to do so!

Best Regards,

[redacted]

-----Original Message-----
From: Charles Daniels <CWD@FBDLAW.com>
To: [redacted]
Sent: Thu, 13 Sep 2007 2:51 pm
Subject: The reason for my call

[redacted]

[redacted] called and told me that he had talked to you about my candidacy for the Supreme Court. I just want to assure you that I would never ask you to back down on a pledge of support you had made to anyone else, especially someone I like and admire as much as [redacted] nor that I have any intention of trying to undercut her own candidacy. I would be delighted to see the appointment of [redacted] or one of the other excellent candidates in the huge field of markedly varying quality. I told [redacted] that when I called her yesterday to tell her of my decision. In fact, there are several people who have offered to support both [redacted] and me.

Best regards,
Charlie

505 842-9960 office
505 362-6514 cell
505 842-0761 fax
www.fbdlaw.com

Exhibit E5

From: Charles Daniels
To: List
Subject: Positive words
Date: Friday, September 14, 2007 8:27:00 AM

Since this thread originally began with the notice of my application for the Supreme Court vacancy, I thought I should make sure I express that I have no intentions of trying to advance my own candidacy by saying anything negative about any other candidates, or asking anyone else to do so. Some of the candidates are people I know and respect, and I would be happy to see them on the court. I have called several of them and told them so. Others, like Judge Sanchez, are people I do not know and I would therefore honestly have nothing negative to say about them, even if I were inclined to do so, which I am not. There are a few who, in my personal opinion, would not be good for the court, but I plan to keep those opinions to myself and leave those judgments to others, in particular the persons whose job it is to compare qualifications and make the selections. I will therefore try to stay out of any discussions, on this listserve or elsewhere, of the relative strengths and weaknesses of the candidates for this important public position, although I recognize that others may have a legitimate need to share their observations and opinions. I do appreciate the kind words I personally have received from many of my colleagues.

-----Original Message-----
From: [redacted]
Sent: Friday, September 14, 2007 6:24 AM
To: List
Subject: Re: [redacted] Suffering Fools Gladly

Exhibit E6

LAW OFFICES OF
FREEDMAN BOYD DANIELS HOLLANDER & GOLDBERG P.A.
20 FIRST PLAZA, SUITE 700
ALBUQUERQUE, NEW MEXICO 87102

TELEPHONE (505) 842-9960
FACSIMILE (505) 842-0761
CELL (505) 362-6514

Charles W. Daniels

MAILING ADDRESS:
P.O. BOX 25326
ALBUQUERQUE, NM 87125-0326

September 28, 2007

Governor Bill Richardson
New Mexico State Capitol
Santa Fe, NM 87501

Dear Governor Richardson:

I am impressed by the fact that there has never been such an excellent list of highly qualified judicial candidates as you have before you as possible appointees for the vacancy on the New Mexico Supreme Court created by the passing of Justice Minzner. I am writing to express to you my unqualified support of whatever decision you make. If it is your desire that I serve on the Court, I will campaign vigorously to retain the seat and dedicate myself fully to the important work of being a Supreme Court justice. If you select one of the other candidates, as you certainly would be justified in doing, I will support that choice just as wholeheartedly.

The other fact about the nominee list that struck me, in addition to the excellence of all of the candidates, was the ethnic and gender diversity that it represented. Without any negative reflections on the other fine candidates, I was especially pleased to see two outstanding women recommended for the highest judicial position in the State. Maureen Sanders and Linda Vanzi earned that recommendation by their own records of excellence and not because of any consideration other than merit.

When Pam Minzner and I were sworn into the bar as young lawyers, the oath was administered by the five Anglo males on the New Mexico Supreme Court. There might as well have been a sign on the judges' bench saying: "No women or minorities need apply." The years since then have seen profound changes in the demographics of our bar and our judiciary that have ended the days when doors of opportunity were closed to qualified people because of their gender or ethnicity. Your own judicial appointments have been an admirable demonstration that the doors are open to all who earn the right to be considered on the basis of their true qualifications.

As always, you can count on my unqualified support in this important decision. I am confident that your choice will be both a conscientious one and in the best interests of the citizens of New Mexico.

With best personal regards,

Charles W. Daniels

Exhibit F1

KEEP
JUSTICE CHARLES
DANIELS
NEW MEXICO SUPREME COURT

201 Broadway SE
Albuquerque, NM 87102
Office: 505 459 1921
Fax: 505 242 8227
www.KeepJusticeDaniels.com

Dear friends and supporters,

I apologize for the generic letter, but judicial ethics understandably prevent me from knowing the identities of those offering contributions to my campaign.

As you may know by now, we have received such overwhelming bipartisan support all over New Mexico that no one from any political party filed as an opposing candidate for my position on the Supreme Court by the deadline of February 12. We were able to file thousands more petition signatures in support of my own unopposed declaration of candidacy than were legally required, thanks to the extraordinary efforts of so many of you.

Over the past three months, my campaign advisers and I had been discussing how to fund the traditional political campaign that current law requires us to wage, with some advocating for the new option of limited public funding and others advocating for traditional funding, to be able to meet the potential challenge of an organized opposition funded by the kinds of out-of-state groups that could make a competitive race very expensive for all concerned. Although I understand why other candidates might in good faith exercise either of those options, I was concerned by both funding methods with respect to my candidacy.

The traditional supporter-financed campaigns raise questions in the minds of the public as to whether a judge might be improperly influenced on the bench by receipt of those donations. While I know that neither I nor my judicial colleagues would allow any such influences to occur, even an unfounded suspicion can cause a lack of confidence in the fairness and integrity of the judicial system that I now serve. For similar reasons, I had instructed the Clerk's office the day I began service on the Court that I am always to be automatically recused from all cases involving the law firms my wife and I had founded.

I also was personally uncomfortable with accepting taxpayers' money to fund my campaign through the public financing option, not because I am against that progressive concept in the abstract, but because in my own case I realized that we could afford to finance the campaign ourselves without using tax monies from citizens whose average income is less than my own salary, without accepting contributions from anyone who might ever in the future appear before me as either a lawyer or party.

As a result, I advised my campaign committee some weeks ago that I wanted to stop any further fundraising from anyone outside my family and the law firms we had founded, and to return any other contributions that already had been sent in to the campaign. The members of the committee persuaded me that it would be more prudent not to announce my intentions until after the declaration deadline for opposing candidates. That day has now passed, and I have asked my campaign staff to send this letter to all those who have offered or may offer in the future to contribute. To all who have sent in contributions, your money is being returned with this letter, with my sincere gratitude for your confidence and support. I will do all in my power to live up to that confidence.

With my best regards,

Charles W. Daniels