

**FAXED ORIGINAL**

**IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

No. 31,920

IN THE MATTER OF JOSEPH GUILLORY,  
Magistrate Court Judge, Doña Ana County, New Mexico

INQUIRY CONCERNING A JUDGE  
Nos. 2008-094

SUPREME COURT OF NEW MEXICO  
**FILED**

DEC 18 2009

*unsealed by Court order 1-6-10*

*William J. Brant*

**FILED UNDER SEAL**

**SECOND PETITION FOR DISCIPLINE UPON STIPULATION**

JUDICIAL STANDARDS COMMISSION  
Post Office Box 27248  
Albuquerque, New Mexico 87125-7248  
TEL (505) 222-9353  
FAX (505) 222-9358

RANDALL D. ROYBAL  
*Executive Director*

ELIZABETH A. GARCIA  
*Trial Counsel*

*Counsel for the Judicial Standards Commission,  
Petitioner*

JOHN M. BRANT  
Law Office of Jack Brant PC  
202 Tulane Drive SE  
Albuquerque, New Mexico 87106-1414  
TEL (505) 232-5300  
FAX (505) 232-5335

*Counsel for Hon. Joseph Guillory,  
Respondent*

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OF THE STATE OF NEW MEXICO

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SECOND PETITION FOR DISCIPLINE UPON STIPULATION

1. Petitioner Judicial Standards Commission ("hereinafter Commission"), upon a majority vote of its members and pursuant to a stipulation between the parties, hereby files this *Second Petition for Discipline Upon Stipulation* under seal pursuant to Rule 27-104(B) NMRA. This matter was remanded by the Court to the Commission for further proceedings, further development of the record, and a discussion of comparative disciplinary cases. (See Exhibit A to the *Stipulation Agreement and Consent to Discipline* for a list of cases where a period of suspension has been imposed.) If the Court requires briefing on the recommended suspension in this case, the Commission and the Respondent respectfully request a briefing schedule.

2. The Commission and Respondent stipulate to the following discipline in this matter:

A. SIXTY-DAY UNPAID SUSPENSION. Respondent shall be suspended from his judicial office for sixty (60) days without pay. This suspension shall commence on the first day of the next full pay period following the Supreme Court's approval of this stipulation agreement.

- B. **FORMAL REPRIMAND.** Respondent shall receive a written formal reprimand from the Supreme Court, to be published in the *Bar Bulletin*.
- C. **TWELVE-MONTH SUPERVISED PROBATION AND FORMAL MENTORSHIP IN JUDICIAL Demeanor, TEMPERAMENT, SENTENCING RESPONSIBILITIES, CONTEMPT CASES, AND RESPONSIBILITIES UNDER THE CODE OF JUDICIAL CONDUCT.** Respondent shall complete a twelve-month supervised probation and formal mentorship following the suspension period outlined above. The mentorship shall cover all substantive and procedural issues addressed in the *Stipulation Agreement and Consent to Discipline*, filed December 7, 2009, including but not limited to, Respondent's obligations and responsibilities under the Code of Judicial Conduct and remedial training concerning proper judicial demeanor, temperament, appearance of impropriety, *ex parte* communications, proper performance of judicial duties, arraignments, sentencing, forms, disqualification, contempt cases and conflict of interest. The Commission will recommend the probation supervisor/mentor for the Supreme Court's approval and appointment. The probation supervisor/mentor shall report on the progress and outcome of the mentorship to the Supreme Court and the Commission. Respondent has requested that a District Judge be named as his probation supervisor and mentor.
- D. Respondent shall abide by all terms of the *Stipulation Agreement and Consent to Discipline*.
- E. Respondent and the Commission shall bear their own costs and expenses in this matter.

3. Jurisdiction is invoked pursuant to the Petitioner's power to recommend judicial discipline and the Supreme Court's power to discipline judges under N.M. Const. art. VI, § 32, as amended, and the Court's power of superintending control under N.M. Const. art. VI, § 3.

4. The factual record and the grounds for disciplining the Respondent are set forth completely in the *Stipulation Agreement and Consent to Discipline*, attached hereto as **Exhibit 1** and

incorporated by reference herein. Following is a brief and plain statement of the allegations to which Respondent has admitted:

- A. On or about January 22, 2008, Respondent referred several times to Presiding Judge Oscar Fietze in a condescending manner and voiced his discontentment with the Presiding Judge to the Magistrate Court staff, all within hearing of the public.
- B. Respondent abused the contempt power in *State v. Barela*, M-14-DR-2007-01187 and *State v. Amanti*, M-14-MR-2008-01069 by denying fair treatment to the defendants and holding the defendants in contempt without proper justification. Respondent's behavior in the *Barela* and *Amanti* cases demonstrated a lack of proper judicial temperament and abuse of his judicial authority.

On April 15, 2008, during a motion hearing in *State v. Barela*, Respondent improperly raised his voice at Mr. Barela, banged his fists on the bench, argued with the defendant, and then found him in direct contempt of court. When the defendant tried to explain the situation from his perspective, Respondent would not let him, told him to "sit down and shut up," and said that he did not want to hear from him. When the defendant again tried to explain his situation, Respondent slammed his fist on the bench and shouted, "I am giving you 30 days now. I am giving you 60 days now. I am giving you 90 days in jail. Do you want me to go on?" Respondent failed to maintain appropriate decorum in this proceeding and to be patient, dignified, and courteous to the defendant. Mr. Barela ultimately spent two days in jail as a result of Respondent having the bench warrant executed.

In *State v. Amanti*, Respondent hastily entered a Commitment Order, which ordered the defendant to report to the Doña Ana County Detention Center at 5:00 p.m. on March 31, 2008, to serve five consecutive days for direct contempt of court. Later that same day, Respondent signed a Release Order, without explanation on the Order, releasing Mr. Amanti on his own recognizance. Mr. Amanti spent a little over an hour in jail under the commitment order for direct contempt.

- C. Respondent's admitted conduct set forth in paragraphs A and B violates Canons 21-100 NMRA 1995; 21-200(A) NMRA 1995; and 21-300(B)(3) and (B)(4) NMRA 2004 of the Code of Judicial Conduct.

- D. Respondent persistently failed, refused, or was unable to perform his judicial duties, including a refusal to arraign certain defendants, in the cases of *State v. Salcido*, M-14-MR-2008-01255; *State v. Ornelas*, M-14-MR-2008-01011; *State v. Richards*, M-14-MR-2006-00570; and *State v. Solis*, M-14-TR-2001-02221. Respondent failed to sentence individuals properly in the cases of *State v. Pedraza*, M-14-MR-2008-00771; *State v. Baca*, M-14-MR-2008-00752; *State v. Chambers*, M-14-MR-2007-02441; *State v. Amanti*, M-14-MR-2007-0229 and *State v. Delgado*, M-14-MR-200802063 and M-14-MR-200800423. Respondent's Judgment and Sentence notes were undecipherable and the clerks could not understand the intent of the court. See *State v. Montoya*, M-14-MR-200700595, and *State v. Borunda*, M-14-MR-200800429. Respondent also failed to complete arraignment forms correctly. See *State vs. Lucero*, M-14-DR-200800471; *State v. Montoya*, M-14-VR-200700595; *State vs. Borunda*, M-14-MR-200800429; *State v. Sanchez*, M-14-MR-200801555; *State vs. Meza*, M-14-MR-200701743; and *State v. Madrid*, M-14-MR-200801687.
- E. Respondent's admitted conduct set forth in paragraph D violates Canons 21-100 NMRA 1995; 21-200(A) NMRA 1995; 21-300(A), (B)(1), (B)(2), (B)(8), and (C)(1) NMRA 2004; and 21-400(A)(1) NMRA 2004 of the New Mexico Code of Judicial Conduct.
- F. Respondent engaged in *ex parte* communications with litigants. During Respondent's smoking breaks, Respondent spoke and visited with litigants, officers, and bail bondsman, and discussed specific cases outside and in front of the courthouse. The cases involved included *State v. Mendoza*, M-14-TR-2005-01311; *State v. Granger*, M-14-TR-2008-05052; *State v. McNutt*, M-14-TR-2007-10879; *State v. Castillo*, M-14-TR-2007-10762; *State v. Delgado*, M-14-VR-2007-00434; and *State v. Perez*, M-14-DR-2007-00931 and M-14-TR-2007-08539.
- G. Respondent's admitted conduct set forth in paragraph F violates Canons 21-100 NMRA 1995; 21-200(A) NMRA 1995; 21-300(B)(7) and (B)(8) NMRA 2004; and 21-500(A)(1), (A)(2), (A)(3), and (A)(4) NMRA 1995 of the New Mexico Code of Judicial Conduct.
- H. Respondent regularly took short naps at his desk during the noon hour, within view of court staff and the public, which gave an appearance of impropriety. On one occasion, Respondent also fell asleep on the bench while three defendants were waiting for paperwork from his clerk.

- I. Respondent's admitted conduct set forth in paragraph H violates Canons 21-100 NMRA 1995; 21-200(A) NMRA 1995; 21-300(A), (B)(3), (B)(7), (B)(8), and (C)(1) NMRA 2004; and 21-500(A)(2), (A)(3), (A)(4) and (H) NMRA 2004 of the Code of Judicial Conduct.
- J. On September 11, 2008, during a jury trial in *State v. Castillo*, M-14-DR-2008-00454, a DWI case, Respondent assisted the officer in presenting his case at the dry erase board. At one point, while the jury was outside the courtroom, but while the jurors were in sight and earshot, Respondent told the court manager, "This guy in here blew a .3."
- K. Respondent's admitted conduct set forth in paragraph J violates Canons 21-100 NMRA 1995; 21-200(A) and (B) NMRA 1995; 21-300(B)(2), (B)(7), (B)(8), and (B)(10) NMRA 2004 of the Code of Judicial Conduct.

5. The parties reached this recommendation after consideration of a variety of factors.

The judicial misconduct involved is serious. Respondent's misconduct was repetitive regarding demeanor issues and *ex parte* communications. There were several mitigating factors that the Commission took into consideration, which are fully described in paragraph H of the *Stipulation Agreement and Consent to Discipline (Exhibit 1)*. These factors include, but are not limited to: (1) During the time that the foregoing conduct occurred, Respondent was under emotional stress as a result of serious health problems being experienced by his spouse, which may have contributed to Respondent's conduct giving rise to these charges. However, emotional stress does not justify or excuse Respondent's misconduct; (2) Respondent does not have any history of discipline before the Judicial Standards Commission during his service as a judge; (3) Court administration has reported that Respondent's demeanor with the clerks and other Judges has improved immensely; (4) Respondent has made a diligent effort to correct any inappropriate behavior; and (5) Respondent

has expressed that he has accepted responsibility for his actions, that he has a desire to correct any past problems, and that he would endeavor to abide by the Code of Judicial Conduct in the future.

6. Respondent has agreed that his admitted conduct as set forth above constitutes willful misconduct in office and/or persistent failure or inability to perform a judge's duties, and provides sufficient basis for the New Mexico Supreme Court to impose the stipulated discipline.

7. Petitioner also respectfully requests that upon this Petition being granted, the Court unseal the file in this matter pursuant to 27-104(B) NMRA (2009).

WHEREFORE, Petitioner Judicial Standards Commission respectfully requests that the Supreme Court accept its disciplinary recommendation, order discipline for the Respondent as set forth above, and unseal this matter.

Respectfully submitted,

JUDICIAL STANDARDS COMMISSION



RANDALL D. ROYBAL  
*Executive Director*

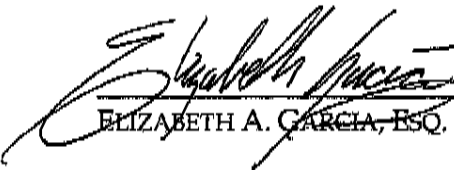
ELIZABETH A. GARCIA  
*Trial Counsel*

Post Office Box 27248  
Albuquerque, NM 87125-7248

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was faxed and mailed via first class mail on this 18<sup>th</sup> day of December, 2009, to the following:

*John M. Brant, Esq.  
Law Office of Jack Brant, PC  
202 Tulane Drive SE  
Albuquerque, New Mexico 87106-1414*

  
ELIZABETH A. GARCIA, ESQ.



**FILED**

DEC 07 2009

NM JUDICIAL  
STANDARDS COMMISSION**BEFORE THE JUDICIAL STANDARDS COMMISSION  
STATE OF NEW MEXICO**

INQUIRY CONCERNING A JUDGE

Inquiry No. 2008-094

**STIPULATION AGREEMENT AND CONSENT TO DISCIPLINE**

THIS MATTER is currently pending before the Judicial Standards Commission pursuant to the *Notice of Formal Proceedings* issued on January 6, 2009. Respondent filed a Response to the *Notice of Formal Proceedings* on January 15, 2009.

This *Stipulation Agreement and Consent to Discipline* is entered into by and between the Judicial Standards Commission and the Hon. Joseph Guillory ("Respondent"). The parties hereby enter into the following *Stipulation Agreement and Consent to Discipline*.

**BACKGROUND:** Respondent served in the San Francisco, California, police reserve and then for a number of years as a Deputy Sheriff with the San Mateo County, California, Sheriff's Department. He moved to New Mexico in 1982, served as a Police Officer with the Socorro Police Department, and graduated from the New Mexico Police Academy. He then became an Enforcement Officer with the Transportation Division of the New Mexico Public Regulation Commission. He retired from law enforcement in 1992, and for the next 14 years, ran his own company, Paradise Tours, providing bus services for New Mexico State University and other entities. He was appointed to the bench by Governor Richardson in 2006, and ran for election and won election to a four-year term on the bench in November 2006.

**RESPONDENT'S TRAINING & MEETING WITH THE MAGISTRATE ADVISORY COMMITTEE:** In December of 2006, Respondent attended the annual magistrate conference and the new magistrate judges orientation provided by the Judicial Education Center. The annual training for magistrate judges includes civil and criminal law and procedure, ethics, case management,

**EXHIBIT**

court security, and administrative and management issues. In 2007, Respondent attended the annual Magistrate Conference and the New Magistrate Phase II Training. In 2009, Respondent attended the annual Magistrate Conference and the DWI Regional Seminar.

Respondent met with the Magistrate Advisory Committee ("Committee") on Tuesday, March 11, 2008. The Committee met with Judge Guillory to discuss concerns regarding Respondent's judicial temperament, communications with the presiding judge, and the appearance of impropriety when a judge smokes outside the office with defendants who will be appearing in court. First, the Committee discussed allegations from court staff that Respondent was unprofessional in dealing with them. The Committee discussed the possibility that Respondent's health may have played a factor in his demeanor. The Committee encouraged Respondent to address his health issues and that unprofessional behavior was unacceptable regardless of the cause. Second, the Committee discussed the importance of communicating with the Presiding Judge concerning scheduling. Respondent indicated that he did have a personality conflict with the Presiding Judge but that he would try to work with him in the future. Third, the Committee stressed the need for Respondent to go above and beyond in avoiding any appearance of impropriety whether it be smoking at the court or meeting defendants on the street. The Committee emphasized that of all the difficulties a judge can have, this one is the most damaging to the judge and to the Court. During the course of the meeting, Respondent became slightly confrontational and defensive at times. The Committee reiterated its objective was to point out areas of concern and help him avoid problems in the future. Respondent left the meeting on good terms and indicated he would work on his demeanor with court staff and the Presiding Judge.

1. Respondent admits the following facts:

A. COUNT I: DEMEANOR - INTEMPERATE LANGUAGE ABOUT THE PRESIDING JUDGE.

The Court Manager had circulated a court-wide e-mail which stated that derogatory language would not be tolerated by any court staff member, including judges. After receiving the email, Respondent advised the Court Manager that Respondent could say what he wanted. Afterwards, on or about January 22, 2008, Respondent referred to the Presiding Judge Oscar Fietze condescendingly several times and voiced his discontentment with the Presiding Judge to the magistrate court staff where members of the public could hear. Bernice Ramos, the Court Manager, told Respondent that court personnel do not use disparaging language in the Clerk's office.

Later on January 22, 2008, Respondent spoke in a very loud voice telling the Court Manager that he was "sick and tired of the new court calendar." Respondent told the Court Manager that Respondent "answered to no one," referring condescendingly to the Presiding Magistrate Judge and to the Clerk's office. Respondent told the Court Manager that he was going to take off whenever he wished and that he was not going to ask for any time off. Respondent told the Court Manager that he was going to tell her when he was taking off so she could calendar it. At that point, the Court Manager told Respondent that while she appreciated him sharing that information with her, she would not clear Respondent's calendar until Presiding Magistrate Judge Fietze gave his approval.

**B. COUNT I: ABUSE OF CONTEMPT POWER AND IMPROPER Demeanor.**

*State v. Donald Barela, M-14-DR-2007-01187:* On February 26, 2008, Defendant Donald Barela failed to show up for a pre-trial conference in *State v. Donald Barela, M-14-DR-2007-01187*. On March 3, 2008, a bench warrant was issued for the defendant's arrest for failure to appear at the pre-trial conference. On March 31, 2008, the Public Defender filed a *Motion to Quash the Bench Warrant* stating that Defendant Barela had submitted a change of address on January 9, 2008, and arguing that Mr. Barela did not receive the notice for the pre-trial conference and that the failure to appear was not intentional. A hearing on the *Motion to Quash Bench Warrant* was set for April 15, 2008.

On April 15, 2008, during the hearing on the *Motion to Quash Bench Warrant*, Respondent improperly raised his voice at Mr. Barela, banged his fists on the bench, argued with Defendant Barela and then found him in direct contempt of court. During the hearing, Respondent asked Mr. Barela why he did not appear for his pre-trial conference, and he indicated to Respondent that he did not receive his notice. Respondent told Defendant Barela, "I am sick and tired of the defendants lying to me. What, are you trying to play games with me?" When Defendant Barela tried to explain the situation, Respondent would not let him, told him to "sit down and shut up," and said that he did not want to hear from him. When Defendant Barela again tried to explain his situation, Respondent slammed his fist on the bench and shouted, "I am giving you 30 days now; I am giving you 60 days now; I am giving you 90 days in jail, do you want me to go on?" Respondent denied the *Motion to Quash Bench Warrant* and had Defendant Barela served with the bench warrant, and asked the officers to handcuff Defendant Barela and to take him away. Respondent failed to maintain appropriate decorum in this proceeding and to be

patient, dignified, and courteous to Defendant Barela. Defendant Barela ultimately spent two days in jail as a result of Respondent having the bench warrant executed.

On the following day, April 16, 2008, Respondent filed a criminal complaint against Defendant Barela for direct contempt of Magistrate Court. The contempt case, styled *State v. Donald Barela*, M-14-MR-200801067, was ultimately dismissed with prejudice by Judge Warren Walton on November 3, 2008, after Mr. Barela submitted a letter of apology to Respondent.

On April 17, 2008, the Public Defender filed a *Motion to Reduce Bond* from the \$2,500 cash bond set by Respondent in the original case, *State v. Barela*, M-14-DR-2007-01187. Respondent subsequently recused himself from that case on the same day. Judge Olivia Garcia, who was assigned the case, set the bond at \$2,000 surety. On June 13, 2008, the District Attorney's Office filed a *Notice of Dismissal* and re-filed the matter in District Court.

*State v. Tito Amanti*, M-14-MR-2008-01069: On March 31, 2008, a pre-trial conference was held in this case. That same day, Respondent entered a *Commitment Order*, which ordered Defendant Amanti to report to the Doña Ana County Detention Center at 5:00 p.m. on March 31, 2008, to serve five consecutive days for direct contempt of court. The fax confirmation sheet indicates that this order was faxed at 3:36 p.m. Respondent later signed a *Release Order*, releasing Defendant Amanti on his own recognizance at 4:54 p.m. on March 31, 2009. Defendant Amanti spent a little over an hour in jail under the commitment order for direct contempt.

On April 21, 2008, Respondent filed a criminal complaint against Defendant Amanti and attached a document titled "Direct Contempt." That same day, Respondent arraigned Defendant Amanti and set the bond at "0" and released Defendant Amanti on his own recognizance.

That same day, Respondent sentenced Defendant Amanti in the underlying case to 15 days in jail, with two days suspended and a \$100 fine, and 60 days unsupervised probation. Respondent's Judgment and Sentence ("J and S") notes contained so many errors that the clerk had to bring the errors and inconsistencies to Respondent's attention. On April 24, 2008, the Public Defender filed a *Motion to Review Sentencing*, indicating that the Court had sentenced the Defendant to jail time, despite the fact that the State did not request jail time and that Defendant had spent 16 days in jail after the original arrest. In May 5, 2008, Respondent conducted a Sentencing Review and entered an Amended Judgment and Sentence, sentencing Defendant Amanti to 15 days in jail, with 15 days suspended, a \$100 fine and 15 days of unsupervised probation. On July 10, 2008, Defendant Amanti was discharged from probation.

The contempt case, *State v. Tito Amanti*, M-14-MR-200801069, was assigned to Judge Olivia Garcia on April 23, 2008. On June 19, 2008, Judge Garcia accepted a Plea and Disposition Agreement in the contempt case wherein Mr. Amanti was represented by counsel. Judge Olivia Garcia deferred Mr. Amanti's sentence for 90 days and ordered Mr. Amanti to pay \$67.00 in courts costs and fines. On December 13, 2008, a final order on the criminal complaint was entered.

- i. Respondent's admitted conduct set forth in paragraphs A and B violates Canons 21-100 NMRA 1995; 21-200(A) NMRA 1995; and 21-300(B)(3) and (B)(4) NMRA 2004 of the Code of Judicial Conduct.

C. COUNT II: FAILURE OR INABILITY TO PERFORM JUDICIAL DUTIES.

Respondent persistently failed, refused, or was unable to perform his judicial duties, including refusing to arraign certain defendants; holding defendants in contempt in at least two instances, and then refusing to recuse himself from adjudicating the contempt charges; not properly sentencing individuals; and lastly, not completing arraignment forms correctly. Such conduct is delineated below.

Refusing to arraign defendants.

*State v. Ivan Salcido, M-14-MR-2008-01255:* Defendant Salcido arrived on the afternoon of May 19, 2008. The clerk advised Defendant Salcido that arraignments were held in the morning. Defendant Salcido arrived early in the morning on May 20, 2008. The file reflected that a bench warrant had been prepared on May 19, 2008, but had not been signed by Judge Wingenroth. Respondent refused to arraign the Defendant while he was at the courthouse on May 20, 2008, and then signed off on the Bench Warrant and mistakenly dated the warrant June 20, 2008.

*State v. Gabriel O. Ornelas, M-14-MR-2008-01011:* Defendant Ornelas was ordered to appear on a criminal summons on April 21, 2008, at 2:00 p.m. Defendant Ornelas missed his hearing and came in the next day. Defendant Ornelas arrived at 8:30 a.m. and stood in line on April 22, 2008, and when he reached the window at 11:30 a.m., he was told you were unavailable for walk-ins and would need to return the next day. Respondent refused to arraign Defendant Ornelas while he was at the courthouse on April 22, 2008, and instead ordered a bench warrant for the Defendant's "failure to appear." The docket sheet reflects that Judge Frieze conducted an arraignment and took a plea in the case on April 23, 2008.

*State v. Jeffery Richards, M-14-MR-2006-00570:* Defendant Richards arrived from Florida and had an outstanding bench warrant for failure to appear for arraignment. Respondent and Judge Silva were the two Judges assigned to hold arraignments that morning. Respondent refused to arraign Defendant Richards and wanted him booked and stated this was an old case. Judge Frieze was doing administrative work in his office and came out of his office and into the courtroom to arraign the defendant because Respondent refused to do so.

*State v. Lorenzo Solis, M-14-TR-2001-02221:* Defendant Solis arrived for arraignment and had a pending bench warrant for failure to appear. Defendant Solis was sent to Respondent to be arraigned. The Defendant advised Respondent that he lived in Utah and in Mexico and stated he would like the case adjudicated and

would take care of the pending bench warrant fee. Respondent did not want to arraign him and wanted the defendant served with the bench warrant and arrested.

**Unable to properly sentence individuals.**

***State v. Harold Pedraza, M-14-MR-2008-00771:*** Respondent convicted Defendant Pedraza of driving on a suspended license, despite the fact that the defendant provided a certified clearance from MVD which indicated there was no suspension at time of citation. This conviction resulted in the Defendant getting a revocation of his driver's license for one year.

***State v. Gilbert Baca, M-14-MR-2008-00752:*** Respondent convicted Defendant Baca of driving on a suspended license. Respondent then sentenced the Defendant to DWI school, alcohol screening, and 24 hours of community service. The clerk had to advise Respondent that DWI school and alcohol screening and the mandatory 24 hours community service only applied to a DWI conviction.

***State v. Marcus G. Chambers, M-14-MR-2007-02441:*** Respondent convicted Defendant Chambers of driving on a suspended license, despite the fact that the Defendant provided proof of a clearance from MVD, and sentenced him to 364 days probation. This conviction resulted in the Defendant getting a revocation of his driver's license for one year.

***State v. Tito Amanti, M-14-MR-2007-02991:*** The details of Defendant Amanti's case were discussed in Section B, *supra*. Those facts pertain to this count as well.

***State v. Ricardo A. Delgado, M-14-MR-2008-02063 and M-14-MR-2008-00423:*** Respondent was not familiar with § 66-5-39 and mandatory minimum sentences. Respondent's clerk advised him of mandatory minimum sentences for § 66-5-39 on Monday, July 21, 2008. On Friday, July 25, 2008, Respondent sentenced Mr. Delgado incorrectly and then stated he had never been informed of mandatory minimum sentences.

**Clerks have to advise of incorrect sentences.**

***State v. Ricardo Montoya, M-14-MR-2007-00595:*** Respondent's J and S Notes were indecipherable, and the clerks could not understand the intent of the Court.

***State v. Gabby Borunda, M-14-MR-2008-00429:*** Respondent's J and S Notes were indecipherable and the clerks could not understand the intent of the Court.



**Incomplete arraignment forms.**

During arraignment proceedings, a defendant is advised of his/her rights, and the arraignment form serves as the record of what the Court has done. Approximately 75-80% of Respondent's files have arraignment sheets which are left blank and only contain Respondent's signature and the bond amount, leaving the record unclear as to whether the Defendant was actually advised of his/her rights. For examples of incomplete arraignment forms, see *State v. Roberto J. Lucero*, M-14-DR-2008-00471; *State v. Ricardo Montoya*, M-14-VR-2007-00595; *State v. Gabby Borunda*, M-14-MR-2008-00429; *State v. Raul Sanchez*, M-14-MR-2008-01555; *State v. David Meza*, M-14-MR-2007-01743; and *State v. Jamie Madrid*, M-14-MR-2008-01687.

- i. Respondent's admitted conduct set forth in paragraph C violates Canons 21-100 NMRA 1995; 21-200(A) NMRA 1995; 21-300(A), (B)(1), (B)(2), (B)(8), and (C)(1) NMRA 2004; and 21-400(A)(1) NMRA 2004 of the New Mexico Code of Judicial Conduct.

**D. COUNT III: EX PARTE COMMUNICATIONS**

Respondent regularly engaged in *ex parte* communications with litigants. Respondent had repeated conversations with parties in cases, including during Respondent's smoking breaks, where Respondent spoke and visited with litigants, officers, and bail bondsmen and discussed specific cases outside and in front of the courthouse. Such improper conduct is delineated below.

*State v. Crystal Mendoza*, M-14-TR-2005-01311: Respondent sentenced the juvenile defendant to community service and fines and fees. On Ms. Mendoza's 18th

birthday, Respondent had an *ex parte* conversation with Robert Hernandez, a purported bail bondsman, and Respondent converted the juvenile bench warrant to an adult bench warrant. The protocol in the Las Cruces Magistrate Court is that once a juvenile matter goes into a juvenile bench warrant the matter stays pending as a juvenile bench warrant until the matter is brought before the judge, either by service of the juvenile bench warrant on the defendant or by motion of a party.

*State v. Tabatha Granger, M-14-TR-2008-05052*: Ms. Granger (defendant) appeared at the clerk's window sometime during the week of June 16-20, 2008. At that time, the Defendant advised the clerk that she wanted to see Respondent. The window clerk advised that Respondent was not scheduled to hear traffic matters or arraignments on that particular day/time. The Defendant then asked what days/times Respondent heard traffic matters/arraignments and was given the judges' schedule. The Defendant returned on June 20, 2008, and once again specifically requested Respondent. As the magistrate judges are on rotation, Respondent was not the assigned arraignment judge. When the clerk informed the defendant that Respondent was not the arraignment judge, she became upset with the window clerk, and advised the clerk that she had just spoken with Respondent on the phone and Respondent had advised her to instruct the clerks to send her in to see him. The Defendant then asked to speak with a supervisor. The court manager went to the window and the Defendant proceeded to tell her that she had spoken with Respondent by phone and that Respondent had instructed her to specifically request him and he would take care of the matter.

*State v. Krystal McNutt, M-14-TR-2007-10879*: This matter was assigned to Judge Olivia Garcia. The week of February 18, 2008, Respondent brought the Court Manager a manila envelope with a letter from Defendant Krystal McNutt. Respondent advised the Court Manager that he or his wife had a doctor's appointment, and this defendant worked in that doctor's office and gave Respondent the file to send to the Court Manager. The Court Manager then spoke with the Defendant on the phone who told the Court Manager that Respondent told her that he could help her out on her case.

*State v. Francisco Castillo, M-14-TR-2007-10762*: On April 21, 2007, Defendant Castillo had an active bench warrant for failure to appear at arraignment. Respondent had misdemeanor cases scheduled in the morning and afternoon. Defendant Castillo appeared at the window and stated that he had just spoken with Respondent, and Respondent advised him to have the clerk pull the file and it would be seen by him.

*State v. Luis Delgado, M-14-VR-2007-0043*: The Defendant failed to appear on a *Motion to Quash Bench Warrant*. Respondent proceeded to sentence Defendant Delgado despite the fact that the Defendant was absent, and then directed the clerk to continue the bench warrant. Supervisor Leticia Padilla advised Respondent of the

error and advised the clerk that the J and S notes would need to be voided because a sentencing could not take place without the defendant being present.

*State v. Fabian J. Perez, M-14-DR-2007-00931 and M-14-TR-2007-08539*: DR-2007-00931 came before the court on February 28, 2008, for a pre-trial conference. At that hearing, Deputy Ernest Najera testified as to the citations he issued in DR-2007-00931 and the Criminal Complaint that had been issued on September 10, 2007. Despite the conference being about DR-2007-00931, Respondent brought up M-14-TR-2007-08539. M-14-TR-2007-08539 was not before the court and the issuing officer, Deputy Ordonez, was not present to testify regarding M-14-TR-2007-08539. Respondent discussed M-14-TR-2007-08539 with the Defense Attorney present for DR-2007-00931, Steven Almanza, and Deputy Najera and entered a *Notice of Dismissal of Complaint* for M-14-TR-2007-08539. The Court Manager advised Respondent that the *Order of Dismissal* was improvidently entered and that Respondent would now need to recuse himself as he had participated in an *ex parte* communication in the traffic matter, M-14-TR-2007-08539.

- i. Respondent's admitted conduct set forth in paragraph D violates Canons 21-100 NMRA 1995; 21-200(A) NMRA 1995; 21-300(B)(7) and (B)(8) NMRA 2004; and 21-500(A)(1), (A)(2), (A)(3), and (A)(4) NMRA 1995 of the New Mexico Code of Judicial Conduct.

**E. COUNT IV: CREATING AN APPEARANCE OF IMPROPRIETY.**

Respondent regularly took short naps at his desk during the noon hour, within view of court staff and the public, which gave an appearance of impropriety. On one occasion, Respondent also fell asleep on the bench while three defendants were waiting for paperwork from his clerk. In an effort to wake Respondent up, Respondent's clerk whispered loudly to him, "Judge," which ultimately woke him up.

- i. Respondent's admitted conduct set forth in paragraph E violates Canons 21-100 NMRA 1995; 21-200(A) NMRA 1995; 21-300(A), (B)(3),

(B)(7), (B)(8), and (C)(1) NMRA 2004; and 21-500(A)(2), (A)(3), (A)(4) and (H) NMRA 2004 of the Code of Judicial Conduct.

**F. COUNT V: INVOLVEMENT IN STATE V. JOSE CASTILLO, DR-2008-00454**

On September 11, 2008, during a jury trial in *State v. Jose Castillo*, DR-2008-00454, a DWI case, Respondent felt that the police officer was having a difficult time presenting his case, so Respondent stepped off the bench and assisted the officer in presenting his case at the dry erase board. At one point, while the jury was outside the courtroom, and while the jurors were in sight and earshot, Respondent told the court manager, "This guy in here blew a .3." The Defendant was later found guilty on all charges.

- i. Respondent's admitted conduct set forth in paragraph F violates Canons 21-100 NMRA 1995; 21-200(A) and (B) NMRA 1995; 21-300(B)(2), (B)(7), (B)(8), and (B)(10) NMRA 2004 of the Code of Judicial Conduct.

G. Respondent agrees that his admitted conduct as set forth in paragraphs 1(A) through 1(F) constitutes willful misconduct in office and/or persistent failure or inability to perform a judge's duties and provides sufficient basis for the New Mexico Supreme Court to impose discipline against Respondent pursuant to article VI, § 32 of the New Mexico Constitution.

2. Respondent will accept the following formal discipline from the Supreme Court:
  - a. **Sixty Day Unpaid Suspension.** Respondent shall be suspended from his judicial office for 60 days without pay. This suspension shall commence

on the first day of the next full pay period following the Supreme Court's approval of this stipulation agreement.

Attached as Exhibit A to the *Stipulation Agreement and Consent to Discipline* is a list of suspension cases where counsel has highlighted similar cases where a period of suspension has been imposed. If this Honorable Court still requires briefing on the recommended suspension, counsel for the Commission and the Respondent respectfully request a briefing schedule from the Court to address discipline in similar cases.

- b. **Formal Reprimand.** Respondent agrees to accept a formal reprimand from the Supreme Court concerning the conduct admitted in this *Stipulation Agreement and Consent to Discipline*. Formal reprimands are published in the *Bar Bulletin*.
- c. **Twelve-Month Supervised Probation and Formal Mentorship in Judicial Demeanor, Temperament, Sentencing Responsibilities, Contempt Cases, and Responsibilities under the Code of Judicial Conduct.** Respondent agrees to participate in a twelve-month supervised probation and formal mentorship following the suspension period outlined above concerning all substantive and procedural issues addressed in this stipulation agreement, including but not limited to, his obligations and responsibilities under the Code of Judicial Conduct and remedial training concerning proper judicial demeanor, temperament, appearance of impropriety, *ex parte* communications, proper performance of judicial duties, arraignments, sentencing, forms, disqualification, contempt cases and conflict of interest. The Judicial Standards Commission will recommend the probation supervisor/mentor for the Supreme Court's approval and appointment. The probation supervisor/mentor shall report on the progress and outcome of the mentorship to the Supreme Court and the Commission. Respondent has requested that if a judge is selected as mentor, that a District Judge be named.

If the Respondent is alleged to have violated the terms of his supervised probation, Respondent would be afforded a hearing before the Commission as to whether Respondent violated the terms of his supervised probation. If the Commission finds that Respondent violated the terms of his supervised probation and/or the Commission initiates formal proceedings against Respondent in any new matter, the Commission may petition the Supreme Court to revoke probation and temporarily suspend Respondent without pay until new proceedings terminate.

d. Respondent agrees to abide by all terms of this *Stipulation Agreement and Consent to Discipline*.

3. Respondent and the Judicial Standards Commission will bear their own costs and expenses in this matter.

H. The parties reached this recommendation after consideration of a variety of factors. The judicial misconduct involved is serious. Respondent's misconduct was repetitive regarding demeanor issues and *ex parte* communications.

In mitigation, the conduct of Respondent giving rise to these charges occurred during a particularly difficult period for Respondent personally. During the time that the foregoing conduct occurred, Respondent was under emotional stress as a result of serious health problems being experienced by his spouse, which may have contributed to Respondent's conduct giving rise to these charges. However, emotional stress does not justify or excuse Respondent's misconduct.

Respondent does not have any history of discipline during his service as a judge. Since the filing of the complaint, there have been no known incidents where defendants arrived at the clerk window and stated they had spoken with Judge Guillory regarding a particular case. The Doña Ana County Magistrate Court has moved into a new facility in which the staff enters and exits the courthouse through a private entrance/exit and judges use a secured hallway to enter the courtroom. Court administration has reported that Judge Guillory's demeanor with the clerks and other judges has improved immensely.

Since Judge Guillory has become aware of his misconduct, he has made a diligent effort to correct any inappropriate behavior. Finally, Judge Guillory has expressed that he has accepted responsibility for his actions, that he has a desire to correct any past problems, and

that he would endeavor to abide by the Code of Judicial Conduct in the future. Balancing these issues, the Commission has concluded that a sixty day suspension, a year long period of a supervised probation along with remedial training, and a formal reprimand is the appropriate discipline in light of the misconduct involved in this matter.

3. Upon successful completion of the terms of this *Stipulation Agreement and Consent to Discipline* and the anticipated disciplinary order from the Supreme Court, the Commission will close the matter.

4. **Non-Compliance and Breach.** Failure to comply with these detailed conditions shall constitute a material breach of this Agreement.

5. The terms of this *Stipulation Agreement and Consent to Discipline* are to be approved by the Supreme Court. The Commission will file *Findings of Fact, Conclusions of Law, and Disciplinary Recommendation*, and a *Petition for Discipline* with the Supreme Court containing the terms of this *Stipulation Agreement and Consent to Discipline* and recommend their adoption and approval.

6. The Commission agrees to dismiss the third allegation in Count I (speaking of court security matter with attorneys in open court) of the *Notice of Formal Proceedings* and to abate the current proceedings upon acceptance of this agreement by the Supreme Court.

7. This *Stipulation Agreement and Consent to Discipline* contains the entire agreement between the parties hereto and is intended as a full and final expression of their stipulation in Inquiry 2008-094. It is expressly understood, acknowledged, and agreed that this is a full and final stipulation agreement applying to only Inquiry 2008-094 and does not apply to any other matter pending or impending before the Commission.

8. This *Stipulation Agreement and Consent to Discipline* is specifically enforceable by the Commission before the Supreme Court.
9. Respondent acknowledges that upon execution of this *Stipulation Agreement and Consent to Discipline*, Respondent gives up any and all motions, defenses, objections, or requests that the Respondent has made or raised, or could assert hereafter in or concerning the Judicial Standards Commission proceedings.
10. This document is not enforceable unless fully executed by all parties.
11. The Commission and Respondent shall take all actions necessary to carry out and fulfill the terms and conditions of this *Stipulation Agreement and Consent to Discipline*.
12. If Respondent violates any terms or provisions of this executed *Stipulation Agreement and Consent to Discipline*, Respondent agrees that all facts and charges admitted in this *Stipulation Agreement and Consent to Discipline* shall be deemed admitted by the Respondent and will be used against Respondent in future proceedings before the Commission and the Supreme Court.
13. The terms and conditions contained in this *Stipulation Agreement and Consent to Discipline* are mutually acceptable to and agreed upon by all parties.
14. All parties have read and understand this *Stipulation Agreement and Consent to Discipline*, have had the opportunity to discuss it with and be advised by legal counsel, and hereby freely and voluntarily enter into this *Stipulation Agreement and Consent to Discipline* free of any threats, and free of any promises not contained herein.



From: NEW MEXICO JUDICIAL STANDARDS 505 222 9358

12/18/2009 14:26

#002 P.026/032

11-09-'09 09:38 FROM-Jack Brant PC

505-232-5335

T-371 P018/019 F-798

RESPONDENT'S REVIEW & APPROVAL

I have read and understand this *Stipulation Agreement and Consent to Discipline*. I have had the opportunity to discuss this matter and my rights with a lawyer. I understand that by entering into this *Stipulation Agreement and Consent to Discipline*, I will be giving up my rights to a formal hearing on the merits and to confront, cross-examine, and compel the attendance of witnesses. I stipulate that the Commission has sufficient evidence to prove the facts presented in this *Stipulation Agreement and Consent to Discipline* and to conclude that individually and taken together the facts constitute willful misconduct and/or failure to perform judicial duties in office, one or more violations of the New Mexico Code of Judicial Conduct, and provide sufficient basis for the New Mexico Supreme Court to impose discipline against me pursuant to article VI, § 32 of the New Mexico Constitution.

I understand and agree that my attorney is speaking for me, and on my behalf in this proceeding, and that anything my attorney says or does in this proceeding can and should be attributable to me. In the event my attorney says or does anything during the course of this proceeding that I do not agree with, I know, understand, and agree that I have an affirmative duty to make my disagreement with my attorney's words or conduct known. If I do not make my disagreement known, then I know, understand, and agree that I am accepting my attorney's words and conduct in this proceeding as my own.

I know, understand, and agree that any hearing or presentment of this matter before the New Mexico Supreme Court is, under the Judicial Standards Commission Rules and the Supreme Court Rules Governing Review of Judicial Standards Commission Proceedings, a "stage" of the Judicial Standards Commission proceeding against me as that term is used in Rule 4(D) of the Commission's Rules.

I know, understand, and agree that the enumerated facts, my stipulated conduct, my stipulated violations of the Code, and my stipulation that my conduct provides a sufficient basis for the imposition of discipline pursuant to article VI, § 32 of the New Mexico Constitution, as agreed to in the *Stipulation Agreement and Consent to Discipline*, are material to the Commission's deliberations and ultimate acceptance of this *Stipulation Agreement and Consent to Discipline*.

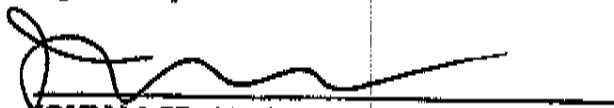


HON. JOSEPH GULLORY, Respondent

Dated: 11-11-09

DEFENSE COUNSEL REVIEW & APPROVAL

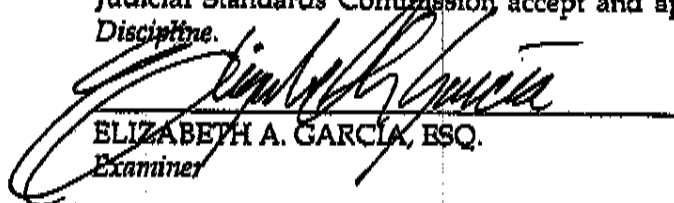
I have reviewed the *Stipulation Agreement and Consent to Discipline* with my client. I have discussed this case with my client, and I have advised my client of all applicable constitutional rights and possible defenses.

  
 JOHN M. BRANT, ESQ.  
 Counsel for Respondent

Dated: 11-11-09

EXAMINER'S REVIEW & APPROVAL

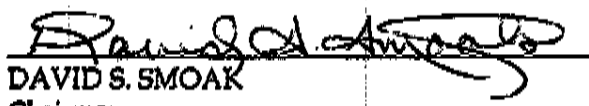
I have reviewed this *Stipulation Agreement and Consent to Discipline* and find that it is appropriate and consistent with the best interests of justice. I hereby recommend that the Judicial Standards Commission accept and approve this *Stipulation Agreement and Consent to Discipline*.

  
 ELIZABETH A. GARCIA, ESQ.  
 Examiner

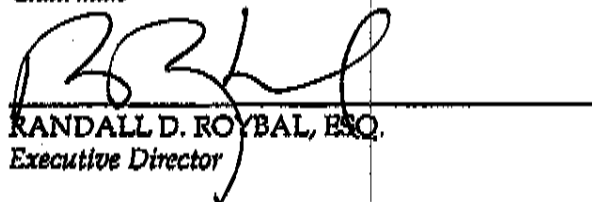
Dated: 11-17-09

JUDICIAL STANDARDS COMMISSION REVIEW & APPROVAL

The Commission has reviewed this *Stipulation Agreement and Consent to Discipline*. Upon a majority vote of its members, the Commission hereby accepts, approves, and enters into this *Stipulation Agreement and Consent to Discipline*.

  
 DAVID S. SMOAK  
 Chairman

Dated: 12-7-09 DR

  
 RANDALL D. ROYBAL, ESQ.  
 Executive Director

Dated: 12/7/09

## PROCEEDINGS BEFORE THE NEW MEXICO SUPREME COURT—SUSPENSION CASES

In re Hon. Baltazar Archuleta, Rio Arriba County Magistrate Judge, No. 17,903 (N.M. 1988). Allegations included driving under influence of intoxicating liquor and attempting to obstruct and evade police officer in performance of official duties. Judge suspended six months without pay and ordered to submit to alcohol dependency examination, to comply with recommendation of alcohol examiners, and to pay Commission's costs.

Matter of Hon. Susana Chaparro, Doña Ana County Magistrate Court, JSC Inquiry No. 2003-82, Supreme Court Docket No. 27,923 (2005). Allegations included improper involvement in and interference with adjudication of a matter involving her son, thereby giving the appearance that she was trying to influence the outcome of her son's case and compromising the integrity, independence and impartiality of the judiciary. After trial, Commission found that judge's conduct constituted willful misconduct in office and recommended a sixty-day suspension deferred on the condition that judge successfully complete one year of supervised probation, a formal public reprimand by the Supreme Court and assessment of the Commission's costs. Supreme Court imposed greater discipline than recommended by Commission and suspended Respondent without pay for two weeks, along with a year of supervised probation, a formal reprimand, and assessed \$5,000.00 in costs.

In re Hon. Thomas G. Cornish, Dona Ana County District Judge, No. 27,253 (N.M. 2002). Allegations included conviction for DWI and driving with no headlamps. Upon stipulation, judge summarily and temporarily suspended with pay not to exceed 90 days, and thereafter without pay. Upon further stipulation, judge publicly reprimanded and ordered to complete alcohol counseling and in-patient alcohol rehabilitation program. Supreme Court ordered judge to remain suspended from judicial office without pay. On stipulation, Judge permanently resigned.

In re Hon. Berna Garcia, Mountainair Municipal Judge, No. 15,967 (N.M. 1985). Allegations included accepting and signing absentee ballot without first administering oath required by law and in the absence of the person casting absentee ballot. Judge suspended fifteen days and ordered to pay Commission's costs.

In re Hon. Berna Garcia, Mountainair Municipal Judge, No. 16,974 (N.M. 1987). Allegations included not being available to perform judicial duties; refusing to comply with town ordinance governing court hours; failing to post a work schedule; failing to make arrangements to be reached by telephone; and allowing Judge's son-in-law (a town police officer) to serve as prosecutor on criminal complaints in her court. Judge suspended thirty days without pay and ordered to pay Commission's costs.

In re Hon. Ignacio Garcia, Socorro County Magistrate Judge, No. 18,385 (N.M. 1989). Allegations included failing to perform judicial duties; accepting partial payment of fines contrary to Supreme Court directive; accepting monies from defendants and placing them in file, rather than sending them to court clerk for proper handling; delaying disposition of civil matters; taking criminal cases under advisement for lengthy periods; failing to docket traffic cases properly on court calendar; docketing and disposing of cases without properly recording decision; suspending mandatory sentences after imposition in revoked/suspended driver's license

EX-1181T

cases; failing to prepare final orders on approved forms for DWI cases; and failing to perform administrative duties properly. Judge suspended two months without pay, ordered to attend magistrate training course at own expense, ordered to work with fellow magistrate(s) for thirty days, placed on one year probation, and ordered to pay Commission's costs.

Matter of Hon. Frances Gallegos, Santa Fe Municipal Court, JSC Inquiry Nos. 2003-58, 2003-89 & 2003-108, Supreme Court Docket No. 27,906 (2005). Allegations included ordering defendants to attend a specific driving safety course, contrary to statute, for which the paid course instructor was the judge's court administrator; allowing court administrator (acting in court administrator's personal for-profit business interests) to use the property and facilities of the judge's court for the administrator's driving safety course; allowing court administrator to teach driving safety courses for profit while administrator is employed by the court. Judge's acts occurred prior to and during time she negotiated stipulation agreement with Commission in Inquiry No. 2002-80 and when she became subject to Supreme Court's disciplinary order. Judge ceased and agreed to desist from newly stated conduct. Judge suspended 30 days without pay (deferred on conditions: formal mentorship in judicial ethics and court administration, and complete "Ethics for Judges" course at National Judicial College on own time and at own expense).

In re Hon. Milton J. Griego, Grants Municipal Judge, No. 21,177 (N.M. 1993). Allegations included resisting arrest and referring to his female companion as a "whore" in her presence and in presence of two State Police Officers who arrested him. Judge publicly reprimanded, suspended one month without pay, and ordered to pay Commission's costs.

Matter of Hon. Theresa Gomez, Bernalillo County Metropolitan Court, JSC Inquiry No. 2006-128, Supreme Court Docket No. 30,549 (2007). Allegations included that: (1) judge lived rent-free for twenty months in a home owned by the Region III State Housing Authority, which she was in the process of buying (to include past rent due) under the Housing Authority's lease-purchase program for individuals whose credit rating prevented them from accessing private mortgage financing; and (2) judge had communications with and dismissed traffic citations and cancelled an arrest warrant for the director of the Housing Authority without the presence or involvement of the prosecuting police officer or prosecutor. Upon stipulation with the Commission, judge consented to accept a formal reprimand and pay \$17,000 restitution to the housing authority. The Supreme Court rejected the stipulated discipline but indicated a two-week suspension without pay would be appropriate. Upon a second stipulation accepted by the Court, the judge received a two week unpaid suspension and agreed to pay \$17,000 restitution in unpaid rent due to the housing authority.

In re Hon. Walter F. Herrera, Taos County Magistrate Judge, No. 17,289 (N.M. 1987). Allegations included failing to perform duties as a political favor; having ex parte communications with litigant's son; and instructing court clerk to prepare backdated criminal complaint charging defendant with another crime to avoid statute of limitations. Judge suspended sixty days and ordered to pay Commission's costs.

In re Hon. Charles Maestas, Espanola Municipal Judge, No. 27,348 (N.M. 2002). Allegations included soliciting favored treatment from police officers for judge's friend. On stipulation, judge suspended two days without pay, publicly reprimanded, and ordered to attend (at own expense) a national judicial ethics course. Supreme Court took final disposition under advisement pending completion of criminal prosecution and Commission proceedings on another matter (Inquiry No. 2002-40 reported below). After conviction and during incarceration, Judge resigned.

In re Hon. Anthony Martinez, Taos County Probate Judge, No. 20,026 (N.M. 1992). Allegations included citation for driving while license revoked for one year following prior conviction for DWI; and admitting having open container of alcohol in a car "one or two times." Judge suspended without pay until costs paid, publicly censured, ordered to receive consultation and supervision from district judge for ninety days, and ordered to pay Commission's additional costs.

In re Hon. Donaldo Martinez, Fourth Judicial District Judge, 99 N.M. 198 (1982). Allegations included countermanding presiding judge's orders; banning district attorney from performing statutory duties; permitting his son (an attorney) to practice before him without complying with rules; and signing temporary restraining order for his son beyond his judicial authority. Judge suspended sixty days without pay and ordered to pay Commission's costs.

In re Hon. Joe Peter Martinez, Sandoval County Magistrate Judge, No. 10,188 (N.M. 1974). Allegations included improperly dismissing DWI and related charges without a hearing. Judge suspended one month and ordered to pay Commission's costs.

In re Hon. Luis Martinez, San Miguel County Magistrate Judge, No. 20,160 (N.M. 1991). Allegations included drinking beer and having sexual intercourse with female defendant in defendant's home while judge still had jurisdiction over her and while conditions of defendant's release included refraining from alcoholic beverages. Judge suspended 120 days and ordered to pay Commission's costs.

In re Hon. Richard C. Martinez, Rio Arriba County Magistrate Judge, No. 18,863 (N.M. 1989). Allegations included drinking beer in Judge's home with defendant who had matters pending before Judge's court; telling defendant that if he had enough money to buy beer he should have enough to pay to clear driving record; telling the defendant that he was tired of defendant's "bullshit" and if he did not clear up the matter of his driver's license by the end of the week the Judge was going to "throw his ass in jail"; and failing to prevent the defendant from driving when Judge observed and considered him to be intoxicated. Judge suspended thirty days without pay and publicly reprimanded.

Matter of Hon. Erminio Martinez, Taos County Magistrate Court, JSC Inquiry No. 2005-024, Supreme Court Docket No. 29,309 (2005). Allegations included that during the months of January, February, and March 2005, Respondent, while employed as a full-time magistrate judge for Taos County, also served as a tribal judge for Taos Pueblo Tribal Court, and was paid \$840.00 for 28 hours (3.5 days) of services rendered to Taos Pueblo as Tribal Court Judge *Pro Tempore*, during hours in which he was being paid by the State of New Mexico to serve as a

Taos County Magistrate Judge. On stipulation, judge publicly reprimanded, ordered to pay an \$840.00 fine, and placed on a 3.5-day suspension without pay.

Matter of Hon. William A. McBee, Fifth Judicial District Court, JSC Inquiry No. 2004-011, Supreme Court Docket No. 29,265 (2005). Allegations included failing to recuse from criminal case after personally and verbally acknowledging that he should recuse because he could not be impartial in the adjudication and because his impartiality had been compromised because of his personal relationship with the defendant's attorney, boyfriend, and husband. Judge reprimanded and ordered to recuse from the case and all other matters involving the defendant or her attorney/boyfriend. Judge was also ordered to disclose his attorney-client relationship in this disciplinary matter to all parties appearing before him where his attorney will appear. Further ordered to pay \$1,000.00 fine, \$2,500.00 in costs, suspended seven days without pay, and suspended additional thirty days (deferred for one year supervised probation with conditions).

In re Hon. Joe C. Montoya, Taos Municipal Judge, No. 17,843 (N.M. 1988). Allegations included driving while intoxicated; causing accident on highway; and failing to cooperate with investigating police officers. Judge suspended thirty days without pay and ordered to pay Commission's costs.

In re Hon. Russell L. Muffley, Clovis Municipal Judge, No. 19,238 (N.M. 1990). Allegations included purchasing keg of beer for 19-year-old son's party held in judge's garage; and conviction for selling or giving alcoholic beverages to minors. Judge suspended thirty days without pay and publicly reprimanded.

In re Hon. John R. Perea, San Miguel County Magistrate Judge, No. 16,110 (N.M. 1985). Allegations included delegating duty to perform marriage to Las Vegas Municipal Court Clerk. Judge suspended five days without pay and publicly reprimanded.

In re Hon. Toribio L. (Tody) Perea, Valencia County Magistrate Judge, No. 25,822 (N.M. 1999). Allegations included delaying the signing and filing of judgment and sentence orders in three DWI cases (including one where defendant was a municipal judge); failing to impose mandatory minimum sentences in two DWI cases; failing to submit Abstracts of Record to MVD within the time required by law in three DWI cases, and one careless driving case (in which defendant was a district judge); and having ex parte communications pertaining to the disposition of DWI case. Judge publicly censured, suspended two weeks without pay, placed on six-month unsupervised probation, and ordered to pay Commission's costs.

Matter of Hon. Hector Pineda, Roswell Municipal Court, JSC Inquiry No. 2005-095, Supreme Court Docket No. 29,479 (2007). Allegations included requiring all citizens who need to appear before the court to present photo identification prior to such appearances being allowed, including appearances from defendants in criminal or traffic matters, from legal guardians for minors, and from persons seeking civil marriages; denying a criminal defendant constitutional due process of law by issuing a bench warrant for the criminal defendant's arrest based upon the judge's determination that he failed to appear the previous day despite the fact that the defendant arrived to the judge's court ten minutes early and was advised by the court staff that he would need photo identification in order to appear for court. After trial (on stipulated factual findings),

Commission found willful misconduct. Upon recommendation from the Commission, the Supreme Court ordered that: (1) Respondent shall immediately discontinue the photo identification policy; (2) a formal reprimand (3); a one-week suspension without pay; (4) a one thousand dollar fine; and lastly, (5) a one-year supervised probation and mentorship.

Matter of Hon. John W. Pope, Thirteenth Judicial District Court, JSC Inquiry No. 2004-046, Supreme Court Docket No. 29,778 (2006). Allegations included failing to perform judicial duties, failing to notify the Chief Judge or Court Administrator of his extended absence, leaving a criminal jury trial unfinished prior to the defense concluding its case (ultimately resulting in substantial prejudice, error, and mistrial), and failing to make arrangements for coverage of his daily dockets. On stipulation, judge required to participate in a thirty day in-patient alcohol/substance abuse rehabilitation and thirty day follow-up program, publicly reprimanded, write a letter of explanation and apology to members of the jury and the Judicial Standards Commission, suspension without pay for two days (the period of time judge failed to appear for work when he was not receiving medical treatment), pay a fine of \$1000, and for the entire duration of Respondent's service as a judge in the State of New Mexico, the following discipline: (1) permanent supervised probation; (2) participation in Alcoholics Anonymous or other twelve-step program at least once a week, (3) random alcohol and drug testing, and lastly (4) no alcohol or drug use.

In re Hon. Pat Romero, Las Vegas Municipal and San Miguel County Magistrate Judge, 100 N.M. 180 (1983). Allegations included improper demeanor with a defendant's family; improperly reading pending charges and finding defendant guilty when defendant was absent and had been instructed not to appear; making improper comment; telling defendant's mother she could not receive refund of bond and refusing to give receipt; failing to inform defendant's mother that bond money was still being held in court's account. Judge suspended thirty days without pay and ordered to pay Commission's costs.

In re Hon. Marvin Terry, Quay County Magistrate and San Jon Municipal Judge, No. 15,469 (N.M. 1984). Allegations included accepting and using a partial load of lumber valued in excess of \$100 from a defendant truck driver who he had previously ordered to reduce the truck's load. Judge suspended thirty days and ordered to pay Commission's costs.

In re Hon. Beatrice R. Vigil, Taos County Probate Judge, No. 26,328 (N.M. 2000). Allegations included failing to timely file gross receipts tax reports, to timely pay gross receipts taxes, to timely file personal income tax returns, to timely pay income tax due, using court facilities for private business activities, failing to timely pay private business photocopy charges to County, and failing to cooperate with Commission. Judge suspended two weeks without pay, publicly reprimanded, and placed on six-month supervised probation. Judge ordered to pay outstanding tax liabilities to State, to pay outstanding photocopy bill liabilities to county, and to cease all non-judicial use of court facilities and equipment. Judge failed to comply with Supreme Court order. On show cause order, Court ordered judge's supervised probation would continue until May 31, 2001 on specific terms and conditions. Judge again failed to comply with Supreme Court's order and second order to show cause issued. Judge resigned from judicial office two days before Supreme Court hearing.

From:NEW MEXICO JUDICIAL STANDARDS

505 222 9358

12/18/2009 14:18

#002 P.001/032



State of New Mexico  
Judicial Standards Commission  
Post Office Box 27248  
Albuquerque, New Mexico 87125-7248  
Telephone (505) 222-9353  
Fax (505) 222-9358

**CONFIDENTIAL  
FAX TRANSMITTAL**

To: Kathleen Jo Gibson, Chief Clerk  
New Mexico Supreme Court

Fax Filing: 505-827-4178

From: Elizabeth A. Garcia, Esq.

Date: December 18, 2009

Re: Supreme Court No. 31,920  
Inquiry No. 2008-094

32, including coversheet

URGENT

FOR REVIEW

PLEASE FILE

PLEASE REPLY

FILED UNDER SEAL  
Pursuant to 27-104(B) NMRA 2009

Please file the attached document today: *Second Petition for Discipline upon*

*Stipulation.*

Original will not follow by mail. Thank you.

The information transmitted in this facsimile message is legally confidential, privileged, and intended solely for the use of the individual or entity addressed on this coversheet. If you are not the intended recipient, be aware that any review, dissemination, distribution, copy or use of this information is strictly prohibited by law. If you have received this fax in error, please notify us immediately by telephone so that we may arrange for the retrieval of the document(s) at no cost to you. Thank you.



1 IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

2  
3 January 6, 2010

4 NO. 31,920

5 INQUIRY CONCERNING A JUDGE  
6 NO. 2008-094

7 IN THE MATTER OF JOSEPH GUILLORY,  
8 Magistrate Court Judge, Dona Ana County, New Mexico

9 ORDER

10 WHEREAS, this matter came on for consideration by the Court upon  
11 second petition for discipline upon stipulation, and the Court having  
12 considered said petition and being sufficiently advised, Chief Justice  
13 Edward L. Chávez, Justice Patricio M. Serna, Justice Petra Jimenez Maes,  
14 Justice Richard C. Bosson, and Justice Charles W. Daniels concurring;  
15  
16

17 NOW, THEREFORE, IT IS ORDERED that the second petition for  
18 discipline upon stipulation hereby is GRANTED;

19 IT IS FURTHER ORDERED that respondent shall be disciplined as  
20 follows:  
21

- 22 1. Respondent shall be suspended from judicial office for sixty (60)  
23 days without pay effective January 9, 2010;
- 24 2. Respondent shall receive a written formal reprimand to be  
25 published in the *Bar Bulletin*; and
- 26 3. Respondent shall complete a twelve-month supervised probation  
27 and formal mentorship following the period of suspension. The  
28

1  
2 mentorship shall cover all substantive and procedural issues  
3 addressed in the *Stipulation Agreement and Consent to Discipline*,  
4 filed on December 7, 2009, including but not limited to,  
5 respondent's obligations and responsibilities under the Code of  
6 Judicial Conduct and remedial training concerning proper judicial  
7 demeanor, temperament, appearance of impropriety, *ex parte*  
8 communications, proper performance of judicial duties,  
9 arraignments, sentencing, forms, disqualification, contempt cases,  
10 and conflict of interest.

11 IT IS FURTHER ORDERED that the Judicial Standards Commission  
12 shall recommend a probation supervisor/mentor for approval and  
13 appointment. The probation supervisor/mentor shall report on the  
14 progress and outcome of the mentorship to this Court and to the  
15 Commission.

16 IT IS FURTHER ORDERED that respondent shall abide by all terms  
17 of the *Stipulation Agreement and Consent to Discipline*;


18 IT IS FURTHER ORDERED that respondent and the Commission  
19 shall bear their own costs and expenses in this matter; and

20 IT IS FURTHER ORDERED that the entire file shall be permanently  
21 unsealed.

22  
23 IT IS SO ORDERED.

24 WITNESS, Honorable Edward L. Chávez, Chief Justice  
25 of the Supreme Court of the State of New Mexico, and  
26 the seal of said Court this 6th day of January, 2010.

27 (SEAL)

28  
  
Kathleen Jo Gibson, Chief Clerk of the Supreme Court  
of the State of New Mexico