

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

RECEIVED

JUL 17 2015

NM JUDICIAL
STANDARDS COMMISSION

No. S-1-SC-35410

IN THE MATTER OF HON. SARAH M. SINGLETON
First Judicial District Court

INQUIRY CONCERNING HON. SARAH M. SINGLETON
Inquiry No. 2015-049

FILED UNDER SEAL
PURSUANT TO 27-104(B) NMRA 2011

PETITION TO ACCEPT STIPULATION AGREEMENT AND
CONSENT TO DISCIPLINE

JUDICIAL STANDARDS COMMISSION
RANDALL D. ROYBAL
DEBORAH BORIO
Post Office Box 27248
Albuquerque, NM 87125-7248
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Counsel for Petitioner

JAMES A. HALL, ESQ.
JAMES A. HALL LLC
505 Don Gaspar
Santa Fe, NM 87505-4463
Telephone: (505) 988-9988
Fax: (505) 986-1028

Counsel for Respondent

SUPREME COURT OF NEW MEXICO
FILED

JUL 15 2015



IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

No.

IN THE MATTER OF HON. SARAH M. SINGLETON
First Judicial District Court

INQUIRY CONCERNING HON. SARAH M. SINGLETON
Inquiry No. 2015-049

FILED UNDER SEAL
PURSUANT TO 27-104(B) NMRA 2011

PETITION TO ACCEPT STIPULATION AGREEMENT AND
CONSENT TO DISCIPLINE

The Judicial Standards Commission of the State of New Mexico (“Petitioner” or “Commission”), through the undersigned counsel, respectfully petitions the Supreme Court for an order approving the *Stipulation Agreement and Consent to Discipline* (“*Stipulation*”), attached hereto as Exhibit 1, in which Respondent, Hon. Sarah M. Singleton, consents to discipline from the Supreme Court. In addition, the Commission requests the Court unseal the file in this matter, pursuant to Rule 27-104(B) NMRA 2011.

1. Petitioner invokes its jurisdiction pursuant to Petitioner's power to recommend the discipline of judges, and the Supreme Court's power to discipline judges under Article VI, Section 32 of the New Mexico Constitution; the Court's power of superintending control under Article VI, Section 3 of the New Mexico Constitution; and, Rule 38 of the Judicial Standards Commission's Rules.

2. On April 21, 2015, the Commission issued a *Notice of Preliminary Investigation* to Respondent in Inquiry Number 2015-049. (See Exhibit A to Exhibit 1.)

3. On May 11, 2015, Respondent filed her response to the *Notice of Preliminary Investigation*. (See Exhibit 2.)

4. On June 8, 2015, the Commission issued a *Notice of Formal Proceedings*. (See Exhibit B to Exhibit 1.)

5. On July 8, 2015, the Commission entered into a *Stipulation Agreement and Consent to Discipline ("Stipulation")* with Respondent (Exhibit 1), which provides in pertinent part the following:

A. Respondent consents to imposition of the following discipline by the Supreme Court: **Public censure**, which shall be published in the *New Mexico Bar Bulletin*.

B. Respondent admits to the following acts:

(1) On or about January 24, 2015, in the case of *Alfredo Morga, et al., v. FedEx Ground Package System, Inc., et al.*, D-101-CV-2012-01906, Respondent permitted and engaged in impermissible *ex parte* communications with Plaintiff's attorney while the case was still pending before Respondent; and,

(2) On or about January 24, 2015, in the case of *Alfredo Morga, et al., v. FedEx Ground Package System, Inc., et al.*, D-101-CV-2012-01906, Respondent created the appearance of impropriety by engaging in a phone conversation with Plaintiff's attorney that involved substantive matters and was outside the presence of the other party or the other party's attorney.

C. Respondent admits that she violated the Code of Judicial Conduct Rules: 21-101, 21-102, 21-209(A), and 21-210(A) NMRA 2012.

D. Respondent admits that she engaged in *ex parte* communications contrary to the Code of Judicial Conduct. Respondent denies that she engaged in willful misconduct and further denies any malice, corrupt purpose, or dishonesty. Respondent acknowledges, however, that the facts support a

conclusion that she knew or should have known that her actions were beyond her lawful authority and that such conduct falls within the Supreme Court's definition of bad faith.

E. While the parties agree that a violation of the Code of Judicial Conduct, by itself, does not necessarily constitute willful misconduct, Respondent acknowledges and stipulates that the facts and evidence, individually and taken together, may constitute willful misconduct in office and 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 pursuant to Article VI, Section 32 of the New Mexico Constitution.

F. In stipulating to discipline, the following non-exclusive factors in Judicial Standards Commission Rule 30 NMRA 2010 were considered:

- (1) the misconduct was an isolated instance;
- (2) the misconduct occurred in Respondent's official capacity;
- (3) the misconduct created a highly publicized appearance of impropriety, which reflects adversely on the judiciary;
- (4) Respondent immediately took corrective action and disclosed the *ex parte* communications to all parties;

(5) Respondent showed remorse, was candid and truthful with the Commission, and fully cooperated with the Commission; and,

(6) Respondent is a well-respected judge with an excellent reputation and has no history of discipline by the Supreme Court.

6. Upon Order from this Court, the attached *Stipulation* is enforceable by the Commission before the Supreme Court.

7. It is in the best interest of justice and integrity of the New Mexico Judiciary that the Supreme Court grant this *Petition*.

WHEREFORE, Petitioner respectfully requests this Court issue an order granting the Commission's *Petition*, approving the *Stipulation Agreement and Consent to Discipline*, and unsealing the file in this matter pursuant to Rule 27-104(B) NMRA 2011.

Respectfully submitted,

JUDICIAL STANDARDS COMMISSION



RANDALL D. ROYBAL

Executive Director & General Counsel

DEBORAH BORIO

Investigative Trial Counsel

Post Office Box 27248

Albuquerque, NM 87125-7248

Telephone: (505) 222-9353

Fax: (505) 222-9358

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was sent by
U.S. Post and email on this 2nd day of July, 2015, to Respondent's Counsel:

James A. Hall, Esq.

James A. Hall LLC

505 Don Gaspar

Santa Fe, New Mexico 87505-4463



DEBORAH BORIO

INVESTIGATIVE TRIAL COUNSEL

BEFORE THE JUDICIAL STANDARDS COMMISSION
OF THE STATE OF NEW MEXICO

FILED

JUL 07 2015

**NM JUDICIAL
STANDARDS COMMISSION**

INQUIRY CONCERNING HON. SARAH M. SINGLETON
First Judicial District Court

Inquiry No. 2015-049

STIPULATION AGREEMENT AND CONSENT TO DISCIPLINE

THIS MATTER is currently pending before the Judicial Standards Commission ("the Commission") pursuant to the *Notice of Preliminary Investigation* issued April 21, 2015 in Inquiry No. 2015-049 (see Exhibit A), and the *Notice of Formal Proceedings* issued June 8, 2015 in Inquiry No. 2015-049 (see Exhibit B).

This *Stipulation Agreement and Consent to Discipline* ("Stipulation") is entered into by and between the Judicial Standards Commission and Hon. Sarah M. Singleton. Respondent is represented by James A. Hall, Esq., of James A. Hall, LLC. The parties hereby enter into the following *Stipulation*:

1. Respondent was a district court judge in the First Judicial District at the time of the conduct alleged.
2. The Commission has jurisdiction over the Respondent and the above-captioned and numbered matter pursuant to Article VI, Section 32 of the Constitution of the State of New Mexico; Sections 34-10-1 through 34-10-4 NMSA 1978, as amended; and the Judicial Standards Commission Rules.
3. Respondent admits to the following acts:
 - a. On or about January 24, 2015, in the case of *Alfredo Morga, et al., v. FedEx Ground Package System, Inc., et al.*, D-101-CV-2012-01906, Respondent permitted and

Exhibit 1

engaged in impermissible *ex parte* communications with Plaintiff's attorney while the case was still pending before Respondent; and,

b. On or about January 24, 2015, in the case of *Alfredo Morga, et al., v. FedEx Ground Package System, Inc., et al.*, D-101-CV-2012-01906, Respondent created the appearance of impropriety by engaging in a phone conversation with Plaintiff's attorney that involved substantive matters and was outside the presence of the other party or the other party's attorney.

4. Respondent admits that she violated the Code of Judicial Conduct Rules 21-101, 21-102, 21-209(A), and 21-210(A) NMRA 2012.

5. Respondent admits that she engaged in *ex parte* communications contrary to the Code of Judicial Conduct. Respondent denies that she engaged in willful misconduct and further denies any malice, corrupt purpose, or dishonesty. Respondent acknowledges, however, that the facts support a conclusion that she knew or should have known that her actions were beyond her lawful authority and that such conduct falls within the Supreme Court's definition of bad faith.

6. While the parties agree that a violation of the Code of Judicial Conduct, by itself, does not necessarily constitute willful misconduct, Respondent acknowledges and stipulates that the facts and evidence, individually and taken together, may constitute willful misconduct in office and 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 pursuant to Article VI, Section 32 of the New Mexico Constitution.

7. In stipulating to discipline, the following non-exclusive factors in Judicial Standards Commission Rule 30 NMRA 2010 were considered:

- a. the misconduct was an isolated instance;
- b. the misconduct occurred in Respondent's official capacity;
- c. the misconduct created a highly publicized appearance of impropriety, which reflects adversely on the judiciary;
- d. Respondent immediately took corrective action and disclosed the *ex parte* communications to all parties;
- e. Respondent showed remorse, was candid and truthful with the Commission, and fully cooperated with the Commission; and,
- f. Respondent is a well-respected judge with an excellent reputation and has no history of discipline by the Supreme Court.

8. Respondent consents to imposition of the following discipline by the Supreme Court: Public censure, which shall be published in the *New Mexico Bar Bulletin*.

9. The Commission will file with the New Mexico Supreme Court a *Petition to Accept Stipulation Agreement and Consent to Discipline ("Petition")*, attaching a copy of this *Stipulation*.

10. The Commission will file under seal with the New Mexico Supreme Court, pursuant to Rule 27-104(B) NMRA 2011, a *Petition to Accept Stipulation Agreement and Consent to Discipline ("Petition")*, attaching a copy of this *Stipulation*; a copy of the *Notice of Preliminary Investigation* issued in Inquiry No. 2015-09, filed April 21, 2015; a copy of Respondent's response to the *Notice of Preliminary Investigation* in Inquiry No. 2015-049, filed May 11, 2015; and, a copy of the *Notice of Formal Proceedings* issued in Inquiry No. 2015-049, filed on June 8, 2015, which is required by the Supreme Court.

11. Upon granting the *Petition*, pursuant to the Supreme Court Rules, the Supreme Court's file will be unsealed.

12. The parties are aware that under Rule 27-401(A) NMRA 2012, the Supreme Court may impose the discipline as stipulated to by the parties or any greater or lesser discipline it deems appropriate.

13. Upon granting of the *Petition* by the Supreme Court, the Commission will abate the proceedings and close this matter.

14. The parties agree that each shall bear their own expenses of these proceedings.

15. This *Stipulation* is specifically enforceable by the Commission before the Supreme Court.

16. Respondent acknowledges that upon execution of this *Stipulation*, 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.

17. Respondent shall not make any misrepresentations to the media concerning this matter, the facts and circumstances of Respondent's *Stipulation* or the Commission's proceedings.

18. Non-Compliance and Breach. Respondent's violation of any terms or provisions of this executed *Stipulation* shall constitute obstruction of Commission business and contempt. The Commission shall hold a hearing to determine and recommend the appropriate subsequent discipline for the Supreme Court to impose. Respondent agrees to accept any and all

subsequent, additional discipline the Commission may recommend and the Supreme Court may impose upon a finding of non-compliance with, or breach of, this *Stipulation*.

19. This document is not enforceable unless fully executed by all parties.

20. The Commission and Respondent shall take all actions necessary to carry out and fulfill the terms and conditions of this *Stipulation*.

21. The terms and conditions contained in this *Stipulation* are mutually acceptable to and agreed upon by all parties.

22. All parties have read and understand this *Stipulation*, have had the opportunity to discuss it with and be advised by legal counsel, and hereby freely and voluntarily enter into this *Stipulation* free of any threats, and free of any promises not contained herein.

RESPONDENT'S REVIEW & APPROVAL

I have read and understand this *Stipulation*. I have had the opportunity to discuss this matter and my rights with a lawyer. I understand and agree that the enumerated facts to which I admit, my stipulated conduct, and my stipulated violations of the Code are material to the Commission's deliberations and ultimate acceptance of this *Stipulation*. I agree to abide by all terms of this *Stipulation Agreement and Consent to Discipline*.

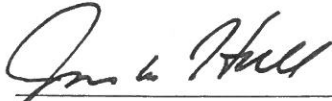


HON. SARAH M. SINGLETON
Respondent

Dated: 7/1/2015

DEFENSE COUNSEL REVIEW

I have reviewed the *Stipulation* with my client. I have advised my client of her constitutional rights and possible defenses, and hereby approve my client's entry into this *Stipulation Agreement and Consent to Discipline*.

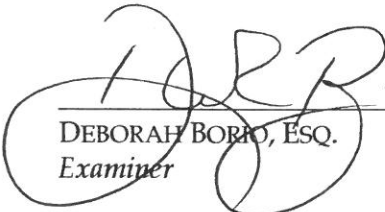


JAMES A. HALL, ESQ.
Counsel for Respondent

Dated: 7/1/15

EXAMINER'S REVIEW & APPROVAL

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




DEBORAH BORIO, ESQ.
Examiner

Dated: 7/2/2015

JUDICIAL STANDARDS COMMISSION REVIEW & APPROVAL

The Commission has reviewed this *Stipulation* and finds that it is in the best interest of justice and hereby accepts and approves this *Stipulation Agreement and Consent to Discipline*.



JOYCE BUSTOS
Chair

Dated: 7/6/15



RANDALL D. ROYBAL, ESQ.
Executive Director & General Counsel

Dated: 7/8/15



STATE OF NEW MEXICO
JUDICIAL STANDARDS COMMISSION

POST OFFICE BOX 27248
ALBUQUERQUE, NEW MEXICO 87125-7248
(505) 222-9353
WWW.NMJSC.ORG

RANDALL D. ROYBAL
Executive Director & General Counsel

PHYLLIS A. DOMINGUEZ
Investigative Trial Counsel

DEBORAH BORIO
Investigative Trial Counsel

April 21, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
CONFIDENTIAL
FILED

APR 21 2015

NM JUDICIAL
STANDARDS COMMISSION

Hon. Sarah M. Singleton
First Judicial District Court
P.O. Box 2268
Santa Fe NM 87504-2268

Re: *Inquiry No. 2015-049, Notice of Preliminary Investigation*

Dear Judge Singleton:

The above-referenced matter came before the Judicial Standards Commission on either a verified complaint or the Commission's own motion. As part of a preliminary investigation pursuant to Rule 14(F) of the Judicial Standards Commission Rules (NMRA 2010), the Commission requires that you provide a written explanation as to the matter discussed below.

It has been alleged that on or about January 24, 2015, in the case of *Alfredo Morga, et al., v. FedEx Ground Package System, Inc. et al.*—a case that was pending before you—you initiated, permitted, or considered *ex parte* communications with the Plaintiff's attorney outside the presence of the other party or the other party's attorneys. Further, the *ex parte* communications involved substantive matters and your statements could substantially interfere with a fair trial or hearing concerning the case.

Please provide the Commission with an explanation of this incident and the factual and legal basis for your conduct. Your response to this letter must be submitted in writing and must include an explanation and disclosure of all pertinent facts, including any relevant documents regarding the matters outlined herein. The Commission must receive your response within twenty-one (21) days of your receipt of this letter.

Sincerely yours,


Joyce E. Bustos
Chair

Exhibit A

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing was mailed on the 21st day of April, 2015, by certified mail, return receipt requested to:

*Hon. Sarah M. Singleton
First Judicial District Court
P.O. Box 2268
Santa Fe NM 87504-2268*


SHARIESSE T. MCCANNON
CLERK OF THE COMMISSION

BEFORE THE JUDICIAL STANDARDS COMMISSION
OF THE STATE OF NEW MEXICO

FILED
JUN 08 2015
NM JUDICIAL
STANDARDS COMMISSION

INQUIRY CONCERNING HON. SARAH M. SINGLETON
First Judicial District Court

Inquiry No. 2015-049

NOTICE OF FORMAL PROCEEDINGS

Hon. Sarah M. Singleton
P.O. Box 2423
Santa Fe, NM 87504

YOU ARE HEREBY NOTIFIED that the Judicial Standards Commission, pursuant to Rule 15 NMRA 2010 of the Judicial Standards Commission Rules, has instituted formal proceedings on the allegations set forth below.

COUNT I

On or about January 24, 2015, in the case of *Alfredo Morga, et al., v. FedEx Ground Package System, Inc., et al.*, D-101-CV-2012-01906, you permitted and engaged in impermissible *ex parte* communications with Plaintiff's attorney while the case was still pending before you.

Such conduct violates Rules 21-101, 21-102, 21-206(A), 21-209(A), and 21-210(A) NMRA 2012, and constitutes willful misconduct in office.

COUNT II

On or about January 24, 2015, in the case of *Alfredo Morga, et al., v. FedEx Ground Package System, Inc., et al.*, D-101-CV-2012-01906, you created the appearance of impropriety by engaging in a phone conversation with Plaintiff's attorney that involved substantive matters and was outside the presence of the other party or the other party's attorney.

Exhibit B

Such conduct violates Rules 21-101, 21-102, 21-209(A), and 21-210(A) NMRA 2012, and constitutes willful misconduct in office.

PLEASE BE ADVISED that in accordance with Rule 16 of the Judicial Standards Commission Rules, you shall file a written answer to this notice within twenty-one (21) days of its service upon you. Your answer shall be filed with:

Judicial Standards Commission
P.O. Box 27248
Albuquerque, New Mexico 87125-7248

Your answer should be legible and your signature must be verified.

Article VI, Section 32 of the New Mexico Constitution provides that all papers filed with and proceedings before the Judicial Standards Commission are confidential, except that any record filed by the Commission in the New Mexico Supreme Court continues privileged but, upon its filing, loses its confidential character, and a writing which was privileged prior to filing with the Commission or its masters does not lose its privilege by the filing.


JUDICIAL STANDARDS COMMISSION

By: 
Joyce Bustos, Chair
Post Office Box 27248
Albuquerque, NM 87125-7248

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed via certified U.S. mail, receipt requested, on this 8th day of June 2015, to the following:

*Hon. Sarah M. Singleton
P.O. Box 2423
Santa Fe, NM 87504*



SHARIESSE T. MCCANNON
Clerk of the Commission

BEFORE THE JUDICIAL STANDARDS COMMISSION
OF THE STATE OF NEW MEXICO

INQUIRY CONCERNING HON. SARAH M. SINGLETON
First Judicial District Court

Inquiry No. 2015-049

FILED
JUL 09 2015
NM JUDICIAL
STANDARDS COMMISSION




NOTICE OF ERRATA

The Clerk of the Commission hereby submits this *Notice of Errata* with respect to the filing date of the *Stipulation Agreement and Consent to Discipline*. The pleading was erroneously file stamped “Jul 07, 2015” [emphasis added], but should have been file stamped “Jul 08, 2015,” [emphasis added].

Respectfully submitted:

JUDICIAL STANDARDS COMMISSION



Shariesse T. McCannon
Clerk of the Commission
Post Office Box 27248
Albuquerque, NM 87125-7248
(505) 222-9353

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was sent by U.S. Post and email on this 9th day of July, 2015, to Respondent’s Counsel:

James A. Hall, Esq.
James A. Hall LLC
505 Don Gaspar
Santa Fe, New Mexico 87505-4463



Shariesse T. McCannon
Clerk of the Commission

FILED JS

MAY 11 2015

**NM JUDICIAL
STANDARDS COMMISSION**

SARAH M. SINGLETON
POST OFFICE BOX 2423
SANTA FE, NEW MEXICO 87504
srsingleton@gmail.com

May 4, 2015

Joyce E. Bustos, Chair
State of New Mexico
Judicial Standards Commission
Post Office Box 27248
Albuquerque, New Mexico 87125-7248

Re: Inquiry No. 2015-049

Dear Madam Chair:

In response to your letter of April 21, 2015, I am enclosing my initial email to the parties, their responses and my replies, and a log and a disk of a hearing on the issue of the ex parte communication. As my initial email occurred within hours of the communication and as the hearing occurred within one week of it, I think they are the best evidence about the ex parte communication. They also explain the substance of the communication as I recollected it at the time.

In a nutshell, I presided over a trial that ended on a Friday. On a Saturday, believing that Mr. Legate was seeking information from me on some innocuous matter unrelated to the case, I returned his voice mail message to me from the night before. When I realized that he was talking about a particular event that occurred in the trial¹, I told him that I could not discuss it. When he persisted, I responded to

¹ To place the telephone conversation in context, the discussion concerned something that happened when the verdict was returned. A copy of the verdict is also enclosed for your reference. I read the verdict which had extremely high compensatory damages but no punitive damages. We were polling the jury and a number of jurors indicated that they agreed with the compensatory damage decision but they disagreed with the decision not to award punitive damages. When it appeared to me that there were not ten votes against awarding punitive damages (an error which theoretically adversely impacted the plaintiffs but apparently would be favorable to the defendants), I called counsel to the bench where I stated that there was obviously confusion in the return of the verdict on the punitive damage claim and asked if anyone wanted me to do something to correct it. Both sides indicated that they did not want me to do anything. I can try to get you a copy of this portion of the transcript if you think it would be helpful to your resolution of this inquiry. Please let me know.

Exhibit 2

his inquiry with what I thought was information, as opposed to advice that might make it seem that I was counseling him – the names of attorneys in Santa Fe who handled appeals on the plaintiffs’ side and a well-known theory of appellate review. Why I allowed the conversation to continue, I cannot say other than to offer – not by way of excuse but by way of explanation - I have always tried to be polite and to be helpful. Many attorneys who practice before me know that I will often offer my thoughts on the pertinent law in the course of trying to arrive at the most legally correct result for the case. Of course, I understand now, as I realized as soon as I got off the phone, that being helpful in open court or when all parties are present is different from having an ex parte conversation. Hence, I wrote my initial email, disclosing the conversation to both parties.

In that email, I apologized and offered to recuse myself from further proceedings in the case. However, that led to a dispute between the parties about whether a hearing was necessary. At that point, I thought the most prudent course of action was to hold a hearing at which both parties and I could put on the record what happened and what should be the result of the incident.

It was my belief both before and after the hearing, that the information given was not indicative that I was biased in favor of the plaintiffs. I believe that I would have given serious consideration to any post-trial motion filed by the defense. Despite my belief that I was not biased in favor of the plaintiffs, I ultimately did recuse myself at the hearing with paper work following immediately and did not take any further action in the case. Because of this, I really do not believe that my statements could have substantially interfered with a fair trial or hearing concerning the case. I disclosed the contents of the communication immediately so the defense knew the topics that were discussed. The trial was complete, no hearing was pending, I took no other action in the case, and as the defense requested, I recused myself, much like the district judge in *In re Naranjo*, 2013-NMSC-026, 303 P.3d 849.

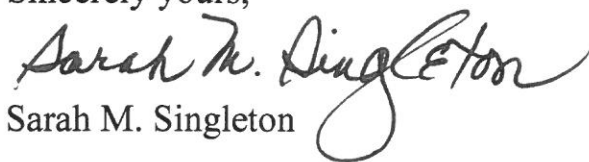
While I was composing my initial email, I did some research into whether recusal was required and whether I should report myself to your Commission for having participated in an ex parte communication. I found cases on both sides of the issue on recusal, particularly inasmuch as I did not feel then and do not feel now that I was biased in favor of either side of this case. Nonetheless, I offered to recuse and ultimately recused out of an abundance of caution and because I know that the appearance of impropriety is often as important as actual impropriety.

On the issue of self-reporting, the cases that I found in which discipline was meted out involved repeated violations of the rule on ex parte communications, involved multiple violations of multiple rules, or involved judges who violated the rule with the intent to help one side of the case, none of which applied in this instance. I did find an out-of-state case, although I cannot for the life of me locate it again, in which a judge either was not disciplined or not required to self-report for an isolated violation in which there was no intent to help one side or the other. Accordingly, I decided that it was not necessary to report myself. I did try to comply with the Code of Judicial Conduct, specifically Rule 21-209, NMRA, in dealing with the communication by disclosing it and permitting the defense to obtain my recusal.

I hope that that decision to not self-report was not erroneous and will not prejudice your consideration of my case. I have been a lawyer and judge for over forty years without a disciplinary complaint or inquiry. I have always tried to conduct myself in accordance with the ethical rules. I routinely read the ethics opinions that are published by Center for Judicial Ethics of the National Center for State Courts (formerly published by the American Judicature Society). I am particularly chagrined at my conduct because I have even taught a course on judicial ethics concerning ex parte communications. I am embarrassed and humbled by what happened, and I have taken steps to assure that it will not happen again. I hope that you will consider closing this case without formal proceedings.

If you wish me to appear informally before you or if I can provide you with any further information, please let me know.

Sincerely yours,


Sarah M. Singleton

Enclosures

Zimbra

sfedsms@nmcourts.gov

Re: D-101-CV-2012-01906

From : Judge Sarah Singleton
<sfedsms@nmcourts.gov>

Sat, Jan 24, 2015 09:58 AM

Subject : Re: D-101-CV-2012-01906

To : jcroasdell <JCroasdell@rodey.com>,
Shannon Sherrell
<SSherrell@rodey.com>, bsaiz
<BSaiz@rodey.com>

Cc : James Tawney
<JTawney@ScherrLegate.com>,
Joseph Cervantes
<joseph@cervanteslawnm.com>,
Judge Singleton efileing
<sfeddiv2proposedtxt@nmcourts.gov>,
Sam Legate
<SamLegate@scherrlegate.com>,
daniel <daniel@anchondolaw.com>,
Jim Scherr
<JamesScherr@scherrlegate.com>

Counsel:

I wish to disclose what I believe to be an ex parte communication which I should not have had. This morning I had a telephone conversation with Sam Legate. I returned a phone call he made to me, thinking that he might want some advice about Santa Fe or something similar. To the best of my recollection, the conversation went as follows:

Mr. Legate said that what happened with the jury was that some of them wanted to award punitive damages but not ten of them so the foreperson decided to answer no to the question about punitive damages since ten people were not going to favor awarding punitive damages. He asked if I thought that would jeopardized the entire verdict. I told him that I could

not discuss that without the other side being present. Mr. Legate then asked if I knew any appellate lawyers. I gave him the names of two lawyers who often do plaintiff's appeals, Jane Yohalem and Steve Tucker. I then said he might want to research harmless error and asked if Plaintiffs meant to raise this as an issue. He mentioned something about waiver.

I believe the above paragraph to be at least the gist of the conversation. It happened quickly and as soon as I hung up, I realized I should not have had the conversation at all. I am disclosing this so that if the Defendants want me to recuse myself, they can let me know and I will do so. Please let me know either way how you would like me to proceed. I would appreciate hearing from you by January 30, 2015. I very much apologize for this lapse of judgment on my part.

Sarah M. Singleton
District Judge, Div. 2
First Judicial District
PO Box 2268
Santa Fe, NM 87504
505.455.8160

Zimbra**sfedsms@nmcourts.gov**

Re: D-101-CV-2012-01906

From : Brenda Saiz <BSaiz@rodey.com>

Sat, Jan 24, 2015 03:22 PM

Subject : Re: D-101-CV-2012-01906**To :** Judge Sarah Singleton
<sfedsms@nmcourts.gov>**Cc :** Jeff Croasdell
<JCroasdell@rodey.com>, Shannon
Sherrell <SSherrell@rodey.com>,
James Tawney
<JTawney@ScherrLegate.com>,
Joseph Cervantes
<joseph@cervanteslawnm.com>,
Judge Singleton efileing
<sfeddiv2proposedtxt@nmcourts.gov>,
Sam Legate
<SamLegate@scherrlegate.com>,
daniel <daniel@anchondolaw.com>,
Jim Scherr
<JamesScherr@scherrlegate.com>External images are not displayed. [Display images below](#)

Judge,

This is new to us so we are evaluating what we want to do. We will certainly let you know by January 30th. In the interim, please preserve all communications to and from Mr. Legate, including the message you refer to below. Thank you.

Sent from my iPhone

On Jan 24, 2015, at 9:58 AM, Judge Sarah Singleton
<sfedsms@nmcourts.gov> wrote:

Zimbra

sfedsms@nmcourts.gov

Re: D-101-CV-2012-01906

From : Judge Sarah Singleton
<sfedsms@nmcourts.gov> Sun, Jan 25, 2015 09:26 AM

Subject : Re: D-101-CV-2012-01906

To : bsaiz <BSaiz@rodey.com>

Cc : jcroasdell <JCroasdell@rodey.com>, Shannon Sherrell <SSherrell@rodey.com>, James Tawney <JTawney@ScherrLegate.com>, Joseph Cervantes <joseph@cervanteslawnm.com>, Judge Singleton efileing <sfeddiv2proposedtxt@nmcourts.gov>, Sam Legate <SamLegate@scherrlegate.com>, daniel <daniel@anchondolaw.com>, Jim Scherr <JamesScherr@scherrlegate.com>

I do not know how to preserve a telephone call that was not recorded. If there is a way to do this, please let me know what it is so I can do so.

Sarah M. Singleton
District Judge, Div. 2
First Judicial District
PO Box 2268
Santa Fe, NM 87504
505.455.8160

Zimbra**sfedsms@nmcourts.gov****RE: D-101-CV-2012-01906**

From : Joseph Cervantes
<joseph@cervanteslawnm.com>

Sun, Jan 25, 2015 06:36 PM

Subject : RE: D-101-CV-2012-01906

To : Brenda Saiz <BSaiz@rodey.com>,
Judge Sarah Singleton
<sfedsms@nmcourts.gov>

Cc : Jeff Croasdell
<JCroasdell@rodey.com>, Shannon
Sherrell <SSherrell@rodey.com>,
James Tawney
<JTawney@ScherrLegate.com>, Judge
Singleton efilng
<sfeddiv2proposedtxt@nmcourts.gov>,
Sam Legate
<SamLegate@scherrlegate.com>,
daniel <daniel@anchondolaw.com>,
Jim Scherr
<JamesScherr@scherrlegate.com>

External images are not displayed. [Display images below](#)

Judge Singleton and all counsel,

On behalf of Plaintiffs and Interveners, I ask that the Court set the earliest possible hearing to address any concerns regarding the subject telephone conversation yesterday with Mr. Legate.

Counsel for Plaintiffs and Interveners respectfully disagree that there is any basis for the Defendants to request recusal of Your Honor, or that on the basis of a mere request the Court would consider recusal without hearing argument. Such a procedure would remove the Plaintiffs and Interveners from the opportunity to be heard in opposition to recusal, and on the absence of any prejudice resulting from this conversation. Moreover, without a hearing we would have a deficient record of this conversation in the event of an appeal by Defendants.

For these and other reasons we ask that the Court set a hearing on this matter as soon as possible, and while the matters are present.

Respectfully,

Joe Cervantes

Zimbra

sfedsms@nmcourts.gov

RE: D-101-CV-2012-01906

From : Jeff Croasdell
<JCroasdell@rodey.com>

Wed, Jan 28, 2015 03:22 PM

1 attachment

Subject : RE: D-101-CV-2012-01906

To : 'Judge Sarah Singleton'
<sfedsms@nmcourts.gov>

Cc : Shannon Sherrell
<SSherrell@rodey.com>, 'James
Tawney'
<JTawney@ScherrLegate.com>,
'Judge Singleton efilng'
<sfeddiv2proposedtxt@nmcourts.gov>,
'Sam Legate'
<SamLegate@scherrlegate.com>,
'daniel' <daniel@anchondolaw.com>,
'Jim Scherr'
<JamesScherr@scherrlegate.com>,
'Joseph Cervantes'
<joseph@cervanteslawnm.com>,
Brenda Saiz <BSaiz@rodey.com>

Judge Singleton:

Thank you for your January 24, 2015 e-mail disclosing an ex parte communication with Mr. Legate and offering to recuse yourself if the Defendants desire that relief. We appreciate the Court's candor about the communication. The Defendants accept the Court's offer and ask that the recusal be entered immediately.

Further, we request that the Court's e-mail below be identified and included in the record as the next Court's exhibit.

Mr. Cervantes responded to your e-mail by requesting "a hearing on this matter as soon as possible," and on Monday you scheduled such a hearing for January 30. We assume that you scheduled the hearing provisionally while awaiting the Defendants' response to your offer. Now that the Defendants have accepted your offer, there is no need for a hearing.

Notably, Mr. Cervantes does not dispute the Court's recollection of "the subject telephone conversation." He argues only that the Defendants were not "prejudice[d]" by the conversation. Of

course that is not the test. Instead, "[a] judge shall disqualify ... herself in any proceeding in which the judge's impartiality might reasonably be questioned." Rule 21-211(A) NMRA. The conversation described in your January 24 e-mail plainly gives rise to such reasonable doubts. We presume that the Court would not have felt compelled to disclose it otherwise.

Mr. Cervantes contends that his clients are entitled "to be heard in opposition to recusal," evidently for the irrelevant purpose of contending that your conversation with Mr. Legate was harmless error. In fact, however, you could have recused yourself *sua sponte*, without offering the parties any choice in the matter. *See* Rule 21-211 cmt. 2 ("A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed."). Because you have stopped one step short of that disposition, the question is not whether the Plaintiffs have grounds for urging the Court to stay the course; the question is whether the Defendants consent to the Court's continued involvement. In extending the offer to recuse, you were simply following the procedure outlined in the Code of Judicial Conduct: "A judge subject to disqualification under ... [R]ule [21-211(A)] may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding." Rule 21-211(C). The Defendants and their lawyers do not "agree ... that the judge should not be disqualified." *Id.* Accordingly, the recusal should be effectuated forthwith, and the hearing should be canceled.

Jeff Croasdell

| | |
|--------------------|---|
| RODEY Law | Jeffrey M. Croasdell Product Liability / General Liability Group Leader |
| | jcroasdell@rodey.com Phone: 505.766.7563 Cell: 505.610.9437 201 Third Street NW, Suite 2200 Albuquerque, New Mexico 87102 fax: 505.768.7395 Rodey, Dickason, Sloan, Akin & Robb, P.A. www.rodey.com |

This message is confidential and may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, please reply to the sender that you received the message in error and then delete it. Thank you.

Zimbra

sfedsms@nmcourts.gov

Re: D-101-CV-2012-01906

From : Judge Sarah Singleton
<sfedsms@nmcourts.gov>

Wed, Jan 28, 2015 04:27 PM

📎 1 attachment

Subject : Re: D-101-CV-2012-01906

To : jcroasdell <JCroasdell@rodey.com>

Cc : Shannon Sherrell
<SSherrell@rodey.com>, James
Tawney
<JTawney@ScherrLegate.com>, Judge
Singleton efileing
<sfeddiv2proposedtxt@nmcourts.gov>,
Sam Legate
<SamLegate@scherrlegate.com>,
daniel <daniel@anchondolaw.com>,
Jim Scherr
<JamesScherr@scherrlegate.com>,
Joseph Cervantes
<joseph@cervanteslawnm.com>, bsaiz
<BSaiz@rodey.com>

The hearing will take place as scheduled.

Sarah M. Singleton
District Judge, Div. 2
First Judicial District
PO Box 2268
Santa Fe, NM 87504
505.455.8160

| <u>Time</u> | <u>Speak</u> | <u>Note</u> |
|-------------------|--------------|---|
| <u>8:11:03 AM</u> | Court | Alfredo Morga, et al. vs. FedEx Ground Package System, Inc., et al. D-101-CV-201201906 Hearing: Hearing on Ex Parte Communication Appearances: James Sherr and Sam Legate and James Tawney/Daniel Anchondo and Joseph Cervantes/Kim Purcell and Jeff Croasdell and Brenda Saiz |
| <u>8:14:20 AM</u> | Cervantes | The reason he asked for a hearing is because of a phone conversation with the Court and an atty in this case; this happened after the trial in this case; the Intervenors wanted a record of the events that transpired; the defense requested that the record include some of the email exchanges; Croasdell is asking for the Court to enter the emails as exhibits |
| <u>8:15:44 AM</u> | | Apologizes to the Court for making the phone call and says it was inappropriate; says the contents of the call was inappropriate; commends the Court for handling the issue professionally; the parties want a clear record on the sequence of the events; also, notes that all this followed the completion of the trial and after the Jury was released and after a verdict was reached |
| <u>8:18:22 AM</u> | | The call from Mr. Legate was Friday evening and then another call followed on Saturday; the Pliffs and Intervenors do not request that this Court recuse herself from this case |
| <u>8:19:19 AM</u> | Kim Purcell | Responds that the first regretable call came on Fri evening and then Sat when Legate sought to engage the Court on the legitimacy of the verdict and sought to receive recommendations from appellate counsel; the second circumstance is the fact that the Court not only entertained that call and stayed on the line when the Court knew what the purpose was, but then when the Court suggested a doctrine that Legate could research and argue; it was at that moment, if not before, that the Court stepped out of its assigned role of "calling balls and strikes and became a batting coach"; the Court recognized that the entire transaction was inappropriate and the defense commends the Court |
| <u>8:21:23 AM</u> | | The Defts argue that even though the Court recognized the inappropriate conduct by this Court, the harm has already been done; tells the Court it has no choice but to recuse herself; the Defts would request that this Court recuse herself; cites to Rule 21-2-11 on a judge's impartiality that might reasonably be questioned; Defts argue that question on impartiality has been met |
| <u>8:22:58 AM</u> | | Cites to case law In Re: Hernandez on impartiality between two judges who discussed a case about a deft's plea; argues that this Court's recusal is not only appropriate but is actually necessary |
| <u>8:25:27 AM</u> | | Cites to Martinez vs. Carmona, 95 NM 45 at page 550 and cites to judicial function |
| <u>8:27:59 AM</u> | | Asks that the email exchanges between this Court and Counsel be entered in the record; asks this Court to please produce the voicemail that Legate left on this Court's cell phone on Friday night |

| | | |
|-------------------|-----------|---|
| <u>8:28:50 AM</u> | Court | Tells Purcell that she deleted the voicemail right away and doesn't know if it can be retrieved; would like to tell Counsel the Court's recollection of what the voicemail said; this Court recalls that Legate said, " Would you give me a call when you have a chance tomorrow." This Court thought Legate was calling about asking for places to eat in Santa Fe |
| <u>8:30:37 AM</u> | Purcell | Presents the Court with the emails for entry into the record |
| <u>8:30:54 AM</u> | Court | Marks the email exchanges as Court's Exhibit A; tells Purcell to Efile the exhibit |
| <u>8:31:39 AM</u> | Cervantes | As to the Orders, asks this Court not to enter Orders on previous rulings; the Pliffs and Intervenors reject the notion that there was "coziness" by this Court towards the Pliffs and their case; notes that this Court worked very hard in this case and knows this Court is regretful about what happened |
| <u>8:33:36 AM</u> | Court | As long as there is no issue concerning the Orders, this Court tells Counsel that her approach to doing this is not to be someone who's passive; this Court says the "balls and strikes" comment about this Court is a bad analogy; this Court is open and not passive about issues that come up with both sides; this Court looks up cases in the law to try to make a clear and concise record; says the Court wanted to deal with remitter |
| <u>8:35:57 AM</u> | | Court denies any "coziness" by this Court to the Pliffs |
| <u>8:36:33 AM</u> | | On the issue of recommendations on appeal Counsel, this Court was just making recommendations and not being personal; Rule 21-209(A)(1) is what guided this Court on this issue |
| <u>8:38:06 AM</u> | | In fairness to both sides, this Court RECUSES herself from this Court |
| <u>8:38:30 AM</u> | | In recess |

FOREPERSON

filed in open court at 4:30 on 1/23/2015.
Sara W. Singleton

STATE OF NEW MEXICO
SANTA FE COUNTY
FIRST JUDICIAL DISTRICT COURT

ALFREDO MORGA, Individually and on behalf of the
Estate of YLAIRAM MORGA, Deceased, and as Next
Friend of YAHIR MORGA, Minor Child,

RENE VENEGAS LOPEZ, Individually and as the Administrator
of the Estate of Marialy Ruby Venegas Morga, Deceased, and
GEORGINA LETICIA VENEGAS, Individually,

Plaintiffs,

vs.

D-101-CV- 2012-01906

FEDEX GROUND PACKAGE SYSTEM, INC., RUBEN'S
TRUCKING, LLC a/k/a RUBEN REYES a/k/a SHOOTER'S
EXPRESS TRUCKING, INC. and The Estate of ELIZABETH
SENA QUINTANA, M & K's TRUCKING, INC.,

Defendants.

SPECIAL VERDICT FORM

On the questions submitted, the jury finds as follows:

Question No. 1:

- 1(a): Was FedEx Ground negligent?
Answer: YES (Yes or No)
- 1(b): Was M & K negligent?
Answer: YES (Yes or No)
- 1(c): Was Ruben's negligent?
Answer: YES (Yes or No)
- 1(d): Was Elizabeth Quintana negligent?
Answer: YES (Yes or No)

If you answer "No" to all of Questions 1(a), 1(b), 1(c), and 1(d), you are not to answer further questions. You shall return the special verdict for Defendants and against Plaintiffs. Your foreperson must sign this special verdict, and you will all return to open Court. If you answer "Yes" to Question 1(a) or 1(b) or 1(c) or 1(d), for any Defendant for which you found negligence proceed to Question 2.

Question No. 2:

Was the negligence of the Defendant(s) against whom you found negligence a cause of Plaintiffs' damages?

2(a): FedEx Ground Answer: YES (Yes or No)
2(b): M & K Answer: YES (Yes or No)
2(c): Ruben's Answer: YES (Yes or No)
2(d): Elizabeth Quintana Answer: YES (Yes or No)

If you answer "No" to all of Questions 2(a), 2(b), 2(c), and 2(d) (as applicable), you are not to answer further questions. You shall return the special verdict for Defendants and against Plaintiffs. Your foreperson must sign this special verdict, and you will all return to open Court. If you answer "Yes" to Question 2(a) or 2(b) or 2(c) or 2(d), proceed to Question 3.

Question No. 3:

In accordance with the damage instructions given by the Court, we find the total amount of damages suffered by **Alfredo Morga, Individually**, to be \$ 40,125,000.
(Here enter the total amount of damages without any reduction for comparative fault).

In accordance with the damage instructions given by the Court, we find the total amount of damages suffered by Alfredo Morga, on behalf of the Estate of **Ylairam Morga, Deceased**, to be \$ 61,000,000. (Here enter the total amount of damages without any reduction for comparative fault).

In accordance with the damage instructions given by the Court, we find the total amount of damages suffered by Alfredo Morga, as Next Friend of **Yahir Morga, Minor Child** to be \$ 32,000,000. (Here enter the total amount of damages without any reduction for comparative fault).

In accordance with the damage instructions given by the Court, we find the total amount of damages suffered by Rene Venegas, as the Administrator of the Estate of **Marialy Morga**, Deceased, to be \$ 32,000,000 (Here enter the total amount of damages without any reduction for comparative fault).

In accordance with the damage instructions given by the Court, we find the total amount of damages suffered by **Rene Venegas, Individually**, to be \$ 208,000. (Here enter the total amount of damages without any reduction for comparative fault).

In accordance with the damage instructions given by the Court, we find the total amount of damages suffered by **Georgina Venegas** to be \$ 200,000. (Here enter the total amount of damages without any reduction for comparative fault).

Question No. 4:

Compare the negligence of the following parties and find a percentage for each. The total of the percentages must equal 100%, but that percentage for any one or more of the parties named may be zero if you find that such party was not negligent or that any negligence on the part of such party was not a cause of damage.

| | |
|------------------------|-------------|
| FedEx Ground | <u>65</u> % |
| M & K's Trucking, Inc. | <u>10</u> % |
| Ruben's | <u>10</u> % |
| Elizabeth Quintana | <u>10</u> % |
| Marialy Morga | <u>5</u> % |
| | 100 % TOTAL |

The Court will multiply the percentage of each party times the Plaintiffs' total damages as found by the jury under Question No. 3. The Court will then enter judgment for Plaintiff(s) against Defendants in the proportion of damages found as to that party. If the percentage found by the Court for any Defendant is zero, then the Court will enter judgment for that Defendant and against the Plaintiff as to that Defendant.

Questions No. 5:

As to any party against whom you answered "Yes" to Question No. 2, answer the following: Did the act of that Defendant amount to reckless or wanton conduct?

| | | |
|--------------------------|-------------------|-------------|
| 5(a): FedEx Ground | Answer: <u>NO</u> | (Yes or No) |
| 5(b): M & K | Answer: <u>NO</u> | (Yes or No) |
| 5(c): Ruben's | Answer: <u>NO</u> | (Yes or No) |
| 5(d): Elizabeth Quintana | Answer: <u>NO</u> | (Yes or No) |

If you answer "No" to all of Questions 5(a), 5(b), 5(c) and 5(d), you are not to answer further questions. You shall return the special verdict for Defendants and against Plaintiffs on the issue of punitive damages. Your foreperson must sign this special verdict, which will be your verdict for the Defendants and against Plaintiffs on the issue of punitive damages, and you will all return to open Court.

If you answer "Yes" to Questions 5(a) or 5(b) or 5(c) or 5(d), proceed to Question 6.

Questions No. 6:

In accordance with the punitive damages instructions given by the Court, we find the total amount of punitive damages to be \$ _____.

Proceed to Question No. 7.

Question No. 7:

Determine what percentage of punitive damages should go to each Plaintiff. The total of the percentages must equal 100%, but that percentage for any one or more of the parties named may be zero if you find that such party is not entitled to punitive damages.

| | |
|--------------------------------|-------------|
| Alfredo Morga, Individually | _____ % |
| Estate of Ylairam Morga | _____ % |
| Yahir Morga | _____ % |
| Estate of Marialy Morga | _____ % |
| Rene Venegas, Individually | _____ % |
| Georgina Venegas, Individually | _____ % |
| | 100 % TOTAL |

The Court will multiply the percentage of each party times the Plaintiffs' total punitive damages as found by the jury under Question No. 6. The Court will then enter judgment for Plaintiff(s) against Defendants in the proportion of damages found as to that party. If

the percentage found by the Court for any Defendant is zero, then the Court will enter judgment against that Plaintiff as to punitive damages.

A handwritten signature in cursive script, appearing to read "Duane L. ...", is written over a horizontal line. Below this line, the word "FOREPERSON" is printed in a bold, sans-serif font.

FOREPERSON

