

  
Joey D. Moya

IN THE SUPREME COURT  
OF THE STATE OF NEW MEXICO

No.

**S-1-SC-37568**

IN THE MATTER OF HON. ALBERT J. MITCHELL, JR.  
Tenth Judicial District Court

INQUIRY CONCERNING HON. ALBERT J. MITCHELL, JR.  
Inquiry No. 2018-020

FILED UNDER SEAL  
PURSUANT TO 27-104(B) NMRA 2017

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  
Telephone: (505) 222-9353  
Fax: (505) 222-9358

*Counsel for Petitioner*

BRIGGS F. CHENEY, ESQ.  
SHEEHAN & SHEEHAN, P.A.  
6001 Indian School Rd. NE #400  
Albuquerque, NM 87110-8740  
Telephone: (505) 247-0411  
Fax: (505) 842-8890

*Counsel for Respondent*

IN THE SUPREME COURT  
OF THE STATE OF NEW MEXICO

No.

IN THE MATTER OF HON. ALBERT J. MITCHELL, JR.  
Tenth Judicial District Court

INQUIRY CONCERNING HON. ALBERT J. MITCHELL, JR.  
Inquiry No. 2018-020

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

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. Albert J. Mitchell, Jr., consents to discipline from the Supreme Court. In addition, the Petitioner requests the Court impose the stipulated discipline and unseal the file in this matter, pursuant to Rule 27-104(B) NMRA.

1. Petitioner invokes its jurisdiction pursuant to the Commission'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 27, 2018, the Commission issued a *Notice of Preliminary Investigation* to Respondent in Inquiry Number 2018-020. (See Exhibit A to Exhibit 1)

3. On August 9, 2018, the Commission issued a *Notice of Preliminary Investigation* to Respondent in Inquiry Number 2018-020. (See Exhibit B to Exhibit 1)

4. On March 7, 2019, upon a unanimous vote, 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 admits that on or about January 8, 2018, he met privately with Quay County Manager Richard Primrose, during which Respondent expressed his displeasure with the vote of the

County Commissioners earlier that day concerning security of the Quay County Courthouse. The statements Respondent made to the County Manager during that meeting form the basis for the Commission's *Petition* and request for the imposition of discipline.

B. Respondent denies that he engaged in willful misconduct regarding political influence, but does not contest that the Commission has sufficient facts and evidence to prove the following conduct occurred at the private meeting with the County Manager on January 8, 2018:

(1) Respondent made statements indicating he had the Governor's ear and could call on her to line-item veto capital outlay funds for Quay County if the court security measures Respondent wanted were not met.

(2) Respondent made statements indicating that if the court security measures Respondent wanted were not met, a prominent legislator could take the Quay County court's security measures into his own hands and pass a law to provide the measures Respondent believed were necessary for the courthouse.

(3) Respondent made statements indicating that if any of a number of specific options concerning court security were implemented, Respondent would not follow through with notifying the Governor about Quay County's failure to implement the court security measures. The manner in which Respondent presented the options to the County Manager on January 8, 2018, was suggestive of a threat and the possibility of putting Quay County in jeopardy of not receiving capital outlay funds.

C. **Code of Judicial Conduct.** Respondent acknowledges that the facts support a conclusion that he violated the Code of Judicial Conduct and Respondent knew or should have known that his actions were clearly a failure to be patient, dignified, and courteous, (Rule 21-208(B)). Further, Respondent's statements created an appearance of impropriety, (Rule 21-102), and could be perceived as an abuse of the prestige of judicial office, (Rule 21-103), which reflects negatively upon the independence, integrity and impartiality of, and respect for, the judiciary, (Rule 21-102). Respondent stipulates

that the Commission has sufficient evidence to prove the facts presented in this *Stipulation* and to conclude that individually and taken together the facts constitute willful misconduct in office, one or more violations of the New Mexico Code of Judicial Conduct, and provide sufficient bases for the New Mexico Supreme Court to impose discipline against him pursuant to Article VI, Section 32 of the New Mexico Constitution.

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

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

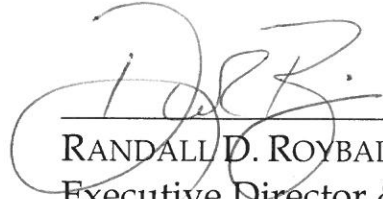
6. It is in the best interest of justice and integrity of the New Mexico Judiciary that the Supreme Court grant this *Petition* and impose the stipulated discipline.

WHEREFORE, Petitioner respectfully requests this Court issue an order granting the Commission's *Petition*, approving the *Stipulation Agreement and Consent to Discipline*, imposing the stipulated discipline, and

unsealing the Supreme Court's file in this matter pursuant to Rule 27-104(B) NMRA.

Respectfully submitted,

JUDICIAL STANDARDS COMMISSION



---

RANDALL D. ROYBAL  
Executive Director & General Counsel

DEBORAH BORIO  
Senior 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 copy of the foregoing was filed and served via the Supreme Court's E-File and Serve system, addressed to Briggs F. Cheney, Esq., Counsel for Respondent, on this <sup>8/4</sup> day of March, 2019.



---

DEBORAH BORIO

BEFORE THE JUDICIAL STANDARDS COMMISSION  
STATE OF NEW MEXICO

INQUIRY CONCERNING HON. ALBERT J. MITCHELL, JR.  
Tenth Judicial District Court

Inquiry No. 2018-020

**FILED**  
MAR - 7 2019  
NM JUDICIAL  
STANDARDS COMMISSION



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* filed April 27, 2018, and the *Notice of Formal Proceedings* filed August 9, 2018, in Inquiry No. 2018-020. (See Exs. A and B, respectively.)

This *Stipulation Agreement and Consent to Discipline* ("Stipulation") is entered into by and between the Judicial Standards Commission and Hon. Albert J. Mitchell, Jr. ("Respondent"). Respondent is represented by Briggs F. Cheney, Esq., of Sheehan & Sheehan, P.A. The parties hereby enter into the following *Stipulation*:

1. The Commission has jurisdiction over Respondent and the above-captioned and numbered matter pursuant to Article VI, Section 32 of the Constitution of the State of New Mexico; NMSA 1978, Sections 34-10-1 through 34-10-4; and, the Judicial Standards Commission Rules.

2. Respondent is the district court Chief Judge in the Tenth Judicial District Court, and was so at the times of the conduct alleged.

3. Respondent admits to the following facts:

a. On or about January 8, 2018, Respondent met privately with

Exhibit 1



County Manager Richard Primrose following a meeting of the Quay County Commissioners.

b. At the private meeting with the County Manager on January 8, 2018, Respondent expressed his displeasure with the vote of the County Commissioners concerning security of the Quay County Courthouse.

4. Respondent denies that he engaged in willful misconduct regarding political influence, but does not contest that the Commission has sufficient facts and evidence to prove the following conduct occurred at the private meeting with the County Manager on January 8, 2018:

a. Respondent made statements indicating he had the Governor's ear and could call on her to line-item veto capital outlay funds for Quay County if the court security measures Respondent wanted were not met.

b. Respondent made statements indicating that if the court security measures Respondent wanted were not met, a prominent legislator could take the Quay County court's security measures into his own hands and pass a law to provide the measures Respondent believed were necessary for the courthouse.

c. Respondent made statements indicating that if any of a number of specific options concerning court security were implemented, Respondent would not follow through with notifying the Governor about Quay County's failure to implement the court security measures. The manner in which Respondent presented the options to the County Manager on January 8, 2018, was suggestive

of a threat and the possibility of putting Quay County in jeopardy of not receiving capital outlay funds.

5. **Code of Judicial Conduct.** Respondent acknowledges that the facts support a conclusion that he violated the Code of Judicial Conduct and Respondent knew or should have known that his actions were clearly a failure to be patient, dignified, and courteous, (Rule 21-208(B)). Further the Respondent's statements created an appearance of impropriety, (Rule 21-102), and could be perceived as an abuse of the prestige of judicial office, (Rule 21-103), which reflects negatively upon the independence, integrity and impartiality of, and respect for, the judiciary, (Rule 21-102). Respondent stipulates that the Commission has sufficient evidence to prove the facts presented in this *Stipulation* and to conclude that individually and taken together the facts constitute willful misconduct in office, one or more violations of the New Mexico Code of Judicial Conduct, and provide sufficient bases for the New Mexico Supreme Court to impose discipline against him pursuant to Article VI, Section 32 of the New Mexico Constitution.

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

7. The Commission will file under seal with the New Mexico Supreme Court, pursuant to Rule 27-104(B) NMRA 2010, 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* filed April 27, 2018 (Exhibit A); and, a copy of the *Notice of Formal Proceedings*, filed August 9, 2018 (Exhibit B), which is required by the Supreme Court.

8. Upon granting the *Petition*, pursuant to Supreme Court Rules, this matter will be unsealed.

9. Upon granting of this *Stipulation* and acceptance by the Supreme Court, the Commission will abate the proceedings and close this matter (Inquiry No. 2018-020).

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

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

12. 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.

13. Respondent shall not make any public misrepresentations concerning this Inquiry, the facts and circumstances of Respondent's *Stipulation*, or the Commission's proceedings.

14. *Non-Compliance and Breach.* If Respondent violates any terms or provisions of this executed *Stipulation*, Respondent agrees that all facts alleged in the *Notice of Formal Proceedings* filed in Inquiry No. 2018-020, including those facts not

contested or not specifically admitted to in this *Stipulation*, shall be deemed admitted by the Respondent, will be used against Respondent in future proceedings before the Commission and the Supreme Court, and shall constitute obstruction of Commission business and contempt. Further, if Respondent's conduct causes a Notice of Formal Proceedings to be issued in a new matter that involves the same type of conduct detailed in this *Stipulation* and the conduct alleged occurs on or after the date this *Stipulation* is filed, Respondent agrees that he shall be summarily suspended without pay by the Supreme Court until the new matter is resolved.

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

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

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

18. 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 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*, 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 know, understand, and agree that the provisions of this *Stipulation* are material to the Commission's deliberations and ultimate acceptance of it. I further understand that if I violate any provision of this *Stipulation*, I agree, acknowledge, and accept that all facts

alleged against me in this matter are admitted by me as fact, and that the Commission shall reinstate this matter pending before the Supreme Court and/or the Commission at the time this *Stipulation* was executed.

I acknowledge that my conduct concerning the enumerated facts and violation of the rules of the Code of Judicial Conduct, which I do not contest, provides sufficient basis for the imposition of discipline pursuant to Article VI, Section 32 of the New Mexico Constitution, as agreed to in this *Stipulation*, and is material to the Commission's deliberations and ultimate acceptance of this *Stipulation Agreement and Consent to Discipline*.

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.



HON. ALBERT J. MITCHELL, JR.  
*Respondent*

Dated: March 6, 2019

**DEFENSE COUNSEL REVIEW & APPROVAL**

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




BRIGGS F. CHENEY, ESQ.  
Sheehan & Sheehan, P.A.  
P.O. Box 271  
Albuquerque NM 87103-0271  
*Counsel for Respondent*

Dated: March 6, 2019

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, approve, and enter into this *Stipulation Agreement and Consent to Discipline*.

  
\_\_\_\_\_  
DEBORAH BORIO, ESQ.  
Examiner

Dated: March 6, 2019

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, approves, and enters into this *Stipulation Agreement and Consent to Discipline*.

  
\_\_\_\_\_  
JOYCE BUSTOS  
Chair

Dated: March 7, 2019

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

Dated: 3/7/19



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 26, 2018

**CONFIDENTIAL**  
CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**FILED**

APR 27 2018

NM JUDICIAL  
STANDARDS COMMISSION

Hon. Albert J. Mitchell, Jr.  
Tenth Judicial District Court  
P.O. Box 1067  
Tucumcari, NM 88401-1067

*Re: Inquiry No. 2018-020; Notice of Preliminary Investigation*

Dear Judge Mitchell:

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 8, 2018, you made comments that: created an appearance of impropriety and/or constituted an actual impropriety; abused the prestige of judicial office; compromised your judicial independence, integrity, or impartiality; and, were threatening in nature. Specifically, it is alleged that you made statements to the Quay County Manager to the effect of:

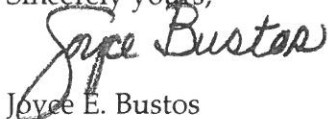
- You had the Governor's ear and if your desires for security measures were not met by the County Commission, you could call the Governor and she would line-item veto capital outlay funds for Quay County;
- If your desires for security measures were not met, a prominent legislator would take matters into his own hands and pass a law to provide the measures; and
- To ensure Quay County stayed in good graces with the Governor, the County needed to implement one of the following options:
  - Hire three (3) more full time Sheriff's deputies who would be responsible for monitoring the stairwells and elevator going up to the District Court during court;
  - Meet your demands and reverse the County Commission's vote of earlier that day;
  - Rent your old law office – which you own – in Tucumcari for \$500 per month and move the County Clerk into that office;

Exhibit A

- Build a new judicial building for you, or,
- Move all of the other county offices out of the Courthouse into some other building, leaving you as the only occupant of the Quay County Courthouse.

Please provide the Commission with an explanation of these incidents and the factual and legal bases 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,

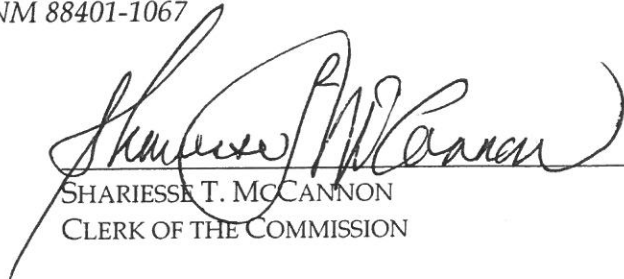


Joyce E. Bustos  
Chair

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing was mailed on the 27<sup>th</sup> day of April, 2018, by certified mail, return receipt requested to:

*Hon. Albert J. Mitchell, Jr.*  
*Tenth Judicial District Court*  
*P.O. Box 1067*  
*Tucumcari, NM 88401-1067*



SHARIESSE T. MCCANNON  
CLERK OF THE COMMISSION



BEFORE THE JUDICIAL STANDARDS COMMISSION  
OF THE STATE OF NEW MEXICO

INQUIRY CONCERNING HON. ALBERT J. MITCHELL, JR.  
Tenth Judicial District Court

Inquiry No. 2018-020

**FILED**  
AUG 09 2018  
NM JUDICIAL  
STANDARDS COMMISSION



NOTICE OF FORMAL PROCEEDINGS

Hon. Albert J. Mitchell, Jr.  
P.O. Box 1067  
Tucumcari NM 88401-1067

YOU ARE HEREBY NOTIFIED that the Judicial Standards Commission, in accordance with its jurisdiction under Article VI, Section 32 of the New Mexico Constitution and pursuant to Rule 15 NMRA 2010 of the Judicial Standards Commission Rules, has instituted formal proceedings on the charges set forth below.

COUNT I

On or about January 8, 2018, you created an appearance of impropriety and/or committed an actual impropriety; abused the prestige of judicial office; compromised your judicial independence, integrity, or impartiality; allowed external interests or relationships to influence your judicial conduct or judgment; and, failed to be patient, dignified, and courteous by making a statement to the Quay County Manager, Richard Primrose, to the effect that you had the Governor's ear and if your desires for court security measures were not met by the County Commission, you would call the Governor and she would line-item veto capital outlay funds for Quay County.

Such conduct violates Rules 21-101, 21-102, 21-103, 21-204(B), and 21-208(B) NMRA 2012 and constitutes willful misconduct in office.

Exhibit B

## COUNT II

On or about January 8, 2018, you created an appearance of impropriety and/or committed an actual impropriety; abused the prestige of judicial office; compromised your judicial independence, integrity, or impartiality; allowed external interests or relationships to influence your judicial conduct or judgment; and, failed to be patient, dignified, and courteous by making a statement to the Quay County Manager, Richard Primrose, to the effect that if your desires for court security measures were not met, a prominent legislator, such as John Arthur Smith, would take matters into his own hands and pass a law to provide the measures.

Such conduct violates Rules 21-101, 21-102, 21-103, 21-204(B), and 21-208(B) NMRA 2012 and constitutes willful misconduct in office.

## COUNT III

On or about January 8, 2018, you created an appearance of impropriety and/or committed an actual impropriety; abused the prestige of judicial office; compromised your judicial independence, integrity, or impartiality; allowed external interests or relationships to influence your judicial conduct or judgment; and, failed to be patient, dignified, and courteous by making a statement to the Quay County Manager, Richard Primrose, to the effect that to ensure Quay County stayed in good graces with the Governor, the County needed to implement one of the following options:

- (a) Hire three (3) more full time Sheriff's deputies who would be responsible for monitoring the stairwells and elevator going up to the District Court during court;
- (b) Meet your demands and reverse the County Commission's vote of earlier that day;

(c) Rent your old law office—which you own—in Tucumcari for \$500 per month and move the County Clerk into that office;

(d) Build a new judicial building for you, or,

(e) Move all of the other county offices out of the Courthouse into some other building, leaving you as the only occupant of the Quay County Courthouse.

Such conduct violates Rules 21-101, 21-102, 21-103, 21-204(B), and 21-208(B) 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  
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, return receipt requested, on this 9<sup>th</sup> day of August, 2018, to the following:

*Hon. Albert J. Mitchell, Jr.  
Tenth Judicial District Court  
P.O. Box 1067  
Tucumcari NM 88401-1067*

  
SHARIESSE T. MCCANNON  
Clerk of the Commission