

  
Joey D. Moya

IN THE SUPREME COURT  
OF THE STATE OF NEW MEXICO

No.

**S-1-SC-37456**

IN THE MATTER OF HON. DOROTHY ENCINIAS  
Municipal Court Judge, Moriarty, New Mexico

INQUIRY CONCERNING HON. DOROTHY ENCINIAS  
Inquiry No. 2018-078

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

PETITION TO ACCEPT STIPULATION AGREEMENT AND  
CONSENT TO DISCIPLINE

JUDICIAL STANDARDS COMMISSION  
Post Office Box 27248  
Albuquerque, New Mexico 87125-7248  
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509 Roma Ave. NW  
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RANDALL D. ROYBAL  
*Executive Director & General Counsel*

*Counsel for Respondent*

PHYLLIS A. DOMINGUEZ  
*Deputy Director*

*Counsel for Petitioner*

IN THE SUPREME COURT  
OF THE STATE OF NEW MEXICO

No.

IN THE MATTER OF HON. DOROTHY ENCINIAS  
Municipal Court Judge, Moriarty, New Mexico

INQUIRY CONCERNING HON. DOROTHY ENCINIAS  
Inquiry No. 2018-078

**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 (“Commission”), through the undersigned counsel, hereby petitions the Supreme Court for an order approving the *Stipulation Agreement and Consent to Discipline* (“*Stipulation*”), attached hereto as **Exhibit 1**, in which Hon. Dorothy Encinias, (“Respondent”), represented by Nathan E. Winger, Esq., consents to discipline from the Supreme Court. In addition, the Commission requests the Court unseal the entire file in this matter, pursuant to Rule 27-104(B) NMRA.

1. The Commission 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. The Commission issued Respondent a *Notice of Preliminary Investigation* ("NPI") on May 17, 2018, and subsequently a *Notice of Formal Proceedings* on August 9, 2018 in Inquiry 2018-078. (See **Exhibits A and B** to **Exhibit 1**, respectively.)

3. Respondent filed a response to the *Notice of Preliminary Investigation* on June 6, 2018 and to the *Notice of Formal Proceedings* on September 5, 2018. (See **Exhibits C and D** to **Exhibit 1**, respectively.)

4. Upon majority vote of the Commissioners, the Commission entered into a *Stipulation* with the Respondent on December 20, 2018, in which the parties agreed and which provides in pertinent part the following:

Respondent failed to immediately resign her position as Moriarty Municipal Court Judge when she declared her candidacy for the position of Torrance County



Commissioner on March 13, 2018, contrary to Rule 21-405(C) of the Code of Judicial Conduct.

5. Respondent stated in her NPI response (**Exhibit C**), that she sought advice from an unnamed attorney prior to her declaration of candidacy on March 13, 2018, and was advised that she did not have to resign her judicial position because she was a part-time judge.

6. The advice was contrary to the plain language of Rule 21-405(C) and Rule 21-004(B)(1) of the Code of Judicial Conduct, which provides no exemption for part-time judges from the long-standing “resign to run rule” of the code. Rule 21-405(C) mandates:

No judge of any court in the State of New Mexico may while in office accept a nomination for, or be elected to, a public nonjudicial office. A judge must, when filing a statement of candidacy for elective nonjudicial office, resign the judge’s office immediately.

Moreover, Rule 21-004(B)(1) provides no exemption for part-time municipal judges from this requirement:

An elected part-time probate or municipal judge, or a judge appointed to a vacant seat on a part-time probate or municipal court,

- (a) is not required to comply with Rules 21-304 (Appointments to governmental positions), 21-308(A) (Appointments to fiduciary positions), 21-309 (Service as

arbitrator or mediator), 21-310 (Practice of law), and 21-311(B) (Financial or business activities) NMRA;

- (b) is not required to comply with Rule 21-315 NMRA (Reporting requirements), unless the extrajudicial compensation, expense reimbursement, or waiver of fees or charges to be reported relates to the judge's judicial duties; and
- (c) shall not practice law in the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

7. Nineteen (19) days before the June 6, 2018 primary election in which Respondent was running for a non-judicial position, the Commission issued the NPI to Respondent. The Commission informed Respondent that she was being investigated for not resigning from her judicial position upon becoming a candidate for county commissioner, as required by the stated rule.

8. Respondent remained in her position as Moriarty Municipal Court Judge and continued her race for county commissioner in the June 6, 2018 primary election, but ultimately did not win.

9. Respondent admits she violated Rules 21-101, 21-102 and 21-405(C) of the Code of Judicial Conduct.

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

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

12. It is in the best interest of justice and integrity of the New Mexico judiciary that the Supreme Court grant the Commission's *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*, ordering the issuance and publication of a Public Censure, 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*

PHYLLIS A. DOMINGUEZ  
*Deputy Director*  
P.O. Box 27248  
Albuquerque, NM 87125-7248  
TEL (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 Court's Electronic Filing and Service System addressed to Nathan E. Winger, Esq., on this 3<sup>d</sup> day of January 2019.



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PHYLLIS A. DOMINGUEZ

BEFORE THE JUDICIAL STANDARDS COMMISSION  
OF THE STATE OF NEW MEXICO

FILED

DEC 20 2018

NM JUDICIAL  
STANDARDS COMMISSION



INQUIRY CONCERNING HON. DOROTHY ENCINIAS  
Moriarty Municipal Court

Inquiry No. 2018-078

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 May 17, 2018, and the *Notice of Formal Proceedings* filed August 9, 2018, in Inquiry No. 2018-078. (See **Ex. A & B** respectively.)

1. This *Stipulation Agreement and Consent to Discipline* ("Stipulation") is entered into by and between the Commission and Hon. Dorothy Encinias ("Respondent"). Respondent filed responses to the *Notice of Preliminary Investigation* on June 6, 2018, and to the *Notice of Formal Proceedings* on September 5, 2018. (See **Exs. C & D** respectively.) Respondent is represented by Nathan E. Winger, Esq. The parties hereby enter into the following *Stipulation*:

Respondent admits she committed the following act:

Respondent failed to immediately resign her position as Moriarty Municipal Court judge when she declared her candidacy for the position of Torrance County Commissioner on March 13, 2018.

**Background:** A *Notice of Preliminary Investigation* (NPI) was issued to Respondent on May 17, 2018 which included reference to Rule 21-405(C) of the Code of Judicial Conduct. Rule 21-405(C) states: "No judge of any court in the State of New Mexico may while in office, accept a nomination for, or be elected to, a public nonjudicial office. A judge must, when filing a statement for elective nonjudicial office, resign the judge's office immediately."

EX  
1



Respondent received the NPI prior to the June 6, 2018 primary election and failed to either resign her position as judge of the Moriarty Municipal Court, or to withdraw from the race for Torrance County Commissioner.

The Commission received Respondent's response to the NPI on June 6, 2018. Respondent stated that she had consulted with an attorney prior to her declaration of candidacy for the position of Torrance County Commissioner and was advised that she did not have to resign her judicial position.

2. Respondent does not contest that the Commission has sufficient facts and evidence to prove by clear and convincing evidence that she engaged in willful misconduct by committing the act described in paragraph one (1) above, and that she violated the Code of Judicial Conduct Rules 21-101, 21-102 and 21-405(C) NMRA 2015.

3. Respondent consents to imposition of the following discipline by the Supreme Court:

**Public censure**, which shall be published in the New Mexico *Bar Bulletin*.

4. Pursuant to Rule 27-104(B) NMRA 2011, the Commission will file under seal with the New Mexico Supreme Court, a *Petition to Accept Stipulation Agreement and Consent to Discipline* ("*Petition*"), attaching a copy of this *Stipulation*.

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

6. The Commission agrees to close the current proceeding in Inquiry No. 2018-078 upon granting of the *Petition* by the Supreme Court.

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

8. 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.

9. Respondent shall not make any misrepresentations to the media concerning this matter (Inquiry No. 2018-078), the facts and circumstances of Respondent's *Stipulation*, or the Commission's 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*.

12. Non-Compliance and Breach. If Respondent violates any terms or provisions of this executed *Stipulation*, Respondent agrees that all facts and charges alleged in the *Notice of Formal Proceedings* issued in Inquiry No. 2018-078 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, the Commission shall issue an order to show cause why Respondent should not be summarily suspended without pay by the Supreme Court until the new matter is resolved.

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

14. 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 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 regarding those issues. I stipulate 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 basis for the New Mexico Supreme Court to impose discipline against me pursuant to Article VI, Section 32 of the New Mexico Constitution.

I know, understand, and agree that the provisions of this *Stipulation* are material to the Commission's deliberations and ultimate acceptance of it. I also understand and agree that by entering into this *Stipulation*, I am agreeing to abide by all the terms and provisions contained herein. I understand that if I violate any terms or provisions of this *Stipulation* in any manner, I agree, acknowledge, and accept that all allegations lodged against me in the *Notice of Formal Proceedings* issued in Inquiry No. 2018-078 will be considered admitted by me as fact, and that the Commission shall re-initiate all matters pending before the Supreme Court and/or the Commission at the time this *Stipulation* was executed. I further understand that if my 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, I know and understand that the Commission shall issue an order to show cause why I should not be summarily suspended without pay by the Supreme Court until the new matter is resolved.

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



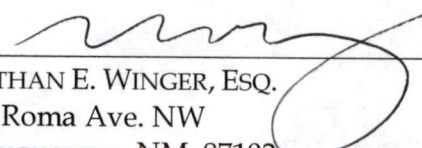
HON. DOROTHY ENCINIAS  
*Respondent*

Dated: 12-13-18



**DEFENSE COUNSEL REVIEW**

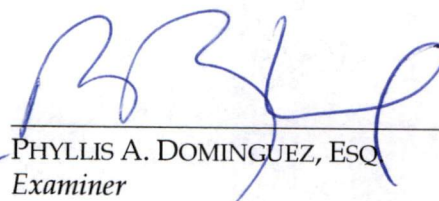
I have reviewed the stipulation agreement with my client. I have advised my client of her constitutional rights and possible defenses, and hereby approve my client's entry into this *Stipulation Agreement and Consent to Discipline*.

  
\_\_\_\_\_  
NATHAN E. WINGER, ESQ.  
509 Roma Ave. NW  
Albuquerque, NM 87102  
Counsel for Respondent

Dated: 12/13/18

**EXAMINER'S REVIEW & APPROVAL**

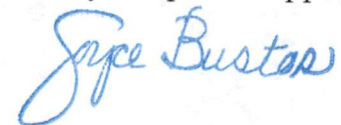
I have reviewed this *Stipulation* and find that it is appropriate and in the best interest of justice. I hereby recommend that the Judicial Standards Commission accept and approve this *Stipulation Agreement and Consent to Discipline*.

*for*   
\_\_\_\_\_  
PHYLLIS A. DOMINGUEZ, ESQ.  
Examiner

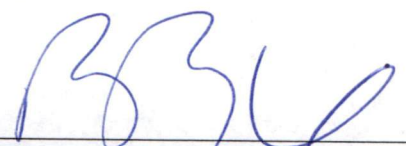
Dated: 12/20/18

**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: 12/20/18

  
\_\_\_\_\_  
RANDALL D. ROYBAL, ESQ.

Dated: 12/20/18



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  
Senior Investigative Trial Counsel

DEBORAH BORIO  
Investigative Trial Counsel

May 17, 2018

**CONFIDENTIAL**  
CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Hon. Dorothy Encinias  
Moriarty Municipal Court  
P.O. Box 130  
Moriarty, New Mexico 87035

**FILED**  
MAY 17 2018  
NM JUDICIAL  
STANDARDS COMMISSION

*Re: Inquiry No. 2018-078, Notice of Preliminary Investigation*

Dear Judge Encinias:

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 matters discussed below.

It has been alleged that:

You are currently running for the elected position of Torrance County Commissioner while simultaneously holding the position of Moriarty Municipal Court Judge, which is contrary to the Code of Judicial Conduct, Rule 21-405(C) NMRA 2015.

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,

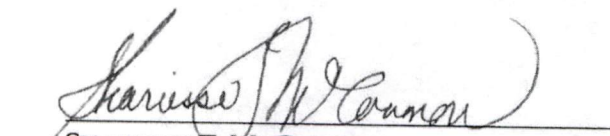
Joyee E. Bustos  
Chair

EX  
A

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing was mailed on the 17<sup>th</sup> day of May 2018, by certified mail, return receipt requested to:

Hon. Dorothy Encinias  
Moriarty Municipal Court  
P.O. Box 130  
Moriarty, New Mexico 87035

  
SHARIESSE T. MCCANNON  
CLERK OF THE COMMISSION




BEFORE THE JUDICIAL STANDARDS COMMISSION  
OF THE STATE OF NEW MEXICO

INQUIRY CONCERNING HON. DOROTHY ENCINIAS  
Moriarty Municipal Court, Moriarty, New Mexico

Inquiry No. 2018-078

**FILED**  
AUG - 9 2018  
NM JUDICIAL  
STANDARDS COMMISSION



NOTICE OF FORMAL PROCEEDINGS

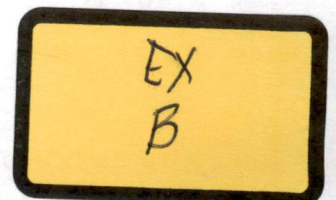
TO: Hon. Dorothy Encinias  
Moriarty Municipal Court  
P.O. Box 130  
Moriarty, New Mexico 87035

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 charge set forth below.

COUNT 1

You failed to immediately resign your position as Moriarty Municipal Court judge when you declared your candidacy for the position of Torrance County Commissioner in the June 6, 2018 primary.

Such conduct violates the Code of Judicial Conduct Rules 21-101 and 21-102 NMRA 2012 and Rule 21-405(C) NMRA 2015, 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:

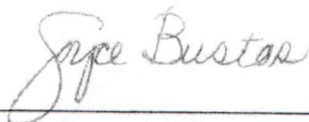
*Clerk of the Commission  
Judicial Standards Commission  
Post Office Box 27248  
Albuquerque, New Mexico 87125-7248*

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

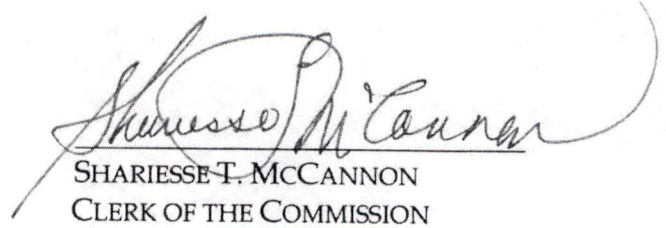
BY: \_\_\_\_\_

  
Joyce E. Bustos, Chair  
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 certified mail returned receipt requested on this 9<sup>th</sup> day of August 2018 to the following:

Hon. Dorothy Encinias  
Moriarty Municipal Court  
P.O. Box 130  
Moriarty, New Mexico 87035

  
SHARIESSE T. MCCANNON  
CLERK OF THE COMMISSION





FILED

JUN 08 2018

NM JUDICIAL

STANDARDS COMMISSION

Mayor

June 6, 2018

Ted Hart

City Councilors

Steve Anaya

Dennis Schanfeldt

Robert Ortiz

Kim Garcia

Joyce E. Bustos

State of New Mexico Judicial Standards Commission

Post Office Box 27248

Albuquerque, New Mexico 87125-7248

City Clerk

RE: Inquiry No. 2018-078, Notice of Preliminary Investigation

Sheila Larrañaga-Murphy

Dear Ms. Bustos and Commission Members:

City Treasurer

Linda Fischer

I am in receipt of your letter dated May 17, 2018, and respectfully state that I am very embarrassed and troubled by what has transpired.

Municipal Judge

Dorothy Encinias

When I made the decision to declare my candidacy for the position of Board of Commissioners in Torrance County, I didn't realize that I needed to step down as Municipal Judge. Prior to running for a seat on the Board of Commissioners, I sought legal advice and was advised I would not be prohibited from seeking the Commissioner position while serving as Municipal Judge, since my position as judge was part-time. I now have reviewed Rule 21-405(C), and understand it's importance. I want to make it clear that I have never used my position as a Municipal Judge for my professional or personal gain, throughout my recent Commissioner campaign or in the twenty (20) years that I have served as a judge. If anything, I have done my very best to refrain from disclosing this information, outside of the Courtroom.

Police Chief

Ike Ensey

Fire Chief

Todd Hart

Superintendent of  
Public Works

Despite advice to the contrary, I understand that now my seeking to run for a County Commissioner position while serving as Municipal Judge was in violation of Rule 21406(c) and for that, I apologize and ask for the Judicial Commission's leniency in resolving this matter.

Thank you for your consideration.

Sincerely,

  
Dorothy Encinias


/DE

EX  
C

BEFORE THE JUDICIAL STANDARDS COMMISSION  
OF THE STATE OF NEW MEXICO

INQUIRY CONCERNING HON. DOROTHY ENCINIAS  
Moriarty Municipal Court, Moriarty, New Mexico  
Inquiry No. 2018-078

**FILED**  
SEP 05 2018  
NM JUDICIAL  
STANDARDS COMMISSION



**ANSWER TO NOTICE OF FORMAL PROCEEDINGS**

COMES NOW Honorable Dorothy Encinias, by and through her counsel, Winger Law Firm (Nathan Winger, Esq.) and in accordance with Rule 16 of the Judicial Standards Commission Rules answers as follow:

1. In response to the allegation of Count 1 of the notice of Formal Proceedings, it is admitted that while the allegations are factually correct, it is denied that Judge Encinias knowingly violated the Code of Judicial Conduct Rules 21-101 and 21-102 NMRA and Rule 21-405(C) NMRA 2015. It is, however, undisputed that the Judge Encinias did not resign her position as Moriarty Municipal Court Judge when she declared her candidacy for the position of Torrance County Commission in the June 6, 2018 primary.

2. Prior to declaring her candidacy in the June 6, 2018 primary for Torrance County Commission, Judge Encinias sought independent legal advice on whether she could run in the primary election and remain on the bench as the part-time Moriarty Municipal Judge. Judge Encinias was advised she could seek election to the County Commission position while serving as a part-time Municipal Judge. Judge Encinias has learned this advice was incorrect.

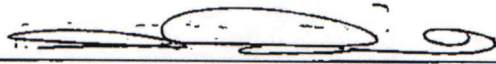
3. At no time did Judge Encinias intend to violate any laws or the Judicial Code of Conduct, give the appearance of any impropriety and believed, based on the legal advice she received, that she her candidacy would violate any law or Judicial Code of Conduct.

EX  
D

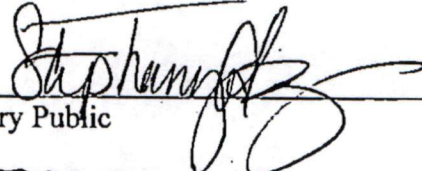


4. Had Judge Encinias known that she would be violating the Judicial Code of Conduct, she would have either declined to run for a position on the Torrance County Commissioners or resigned as the Moriarty Municipal Judge to run.

5. Through her admission and explanation outlined, Judge Encinias requests leniency as to any outcome in this matter.

  
\_\_\_\_\_  
Judge Dorothy Encinias

SUBSCRIBED and SWORN to before me this 31 day of August, 2018, by Dorothy Encinias.

  
\_\_\_\_\_  
Notary Public

My commission expires:  
3/27/2022

