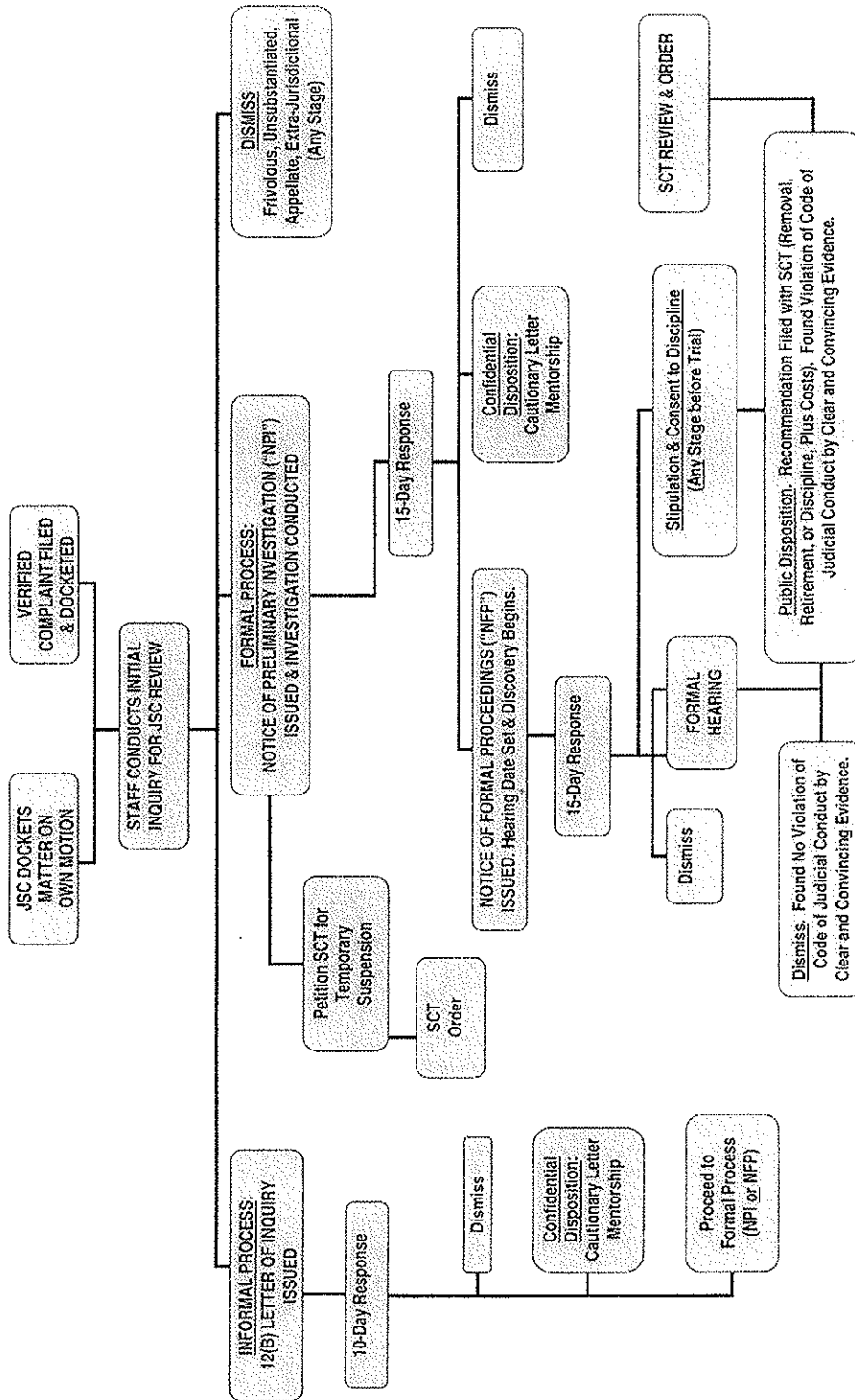




# APPENDIX A

## JUDICIAL STANDARDS COMMISSION PROCESS FLOW CHART





## APPENDIX B

### SUPREME COURT CLARIFICATION OF RULES FOR REPORTING JUDICIAL MISCONDUCT INVOLVING UNLAWFUL DRUGS

On June 16, 2004, the Supreme Court issued a press release and an order emphasizing the Code of Judicial Conduct rule requiring a judge to comply with the law at all times and clarifying the reporting requirements relating to judicial misconduct involving unlawful drugs. The text of the release and the order are set forth below.



### Supreme Court of New Mexico

CHIEF JUSTICE  
PETRA JIMENEZ MAES  
JUSTICES  
PAMELA B. MINZNER  
PATRICIO M. SERNA  
RICHARD C. BOSSON

P.O. BOX 848  
Santa Fe, New Mexico  
87504-0848

CHIEF CLERK  
KATHLEEN JO GIBSON, ESQ.  
(505) 827-4880  
FAX (505) 827-4837

New Mexico Supreme Court  
Press Release (for immediate release)  
Contact information: Chief Justice Petra Jimenez Maes  
505-827-4934 or 505-690-3455

June 16, 2004

#### Supreme Court Announces Intolerance For Drug Use by Judges

The New Mexico Supreme Court today announced the filing of a Supreme Court Order entitled "Reporting Judicial Misconduct Involving Unlawful Drugs." The order emphasizes a Code of Judicial Conduct Rule requiring a judge to comply with the law at all times. Chief Justice Petra Jiménez Maes speaking for the Court said "use of illegal drugs by a Judge reflects directly on a Judge's fitness for office and will not be tolerated."

The Order also clarifies existing reporting requirements by detailing a procedure for reporting such misconduct to the Judicial Standards Commission, a body charged with the responsibility of investigating complaints against judges. "Public confidence in the judiciary is vital to our democracy. The Justices believe that failing to report a judge for such misconduct could only erode public confidence in the orderly administration of justice." said Chief Justice Maes.

The Chief Justice also explained that the Judicial Standards Commission has an orderly process in place for investigating complaints against judges, emphasizing the importance of allowing this independent body to conduct a fair and thorough investigation of any complaint made against a sitting judge. The Commission makes recommendations to the Supreme Court concerning appropriate disciplinary action to be taken against a judge found to have violated the Code of Judicial Conduct.

The Chief Justice reassures the public of the Supreme Court's continued confidence in the Judiciary. "The Court urges the public to keep in mind that our entire state is blessed with qualified and experienced judges who are honest and dedicated public servants."

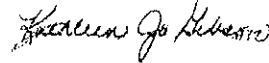
IN THE SUPREME COURT OF THE STATE OF NEW MEXICO MEXICO

NO. 04-8200

FILED

JUN 16 2004

IN THE MATTER OF REPORTING JUDICIAL  
MISCONDUCT INVOLVING UNLAWFUL DRUGS



ORDER

WHEREAS, public confidence in the integrity and impartiality of the judiciary depends on a judge's respect for and compliance with the law *at all times*. See Rule 21-200 NMRA 2004 . Therefore, any incumbent judge who illegally sells, purchases, possesses, or uses drugs or any substance considered unlawful under the provisions of the Controlled Substances Act shall be subject to, among other things, discipline under the Code of Judicial Conduct; and

WHEREAS, Rule 21-300(D)(1) NMRA 2004 provides that "[a] judge having knowledge that another judge has committed a violation of this Code [of Judicial Conduct] that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority." Inaction may be tantamount to encouraging or empowering illegal conduct by judges, thus, eroding public confidence in the orderly administration of justice. Therefore, this order is intended to further clarify the above-referenced reporting requirement as it relates to misconduct involving unlawful drugs, because such misconduct directly reflects on the judge's fitness for office and requires investigation.

1. Reporting to the Judicial Standards Commission

Any judge, employee of the judiciary, or lawyer, who has specific, objective, and articulable facts and/or reasonable inferences that can be drawn from those facts that

a judge has engaged in the above-described misconduct, shall report those facts to the Judicial Standards Commission. Reports of such misconduct should include the following information:

- A. Name of person filing the report;
- B. Address and telephone number where the person may be contacted;
- C. A detailed description of the alleged misconduct;
- D. Dates of the alleged misconduct; and
- E. Any supporting evidence or material that may be available to the reporting person.

The Judicial Standards Commission shall review and evaluate reports of such misconduct to determine if the report warrants further review or investigation. Pursuant to Judicial Standards Commission Rule 8 NMRA 2004, the Commission may require a judge under investigation to submit to drug testing in the manner set forth in State Personnel Board rules and regulations 1.7.8.12 and 1.7.8.13 NMAC 2004. Upon notification to the Supreme Court by the Judicial Standards Commission that the information reported warrants further review or investigation, an incumbent judge under investigation shall be placed on paid administrative leave pending completion of the investigation for a period not to exceed 90 work days unless otherwise ordered by the Supreme Court.

## 2. Reporting to the Lawyer Assistance Committee

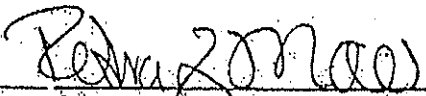
The Supreme Court encourages any judge, employee of the judiciary, or lawyer who has a good faith basis to believe a judge is engaged in the above-described misconduct, but does not have specific, objective, and articulable facts regarding such

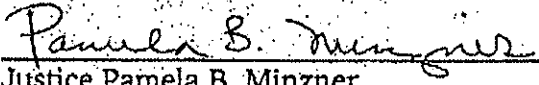
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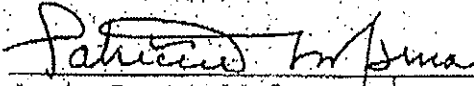
conduct, to report such belief to the Lawyer Assistance Committee hotline. The suggested reporting is to encourage members of the judiciary to seek appropriate help for alcohol and/or substance abuse problems.

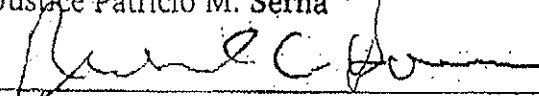
IT IS SO ORDERED.

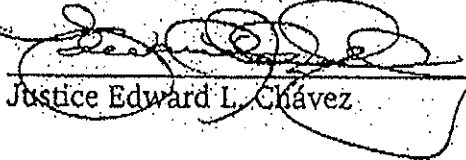
Done in Santa Fe, New Mexico, this 16th day of June, 2004.

  
\_\_\_\_\_  
Chief Justice Petra Jimenez Maes

  
\_\_\_\_\_  
Justice Pamela B. Minzner

  
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Justice Patricio M. Serna

  
\_\_\_\_\_  
Justice Richard C. Bosson

  
\_\_\_\_\_  
Justice Edward L. Chavez



APPENDIX C

SUPREME COURT ESTABLISHMENT OF COMMITTEE ON CONFIDENTIAL HEALTHCARE

On May 25, 2005, the Supreme Court issued an order establishing a Committee on Confidential Healthcare to assist judges, their staff, and family to deal with stress, depression, alcohol, substance or other abuses. The text of the order is set forth below.

ATTEST: *[Signature]*  
 Clerk of the Supreme Court  
 of the State of New Mexico

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 05-8110

IN THE MATTER OF THE ESTABLISHMENT OF THE COMMITTEE ON CONFIDENTIAL HEALTHCARE

ORDER

WHEREAS, the State Bar of New Mexico's Lawyers Assistance Program provides confidential peer assistance to State Bar members in need of help because of alcohol and/or substance abuse, mental illness, or emotional distress;

WHEREAS, this Court recognizes that, generally, members of the judiciary may not seek out assistance from the Lawyers Assistance Program believing that availability is limited to members of the bar; and

WHEREAS, this Court being desirous of assuring that the benefits of the Lawyers Assistance Program are also made available to members of the judiciary, their staff and families, and the Court being sufficiently advised, Chief Justice Richard C. Bosson, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the Committee on Confidential Healthcare is established;

IT IS FURTHER ORDERED that the committee shall have as its primary objective the assistance of judges, their staff, and family to deal with stress, depression, alcohol, substance or other abuses. To accomplish this objective the committee shall, among other things, identify the resources available to provide such assistance; develop educational programs and materials to assist judges, staff, and families in (1) identifying issues concerning alcohol and/or substance abuse, mental illness, or

RECEIVED  
*[Signature]* JUN 23 2005 *[Signature]*  
 JUDICIAL STANDARDS COMMISSION  
 SUPREME COURT OF NEW MEXICO  
 FILED  
 MAY 25 2005  
*[Signature]*

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emotional distress, (2) understanding what resources are available for such care, and  
(3) identifying the providers who are available to provide such healthcare;

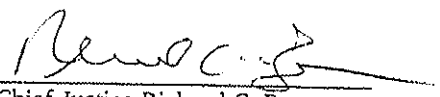
IT IS FURTHER ORDERED that the committee shall make recommendations to  
this Court regarding appropriate orders or rules to further the committees objectives  
and the provision of confidential healthcare to judges, their staff, and family; and

IT IS FURTHER ORDERED that the following members hereby are appointed  
to serve on the Committee on Confidential Healthcare:

- Justice Edward L. Chávez, Chair
- Hon. Teddy L. Hartley
- Hon. William F. Lang
- Amy Plank
- Dr. Samuel Roll
- William K. Stratvert
- Jill Anne Yeagley

IT IS SO ORDERED.

Done at Santa Fe, New Mexico, this 25<sup>th</sup> day of May, 2005.

  
Chief Justice Richard C. Bosson



APPENDIX D

SUPREME COURT ESTABLISHMENT OF A PRIVILEGE FOR COMMUNICATIONS TO LAWYERS' ASSISTANCE PROGRAM AND RULE FOR DOCKET MANAGEMENT DURING LONG-TERM HEALTH CARE

On June 22, 2005, the Supreme Court issued an order establishing a privilege for communications made to the Lawyers' Assistance Program and a rule for court docket management during long-term healthcare. The text of the order is set forth below.

TRUE COPY  
Clerk of the Supreme Court  
of the State of New Mexico

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NM JUDICIAL  
STANDARDS COMMISSION

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 05-8110

IN THE MATTER OF THE ESTABLISHMENT OF A PRIVILEGE FOR COMMUNICATIONS TO LAWYERS' ASSISTANCE PROGRAM AND RULE FOR DOCKET MANAGEMENT DURING LONG-TERM HEALTH CARE

SUPREME COURT OF NEW MEXICO

FILED

JUN 22 2005

*Handwritten signature*

ORDER

WHEREAS, on May 25, 2005, an order was issued establishing the Committee on Confidential Healthcare for the purpose of facilitating assistance to judges, their staff, and families to deal with stress, depression, alcohol, substance or other abuses;

WHEREAS, the Committee on Confidential Healthcare has identified a need for an order that assures confidentiality of communications made to individuals associated with the Lawyers' Assistance Program and for an order specifying the procedure for docket management when a judge requires long-term confidential healthcare;

WHEREAS, this Court recognizes that effective treatment for individuals suffering from mental or emotional problems, or from the effects of alcohol or substance abuse, depends on protecting confidential communications from involuntary disclosure;

WHEREAS, this Court recognizes that for the Lawyers' Assistance Program to be effective individuals affiliated with the program must be able to assure those seeking its services of confidentiality; and



1                   WHEREAS, this Court recognizes that judges who have long-term healthcare  
2 needs must be able to assure appropriate and efficient management of their  
3 dockets, and the Court being sufficiently advised, Chief Justice Richard C. Bosson,  
4 Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes,  
5 and Justice Edward L. Chávez concurring;

7                   NOW, THEREFORE, IT IS ORDERED that communications made to a  
8 member, staff, or authorized agent of the Lawyers' Assistance Program, and any  
9 proceedings and records of the Lawyers' Assistance Program, are privileged as  
10 hereinafter described. The privilege shall apply in any court, Disciplinary Board,  
11 Board of Bar Examiner, or Judicial Standards Commission proceeding;

13                   IT IS FURTHER ORDERED that a judge or justice requiring or seeking  
14 confidential healthcare for an extended period of time shall confer, in confidence,  
15 with the Chief Judge of their district and the Chief Justice to ensure that adequate  
16 arrangements are made for the orderly management of their docket during their  
17 absence. In the event a Chief Judge requires confidential healthcare for an  
18 extended period of time, the Chief Judge shall confer, in confidence, with the Chief  
19 Justice to ensure that adequate arrangements are made for the orderly management  
20 of their docket during their absence. A magistrate court judge requiring or seeking  
21 confidential healthcare for an extended period of time shall confer with the Director  
22 of the Magistrate Court Division of the Administrative Office of the Courts and with  
23 the Chief Justice to ensure that adequate arrangements are made for the orderly  
24 management of their docket during their absence. All communications conducted  
25 pursuant to this provision shall be privileged as hereinafter described.  
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IT IS FURTHER ORDERED that the privileges referred to in this order are as follows:

A. General Rule of Privilege. An individual seeking services from the Lawyers' Assistance Program, or other comparable program, has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to individuals associated with such program.

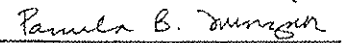
B. Confidential Communication. A communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure would be made in furtherance of the provision of services to the individual seeking such services, or those reasonably necessary for the transmission of the communication.

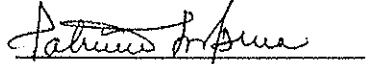
C. Who May Claim the Privilege. The privilege may be claimed by the individual seeking services or the individual's guardian or conservator. The individual associated with the Lawyers' Assistance Program or comparable program who participated in the confidential communication has authority to claim the privilege but only on behalf of the individual seeking services.

IT IS SO ORDERED.

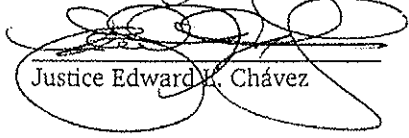
Done at Santa Fe, New Mexico, this 22<sup>nd</sup> day of June, 2005.

  
Chief Justice Richard C. Bosson

  
Justice Pamela B. Minzner

  
Justice Patricio M. Serna

  
Justice Petra Jimenez Maes

  
Justice Edward L. Chavez



APPENDIX E

SUPREME COURT ADMINISTRATION OF THE MAGISTRATE COURT SYSTEM

On June 14, 2005, the Supreme Court issued an order to promote the effective administration of the magistrate court system in New Mexico. The text of the order is set forth below.

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 05-8500

JUN 14 2005  
NM JUDICIAL STANDARDS COMMISSION SUPREME COURT OF NEW MEXICO

FILED

IN THE MATTER OF THE EFFECTIVE ADMINISTRATION OF THE MAGISTRATE COURT SYSTEM IN NEW MEXICO

JUN 14 2005

*Patricia G. Robinson*

ORDER

WHEREAS, this Court has concluded that certain measures should be instituted in order to promote the effective administration of the Magistrate Court System, and the Court being sufficiently advised, Chief Justice Richard C. Bosson, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the Director of the Administrative Office of the Courts shall have the power to require magistrate judges who are ill, either for an extended period of time or for repeated periods of time, to provide a doctor's statement giving both the diagnosis and the prognosis for the magistrate, so that the AOC may plan for coverage of the judge's court. It shall be within the discretion of the Director to decide what constitutes an extended period of time or repeated periods of time;

IT IS FURTHER ORDERED that the Director shall have the following powers with respect to magistrate judges: (1) Authority to counsel the magistrate judge and (2) Authority to issue a written warning to the magistrate judge detailing why the judge's behavior is inappropriate. Should the magistrate judge's behavior persist after the Director takes the above actions, or if the magistrate judge's behavior is sufficiently serious to justify skipping any or all of the above actions, the Director shall refer the

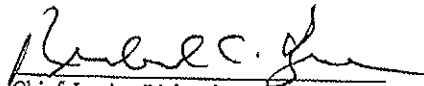
1 judge's conduct to the Judicial Standards Commission;

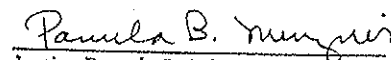
2 IT IS FURTHER ORDERED that the Director shall consult with a committee of  
3 five current or retired magistrate judges, the Magistrate Advisory Committee,  
4 appointed by this Court. This committee shall function in an advisory capacity to the  
5 Director. The Director will consult with as many members of the committee as is  
6 reasonably possible on a given issue. Committee members shall assist the Director in  
7 counseling and mentoring magistrate judges on particular issues, either in the form of  
8 telephone calls or personal visits; and  
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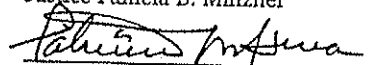
10 IT IS FURTHER ORDERED that the Director has discretion to require that any  
11 magistrate judge, whether new to the office or not, shall work with another magistrate  
12 as a mentor for a period not exceeding six months.  
13


14 IT IS SO ORDERED.


15 DONE this 14<sup>th</sup> day of June, 2005, in Santa Fe, New Mexico.  
16

17   
18 Chief Justice Richard C. Bosson

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20 Justice Pamela B. Minzner

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22 Justice Patricio M. Serha

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24 Justice Petra Jimenez Maes

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26 Justice Edward I. Chavez  
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APPENDIX F

SUPREME COURT ORDER OF APPROVAL OF HARASSMENT POLICY FOR THE JUDICIAL BRANCH OF GOVERNMENT

On August 18, 2006, the Supreme Court approved and implemented a new policy concerning harassment for the Judicial Branch of State Government. The order is set forth below.

ATTEST: A TRUE COPY

Kathleen Jo Gibson  
Clerk of the Supreme Court  
of the State of New Mexico

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

August 18, 2006

NO. 06-8500

IN THE MATTER OF THE APPROVAL  
OF THE HARASSMENT POLICY FOR  
THE JUDICIAL BRANCH OF GOVERNMENT

ORDER

RECEIVED  
AUG 29 2006  
NM JUDICIAL  
STANDARDS COMMISSION

WHEREAS, this matter came on for consideration by the Court upon recommendation of the New Mexico Judicial Branch Personnel Rules Committee to adopt the attached harassment policy for the judicial branch of government, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Richard C. Bosson, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the recommendation hereby is ADOPTED and the attached harassment policy hereby APPROVED; and

IT IS FURTHER ORDERED that the harassment policy shall be effective immediately.

IT IS SO ORDERED.

WITNESS, Honorable Richard C. Bosson, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 18th day of August 2006.

(SEAL)

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



APPENDIX G

SUPREME COURT ORDER REGARDING FILINGS  
BY THE JUDICIAL STANDARDS COMMISSION

On August 29, 2006, the Supreme Court approved and implemented the following new policy sealing Commission petitions for temporary suspension and responses thereto upon filing:

RECEIVED  
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NM JUDICIAL  
STANDARDS COMMISSION

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

August 29, 2006

NO. 06-8500

IN THE MATTER OF THE FILING OF PLEADINGS  
BY THE JUDICIAL STANDARDS COMMISSION

ORDER

WHEREAS, this matter came on for consideration upon the Court's own motion to direct this Court's Clerk's Office to file under seal petitions for immediate suspension and responses thereto, and the Court being sufficiently advised, Chief Justice Richard C. Bosson, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Fetra Jimenez Maes, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the Supreme Court Clerk's Office shall file under seal all petitions for immediate suspension either with or without pay and responses thereto, absent a contrary order of this Court; and

IT IS FURTHER ORDERED that the filing under seal of said petitions shall be effective immediately.

IT IS SO ORDERED.

WITNESS, Honorable Richard C. Bosson, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 29th day of August 2006.

(SEAL)

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



APPENDIX H

SUPREME COURT ORDER OF APPROVAL OF A DRUG-FREE AND ALCOHOL-FREE WORK PLACE POLICY AND A DRUG/ALCOHOL TESTING POLICY FOR THE NEW MEXICO JUDICIAL BRANCH

On January 24, 2007, the Supreme Court approved and adopted a new policy for an alcohol/drug-free workplace and a drug/alcohol testing policy for all judges and judicial branch employees. The order is set forth below.

ATTEST: A TRUE COPY

*Kathleen J. Gibson*  
Clerk of the Supreme Court  
of the State of New Mexico

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 07-8500

SUPREME COURT OF NEW MEXICO

FILED

IN THE MATTER OF THE APPROVAL OF A DRUG-FREE AND ALCOHOL-FREE WORK PLACE POLICY AND A DRUG/ALCOHOL TESTING POLICY FOR THE NEW MEXICO JUDICIAL BRANCH

JAN 24 2007

*Kathleen J. Gibson*

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Administrative Office of the Courts to adopt a Drug-free and Alcohol-free Work policy and a Drug/Alcohol Testing policy for the New Mexico Judicial Branch, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Edward L. Chávez, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Richard C. Bosson concurring;

NOW, THEREFORE, IT IS ORDERED that the recommendation hereby is ADOPTED and a Drug-free and Alcohol-free Work policy and a Drug/Alcohol Testing policy for the New Mexico Judicial Branch hereby are APPROVED; and

IT IS FURTHER ORDERED that, although state judges are not judicial employees bound by the New Mexico Judicial Branch Personnel Rules, all state, county, magistrate, metropolitan, municipal, and probate judges shall abide by these policies in the execution of their judicial duties.

DONE at Santa Fe, New Mexico, this 24<sup>th</sup> day of January, 2007.

*[Signature]*  
Chief Justice Edward L. Chávez  
*[Signature]*  
Justice Pamela B. Minzner  
*[Signature]*  
Justice Patricio M. Serna  
*[Signature]*  
Justice Petra Jimenez Maes  
*[Signature]*  
Justice Richard C. Bosson



## APPENDIX I

### CONSTITUTIONAL AUTHORITY

#### NEW MEXICO CONSTITUTION, ARTICLE VI, SECTION 32

There is created the "judicial standards commission", consisting of two justices or judges, one magistrate and two lawyers selected as may be provided by law to serve for terms of four years, and six citizens, none of whom is a justice, judge or magistrate of any court or licensed to practice law in this state, who shall be appointed by the governor for five-year staggered terms as may be provided by law. If a position on the commission becomes vacant for any reason, the successor shall be selected by the original appointing authority in the same manner as the original appointment was made and shall serve for the remainder of the term vacated. No act of the commission is valid unless concurred in by a majority of its members. The commission shall select one of the members appointed by the governor to serve as chairman.

In accordance with this section, any justice, judge or magistrate of any court may be disciplined or removed for willful misconduct in office, persistent failure or inability to perform a judge's duties, or habitual intemperance, or he may be retired for disability seriously interfering with the performance of his duties that is, or is likely to become, of a permanent character. The commission may, after investigation it deems necessary, order a hearing to be held before it concerning the discipline, removal or retirement of a justice, judge or magistrate, or the commission may appoint three masters who are justices or judges of courts of record to hear and take evidence in the matter and to report their findings to the commission. After hearing or after considering the record and the findings and report of the masters, if the commission finds good cause, it shall recommend to the supreme court the discipline, removal or retirement of the justice, judge or magistrate.

The supreme court shall review the record of the proceedings on the law and facts and may permit the introduction of additional evidence, and it shall order the discipline, removal or retirement as it finds just and proper or wholly reject the recommendation. Upon an order for his retirement, any justice, judge or magistrate participating in a statutory retirement program shall be retired with the same rights as if he had retired pursuant to the retirement program. Upon an order for removal, the justice, judge or magistrate shall thereby be removed from office, and his salary shall cease from the date of the order.

All papers filed with the commission or its masters, and proceedings before the commission or its masters, are confidential. The filing of papers and giving of testimony before the commission or its masters is privileged in any action for defamation, except that the record filed by the commission in the supreme court continues privileged but, upon its filing, loses its confidential character, and a writing which was privileged prior to its filing with the commission or its masters does not lose its privilege by the filing. The commission shall promulgate regulations establishing procedures for hearings under this section. No justice or judge who is a member of the commission or supreme court shall participate in any proceeding involving his own discipline, removal or retirement.

This section is alternative to, and cumulative with, the removal of justices, judges and magistrates by impeachment and the original superintending control of the supreme court. (As added November 7, 1967; as amended November 7, 1978 and November 3, 1998.)





## APPENDIX J

### STATUTORY AUTHORITY

#### NEW MEXICO STATUTES ANNOTATED, §§34-10-1 - 34-10-4

##### **34-10-1. Judicial standards commission; selection; terms. (1999)**

The judicial standards commission consists of eleven positions:

A. positions 1 through 5 and position 10, each of which shall be filled by a person who is a qualified elector of this state, who is not a justice, judge or magistrate of any court and who is not licensed to practice law in this state. The governor shall fill each of these positions by appointment of qualified persons. Following initial terms specified in this subsection, these positions shall be filled in the same manner by qualified persons who serve for five years or less, in such manner that at least one term expires on June 30 each year, and so that not more than four of the six positions are occupied by persons from the same political party. The initial terms for positions 1 through 5 begin on July 1, 1968. The initial term for position 10 begins on July 1, 1999. The terms expire as follows:

- (1) position 1 on June 30, 1969;
- (2) position 2 on June 30, 1970;
- (3) position 3 on June 30, 1971;
- (4) position 4 on June 30, 1972;
- (5) position 5 on June 30, 1973; and
- (6) position 10 on June 30, 2004;

B. positions 6 and 7, each of which shall be filled by a person who is licensed to practice law in this state. These positions shall be filled by appointment of qualified persons by majority vote of all members of the board of commissioners of the state bar of New Mexico, but no member of the board of commissioners shall be appointed. Following initial terms specified in this subsection, these positions shall be filled in the same manner by qualified persons who serve for four years or less, in such manner that one of the terms expires on June 30 of each even-numbered year. Initial terms begin on July 1, 1968 and expire as follows:

- (1) position 6 on June 30, 1970; and
- (2) position 7 on June 30, 1972; and

C. positions 8 and 9, each of which shall be filled by a person who is a justice of the supreme court or a judge of the court of appeals or district court and position 11, which shall be filled by a person who is a magistrate court judge. These positions shall be filled by appointment of qualified persons by the supreme court. Following initial terms specified in this subsection, these positions shall be filled in the same manner by qualified persons who serve for four years or less, in such manner that at least one of the terms expires on June 30 of each odd-numbered year. The initial terms for positions 8 and 9 begin on July 1, 1968. The initial term for position 11 begins on July 1, 1999. The terms expire as follows:

- (1) position 8 on June 30, 1971;
- (2) position 9 on June 30, 1973; and
- (3) position 11 on June 30, 2003.

##### **34-10-2. Judicial standards commission; vacancies. (1968)**

Whenever any member of the judicial standards commission dies, resigns or no longer has the qualifications required for his original selection, his position on the commission becomes vacant. The remaining members of the commission shall certify the existence of the vacancy to the original appointing authority for the vacant position, which authority shall select a successor in the same manner as the original selection was made.

##### **34-10-2.1. Judicial standards commission; duties; subpoena power. (1977)**

A. The judicial standards commission shall:

(1) investigate all charges, complaints and allegations as to willful misconduct in office, persistent failure or inability to perform a judge's duties, or habitual intemperance of any justice, judge or magistrate of any court, and when the commission deems necessary hold a hearing on the charges, complaints or allegations concerning the discipline or removal of such judicial officer;

(2) investigate and, if the commission deems necessary, hold hearings on any charge, complaint or allegation that a justice, judge or magistrate has suffered a disability seriously interfering with the performance of his duties which is, or is likely to become, of a permanent character;

(3) if the commission deems it necessary or convenient, appoint three masters, who are justices or judges of courts of record, to hear and take evidence in any matter arising under Paragraph (1) or (2) of this subsection who shall report their findings to the commission; and

(4) after a hearing deemed necessary pursuant to Paragraph (2) of this subsection, or after considering the record and the findings and report of the masters, if the commission finds good cause, it shall recommend to the supreme court the discipline, removal or retirement of the justice, judge or magistrate.

B. In any investigation or hearing held under the provisions of this section, the commission shall have the power to administer oaths and with the concurrence of a majority of the members of the commission, it may petition a district court to subpoena witnesses, compel their attendance, examine them under oath or affirmation and require the production of any books, records, documents or other evidence it may deem relevant or material to an investigation upon a showing of probable cause.

**34-10-3. Judicial standards commission; executive director. (1974)**

The judicial standards commission shall employ an executive director.

**34-10-4. Judicial standards commission; director's duties. (1974)**

The executive director of the judicial standards commission shall:

A. perform, or cause to be performed, all investigations as may be deemed necessary or desirable by the commission or masters appointed by the commission;

B. enter into such contracts as may be necessary to carry out the responsibilities of the commission;

C. hire such other personnel as may be necessary to carry out the responsibilities of the commission; and

D. perform such other duties as may be delegated to him by the commission.



## APPENDIX K

### CODE OF JUDICIAL CONDUCT

#### 21-001. Definitions.

As used in this Code:

- A. "candidate" means a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as the person makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to nonjudicial office;
- B. "election" means a municipal, primary or general election and includes partisan elections, nonpartisan elections and retention elections;
- C. "fiduciary" includes such relationships as executor, personal representative, attorney in fact, trustee and guardian;
- D. "impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.
- E. "knowingly," "knowledge," "known" or "knows" means actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances;
- F. "law" means court rules, statutes, the United States Constitution, the Constitution of the State of New Mexico and decisional law of this jurisdiction;
- G. "member of the candidate's family" or "member of the judge's family" means a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship;
- H. "member of the judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household;
- I. "nonpublic information" means information that, by law or court order, is not available to the public; and
- J. "require," when used in rules prescribing that a judge "require" certain conduct of others, means that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

[Adopted, effective February 16, 1995; as amended, effective August 31, 2004.]

#### 21-100. A judge shall uphold the integrity and independence of the judiciary.

A judge shall participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved.

[As amended, effective February 16, 1995.]

#### COMMENTARY

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. A judiciary of integrity is one in which judges are known for their probity, fairness, honesty, uprightness and soundness of character. An independent judiciary is one free of inappropriate outside influences. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

**21-200. A judge shall avoid impropriety and the appearance of impropriety in all the judge's activities.**

A. Respect for the law. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. Impartiality. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor should a judge convey or permit others subject to the judge's direction and control to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. Membership in organizations. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.

[As amended, effective February 16, 1995.]

#### COMMENTARY

##### Paragraph A

The commentary to Rule 21-100 NMRA also applies to Paragraph A.

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on judicial speech imposed by Subparagraphs (10) and (11) of Paragraph B of Rules 21-300 NMRA that are indispensable to the maintenance of the integrity, impartiality and independence of the judiciary.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

See also Commentary to Paragraph C of this rule.

##### Paragraph B

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. (As to the acceptance of awards, see Paragraph D(5)(a) of Rule 21-500 and Commentary.)

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation.

Judges may participate in the process of judicial selection as provided by law and by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to

official inquiries concerning a person being considered for judgeship. (See also Rule 21-700 regarding use of a judge's name in political activities.)

A judge must not testify voluntarily as a character witness because to do so might lend the prestige of the judicial office in support of the party for whom the judge testifies, and such testimony may be misunderstood to be an official testimonial. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

#### Paragraph C

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Paragraph C of this rule refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. See *New York State Club Ass'n Inc. v. City of New York*, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); *Bd. of Directors of Rotary Int'l v. Rotary Club*, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984).

It would be a violation of this rule for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion or national origin in its membership or other policies, or for the judge to regularly use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under this rule and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Paragraph A of this rule.

When a judge learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Paragraph C or Paragraph A of this rule, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

#### **21-300. A judge shall perform the duties of office impartially and diligently.**

A. Judicial duties in general. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

B. Adjudicative responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(3) ~~A judge shall maintain order and decorum in judicial proceedings.~~

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge's official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, marital status, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, marital status, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This subparagraph does not preclude legitimate advocacy or consideration by the court when race, sex, religion, national origin, disability, age, marital status, sexual orientation or socioeconomic status, or other similar factors, are issues in or relevant to the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication if it might reasonably be perceived that the party contacting the judge may have gained a tactical advantage.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer with the parties and their lawyers in an effort to mediate or settle matters pending before the judge. Ordinarily the judge will meet jointly with the parties.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(9) All cases decided by an opinion of an appellate court shall be by a collegial opinion. Before an opinion is placed in final form, the participating justices or judges shall attempt to reconcile any differences between them. Each justice or judge on each panel is charged with the duty of carefully reading and analyzing the pertinent submitted material on each case in which the justice or judge participates.

(10) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This subparagraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This subparagraph does not apply to proceedings in which the judge is a litigant in a personal capacity.

(11) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(12) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(13) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

C. Administrative responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall inform and require the judge's staff, court officials and others subject to the judge's direction and control to observe the standards of confidentiality, fidelity and diligence that apply to the judge and to refrain from manifesting bias and prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

D. Disciplinary responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

(3) The requirements of Subparagraphs (1) and (2) of this paragraph do not apply to any communication concerning alcohol or substance abuse by a judge or attorney that is:

(a) intended to be confidential;

(b) made for the purpose of reporting substance abuse or recommending, seeking or furthering the diagnosis, counseling or treatment of a judge or an attorney for alcohol or substance abuse; and

(c) made to, by or among members or representatives of a lawyers support group, Alcoholics Anonymous, Narcotics Anonymous or other support group recognized by the Judicial Standards Commission or the Disciplinary Board. Recognition of any additional support group by the Judicial Standards Commission or Disciplinary Board shall be published in the Bar Bulletin.

This exception does not apply to information that is required by law to be reported or to disclosures or threats of future criminal acts or violations of these rules.

(4) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Subparagraphs (1) and (2) of Paragraph D of this rule are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

E. Definition. As used in this rule, "court personnel" does not include the lawyers in a proceeding before a judge.

[As amended, effective March 1, 1991; February 16, 1995; August 31, 2004.]

COMMENTARY

Paragraph A

The commentary to Rule 21-100 NMRA also applies to Paragraph A of this rule.

Paragraph B (4)

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

Commentary B (5)

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

Paragraph B (7)

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out his adjudicative responsibilities.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by Subparagraph (7) of Paragraph B, it is the party's lawyer, or if the party is unrepresented the party, who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief *amicus curiae*.

Certain *ex parte* communication is approved by Subparagraph (7) of Paragraph B to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage *ex parte* communication and allow it only if all the criteria stated in Subparagraph (7) are clearly met. A judge must disclose to all parties all *ex parte* communications described in Subparagraphs (a) and (b) of Subparagraph (7) of this paragraph regarding a proceeding pending or impending before the judge if it might reasonably be perceived that the party contacting the judge may have gained a tactical advantage. On rare occasions the judge may, with the consent of the parties, meet separately with the parties.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Subparagraph (7) of Paragraph B of this rule is not violated through law clerks or other personnel on the judge's staff. See Paragraph E of this rule for the definition of "court personnel".



If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

#### Paragraph B (8)

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts. See Rule 11-408 NMRA of the Rules of Evidence relating to communications relating to compromise.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

The practices of a judge in the enjoyment of hours of personal holiday or recreation should leave no public perception that the business of the court is not a full-time demand or that the avoidance of delays in the administration of justice is not dependent upon active management of the judiciary.

#### Paragraphs B (10) and (11)

Paragraph B (10) and (11) restrictions on judicial speech are essential to the maintenance of the integrity, impartiality and independence of the judiciary. A pending proceeding is one that has begun but not yet reached final disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. Subparagraphs (10) and (11) of Paragraph B do not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly.

#### Paragraph B (12)

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

#### Paragraph C

Appointees of the judge include officials such as referees, commissioners, special masters, receivers and guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

#### Paragraph D

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

#### Paragraph E

The definition of "court personnel" was taken from the Model Code of Judicial Conduct "terminology" section. It is used in Subparagraph (7)(c) and Subparagraph (9) of Paragraph B of this rule.

**21-400. Disqualification.**

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

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

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

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

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

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

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

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

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

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

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

(a) an issue in the proceeding; or

(b) the controversy in the proceeding.

B. Duty to be informed. A judge shall use reasonable efforts to keep informed about the judge's personal and fiduciary economic interests, and make reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household. In keeping informed about the judge's personal economic and fiduciary interests, the judge may rely on representations of professional investment or financial advisors.

C. Remittal of disqualification. A judge disqualified by the terms of Paragraph A of this rule may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

D. Definitions. As used in this rule:

(1) "de minimis" means an insignificant interest that could not raise reasonable question as to a judge's impartiality;

(2) "economic interest" means ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(a) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(b) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(c) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(d) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities; and

(3) "third degree of relationship" means the following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

[Approved, January 1, 1984; as amended, effective February 16, 1995; August 31, 2004.]

#### COMMENTARY

##### Paragraph A. Recusal

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific rules in Paragraph A of this rule apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

The fact that an employee of the court is a party to the proceeding does not of itself disqualify the judge. The judge shall consider the specifics of the case in determining whether the judge's impartiality might reasonably be questioned and if a recusal is required.

##### Paragraph A (1) and (2)

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of Subparagraph (2) of Paragraph A; a judge formerly employed by a governmental agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

##### Paragraph A (3)

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Subparagraph (1) of Paragraph A, or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Paragraph A(5)(c) of this rule may require the judge's disqualification.

Paragraph A (6)

Subparagraph (6) of Paragraph A prohibits a judge from pre-judging an issue. This Subparagraph is not intended to limit any comment allowed under Rule 21-500 NMRA.

Paragraph C. Remittal of disqualification

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

**21-500. A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.**

A. Extra-judicial activities in general. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office;
- (3) interfere with the proper performance of judicial duties; or
- (4) violate the judge's oath and obligation to uphold the laws and constitutions of the United States and the State of New Mexico.

B. Avocational activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

C. Governmental, civic or charitable activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the judiciary or matters relating to the judiciary or which affect the interests of the judiciary, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests;

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities;

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal, or civic organization not conducted for profit, subject to the following limitations and other requirements of this Code:

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization:

(i) will be engaged in proceedings that would ordinarily come before the judge;

or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge

may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Subparagraph (3)(b)(i) of this paragraph, if the membership solicitation is essentially a fund-raising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

D. Financial activities.

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position; or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:

(a) a business closely held by the judge or members of the judge's family; or

(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept a gift, bequest, favor or loan from anyone except for:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, including, but not limited to, a wedding anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative;

(f) a loan from a lending or similar institution in its regular course of business on the same terms generally available to persons who are not judges; or

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.

E. Fiduciary activities.

(1) A judge shall not serve as the executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of

the judge's family or the family of a close friend, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. Service as an arbitrator or mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

G. Practice of law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

H. Conflicting compensated activities. A judge shall not hold any other paid position, judicial or otherwise, that conflicts with the hours and duties the judge is required to perform for every judicial position. A judge shall devote the number of hours that is required by any judicial position held. In no event shall other paid employment or compensable activity hours be performed simultaneously.

I. No full-time municipal, magistrate, metropolitan, district or appellate judge may hold any other judicial position, elected or appointed.

[As amended, effective January 1, 1987; March 1, 1988 and October 1, 1989; February 16, 1995.]

#### COMMENTARY

##### Paragraph A. Extra-judicial activities in general

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

##### Paragraph B. Avocational activities

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In Paragraph B and other paragraphs of this rule, the phrase "subject to the requirements of this Code" is used, notably, in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various provisions of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

##### Paragraph C. Governmental, civic or charitable activities

###### Paragraph C(1)

See Paragraph B of Rule 21-200 regarding the obligation to avoid improper influence.

###### Paragraph C(2)

Paragraph C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Paragraph C(3). The appropriateness of accepting extra judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Paragraph C(2) does not govern a judge's service in a nongovernmental position. See Paragraph C(3) of this rule permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Paragraph C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Paragraph C(3).

#### Paragraph C(3)

Paragraph C(3) of this rule does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see Paragraph C(2).

See Commentary to Paragraph B of this rule regarding use of the phrase "subject to the following limitations and the other requirements of this Code". As an example of the meaning of the phrase, a judge permitted by Paragraph C(3) of this rule to serve on the board of a fraternal institution may be prohibited from such service by Paragraph A of Rule 21-200 if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Rule 21-400 in addition to Paragraph C of this rule. For example, a judge is prohibited by Paragraph G from serving as a legal advisor to a civic or charitable organization.

#### Paragraph C(3)(a)

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the court for adjudication.

#### Paragraph C(3)(b)

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: (1) a judge may solicit for funds or memberships other judges over whom the judge does not exercise supervisory or appellate authority; (2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves; and (3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Paragraph C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and

others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

If requested to be a speaker or guest of honor at an organization or fund-raising event, the judge should seriously consider whether the acceptance of such a role would constitute the use of the prestige of judicial office for fund-raising purposes. Mere attendance at such an event is permissible if otherwise consistent with this Code.

#### Paragraph D. Financial activities

##### Paragraph D(1)

When a judge acquires information in a judicial capacity, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Rule 21-200 B; see also Rule 21-300 B(12).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of judge with law firms appearing before the judge, see Commentary to Paragraph A of Rule 21-400 relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Paragraph A of this rule against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Rule 21-200 against activities involving impropriety or the appearance of impropriety and the prohibition in Paragraph B of Rule 21-200 against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Rule 21-100. See Commentary for Paragraph B of this rule regarding use of the phrase "subject to the requirements of this Code."

##### Paragraph D(2)

This subparagraph provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

##### Paragraph D(3)

Subject to the requirements of this Code, a judge may participate in a business that is closely held either by the judge alone, by members of the judge's family, or by the judge and members of the judge's family.

Although participation by a judge in a closely-held family business might otherwise be permitted by Paragraph D(3) of this rule, a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely-held family business if the judge's participation would involve misuse of the prestige of judicial office.

##### Paragraph D(5)

Paragraph D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Rule 21-800. Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must ~~inform those family members of the relevant ethical constraints upon the judge in this regard and~~



discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

Paragraph D(5)(d)

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Paragraph D(5)(e).

Paragraph D(5)(h)

Paragraph D(5)(h) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

Paragraph E. Fiduciary activities

The restrictions imposed by this rule may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Subparagraph (4) of Paragraph D.

Paragraph F. Service as an arbitrator or mediator

Paragraph F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

Paragraph G. Practice of law

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Paragraph B of Rule 21-200.

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

**21-600. Reporting quasi-judicial and extra-judicial activities and compensation.**

A. Compensation and reimbursement. A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if neither the source nor amount of such payments gives the appearance of influencing the judge's official duties, or otherwise gives the appearance of impropriety.

B. Extra-judicial compensation. Extra-judicial compensation is defined as being the consideration received for services rendered by a judge to a person, firm, corporation or association other than the salary, benefits and perquisites of office provided to the judge for the performance of official judicial duties. Extra-judicial compensation does not include income from interest, dividends, rents, royalties, working interests, proceeds of or profits from the sale or exchange of capital assets as defined by the Internal Revenue Code and regulations, or collection of fees or retirement benefits earned or reimbursement of expenses incurred prior to entering judicial service. Compensation or income of a spouse attributed to the judge by operation of community property or other law is not extra-judicial compensation of the judge. Extra-judicial compensation should not exceed a reasonable amount for the activities performed, and should not exceed what a person who is not a judge would receive for the same activity.

C. Expense reimbursement. Expense reimbursement should be limited to the actual cost of travel, food and lodging and other expenses reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse. Any payment in excess of actual cost is extra-judicial compensation subject to the requirements of this rule.

D. Public reports. In addition to all other reports required by law, a judge should report the date, place and nature of any activity for which the judge received extra-judicial compensation as defined in this rule, including the name of the payor and the amount, or character and value, of extra-judicial compensation so received. The judge's report shall be filed as a public record in the office of the clerk of the Supreme Court of New Mexico on or before April 15 of each year covering the preceding calendar year.

[As amended, effective January 1, 1987; February 16, 1995.]

#### COMMENTARY

##### Paragraph A. Compensation and reimbursement

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the amount of the extra-judicial compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts of interest are created by the arrangements. A judge must not appear to trade on judicial office for personal advantage. A judge shall not spend significant time away from court duties in order to meet speaking or writing commitments. Neither the source of payment nor the amount paid as extra-judicial compensation must raise any question of undue influence or the judge's ability or willingness to be impartial. Engaging in business for profit with the State of New Mexico or any of its departments, officials, or political subdivisions, either in person or through an entity in which the judge owns an interest, should be carefully scrutinized to avoid creating a conflict of interest or suggesting that the judge is exploiting judicial office for personal advantage.

##### Paragraph B. Extra-judicial compensation

No judge may ask for any remuneration for performing a marriage ceremony, but may receive an unsolicited gratuity for performing a marriage outside normal business hours.

#### 21-700. Elections and political activity.

##### A. Incumbent judges.

(1) A judge may engage in political activity on behalf of the legal system, the administration of justice, measures to improve the law and as expressly authorized by law or by this Code.

(2) A judge may, unless and except as prohibited by law:

(a) purchase tickets for and attend political gatherings;

(b) identify the political party of the judge, except as prohibited by Subparagraph (6)

of Paragraph B of this rule; and

(c) contribute to a political organization.

(3) A judge shall not:

(a) act as a leader or hold an office in a political organization;

(b) publicly endorse or publicly oppose a candidate for public office through the news media or in campaign literature;

(c) make speeches on behalf of a political organization; or

(d) solicit funds for a political organization or candidate.

B. Candidates for election to judicial office. Candidates for election to judicial office in partisan, non-partisan and retention elections, including judges, lawyers and non-lawyers, are permitted to participate in the electoral process, subject to the requirements that all candidates:

(1) shall maintain the dignity appropriate to judicial office, act in a manner consistent with the impartiality, integrity and independence of the judiciary and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate;

(2) shall prohibit public officials and employees subject to the candidate's direction or control from doing for the judge what the candidate is prohibited from doing under these rules;

(3) shall not allow any other person to do for the candidate what the candidate is prohibited from doing under these rules, except activities permitted to a campaign committee;

(4) shall not:

(a) with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office; or

(b) misrepresent the candidate's or the candidate's opponent's identity, qualifications, present position or other material fact;

(5) may speak at public meetings, subject to these rules;

(6) may use advertising that does not contain any misleading contents, provided that the advertising is within the bounds of proper judicial decorum and does not, in nonpartisan elections, contain any reference to the candidate's affiliation with a political party; and

(7) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Paragraph B(4) of this rule.

C. Elections for non-judicial offices. No judge of any court in the State of New Mexico may while in office be nominated or elected to a public non-judicial office. A judge must, when filing a statement of candidacy for a non-judicial office, resign the judge's office immediately.

D. Candidates seeking appointment to judicial office.

(1) A candidate for appointment to judicial office shall not solicit or accept funds, personally or through a committee or otherwise, to support the candidacy.

(2) A candidate for appointment to judicial office shall not engage in political activity to secure the appointment except that such candidate may:

(a) communicate with the appointing authority, including any nominating commission designated to screen candidates;

(b) seek support or endorsement for the appointment from organizations and from individuals to the extent requested, required or permitted by the appointing authority and the nominating commission; and

(c) provide to the appointing authority and the nominating commission information as to the candidate's qualifications for office.

E. Judges seeking appointment to public, non-judicial office.

(1) A judge seeking appointment to a public, non-judicial office shall not:

(a) solicit or accept funds, personally or through a committee, or otherwise, to support the candidacy;

(b) engage in any political activity to secure the appointment except:

(i) communicating with the appointing authority;

(ii) seeking the support or endorsement for the appointment from organizations and from individuals to the extent requested, required or permitted by the appointing authority; and

(iii) providing to the appointing authority information concerning the candidate's qualifications for the office.

(2) A judge seeking appointment to a public non-judicial office, during the time the appointment is sought, shall be disqualified from presiding or participating as a judge in any legal proceeding involving or materially affecting the interests of:

(a) the appointing authority; or

(b) an organization or individual that has been contacted by the candidate to make, or is known by the candidate to be making, a recommendation to the appointing authority concerning the appointment.

F. Definition. As used in this rule "political organization" means a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

[As amended, effective June 1, 1990; July 1, 1990; February 16, 1995; August 31, 2004.]

## COMMENTARY

With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Subparagraphs (1) through (3) of Paragraph C of Rule 21-500 NMRA. The Code does not prohibit a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government.

A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited from making the facts public.

A candidate for elective judicial office is not prohibited from retaining during candidacy a public office such as county prosecutor, which is not an office in a "political organization".

A judge or judicial candidate is not prohibited from privately expressing the judge's or judicial candidate's views on judicial candidates or other candidates for public office.

A candidate for judicial office does not publicly endorse another candidate for public office by having that candidate's name on the same ticket, or by participating in joint fund-raising with other judicial candidates, or by running for election as part of a slate of judicial candidates.

Although a judicial candidate must encourage members of the judicial candidate's family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

The Code prohibits a candidate for judicial office from making statements that commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of the candidate's personal views. The Code does not prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. Paragraph B(4) of this rule applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment.

This rule does not prohibit a candidate from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of the Code of Judicial Conduct, from responding to a request for information from any organization.

**21-800. A judge shall refrain from campaign fund-raising activity which has the appearance of impropriety.**

A. Contributions creating appearance of impropriety. Candidates for judicial office in both partisan and retention elections shall refrain from campaign fund-raising activity which has the appearance of impropriety, and shall not accept any contribution that creates an appearance of impropriety.

B. Solicitation for other campaigns and candidates. Subject to the restrictions of this rule, candidates in both partisan and retention elections for judicial office may solicit contributions for their own campaigns, but shall not solicit funds for any other political campaign, or for any candidate for any other office. Judicial candidates may run for election as part of a slate of judicial candidates and may participate in joint fund-raising events with other judicial candidates.

C. Campaign committees. Candidates in both partisan and retention elections shall establish committees of one or more responsible persons to conduct campaigns for the candidate using media advertisements, brochures, mailings, candidate forums and other means not prohibited by law or these rules. Campaign committees may solicit and accept reasonable campaign contributions, and obtain public statements of support in behalf of the candidate, subject to the restrictions of these rules. ~~All campaign contributions shall be paid or turned over to the campaign committee, and shall be managed~~

and disbursed by the committee. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

D. Unopposed candidates in partisan elections. Candidates in partisan elections for judicial office who have a campaign fund, but who are unopposed or become unopposed in the campaign, shall return all unused and uncommitted campaign funds pro rata to the contributors of the funds, or donate the funds to a charitable organization, or to the State of New Mexico, as the candidate may choose, with disbursement of such funds to occur within thirty (30) days after the absence of opposition becomes known.

E. Unused campaign funds. A candidate for judicial office in either a partisan or retention election who has unused campaign funds remaining after election, and after all expenses of the campaign and election have been paid, shall refund the remaining funds pro rata to the campaign contributors, or donate the funds to a charitable organization, or to the State of New Mexico, as the candidate may choose, within thirty (30) days after the date the election results are certified.

F. Contributions by attorneys and litigants. Candidates for judicial office, in both partisan and retention elections, shall not personally solicit or personally accept campaign contributions from any attorney, or from any litigant in a case pending before the candidate. Contributions from attorneys and litigants shall be made only to a campaign committee, and are subject to all the requirements of this rule. Campaign committees may solicit contributions from attorneys. Campaign committees shall not knowingly solicit a contribution from a litigant whose case is then pending before the candidate. Campaign committees shall not disclose to the judge or candidate the identity or source of any funds raised by the committee. If a case is pending before any candidate for the judicial office being contested, restrictions of this subparagraph apply to all candidates for that office.

[As amended, effective February 16, 1995.]

#### COMMENTARY

This rule restricts contributions for campaigns for judicial office to sources and amounts that do not create an appearance of impropriety. Candidates for judicial office may solicit contributions for their own campaigns, within the restrictions of this rule, but not for the campaigns for other candidates or offices. Candidates for election to judicial office are required to create campaign committees to solicit and accept contributions, to solicit public support, and to receive, manage and disburse all campaign contributions. Each candidate must instruct the campaign committee to solicit or accept only those contributions that are reasonable under the circumstances, and that meet the requirement of this rule.

Attorneys and litigants have the right as citizens to participate in the electoral process of public officers, including judges, and have the right to support and make contributions to candidates for judicial office. Therefore, campaign contributions by attorneys and litigants are permitted, within the restrictions of this rule. However, campaign contributions from litigants with cases pending before any candidate for the judicial office being contested may not be knowingly solicited or accepted by any candidate for that office, or that candidate's campaign committee.

Campaign committees established under this rule should attempt to manage campaign finances responsibly, avoiding deficits that may necessitate post-election fund-raising.

#### 21-900. Violations.

A. Violations by incumbents. Violations of any of the rules of the Code of Judicial Conduct by incumbent judges shall be investigated, proceeded upon and disposed of by the Judicial Standards Commission in accordance with its authority and rules of procedure, and by the Supreme Court of New Mexico acting under its powers of contempt and superintending control. Judges shall comply with all rules, requirements and procedures of the Judicial Standards Commission, shall cooperate with the Judicial Standards Commission in the performance of its functions and shall comply with all laws applicable to judicial office.

B. Violations by candidates for judicial office. All candidates for judicial office shall comply with Rules 21-700, 21-800, 21-900 and 21-901 NMRA of the Code of Judicial Conduct. Violations of those rules by persons who are members of the bar shall be deemed to constitute violations of the Rules of Professional Conduct. Violations of those rules by candidates who are not lawyers are within the superintending control of the Supreme Court, and may be grounds for petitioning the Supreme Court for relief by way of mandamus, injunction or other equitable relief to require compliance and rectify non-compliance.

C. Challenges of violations in election campaigns. A candidate may bring an action to challenge a violation by the candidate's opponent of Paragraph B of Rule 21-700 NMRA or Rule 21-800 NMRA occurring in election campaigns for judicial office.

(1) Filing and venue. In election campaigns for the Supreme Court and Court of Appeals, by filing a complaint in the district court for Santa Fe County. In election campaigns for district, metropolitan, magistrate, municipal and probate courts, by filing a complaint in the district court of the county in which the complainant or the defendant resides, but only within the judicial district where the election is to occur. The complainant shall serve all parties within three (3) days after filing the action. If available, any statement, advertisement or publication alleged to constitute a violation shall be filed with the complaint.

(2) Standing; parties. Violations by a candidate or by a candidate's campaign committee can be challenged by an opposing candidate. The alleged violator shall be joined as a defendant and shall be served forthwith in person with the complaint, summons and notice of hearing when issued. A candidate who has not been joined as a party may intervene in the proceeding by filing a notice of intervention and a response to the complaint within the time required by this rule.

(3) Hearing. The complaint shall be heard by the district court without a jury within ten (10) days after the action is filed, unless the time is extended for good cause. Peremptory challenges to the district judge shall be filed by the complainant within three (3) days after the action is filed and by a defendant within three (3) days after service of process on that defendant. The district court shall enter its decision, findings of fact and conclusions of law, within not more than three (3) days after the hearing is completed. The decision of the district court shall constitute a final judgment immediately upon entry.

(4) Remedies. The district court is authorized to issue any order provided by the Rules of Civil Procedure for the District Courts and any remedial decrees for cessation of violations, retractions, corrective publications or other relief as may be reasonably required to rectify the effects of the violation. The district court may also refer any violation to the Judicial Standards Commission or the Disciplinary Board of the Supreme Court for additional action.

(5) Discovery. Any documentary or demonstrative evidence to be offered at the hearing shall be exchanged by the opposing parties as ordered by the district court, and in any case not less than twenty-four (24) hours prior to the commencement of the hearing. Discovery shall not delay the hearing on the merits, but wrongful refusal, obstruction or delay in discovery may be sanctioned in the discretion of the district court. The parties may by subpoena require the appearance of witnesses and the production of evidence at the hearing. The district court may allow oral testimony to be admitted telephonically.

(6) Appeals. Appeals shall be taken directly to the Supreme Court of New Mexico pursuant to the provisions of Rule 12-603 NMRA of the Rules of Appellate Procedure.

(7) Other rules applicable. The Rules of Civil Procedure for the District Courts, Rules of Appellate Procedure and Rules of Evidence shall apply unless inconsistent with this rule.

(8) Other proceedings. The jurisdiction of the Judicial Standards Commission, the Supreme Court and the Disciplinary Board to hear violations of the Code of Judicial Conduct is not affected by this paragraph.

[As amended, effective February 16, 1995; September 21, 2004.]

#### 21-901. Applicability.

A. Scope. Except as provided in this rule, all judges and all candidates for judicial office shall comply with the provisions of this Code, including, but not limited to, all judges and justices and all

judicial candidates of the Supreme Court, Court of Appeals, district court, magistrate court, metropolitan court, probate court and municipal court. Any person who serves as a full-time or part-time judge is a "judge" within the meaning of this Code.

B. Full-time magistrate and municipal judges. A full-time magistrate or municipal court judge is not required to:

- (1) comply with the provisions of Paragraph B (7)(b) of Rule 21-300 which requires notice to the parties of advice obtained by the judge from a disinterested expert on the law; or
- (2) comply with the provisions of Paragraphs E of Rule 21-500.

C. Probate and part-time magistrate and municipal judges. A probate judge or part-time magistrate or municipal judge:

- (1) is not required to:
  - (a) except while serving as a judge, comply with Paragraph B(10) of Rule 21-300;
  - (b) comply with the provisions of Paragraph C(2) of Rule 21-500 relating to appointment to other governmental positions;
  - (c) comply with the provisions of Paragraph B (7)(b) of Rule 21-300 which requires notice to the parties of advice obtained by the judge from a disinterested expert on the law;
  - (d) comply with the provisions of Paragraph D of Rule 21-500, relating to financial activities, except:
    - (i) the requirement of Rule 21-500(D)(1)(a) that the judge not engage in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position; and
    - (ii) the requirement of Rule 21-500(D)(5) that the judge not accept gifts, bequests, favors or loans except as permitted by the Code of Judicial Conduct;
  - (e) comply with Paragraphs E through G of Rule 21-500;
  - (f) comply with Paragraphs A through D of Rule 21-600; or
  - (g) comply with the provisions of Paragraphs C and F of Rule 21-800;
- (2) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of 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.

D. Campaign Reporting Act. The provisions of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] shall apply to all judges who run in a primary and general election, including a judicial retention election.

E. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Subparagraphs (2) and (3) of Paragraph D and Paragraph E of Rule 21-500 and shall comply with these paragraphs as soon as reasonably possible within one year after the effective date of this Code.

[As adopted, effective February 16, 1995.]



## APPENDIX L

### JUDICIAL STANDARDS COMMISSION RULES

#### 1. Scope, authority and purpose.

A. Scope. These rules and regulations are promulgated pursuant to the Article 6, Section 32 of the constitution of the State of New Mexico. They apply to all proceedings before the Judicial Standards Commission involving the discipline, removal or retirement of justices, judges or magistrates.

B. Statutory authority. Article 6, Section 32 of the constitution of New Mexico and Sections 34-10-1 to 34-10-4 NMSA 1978 provide for the selection, terms and duties of the Judicial Standards Commission and its director.

C. Purpose. The purposes of the Judicial Standards Commission and these rules shall be to protect the public from any improper conduct and behavior of judges; to preserve the integrity of the judicial process; to maintain public confidence in the judiciary; to create a greater awareness of proper judicial behavior on the part of the judiciary and the public; and to provide for the expeditious and fair disposition of complaints of judicial misconduct.

[Approved, effective December 6, 1968; as amended, effective September 29, 1989; January 31, 1998; July 1, 1999.]

#### 2. Definitions.

In these rules and regulations, unless the context or subject matter otherwise requires:

A. "commission" means the Judicial Standards Commission;

B. "judge" means any justice, judge or magistrate of any court of this state;

C. "chairperson" includes vice-chairperson and presiding officer;

D. "masters" means any justices or judges of courts of record of this state who are appointed by the commission to hear and take evidence in any matter and to report their findings to the commission;

E. "presiding officer" means the member of the commission or master so designated by the chairperson;

F. "examiner" means any person appointed by the commission to gather and present evidence before masters or the commission;

G. "shall" is mandatory and "may" is permissive;

H. "registered mail" means either registered or certified mail, deposited with the United States post office, with postage prepaid and with a request for a return receipt;

I. the masculine gender includes the feminine gender;

J. "oath" is synonymous with "affirmation" and "swear" is synonymous with "affirm";

K. "formal proceeding" means those proceedings referred to in Rules 16 through 38 of these rules; and

L. "transcript" means a record of proceedings before the commission or masters taken in any manner the chairperson may determine, and may include a stenographic record, audio recording, video recording or other form of record which accurately relates the contents of the proceeding.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984; September 29, 1989; January 1, 1998.]

#### 3. Organization and administration.

A. Composition. The commission shall consist of eleven (11) members as provided in the state constitution.

B. Officers. The commission shall elect from its membership appointed by the governor a chairperson and a vice-chairperson, each of whom may serve successive one-year terms.

(1) The chairperson may designate another member as a presiding officer to preside at specific hearings or other proceedings and may designate the vice-chairperson or executive director to sign or execute correspondence, orders and other documents on his behalf.



(2) The vice-chairperson shall act as chairperson in the absence of the chairperson and, in the absence of both, the members present may select an acting chairperson.

(3) The chairperson, vice-chairperson, and presiding officer are authorized to administer oaths or affirmations to all witnesses appearing before the commission.

C. Executive director. The commission shall employ an executive director who shall have duties and responsibilities as specified by the commission, including the authority to:

(1) establish and maintain a permanent office;

(2) receive information, allegations, and complaints;

(3) make preliminary evaluations and screen complaints;

(4) conduct investigations;

(5) recommend dispositions;

(6) maintain commission records;

(7) maintain statistics concerning the operation of the commission and make them available to the commission and to the public;

(8) prepare the commission's budget for approval by the commission and administer its funds;

(9) employ and supervise other members of the commission's staff;

(10) prepare an annual report of the commission's activities for presentation to the commission, the Supreme Court and to the public;

(11) employ, with the approval of the commission, special counsel, private investigators and other experts as necessary to investigate and process matters before the commission and before the Supreme Court; and

(12) make and issue public statements as authorized by these rules.

D. Meetings. Meetings of the commission shall be held at the call of the chairperson, the vice-chairperson, the executive director or at the request of a majority of the members of the commission, and all members of the commission shall be given notice. The commission may conduct meetings by telephone conference call.

E. Minutes. Minutes shall be kept of each meeting of the commission. The minutes shall record the names of those present, the actions taken, and any other matter that the commission may deem appropriate.

F. Quorum of commission. A quorum for the transaction of business by the commission shall be six (6) members, and no act of the commission shall be valid unless concurred in by no less than six (6) members.

[Approved, effective December 6, 1968, as amended, effective March 27, 1975; March 1, 1979; August 31, 1984; September 29, 1989; July 1, 1999.]

#### 4. Commission powers.

A. General powers. Notwithstanding any other provision of law, the commission shall have the power to receive information, investigate, conduct hearings, take informal remedial action, and make recommendations to the Supreme Court concerning allegations against judges of willful misconduct in office, persistent failure or inability to perform judicial duties, habitual intemperance, disability, and/or violations of the Code of Judicial Conduct.

B. Subpoena and inspection. The commission shall be entitled, with the concurrence of a majority of members of the commission, to petition a district court to subpoena witnesses, including the judge as witness, compel their attendance and examine them under oath or affirmation, and to require the production of documents, books, accounts, and other records, and for other discovery. Subpoenas shall be served in the manner provided by law for the service of subpoenas in a civil action.

C. Witness expenses. The commission has the discretion to pay per diem and mileage to witnesses at the rate specified for non-salaried public officers as provided in the Per Diem and Mileage Act, Sections 10-8-1 to 10-8-8 NMSA 1978, for the time which attendance is required. Witnesses may apply to the commission for reimbursement of per diem expense and mileage after completion of their participation in commission proceedings. ~~The commission shall promptly determine whether its operating budget and~~

legislative appropriations will permit payment of per diem expense and mileage. Expenses of witnesses shall be borne by the party calling them, subject to the Supreme Court's order assessing to the judge the costs incurred by the commission.

D. Failure to comply. The failure of any judge under investigation to comply with the reasonable requests or directives of the commission may be considered willful misconduct in office by the commission. The intentional misrepresentation of a material fact during any stage of a disciplinary proceeding may constitute willful misconduct in office.

E. Contempt powers. The misconduct of any person in the presence of the commission while it is performing official duties, resistance to or obstruction of any lawful process, order or rule of the commission, or violation of any rule of confidentiality pertaining to commission proceedings shall constitute contempt. Any participant in a commission proceeding may be cited for contempt of the commission. Contempt hearings shall be conducted before the commission which shall advise the Supreme Court of its findings, conclusions, and recommendations with respect to the alleged contempt, and the Supreme Court may impose such penalties or sanctions it deems appropriate.

[Approved, effective September 29, 1989; as amended, effective September 24, 1993; January 31, 1998; September 1, 2000.]

#### **5. Commissioner disqualification.**

A. A judge, who is a member of the commission, shall not participate as such member in any proceedings involving his own discipline, removal or retirement.

B. A commissioner shall not participate in any matter if a judge similarly situated would be disqualified in a court proceeding.

C. A commissioner may disqualify himself or herself in a particular matter stating the reason for the disqualification.

D. If the propriety of a commissioner's participation in a particular matter is questioned, the issue shall be decided by a majority of the other commissioners present and voting.

E. A disqualified commissioner shall not participate in any proceedings with reference to the matter from which the commissioner is disqualified, and he or she shall be excused from that portion of any meeting at which the matter is discussed.

F. Minutes of commission meetings shall record the names of any commissioner not voting on a matter by reason of disqualification.

[Approved, effective December 6, 1968; as amended, September 29, 1989.]

#### **6. Immunity.**

Members of the commission, commission staff and special counsel shall be immune from suit as provided by law for all conduct in the course of their official duties.

[Approved, effective September 29, 1989.]

#### **7. Confidentiality, privilege and oath.**

A. Proceedings confidential. All papers and pleadings filed with and proceedings before the commission or its masters shall be confidential. Only when a record is filed by the commission with the Supreme Court do the proceedings lose their confidential character.

B. Privileged material. Pursuant to Article 6, Section 32 of the New Mexico constitution, the filing of papers with, or giving of testimony before the commission or its masters, shall be privileged in any action for defamation. A writing which was privileged prior to its filing with the commission or its masters does not lose its privilege by the filing. A record filed by the commission in the Supreme Court continues to be privileged.

C. Oath of witnesses. Every witness in every proceeding under these rules shall be sworn to tell the truth and not to disclose the existence of the proceeding or the identity of the judge until the proceeding is no longer confidential under these rules. Violation of the oath shall be an act of contempt of the commission.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984, September 29, 1989; October 27, 1995.]

#### **8. Medical examination and waiver of privilege.**

A. Medical examination. When a complaint is received alleging, or where an initial inquiry or preliminary investigation reveals, that a judge is or may be incapacitated by reasons of mental or physical disability, and the commission finds good cause to do so, the commission may order the judge to undergo any physical or mental examinations the commission deems necessary to proceed with its investigation. The report of the medical practitioner shall be furnished to the commission and the judge.

B. Waivers. At the commission's request, a judge shall provide the commission with all waivers and releases necessary to authorize the commission to receive all medical records, reports, and information from any medical person, medical institution, or other facility regarding the judge's physical or mental condition.

C. Effect of denial. If the complaint involves the physical or mental condition of the judge, a denial of the alleged condition shall constitute a waiver of any privilege the judge may have that would preclude the discovery of medical records or the requirement of a physical or mental examination related to the allegations of the complaint.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989; January 31, 1998.]

#### **9. Extension of time.**

Whenever some action is required to be taken within a certain number of days, the chairperson may extend the time for a reasonable period not to exceed fifteen days.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989.]

#### **10. Service.**

A. Service on judge. All papers in commission proceedings may be served on a judge in person or by registered or certified mail addressed to the judge at his chambers or his last known residence. If counsel has appeared for a judge, all papers may be served on counsel in lieu of service upon the judge.

B. Service on commission. Service of papers on the commission shall be given by delivering or mailing the papers to the commission's office.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989.]

#### **11. Complaint.**

A. Filing a complaint. Any person or organization may file a complaint against a judge. The complaint shall be written on a form provided by the commission. The complainant's signature shall be notarized or otherwise verified. The commission on its own motion may initiate a complaint against a judge.

B. Screening of complaints. The commission or, at its discretion, the executive director shall determine by examination of the complaint or by initial inquiry whether a complaint warrants further investigation and evaluation. Complaints that are frivolous, unfounded, solely appellate in nature, or outside the jurisdiction of the commission may be dismissed.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989; January 31, 1998; September 1, 2000.]

#### **12. Initial inquiry.**

A. Upon receipt of a complaint, report or other information as to conduct that might constitute grounds for sanctions, the executive director or staff may conduct a prompt, discreet, and confidential initial inquiry and evaluation.

B. As part of an initial inquiry, the commission may require a judge to submit, in writing, an explanation and disclosure of all pertinent facts, including germane documents, in answer to a request by the commission. The judge's answer shall be made within ten (10) days of receipt of said request. The request to the judge for an explanation shall be made by written communication.

C. Upon determination that there is insufficient cause to proceed, the commission shall dispose of the case pursuant to Rule 34, and the complainant shall be notified of the commission's action. If the judge has been informed of the proceeding, he shall also be notified of the commission's action.  
[Approved, effective September 29, 1989; as amended, effective January 31, 1998.]

**13. Preliminary investigation.**

A. Upon receipt of complaint. The commission, upon receiving a complaint, not obviously unfounded or frivolous, alleging facts indicating a disability or a violation, may make a preliminary investigation to determine whether formal proceedings should be instituted and a hearing held.

B. On own motion. When the commission receives information, not in the form of a verified statement, which may subject a judge to action by the commission, it may on its own motion, authorize a preliminary investigation.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984; September 29, 1989; January 31, 1998.]

**14. Notice of preliminary investigation.**

The judge shall be notified of the investigation by a notice of preliminary investigation, setting forth the nature of the complaint and the name of the person making the verified statement, if any, or that the investigation is on the commission's own motion. The judge shall respond, in writing, to the notice of preliminary investigation within fifteen (15) days of its service upon him.

[Approved, effective December 6, 1968; as amended, effective September 29, 1989.]

**15. Dismissal notice.**

Upon determination that there is insufficient cause to proceed to a hearing, the commission shall dispose of the case pursuant to Rule 34. The complainant and the judge shall be notified of the commission's action.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989; January 31, 1998.]

**16. Notice of formal proceedings.**

If at least six (6) members of the commission decide that formal proceedings should be instituted, the commission shall issue to the judge a notice of formal proceedings. This notice shall specify in ordinary and concise language the charges against the judge and the alleged facts upon which such charges are based. The notice shall state the laws, canons and rules allegedly violated and specify the constitutional provisions under which the commission invokes jurisdiction in the proceedings.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984; September 29, 1989; July 1, 1999.]

**17. Answer.**

A. Within fifteen (15) days after service of the notice of formal proceedings, the judge shall file with the commission a legible answer which shall be verified.

B. The facts alleged in the notice of formal proceedings may be deemed admitted if not specifically denied by answer or if no answer is filed within the prescribed time, in which event the sole issue to be determined by the commission shall be the nature of the commission's recommendation of discipline after consideration of any facts in aggravation or mitigation of the respondent's fault.

[Approved, effective December 6, 1968; as amended, effective June 27, 1986; September 29, 1989.]

**18. Prehearing motions.**

All prehearing motions shall be submitted to the chairperson at least fifteen (15) days prior to a scheduled hearing, unless, upon good cause shown, the chairperson waives the time requirement. The chairperson may rule upon any prehearing motions, including motions for protective orders; provided, however, that

any prehearing motions involving the determination of factual issues, or seeking the dismissal of a charge or charges, shall require the approval of a majority of the members of the commission to be valid.  
[Approved, effective August 31, 1984; as amended, effective September 29, 1989.]

**19. Setting.**

The commission shall set a time and place for the hearing, and shall give notice of such hearing to the judge at least ten (10) days prior to the date set, which shall be at least twenty-five (25) days after service of notice of formal proceedings.  
[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989.]

**20. Appointment of masters.**

The commission, by a majority vote of its members, may appoint three (3) masters who are judges of courts of record to hear and take evidence in any hearing and to report their findings to the commission. The commission shall set the time and place for the hearing of the masters.  
[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989.]

**21. Number of commission members required at hearing.**

No less than six (6) members of the commission shall be present at the hearing.  
[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989; July 1, 1999.]

**22. Evidence at hearing.**

A. Admissible evidence. At a hearing before the commission or masters, only evidence admissible under the rules of evidence shall be received, and oral evidence shall be taken only on oath or affirmation. When the hearing is before the commission, the chairperson or a member designated by the chairperson shall preside. Procedural and other interlocutory rulings shall be made by the person presiding and shall be taken as consented to by the other members, unless one or more calls for a vote, in which latter event such rulings shall be made by a majority of those present.

B. Depositions; use as evidence. Depositions, either on oral examination or on written interrogatories, of witnesses who reside out of the state or whose personal attendance at the hearing cannot, for good reason, be procured, may be taken and used in evidence upon application to and order of the chairperson or presiding officer. Such order may be made on stipulation of the parties or after hearing on five (5) days' notice. Any such order of the chairperson or presiding officer is subject to review and change by the commission or by the masters as the case may be.

C. Use of closed file.

(1) A "closed file" is one involving a prior complaint received by or initiated by the commission.

(2) A closed file may be used by the commission or the examiner in establishing a course of conduct or pattern of violations by a judge or in making a recommendation for discipline to the Supreme Court.

(3) When the commission or examiner intends to use a closed file the commission or examiner shall give the judge notice. The commission shall thereafter provide the judge with an opportunity to be heard. If no investigation was undertaken or charges were not brought regarding the allegations contained in the closed file, it may be reopened and handled as if it had just been initiated.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989; January 31, 1998; September 1, 2000.]

**23. Conduct of hearing.**

A. Closed hearing. The hearing shall be a closed hearing.

B. Proceeding on time-absence of answer or appearance. At the time and place set for the hearing, the commission, or the masters, when the hearing is before masters, shall proceed with the hearing ~~whether or not the judge has filed an answer or appears at the hearing.~~

C. Presentation of case-failure to appear or comply. The examiner shall present the case in support of the charges set forth in the notice of formal proceedings. The failure of the judge to appear at the hearing, after timely filing an answer specifically denying the facts alleged in the notice of formal proceedings, may be taken as an admission of the truth of the facts alleged to constitute grounds for discipline, removal, or retirement. The commission may refuse to receive testimony of the judge who, having failed without good cause to file a timely answer, appears at the hearing, and may grant a continuance upon a showing by the examiner of prejudice arising from the failure to file a timely answer. The failure of the judge to testify in his own behalf may be considered against him, unless it appears that such failure was in the exercise of a constitutional privilege or due to circumstances beyond his control. [Approved, effective December 6, 1968; as amended, effective August 31, 1984; August 28, 1987; September 29, 1989.]

#### 24. Procedural rights of judges.

A. Evidence; counsel; witnesses. A respondent judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel and to examine and cross-examine witnesses.

B. Transcript of testimony. When a transcript of the testimony has been prepared at the expense of the commission, a copy thereof shall, upon request, be available for use by the judge and his counsel in connection with the proceedings, or the judge may arrange to procure a copy at his expense. The judge shall have the right, without any order or approval, to have all or any testimony in the proceedings transcribed at his expense.

C. Incompetency. If the judge is adjudged incompetent, or if it appears to the commission at any time during the proceedings that he is not competent to act for himself, the commission shall appoint a guardian ad litem unless the judge has a guardian who will represent him. In the appointment of such guardian ad litem, consideration shall be given to the wishes of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right or privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, such notice or matter shall be served, given or sent to the guardian or guardian ad litem.

D. Discovery. A respondent judge and the examiner shall exercise due diligence to obtain any needed discovery on their own. Prior to filing motions related to discovery, a respondent judge and the examiner shall confer in good faith to determine what discovery may be exchanged through stipulation. Any desired discovery that cannot be exchanged by stipulation and that cannot be obtained through the parties' own efforts may then be requested through a motion to compel discovery filed with the commission. Notice shall be mailed to the opposing party of such motion at the same time the motion to compel discovery is filed with the commission. The motion to compel discovery shall be filed with the commission at least 30 days prior to the date of the hearing unless, upon good cause shown, the Chairperson waives the time requirement. The commission may allow appropriate discovery, including the taking of depositions. If a deposition is allowed, the party seeking the deposition will bear the expense of such proceedings, subject to the Supreme Court's order assessing to the judge the costs incurred by the commission. Decisions concerning the motion to compel discovery shall be made as soon as practicable.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984; September 29, 1989; September 24, 1993; January 31, 1998; September 1, 2000.]

#### 25. Amendments to notice or answer.

The commission or masters, at any time prior to the conclusion of the hearing, or the commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given a reasonable time both to answer the amendment and to ~~prepare and present his defense against the matters charged thereby.~~

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989.]

**26. Report of masters.**

A. Preparation and transmittal to commission. After the conclusion of the hearing before masters, they shall within a reasonable time, and not more than twenty (20) days after the hearing, prepare and transmit to the commission a report which shall contain a brief statement of the proceedings had and their findings of fact on the issue presented by the notice of formal proceedings and the answer thereto, or, if there be no answer, their findings of fact with respect to the allegations in the notice of formal proceedings. When the findings support the grounds alleged for discipline, removal, or retirement, the report shall be accompanied by an original of a transcript of proceedings before the masters. The executive director shall provide copies to the commission.

B. Furnishing copy to judge. Upon receiving the report of the masters, the commission shall provide a copy to the judge.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989.]

**27. Objections to report of masters.**

Within fifteen (15) days after mailing of the copy of the masters' report to the judge, the examiner or the judge may file with the commission a statement of objections to the report of the masters, setting forth all objections to the report and all reasons in opposition to the findings as sufficient grounds for discipline, removal or retirement. A copy of such statement, when filed by the examiner, shall be sent to the judge.

[Approved, effective December 6, 1968; as amended, effective September 29, 1989.]

**28. Appearance before commission.**

If no statement of objections to the report of the masters is filed within the time provided, the commission may adopt the findings of the masters without a hearing. If such statement of objections is filed, or if the commission in the absence of such statement proposes to modify or reject the findings of the masters, the commission shall give the judge and the examiner an opportunity to be heard orally before the commission, and written notice of the time and place of such hearing shall be sent to the judge at least ten (10) days prior thereto.

[Approved, effective December 6, 1968; as amended, effective September 29, 1989.]

**29. Hearing additional evidence.**

The commission or masters may order a hearing for the taking of additional evidence at any time while the matter is pending before them. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent to the judge at least ten (10) days prior to the day of hearing.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989.]

**30. Standard of proof-commission vote.**

A. Standard of proof. Formal charges shall be established by clear and convincing evidence.

B. Majority vote required. If the commission finds good cause, upon clear and convincing evidence, it shall recommend to the Supreme Court the discipline, removal or retirement of the judge. When the hearing is held before masters, the affirmative vote of at least six (6) members of the commission is required for a recommendation of discipline, retirement or removal of a judge. When the hearing is held before the commission, the affirmative vote of at least six (6) members of the commission, including a majority of those who were present at the hearing or hearings when the evidence was produced, is required for a recommendation of discipline, removal or retirement of a judge.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984; September 29, 1989; July 1, 1999.]

**31. Recommendation for sanctions.**

The recommendation for sanctions concurred in by at least six (6) members of the commission shall be reported to the Supreme Court.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989; July 1, 1999.]

**32. Record of commission proceedings.**

The commission shall keep a record of all formal proceedings concerning a judge. The proceedings of every hearing shall be reported verbatim either stenographically or electronically. The commission's determination shall be entered in the record, and notice thereof shall be sent to the judge. In all proceedings resulting in a recommendation to the Supreme Court for discipline, removal or retirement, the commission shall prepare a transcript of the evidence and of all formal proceedings therein and shall make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceedings. It shall not be necessary that proceedings be transcribed or recordings preserved in any case in which findings are not forwarded to the Supreme Court for consideration.

[Approved, effective December 6, 1968; as amended, effective March 27, 1975; March 1, 1979; August 31, 1984; September 29, 1989.]

**33. Emergency interim suspension.**

Incident to a preliminary investigation or a formal proceeding conducted pursuant to these rules, the commission may, upon its determination that the continued service of a judge is causing immediate and substantial public harm and an erosion of public confidence to the orderly administration of justice, and the judge's conduct appears to be violative of the Code of Judicial Conduct or the constitution of New Mexico, petition the Supreme Court for injunctive or other appropriate interim relief, including temporary suspension or reassignment of the judge.

[Approved, effective September 29, 1989.]

**34. Dispositions.**

The commission may make any of the following dispositions:

- A. dismissal of complaint;
- B. privately informing the judge that his conduct may be violative of the standards of judicial conduct;
- C. proposing professional counseling or assistance for the judge.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989.]

**35. Sanctions.**

Following a formal hearing or based on admissions by a judge, the commission may recommend to the Supreme Court the following formal sanctions:

- A. removal;
- B. retirement;
- C. discipline, including one or more of the following:
  - (1) suspension;
  - (2) imposition of limitations or conditions on the performance of judicial duties;
  - (3) reprimand or censure;
  - (4) fine; and
  - (5) assessment of costs and expenses; or
- D. imposition of any combination of the above sanctions.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989.]

**36. Certification of commission recommendation to Supreme Court.**

- A. Filing of findings and recommendations. Upon making a determination recommending discipline, retirement or removal of a judge, the commission shall promptly file with the clerk of the Supreme Court the original copy of its written decision containing its recommendations, findings, and



conclusions, indicating that it was concurred in by at least six (6) members of the commission and certified by the chairperson. The commission shall immediately thereafter send to the judge and to his counsel notice of such filing, together with a copy of its decision and findings and conclusions.

B. Filing of transcript and costs. Within a reasonable time after filing of the recommendation, the commission shall file with the clerk of the Supreme Court the transcript of evidence and a memorandum of costs of service of process, witness fees and expenses, mileage, depositions and investigation expenses. The memorandum of costs shall be certified by the chairperson. The commission shall send to the judge and his counsel a notice of filing of the transcript and memorandum of costs. The commission shall request an order of the court assessing to the judge the costs incurred by the commission.

[Approved, effective December 6, 1968; as amended, effective March 27, 1975; August 31, 1984; September 29, 1989; January 31, 1998; July 1, 1999.]

**37. Commission representation before the Supreme Court.**

Following the submission of any formal report to the Supreme Court of a recommendation of discipline, retirement or removal, the commission may designate or retain counsel to represent the commission in any hearings or matters before the Supreme Court involving matters recommended by the commission.

[Approved, effective August 31, 1984, as amended, effective September 29, 1989.]

**38. Jurisdiction.**

The judicial standards commission's jurisdiction is invoked when notice of formal proceeding is served upon the judge under investigation. The jurisdiction continues irrespective of the judge's subsequent resignation and/or termination from office.

[Approved, effective December 3, 1993.]



## APPENDIX M

# SUPREME COURT RULES GOVERNING REVIEW OF JUDICIAL STANDARDS COMMISSION PROCEEDINGS

### ARTICLE 1 General Provisions

#### 27-101. Scope and title.

A. Scope. These rules govern the procedure for Supreme Court review of the record of proceedings and recommendations of the Judicial Standards Commission for the suspension, discipline, removal or retirement of a justice, judge or magistrate. These rules do not govern proceedings to remove a justice, judge or magistrate by impeachment or proceedings to suspend, discipline or remove a justice, judge or magistrate commenced pursuant to the original superintending control of the Supreme Court.

B. Title. These rules shall be known as the Rules Governing Review of Judicial Standards Commission Proceedings.

[Approved, effective April 17, 1996.]

#### 27-102. Definitions.

As used in the Rules Governing Review of Judicial Standards Commission Proceedings:

A. "commission" means the Judicial Standards Commission; and

B. "judge" means a Supreme Court justice, Court of Appeals judge, district court judge, metropolitan court judge, magistrate court judge, probate court judge or municipal court judge.

[Approved, effective April 17, 1996.]

#### 27-103. Computation of time.

A. Computation. In computing any period of time prescribed or allowed by these rules, by order of court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes New Year's day, Martin Luther King, Jr.'s birthday, Presidents day, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, Christmas day and any other day designated as a state or judicial holiday.

B. Additional time after service by mail. Except as otherwise provided by these rules, whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon the party and the paper is served by mail, three (3) days shall be added to the prescribed period.

[Approved, effective April 17, 1996.]

#### 27-104. Filing and service.

A. Filing. Papers required or permitted to be filed in the Supreme Court shall be filed with the clerk. Filing by mail is not complete until actual receipt.

B. Service of all papers required. Copies of all papers filed by any party and not required by these rules to be served by the clerk shall be served by the party on all other parties to the proceeding. Service shall be upon the attorney of record of the party to be served or upon the party if the party has no attorney. Service may be made by either personal service or by mail. Service shall be made at or before the time of filing the paper in the Supreme Court.

C. Service on incompetent persons. If there is an issue of the mental competency of a judge who is not represented by counsel, service shall be made upon a guardian ad litem appointed to represent the judge in the proceedings.

D. Proof of service. Proof of service, in the form of written acknowledgment of the party to be served or certificate of the clerk of the court or of the attorney making service, or affidavit of any other person, shall state the name and address of counsel on whom service has been made, or the name and address of the party if the party has no attorney. Such proof of service shall be filed with the papers filed or immediately after service is effected.

[Approved, effective April 17, 1996.]

#### 27-105. Motions.

A. Use of motion. Unless otherwise prescribed by these rules, all requests for an order or other relief shall be made by filing a motion.

B. Content and filing. Motions shall be filed, together with any supporting affidavits or other papers, with proof of service on all parties as provided in Rule 27-104. A motion shall state concisely and with particularity the relief sought and the ground on which it is based.

C. Procedural motions. Motions seeking extensions of time, leave to exceed the length of a brief permitted to be filed pursuant to these rules and similar motions directed to the appellate court's discretion in procedural matters need not be accompanied by briefs. Such motions shall state with particularity the reasons for the request.

D. Other motions. Other motions may be accompanied by a separate brief. Adverse parties may file and serve a response within ten (10) days after service of movant's motion.

[Approved, effective April 17, 1996.]

#### 27-106. Form of papers.

A. Transcripts of proceedings and records proper. Copies of non-taped transcripts of proceedings shall be reproduced from the original transcript by any duplicating or copying process which produces a clear black image on white paper or shall be typed or printed on white paper. The format of transcripts of proceedings shall comply with the provisions of Paragraphs B and C of this rule except that transcripts and records proper may be bound.

B. Other papers. Motions, applications, petitions and all other papers, except exhibits, filed in the Supreme Court, shall be: clearly legible; typewritten or printed on good quality white paper eight and one-half by eleven (8 1/2 x 11) inches in size, with a left margin of one and one-half (1 1/2) inches, a right margin of one-half (1/2) inch, and top and bottom margins of one and one-half (1 1/2) inches; with consecutive page numbers at the bottom; and stapled at the upper left hand corner; and, except for a cover page, shall be typed or printed using pica (10 pitch) type style or a twelve (12) point typeface. The contents, except quotations, shall be double spaced.

C. Cover page. The front cover of a record proper, transcript of proceedings and other papers shall show:

- (1) the name of the respondent judge;
- (2) the title of the paper or item being filed; and
- (3) the name and mailing address of counsel filing the pleading. If a party is not represented by counsel, the name and address of the party shall appear on the cover page of the pleading.

[Approved, effective April 17, 1996.]

#### 27-107. Number of copies of papers.

A. Copy; definition. As used in this rule, "copy" includes the original.

B. Papers filed in the Supreme Court. The following numbers of copies of papers shall be filed in the Supreme Court:

- (1) findings, conclusions and recommendations of the commission: seven (7);
- (2) motions for extension of time or page limits and responses thereto: one (1);
- (3) ~~motions to amend papers and responses thereto: one (1);~~

- (4) motions for rehearing and briefs in support thereof and responses thereto: six (6);
- (5) all other motions, responses and briefs in support thereof or opposition thereto: four (4);
- (6) all other papers: seven (7).

[Approved, effective April 17, 1996.]

**27-108. Process.**

Process of the Supreme Court shall be in the name of the chief justice of the Supreme Court. It shall be attested by the signature of the clerk and the seal of the Court.

[Approved, effective April 17, 1996.]

**ARTICLE 2**

**Suspension Pending Hearing**

**27-201. Suspension of judge pending hearing.**

A. Temporary suspension. A judge may be suspended by the Supreme Court pending a hearing by the Judicial Standards Commission upon the Judicial Standards Commission filing with the Supreme Court a petition for temporary suspension which shall be accompanied by:

- (1) a certified copy of a judgment finding the judge guilty of a felony or other serious crime;
- (2) a certificate of the commission that a judge has been convicted of or has pleaded guilty or no contest to a felony or serious crime;
- (3) a court order or judgment declaring the judge to be incompetent or incapacitated; or
- (4) a certificate of the commission that immediate suspension of a judge is necessary pending disposition of:

- (a) an investigation by the commission for an alleged violation of the Code of Judicial Conduct, Rules of Professional Conduct or a violation of a court rule, statute or other law;

- (b) a criminal complaint, information or indictment which has been filed against the judge; or

- (c) a determination of the present competency of the judge.

B. Notice and hearing. Prior to entering an order suspending a judge pursuant to this rule, the Supreme Court shall serve on the judge an order to show cause why the judge should not be suspended. The order to show cause shall be served on the judge at least ten (10) days prior to the date set for the hearing unless a shorter time is ordered by the Court. At any time prior to the hearing, the judge may file a response to the order to show cause. A copy of the response shall be served by the respondent judge on the Judicial Standards Commission.

C. Suspension order. Upon a showing made pursuant to Paragraph A of this rule, the Supreme Court may enter an order immediately suspending the judge pending filing with the Court of the recommendations by the Judicial Standards Commission. Unless otherwise ordered by the Court, the salary of a judge shall be suspended during the period of suspension.

D. Evidence of commission of crime. A judgment or plea of guilty or no contest by a judge for any crime shall be conclusive evidence of the commission of that crime in any Judicial Standards Commission proceeding instituted against the judge based upon the conviction.

E. Reinstatement. A judge suspended under the provisions of this rule may be reinstated immediately upon the filing of a certificate by the Judicial Standards Commission demonstrating that:

- (1) if the suspension was for conviction of a crime, the underlying conviction for the felony or other serious crime has been reversed and no further criminal or Judicial Standards Commission proceedings are pending against the judge;

- (2) if the suspension was imposed because of incompetency or incapacity, that such incapacity or incompetency no longer exists; or

- (3) if the suspension was imposed pursuant to Subparagraph (4) of Paragraph A of this rule, that reinstatement of the judge will not result in a substantial loss of public confidence in the judiciary.

F. Effect of reinstatement. Reinstatement after a temporary suspension pursuant to this rule shall ~~not terminate any Judicial Standards Commission proceedings pending against the judge.~~

G. Rehearing. No motion for rehearing or reconsideration shall be permitted.  
[Approved, effective April 17, 1996.]

### ARTICLE 3 Commission Proceedings

#### 27-301. Commencement of proceedings.

A. Discipline, retirement or removal. Proceedings for the discipline, retirement or removal of a judge upon recommendation of the Judicial Standards Commission shall be commenced by the commission filing in the Supreme Court a petition for discipline, retirement or removal of the judge.

B. Contents of petition. The petition shall contain:

(1) a brief and plain statement of the grounds for discipline, retirement or removal, or if more than one, each of the separate grounds;

(2) the provisions of the Code of Judicial Conduct, court rule, statute or other law claimed to have been violated; and

(3) a concise statement of the recommendations of the commission.

C. Petition length. The petition shall not exceed fifteen (15) pages in length.

D. Exhibits. The recommendations, findings and conclusions of the commission and any certificates of the commission may be attached as exhibits to the petition.

E. Service of petition. The petition and any exhibits shall be served by the commission on the respondent judge in the manner provided by the procedural rules of the commission.

[Approved, effective April 17, 1996.]

#### 27-302. Record of proceedings.

A. Record of proceedings. Within fifteen (15) days after the commission files a petition pursuant to Rule 27-301 of these rules, the commission shall file with the clerk of the Supreme Court the record of proceedings before the commission. For purposes of this rule, the record of proceedings shall consist of:

(1) a title page containing caption of the proceedings before the Judicial Standards Commission and the names and mailing addresses of each party or, if the party is represented by counsel, the name and address of the attorney;

(2) a copy of all papers and pleadings filed in the proceedings;

(3) any exhibits; and

(4) the transcript of the proceedings made by the Judicial Standards Commission, either stenographically recorded or tape recorded. If the record is a tape recording, the commission shall prepare and file with the Supreme Court the original tapes and index log.

B. Notice of filing. The clerk of the Supreme Court shall give prompt notice to all parties of the filing of the record of proceedings in the Supreme Court.

C. Filing of recommendations, findings and conclusions of the commission. Unless filed as exhibits to the petition, the recommendations, findings and conclusions of the commission shall be filed with the record of proceedings and shall be served by the commission on the respondent judge in the manner provided by the procedural rules of the commission.

[Approved, effective April 17, 1996.]

#### 27-303. Response.

Within ten (10) days after filing of the record of proceedings in the Supreme Court, the respondent judge shall file in the Supreme Court a response to the petition. The response shall not exceed fifteen (15) pages in length and shall be served on the commission in accordance with Rule 27-104. No briefs shall be filed unless otherwise ordered by the Court.

[Approved, effective April 17, 1996.]

**27-304. Oral argument.**

A. Oral argument. Upon the filing of the response in the proceedings, the Supreme Court may schedule oral arguments or may consider the record of proceedings and the recommendations of the commission without further argument of the parties.

B. Time for argument. If the Court orders the presentation of oral argument, the time for oral argument shall not exceed thirty (30) minutes on each side unless the time is extended or restricted by the Court.

C. Nonappearance of parties. If the respondent judge fails to appear to present argument, the Court may, in its discretion, hear argument on behalf of the commission.

[Approved, effective April 17, 1996.]

**27-305. Enforcement.**

A. Cooperation. If any person willfully fails to cooperate with, obstructs or interferes with any inquiry, investigation or proceeding of the Judicial Standards Commission, counsel for the commission may apply to the Supreme Court for an order to show cause why that person should not be held in contempt for such conduct.

B. Refusal to be sworn; failure or refusal to appear. If any person refuses to take the oath or affirmation as a witness, or refuses or fails to appear and be examined, counsel for the commission may apply to the Supreme Court for an order to show cause why that person should not be ordered to take the required action. If the person violates a Supreme Court order to take the action, the person may be ordered to show cause why the person should not be held in contempt of Court.

[Approved, effective February 1, 1999.]

**ARTICLE 4**

**Disposition; Suspension and Reinstatement**

**27-401. Disposition.**

A. Supreme Court decision. The Supreme Court, in its discretion and under such conditions as it may specify, may:

(1) accept, reject or modify any or all of the findings and conclusions of the commission;

(2) if the judge is eligible for retirement benefits, order the retirement of the judge;

(3) impose the discipline recommended by the commission or any other greater or lesser discipline that it deems appropriate under the circumstances including removal;

(4) impose public censure of the judge;

(5) impose probation or other conditions as a type of discipline by itself or may defer the effect of the discipline imposed;

(6) suspend the judge;

(7) remove the judge; or

(8) remand the proceedings to the commission for additional evidence. The commission may

then affirm or modify its recommendations, and shall file with the Supreme Court as a part of the record any additional evidence, together with the affirmation of, or modifications in, its recommendations.

B. Mandate. The Court may dispose of the proceedings by filing an order in the proceedings. The order may be accompanied by a written decision or opinion. The Court may order the publication of its order or other disposition. All formal opinions shall be published in the New Mexico Reports.

C. Rehearing. No motion for rehearing or reconsideration shall be permitted.

D. Expenses. The Supreme Court in its discretion may direct that the costs of the proceedings be paid by the respondent judge in accordance with Rule 27-403.

[Approved, effective April 17, 1996.]

**27-402. Suspension and reinstatement.**

A. Indefinite or permanent suspension. If an order imposed pursuant to Rule 27-401 results in the suspension of a judge, unless otherwise ordered by the Court, the salary of the judge shall be suspended during the period of suspension. The Court shall assign all cases of the judge to a temporary judge. A

judge who has been suspended may not apply for reinstatement, except upon prior approval of the Supreme Court.

B. Definite suspension. A judge who has been suspended for a specific period of time shall be automatically reinstated at the expiration of the period specified in the order of suspension.

C. Suspension due to incompetency or incapacity. A judge who has been suspended indefinitely due to incompetency or incapacity may during the judge's term of office move for reinstatement upon clear and convincing evidence that the disability has been terminated and that the judge is once again fit to resume office. If the incapacity has not been terminated within one (1) year, the Court may enter an order removing the judge from office or, if eligible, ordering the retirement of the judge.

D. Reinstatement proceedings. The Supreme Court may order the commission to conduct a reinstatement investigation.

[Approved, effective April 17, 1996.]

#### **27-403. Assessment of expenses.**

A. Disciplinary proceeding costs. If the Supreme Court disciplines a judge as provided by Rule 27-401 of these rules, the Court may direct that expenses of the commission incurred in the disciplinary proceedings be paid by the judge.

B. Reinstatement costs. If a judge who has been suspended pursuant to these rules files a motion for reinstatement, the Supreme Court may direct that expenses incurred in the investigation and processing of the motion for reinstatement be paid by the suspended judge.

C. Court order. An order requiring the payment of expenses entered pursuant to this rule shall include a statement of the costs assessed, a date by which the costs will be paid to the commission and the rate of interest to be paid by the judge after the payment due date.

D. Enforcement of Court order. The order assessing the payment of expenses will constitute an enforceable judgment and may be enforced in the manner provided by the Rules of Civil Procedure for the District Courts for enforcement of money judgments. If an order imposing costs is entered pursuant to these rules, upon request of the commission the clerk may issue a writ of execution or writ of garnishment in the manner provided by the Rules of Civil Procedure for the District Courts.

E. Transcript of judgment. Upon request of the commission the clerk shall issue a transcript of judgment.

[Approved, effective April 17, 1996.]