



NEW MEXICO

JUDICIAL STANDARDS COMMISSION

A N N U A L R E P O R T

Fiscal Year 2005





FY 2005 ANNUAL REPORT

JUDICIAL STANDARDS COMMISSION

COMMISSION MEMBERS

Mark A. Filosa, Esq.
Larry Garcia
Hon. Buddy J. Hall
Hon. James A. Hall
Paul F. Sena
David S. Smoak

Hon. Dan Sosa, Jr. (Retired)
Gloria Taradash, Ph.D.
Bob F. Turner, Esq.
William R. Valentine, D.M.D.
Hon. Frank K. Wilson

COMMISSION STAFF

James A. Noel, Esq.
Executive Director
General Counsel

Randall D. Roybal, Esq.
Deputy Director
Chief Staff Attorney

Elizabeth A. Garcia, Esq.
Staff Attorney

Shariesse T. McCannon
Administrative/Legal Assistant

Evonne Sanchez
Paralegal

Krista M. Gianes
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LETTER FROM THE CHAIRMAN

Honorable Governor Bill Richardson
Honorable Senators and Representatives of the New Mexico Legislature
Honorable Chief Justice and Justices of the New Mexico Supreme Court
Citizens of the State of New Mexico

Ladies and Gentlemen:

I am pleased to present the 2005 Annual Report of the Judicial Standards Commission. The Commission is an independent state agency that came into being on July 1, 1968 upon amendment to the New Mexico Constitution. The Commission is charged with the responsibility to investigate allegations of misconduct and disability concerning the state judiciary, to hold hearings as necessary, to recommend appropriate disciplinary sanctions to the New Mexico Supreme Court, and to create a greater awareness of proper judicial behavior on the part of the judiciary and the public.

This Annual Report is presented to inform the public and all branches of state government about the Commission's duties, operations, and actions during the past fiscal year. It is hoped that after reading this report you will have a better understanding of the importance of the Commission's work, which continues to increase in volume, scope and complexity each year.

Please note that case dispositions have been recounted in this report without censorship of graphic content. The Commission believes that the public should be informed of the exact conduct addressed and that accurate reporting will better educate and deter similar misconduct in the future.

The Commission remains firmly committed to fulfilling its responsibilities to the people of the State of New Mexico. We hope that through the vigilant and dedicated performance of our duties, the public's confidence in the integrity, independence and fairness of the state judiciary will be preserved and improved.

We need your continued support for increases in our budget and emergency funding requests to enable us to more properly fulfill our constitutional purposes.

Yours truly,

DAVID S. SMOAK
Chairman



LETTER FROM THE EXECUTIVE DIRECTOR

Honorable Governor Bill Richardson
Honorable Senators and Representatives of the New Mexico Legislature
Honorable Chief Justice and Justices of the New Mexico Supreme Court
Citizens of the State of New Mexico

Ladies and Gentlemen:

New Mexicans have been blessed with a corps of Judges and Justices whose honesty, integrity, and fidelity to their oaths of office have enabled them to adhere to the highest standards of judicial conduct. This contention is confirmed in the pages of this report. In reviewing the complaint statistics over the past three years, while the number of inquiries and complaints has increased, the number of disciplinary dispositions recommended by the Commission and imposed by Supreme Court has actually remained constant or decreased. Such a dynamic is wholly consistent with the Commission's mandate, which is to maintain public confidence in the judiciary, and create a greater awareness on the part of the public and the judiciary of proper judicial conduct. With greater public awareness of the Commission's efforts, we hear from the public more frequently. At the same time, greater awareness of Commission efforts on the part of the judiciary better informs judges of conduct that violates New Mexico's judicial canons of ethics, thereby preventing violations before they happen.

The Commission has continued to evolve in FY 2005. With the support of Governor Bill Richardson, the Supreme Court, and key state legislators, the Commission received additional funding and additional staff. These resources have enhanced the effectiveness and efficiency of the Commission's efforts.

In FY 2005, the State Supreme Court responded to the needs of the judiciary by creating organizations meant to assist judges in adhering to the code of judicial conduct. Such measures have further enhanced the Commission's ability to do its job. On behalf of the Commission and its staff, thank you for your support. We welcome your comments and suggestions.

With best regards,

JAMES A. NOEL
Executive Director & General Counsel



COMMISSION MEMBERSHIP

As set forth in Article VI, §32 of the New Mexico Constitution and New Mexico Statutes Annotated §§34-10-1 through -4, the Judicial Standards Commission is composed of eleven members. Six members are lay citizens appointed by the Governor, two members are attorneys appointed by the Board of Bar Commissioners, two members are justices or judges of the New Mexico Supreme Court, Court of Appeals or District Courts appointed by the Supreme Court, and one member is a magistrate judge appointed by the Supreme Court. Lay members are appointed to staggered five-year terms, while attorney and judicial members are appointed to staggered four-year terms. Commissioners do not receive a salary, but are paid *per diem* and reimbursed for expenses as provided by law. Each year the Commissioners elect a Chairperson and Vice-Chairperson from the lay membership.

COMMISSION MEMBERS AS OF JUNE 30, 2005



Front row (from left to right): Bob F. Turner, Esq.; Vice-Chairwoman Gloria Taradash, Ph.D.; Chairman David S. Smoak; Hon. Frank K. Wilson; and Paul F. Sena. Back row: Hon. Buddy J. Hall; Hon. James A. Hall; Hon. Dan Sosa, Jr. (Retired); Mark A. Filosa, Esq.; William R. Valentine, D.M.D.; and Larry Garcia.

STATUTORY POSITION TERMS AS OF JUNE 30, 2005

See NMSA 1978, §34-10-1, as amended June 1999.

<u>Position No.</u>	<u>Filled By</u>	<u>Appointed By</u>	<u>Position Term</u>
1	David S. Smoak (D)	Governor	7/1/04-6/30/09
2	William R. Valentine, D.M.D. (R)	Governor	7/1/00-6/30/05
3	Gloria Taradash, Ph.D. (D)	Governor	7/1/01-6/30/06
4	Paul F. Sena (D)	Governor	7/1/02-6/30/07
5	Hon. Dan Sosa, Jr. (Ret.) (D)	Governor	7/1/03-6/30/08
6	Mark A. Filosa, Esq.	Bar Commissioners	7/1/02-6/30/06
7	Bob F. Turner, Esq.	Bar Commissioners	7/1/04-6/30/08
8	Hon. Frank K. Wilson	Supreme Court	7/1/03-6/30/07
9	Hon. James A. Hall	Supreme Court	7/1/01-6/30/05
10	Larry Garcia (R)	Governor	7/1/04-6/30/09
11	Hon. Buddy J. Hall	Supreme Court	7/1/03-6/30/07

COMMISSIONER BIOGRAPHIES



MARK A. FILOSA, ESQ. was appointed to the Commission by the Board of Bar Commissioners in 2002. He earned a Bachelor of Science degree in 1979 from Southern Illinois University and a Juris Doctor degree in 1983 from John Marshall Law School. Mr. Filosa is a partner in the law firm of Filosa & Filosa in Truth or Consequences, and formerly served as a contract Public Defender in Sierra County, New Mexico, and an instructor at New Mexico Institute of Mining and Technology and the Albuquerque Career Institute. He has been a member of the New Mexico Medical Review Committee since 1987 and completed eight years as a member of the Unauthorized Practice of Law Committee. Mr. Filosa has been the President of the Seventh Judicial District Bar Association since 1988, and is a member of the American Bar Association and the National Italian-American Bar Association.



LARRY GARCIA was appointed to the Commission by Governor Bill Richardson in 2004. He is a New Mexico native and a successful entrepreneur. He is the proprietor of Suits Unlimited, a full-line men's clothing and specialty store which has operated in Albuquerque since 1971. He is a part-time chef and caters events with Chef Victor Rede of Rede-to-Cater. Prior to establishing his retail business, Mr. Garcia served as Gunnery Sergeant in the United States Marine Corps and was honorably discharged after 14 years of regular and reserve service. Mr. Garcia is a strong community and political activist. He has served as campaign chairman and treasurer for numerous city, county and state political candidates. He has also served on a variety of community and professional boards and commissions, including Presbyterian Hospital Foundation, and the City of Albuquerque Campaign and Elections Board of Ethics. He has served as Chairman of the New Mexico Retailers Association, in addition to serving on the Association's Board of Trustees and Self-Insured Group. Mr. Garcia is also an active member of the Albuquerque Hispano Chamber of Commerce and the Rio Grande Minority Purchasing Council.



HON. BUDDY J. HALL was appointed to the Commission by the New Mexico Supreme Court in 2002. Judge Hall earned an Associate of Science degree from Clarendon Junior College in 1982 and a Bachelor of Science degree in animal science from the Texas Tech University in 1984. He has served on the bench of the De Baca County Magistrate Court since 1995. In addition to his judicial duties, Judge Hall has served on several Magistrate Court boards and committees, including the Magistrate Board of Directors, Data Standards, Classification Committee, Clerks' Manual Review Panel, and the Magistrate Training Conference Panel. Judge Hall has also served on other community and charitable organizations, including the Community Corrections Advisory Panel, De Baca County Health Council, De Baca County DWI Task Force, Rotary International, De Baca County Chamber of Commerce, Christ Full Gospel Church (Assistant Pastor), and the Valley Volunteer Fire Department.



HON. JAMES A. HALL was appointed to the Commission by the New Mexico Supreme Court in 2004 and reappointed in 2005. Judge Hall became a District Judge in the First Judicial District Court in Santa Fe in April of 1995. Before his appointment as a District Judge, he worked as a lawyer handling both civil and criminal cases. After graduating from the University of Michigan Law School in 1983, he came to Santa Fe where he first worked for a private law firm. Later, he worked for both the New Mexico Attorney General and the First Judicial District Attorney. Since his appointment to the bench, Judge Hall has worked in various divisions of the District Court. He has worked in the Criminal Division, Family Court and is presently assigned to the Civil Division. While in the Criminal Division, Judge Hall acted as the first Drug Court Judge for the First Judicial District. Since September of 2001, Judge Hall has served as Chief Judge of the First Judicial District Court.



PAUL F. SENA was appointed to the Commission by Governor Bill Richardson in 2003. He earned a Bachelor of Business Administration degree from Eastern New Mexico University. Mr. Sena is a native New Mexican and is the Chief Executive Officer of the Clovis/Curry County Hispanic American Chamber of Commerce.



DAVID S. SMOAK was appointed to the Commission by Governor Bill Richardson in 2004 and was elected Chairman in August 2004. Mr. Smoak is Chairman of Coldwell Banker Commercial - Las Colinas. He has actively participated in various projects, including power center development, shopping center ownership, management and leasing and office building development, ownership and management. Mr. Smoak started his career on the audit staff of Price Waterhouse in Atlanta, Georgia, as a CPA with bachelor and masters degrees in accounting. He has been a Controller and Chief Financial Officer of public companies, and served as Chief Executive Officer of Wilson Foods, a Fortune 500 company. Mr. Smoak served as Vice President of Export-Import Bank of the United States, Executive Director of the White House Conference on Small Business, and Associate Director of the Office of Business Liaison-Office of the U.S. Secretary of Commerce. Mr. Smoak also served as Chairman of the Board of Trustees for the Jimmy Carter Inaugural Trust for approximately ten years. Mr. Smoak has an extensive background in accounting, finance and corporate management and has developed extensive experience with deal analysis and structuring. He is also President of New Mexico Ventures, Inc., which acts as the General Partner or Managing Member of several real estate investment entities in New Mexico involved in the holding, planning, sale, development and management of property.



HON. DAN SOSA, JR. (RET.) was appointed to the Commission by Governor Bill Richardson in 2003. He earned an undergraduate degree from New Mexico State University in 1947 and a Juris Doctor degree from the University of New Mexico. He is a retired Chief Justice of the New Mexico Supreme Court. Justice Sosa is a native New Mexican, a distinguished lawyer, and a decorated veteran of the armed forces. He was the first graduate of the University of New Mexico Law School to serve on the New Mexico Supreme Court, where he served 16 years.



GLORIA TARADASH, PH.D. was appointed to the Commission by Governor Bill Richardson in 2003. She is an independent education consultant focusing on issues of giftedness and diversity. Dr. Taradash currently serves on the Superintendent's Council on Equity for Albuquerque Public Schools and a variety of boards and committees, including the Board of Directors for the Black Caucus of Special Educators. Dr. Taradash is president of The Association for the Gifted, a division of the International Council for Exceptional Children.



BOB F. TURNER, ESQ. was appointed to the Commission by the Board of Bar Commissioners in 2004. He received a Bachelor of Science degree in the business school at the University of Missouri in 1955 and received a Juris Doctor degree in 1960 from the University of Colorado Law School. He started practicing law in Roswell, New Mexico in June 1960 and for 37 years worked as a trial attorney in areas of personal injury, products liability, medical malpractice, oil and gas contract matters, and commercial and complex litigation. He is now Of Counsel for the law firm of Atwood, Malone, Turner & Sabin in Roswell. He served on the Medical Legal Malpractice screening panel and the New Mexico Medical Review Commission for over 20 years. He was appointed by the New Mexico Supreme Court to serve on the Uniform Jury Instructions-Civil Committee from 1998 to 2002. He is a past President of the Chaves County Bar Association and of the New Mexico Defense Lawyers Association. He is a member of the State Bar of New Mexico; a Fellow in the

American College of Trial Lawyers; and has been listed in all editions of the *Best Lawyers in America*. He is presently a lay leader in the Crown Financial Ministry of Grace Community Church in Roswell.



WILLIAM R. VALENTINE, D.M.D. was appointed to the Commission by Governor Bill Richardson in 2003. He received a Bachelor of Science degree in chemistry in 1966 and his Doctor of Dental Medicine degree in 1970 from the University of Pittsburgh. He is a dentist who has served New Mexico in a number of capacities, from his work with the U.S. Public Health Service as a dentist on several Indian Reservations, to his three terms as a State Senator, to his tenure as Dental Director for the New Mexico Association of Community Colleges. Dr. Valentine is currently a Lt. Commander in the U.S. Public Health Service Reserve.



HON. FRANK K. WILSON was appointed to the Commission by the New Mexico Supreme Court in 1999 and reappointed in 2003. Judge Wilson came to southern New Mexico in 1969 courtesy of the United States Air Force following his graduation from Kenyon College in Ohio with a Bachelor of Arts degree in English. After leaving the Air Force, Judge Wilson entered the University of New Mexico Law School and graduated in 1976. He served as District Attorney for Otero and Lincoln Counties, City Attorney for the city of Alamogordo, and worked as a general practice attorney before his election to the District Court Bench in 1994. Judge Wilson served as Chief Judge of the Twelfth District from July 1998 through June 2001. Judge Wilson is married and the father of two children and stepfather of two others. He is past president of several civic organizations, including the White Sands Rotary Club, the Otero County Association for Retarded Citizens, the Otero County Council on Alcohol Abuse and Alcoholism, and the White Sands Soaring Association, and a former board member of Alamogordo Music Theater. In 2005, he was ordained priest in the Episcopal Church and is serving on a part-time basis as Interim Rector at St. John's Episcopal Church in Alamogordo.

❧ PAST CHAIRPERSONS ❧

LUTHER A. SIZEMORE, June 1968 - November 1969
 BOYD WEST, November 1969 — June 1970
 MORRIS E. H. BINGHAM, June 1970 - October 1972
 LUCY M. SALAZAR, October 1972 — June 1974
 RICHARD VANN, June 1974 — June 1975
 DORIS WAKELAND, July 1975 - August 1977
 LUCY M. SALAZAR, August 1977 — July 1979
 LOIS CHAPMAN, July 1979 - August 1980
 LUCY M. SALAZAR, August 1980 — July 1981
 SUSAN S. DIXON, July 1981 - September 1982
 ELOY A. DURAN, September 1982 - August 1983
 ALBERT N. JOHNSON, August 1983 - December 1984

JUNE O. KELLER, December 1984 - June 1985
 HARRY THOMAS, June 1985 — July 1989
 HUBERT QUINTANA, July 1989 — September 1991
 PEGGY C. TRAVER, September 1991 — June 1992
 FRED HARRIS, July 1992 - August 1994
 DONALD PERKINS, August 1994 - February 1996
 ELEANOR SELIGMAN, February 1996 — April 1997
 DOUGLAS W. TURNER, April 1997 - August 1999
 BARBARA A. GANDY, August 1999 — June 2001
 DOUGLAS W. TURNER, July 2001 — March 2003
 HON. DAN SOSA, JR., October 2003 — August 2004
 DAVID S. SMOAK, August 2004 - Present



COMMISSION STAFF

The Commission employs a full-time staff to conduct its day-to-day business, assist the public, handle complaints, and complete administrative matters required by the State. As of June 30, 2005, the Commission's staff consisted of the personnel whose biographies are provided below.



Current Staff: Front row (from left to right): Shariesse T. McCannon; Krista M. Gianes; and Elizabeth A. Garcia, Esq. Back row: Douglas H. Carver; James A. Noel, Esq.; Randall D. Roybal, Esq.; and Evonne Sanchez.

STAFF BIOGRAPHIES

EXECUTIVE DIRECTOR & GENERAL COUNSEL

JAMES A. NOEL, ESQ. joined the Judicial Standards Commission in 2004 as Executive Director & General Counsel. Mr. Noel earned a Bachelor of Arts degree in political science and anthropology in 1985 from Indiana University. He earned a Masters of Business Administration degree in 1988, also from Indiana University. Subsequently, Mr. Noel held environmental engineering and management positions throughout the Department of Energy Complex, including posts at Lawrence Livermore National Laboratory, Portsmouth Uranium Enrichment Plant, and Los Alamos National Laboratory, where he oversaw the project control function of the multi-million dollar Environmental Restoration Program. Mr.

Noel returned to academia in 1997 to attend law school. He earned a Juris Doctor degree in 2000 from the University of New Mexico School of Law. Prior to joining the Commission, Mr. Noel was in private practice handling complex litigation, personal injury and insurance bad faith cases. Mr. Noel is a member of the Association of Judicial Disciplinary Counsel, New Mexico Trial Lawyers Association, Albuquerque Bar Association, Association of Trial Lawyers of America, and The Federalist Society.

DEPUTY DIRECTOR & CHIEF STAFF ATTORNEY

RANDALL D. ROYBAL, ESQ. joined the Commission staff in 1998 and serves as Deputy Director & Chief Staff Attorney. He is a native New Mexican and earned a Bachelor of Arts degree in economics in 1988 from the University of New Mexico and a Juris Doctor degree in 1991 from the University of Notre Dame Law School. Prior to joining the Commission, he served as an Assistant Attorney General to Attorney General Tom Udall and handled civil defense litigation, administrative licensing prosecutions before various state boards and commissions, judicial writs, and complex prison reform litigation. Before entering public service, Mr. Roybal practiced law privately for five years as an associate of an insurance defense firm and as the principal of his own general practice firm. He has participated in or served on various legal, civic and charitable organizations, including the Association of Judicial Disciplinary Counsel, American Constitution Society for Law and Policy, Albuquerque Bar Association, American Bar Association, Association of Trial Lawyers of America, New Mexico Trial Lawyers Association, State Bar Committees on Women and Minorities in the Profession, Young Lawyers' Division AIDS Law Panel, Domestic Violence Legal HELpline, and New Mexico AIDS Services.

STAFF ATTORNEY

ELIZABETH A. GARCIA, ESQ. joined the Commission staff in 2005 and serves as Staff Attorney. She is a native New Mexican and earned a Bachelor of Arts degree in political science in 1995 from the University of New Mexico, where she graduated *cum laude*, and a Juris Doctor degree in 1998 from Washington and Lee School of Law. Prior to joining the Commission, she served as an Assistant District Attorney in the Thirteenth Judicial District and handled a serious violent felony caseload. Before entering public service, Ms. Garcia practiced law privately for four years as an associate of a large civil defense firm handling education, employment and tort law cases. She has participated in or served on various legal, civic and charitable organizations, including the Association of Judicial Disciplinary Counsel, American Bar Association, New Mexico Hispanic Bar Association, New Mexico Women's Bar Association, Board of State Bar Committees on Women and the Legal Profession and Pro Bono Subcommittee, Albuquerque Bar Association, Washington and Lee N.M. Alumni Chapter-Board of Directors/Treasurer, and the UNM Young Alumni Association-Charitable Activities Chair.

PARALEGAL

EVONNE SANCHEZ joined the Commission in 2004 as Paralegal. She earned her paralegal certificate from the University of New Mexico in 1996 and has been an active member of the Paralegal Division of the State Bar of New Mexico since 2000. She is a native New Mexican and has legal assistant and paralegal experience spanning over 19 years. Prior to joining the Commission staff, the majority of Ms. Sanchez' legal work was performed as paralegal and office manager for an Albuquerque law firm specializing in criminal defense. Ms. Sanchez also has substantial experience in the areas of personal injury and civil litigation.

ADMINISTRATIVE/LEGAL ASSISTANT

SHARIESSE T. MCCANNON joined the Commission staff in 2004 and serves as Administrative/Legal Assistant. Ms. McCannon also serves as Clerk of the Commission and handles the Commission's personnel matters. Originally from Florida, Ms. McCannon made New Mexico her home in 1974. She has more than 17 years experience as a legal assistant and paralegal, including extensive trial experience. Prior

to joining the Commission, Ms. McCannon was employed as a paralegal for an Albuquerque law firm handling complex litigation, personal injury and nursing home cases.

FINANCIAL SPECIALIST II

CYNTHIA HERRERA joined the Commission staff in 2004 and served as Financial Specialist II until July 2005. She earned an Associate of Applied Science degree in office administration from Albuquerque Technical Vocational Institute in 2004. Prior to working with the Commission, Ms. Herrera was an Executive Secretary for the New Mexico Commission for the Blind and a Court Clerk II for the Bernalillo County Metropolitan Court.

LAW CLERK

DOUGLAS H. CARVER joined the Judicial Standards Commission in the summer of 2005 as the Commission's first summer law clerk. He earned a Bachelor of Arts degree in history from Yale University. He then worked as a technical writer for a construction management firm supervising a multi-million dollar project in Washington, DC, before heading to Trinity College, Dublin, Ireland to obtain a Master of Philosophy degree in medieval history. He began work on a doctorate in medieval history, taught classes in medieval and early modern history, and was awarded a year-long Rome Prize Fellowship to the American Academy in Rome. Upon returning from Ireland, Mr. Carver worked as a manager in a bookstore and in wildlife rehabilitation before deciding to pursue a legal career. He entered the University of New Mexico School of Law in 2004, and expects to receive his Juris Doctor degree in 2007. He is active in many organizations at the law school, including the Student Bar Association, the Environmental Law Society, the Native American Law Students Association, the Mexican American Law Students Association, and the Phi Alpha Delta legal fraternity. Additionally, Mr. Carver is a law student member of the State Bar of New Mexico Young Lawyers Division.

OUTGOING STAFF

Cynthia Herrera July 29, 2005

INCOMING STAFF

Krista M. Gianes September 5, 2005

EXECUTIVE DIRECTORS OF THE COMMISSION

DAVID R. GARDNER, ESQ.
October 1974 – September 1984

SAMUEL W. JONES, ESQ.
September 1984 – June 1993

PEG A. HOLGUIN, ESQ.
July 1993 - October 2003

JAMES A. NOEL, ESQ.
January 2004 – Present



OVERVIEW OF COMMISSION AUTHORITY, DUTY & PROCEDURE



AUTHORITY OF THE JUDICIAL STANDARDS COMMISSION

Article VI, §32 of the New Mexico Constitution and New Mexico Statutes Annotated §§34-10-1, *et seq.* authorize the Judicial Standards Commission to investigate complaints involving allegations of willful misconduct in office; persistent failure or inability to perform a judge's duties; habitual intemperance; and disability seriously interfering with the performance of the judge's duties which is, or is likely to become, of a permanent character.

The Commission's jurisdiction extends over complaints made against justices and judges of the state judiciary. Where necessary, the Commission holds hearings and, if allegations are proven, recommends appropriate sanctions to the New Mexico Supreme Court.



ACTIONS THE COMMISSION CANNOT TAKE

The Commission is not an appellate court. The Commission cannot change any judge's ruling, intervene in litigation on behalf of a party, affect the outcome of a court case, or remove a judge from a case. The Commission does not provide legal advice.



CONFIDENTIALITY POLICIES

As required by the New Mexico Constitution, all matters filed with and handled by the

Commission are confidential. Proceedings lose their confidential character only when the Commission files the case record with the New Mexico Supreme Court. The Court's files are available to the public, but confidentiality is maintained at the Commission level.



FILING, REVIEW AND INVESTIGATION OF COMPLAINTS

Any person or organization may file a complaint against a judge on the Commission's complaint form. The Commission may also docket misconduct allegations against a judge on its own motion. The Judicial Standards Commission Rules require that complaints be verified (*i.e.*, substantiated by oath and notarized). The Commission may undertake an investigation on its own motion when it has credible knowledge of misconduct or disability of a judge.

Inquiries about complaint procedures may be made in writing or by telephone. When a complaint is received, the Commission and/or its staff will review the complaint to determine if it falls within the Commission's jurisdiction. After determining whether jurisdiction exists, the Commission may conduct an initial inquiry. The Commission may direct its Executive Director to conduct additional investigation, if necessary.

Judges are neither notified of frivolous or unsubstantiated complaints, nor informed of complaints that are extra-jurisdictional or appellate in nature. Such cases are typically dismissed after review by the Commission.



ACTION THE COMMISSION CAN TAKE ON COMPLAINTS

Initial Inquiry. If it is determined that the complaint, report or other information about the judge's conduct could be grounds for sanctions, the Executive Director and/or Commission staff may conduct a confidential inquiry. The Commission may require the judge to submit a written explanation and disclosure of all pertinent facts and relevant documentation in response to the Commission's request. If such request is made, the judge is allowed ten days in which to provide the response.

If it is determined at this stage that there are insufficient grounds to proceed, the case will be closed. The complainant and the judge, if notified previously, will be informed of the disposition. A closure of the matter at this stage of the Commission's proceedings remains confidential.

Preliminary Investigation. If the complaint appears to allege facts not obviously frivolous or unfounded indicating a disability or a violation of the New Mexico Code of Judicial Conduct, the Commission may complete a preliminary investigation to determine whether formal proceedings should be initiated and a hearing held. The Commission may also initiate a preliminary investigation on its own motion.

The judge will be notified with a notice of preliminary investigation that sets forth the nature of the complaint and identifies the source of the complaint. The judge must respond in writing to the notice of preliminary investigation within fifteen days of service.

If it is determined at this stage that there are insufficient grounds to proceed, the case will be closed and the complainant and the judge will be informed of the disposition. A closure of the matter at this stage of the Commission's proceedings remains confidential.

Formal Proceedings. If at least six members of the Commission vote to begin formal proceedings, a notice of formal proceedings will be issued and served upon the judge. The notice of formal proceedings will contain the charges alleged, the facts upon which the charges are based, the laws, canons and rules allegedly violated, and the constitutional provisions under which the Commission invokes its jurisdiction in the proceedings. After service of a notice of formal proceedings, the Commission's jurisdiction attaches and is not affected by subsequent resignation or termination from office. The judge's answer to the notice of formal proceedings is due within fifteen days of service.

Upon filing and issuance of the Notice of Formal Proceedings, the Commission will set a date for a formal hearing on the merits. The Commission may hear the case itself or appoint three judges as special masters to hear the matter, take evidence, and report their findings to the Commission.

The formal hearing is a closed hearing. The judge has a right to and is given a reasonable opportunity to defend with evidence, to be represented by counsel, and to examine and cross-examine witnesses.

The standard of proof is clear and convincing evidence. At least six Commissioners must agree on an outcome and in recommending removal, retirement or discipline of a judge to the Supreme Court.

If the Commission determines at any time prior to the conclusion of the formal proceedings that there is insufficient evidence to support allegations against the judge, those allegations will be dismissed. In some cases, the Commission has found evidence of wrongdoing, but has determined that the judge's actions were the result of misunderstanding, rather than willful misconduct. In those situations, the judge may be referred for counseling to the Supreme Court or to a judge having supervisory authority.

Dispositions. The Commission may dispose of a case by dismissing it, privately informing the

judge that conduct may violate the standards of judicial conduct, and/or proposing professional counseling or assistance for the judge.

Sanctions. If the Commission votes to recommend to the Supreme Court that a judge should be sanctioned, the following sanctions are available: removal, retirement, discipline (suspension, limitations or conditions on judicial duties, reprimand or censure, fine, and assessment of costs and expenses), or any combination of the above.

The Supreme Court may set a hearing on the Commission's recommendations. The Court will render a decision adopting, rejecting, or modifying the recommendation of the Commission or requiring some other action.

DISPOSITIONS

DISMISSAL

INFORMAL/CONFIDENTIAL

Cautionary Letter
Mentorship/Counseling

FORMAL/PUBLIC

Removal
Involuntary Retirement
Discipline
Suspension
Limitations on Judicial Duties
Reprimand
Censure
Fine
Assessment of Costs
or
Any Combination of Above



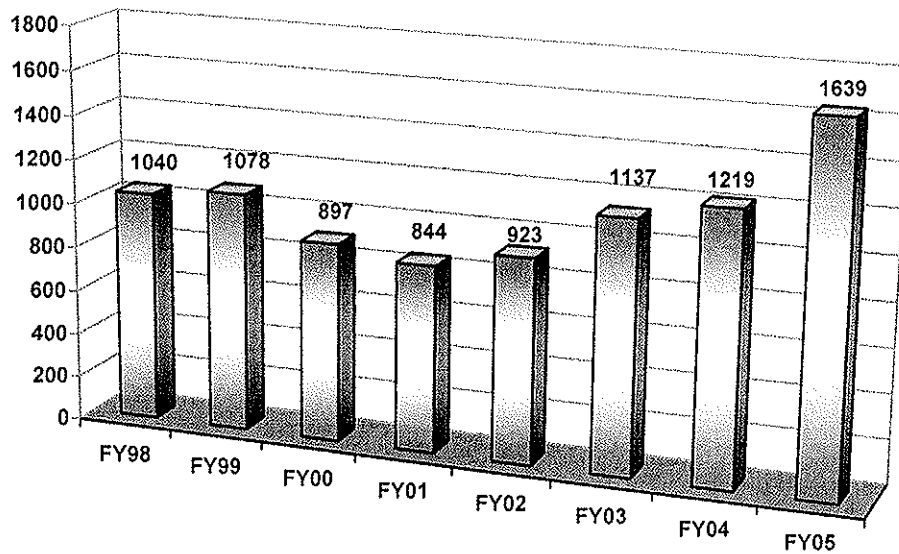
STATISTICS
JULY 1, 2004 TO JUNE 30, 2005

COMPLAINTS/INQUIRIES RECEIVED

During FY 2005 the Commission handled 1,639 complaints/inquiries of judicial misconduct and/or disability. Of these complaints/inquiries, 177 were written complaints in the following categories: 126 verified complaints (includes Commission-initiated complaints) and 51 unverified complaints. Approximately 1,462 complaint inquiries were made by telephone or in person.

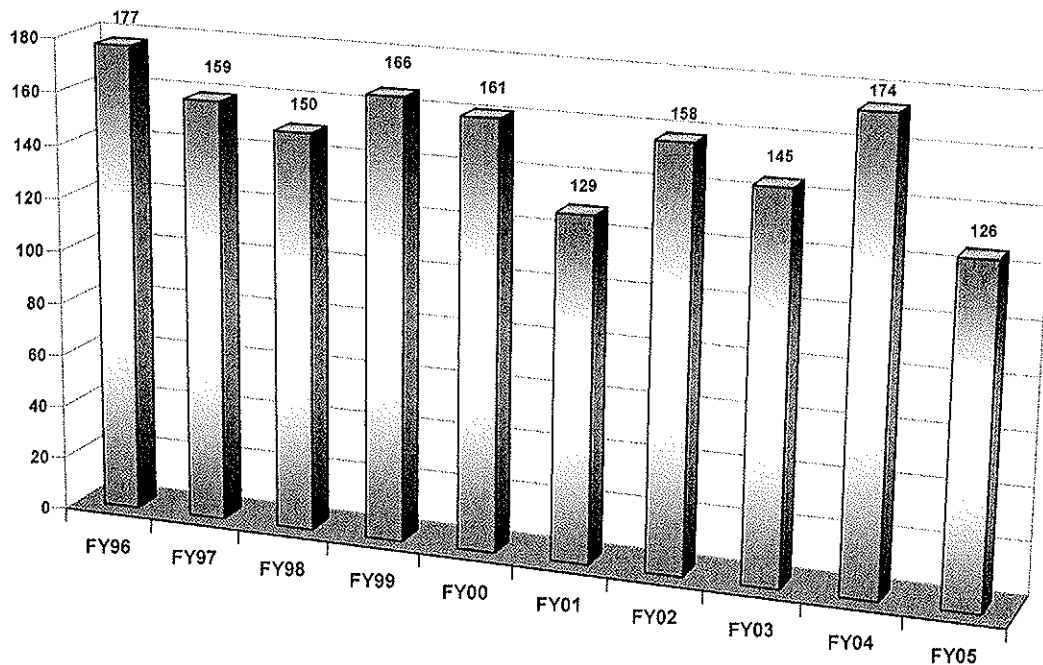
COMPLAINTS/INQUIRIES RECEIVED IN FY 2005	
Written/Verified	126
Written/Unverified	51
<u>Telephonic/In-Person</u>	<u>1,462</u>
TOTAL	1,639

COMPLAINT/INQUIRY HISTORY



The Commission has an established pre-screening process for telephonic and in-person complaints. Staff members make every effort to discuss callers' situations in detail. Callers are informed about the limited scope of the Commission's jurisdiction under state law and discuss where their potential complaints could fall within that jurisdiction. Substantial time is spent helping each person assess the merits of his or her own allegations in light of the Commission's jurisdictional scope and to determine what results the callers desire. In some instances, the callers' desired results fall squarely outside the Commission's authority (e.g., changing a judge's ruling, removing a judge from a case, affecting the course of ongoing litigation, etc.). All callers who request a complaint form will be sent one. Since October 2001, complaint forms and detailed filing instructions have also been available to download from the Commission's web site.

10-YEAR VERIFIED WRITTEN COMPLAINT HISTORY

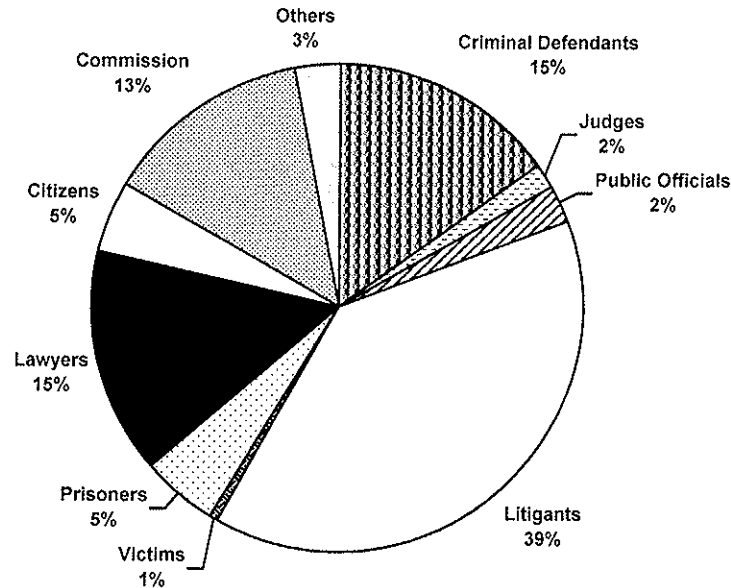


SOURCES OF VERIFIED COMPLAINTS

Of the verified complaints filed with the Commission, most were filed by criminal defendants followed by litigants. The distribution of the sources of written, verified complaints was the following: 49 by litigants or litigants' family/friends, 19 by criminal defendants or criminal defendants' family/friends, 6 by citizens, 6 by prisoners, 3 by public official(s), 19 by lawyers, 2 by judge(s), 1 by victim(s) and/or victims'

family/friends, and 4 by other(s). 17 complaints were initiated by the Commission on its own motion. The chart below illustrates these figures.

COMPLAINT SOURCES



JUDGES REVIEWED PURSUANT TO VERIFIED COMPLAINTS

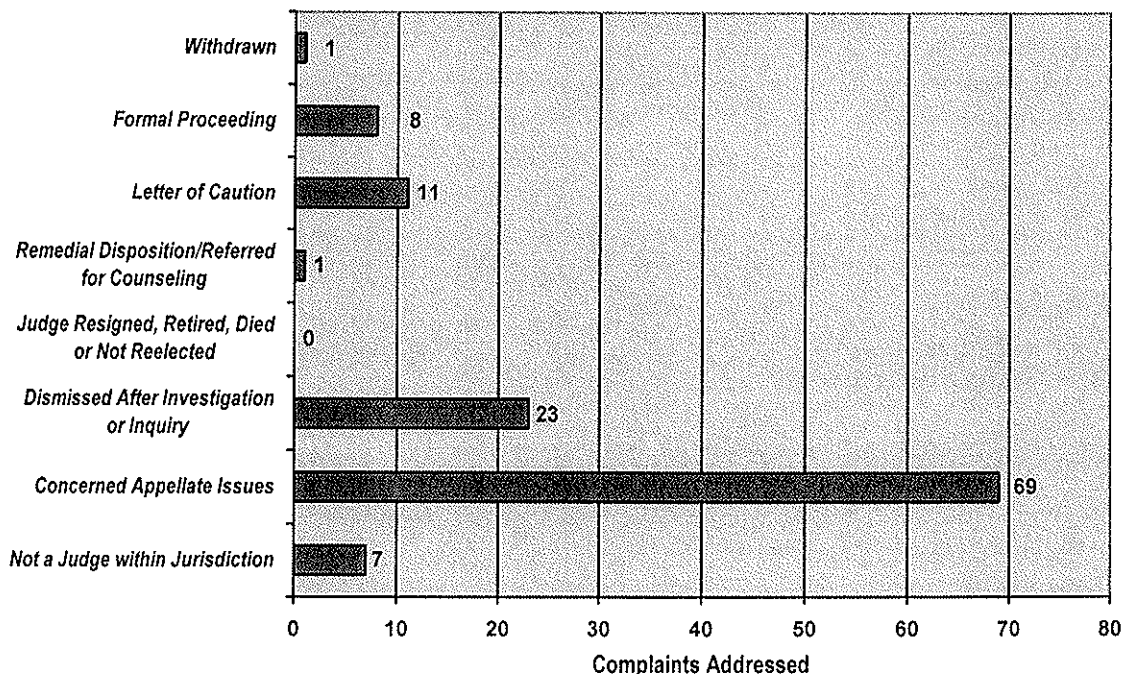
Judges in most levels of the judiciary were the subjects of complaints in FY 2005. Consistent with the Commission's history, the majority of complaints were filed against judges of the district courts (40%), followed by magistrate judges (24%), and municipal judges (17%). The remaining verified complaints were filed against metropolitan judges (10%), and Court of Appeals judges (8%). Supreme Court Justices and other entities outside the Commission's jurisdiction accounted for less than 1% of the complaints.

The written/verified or Commission-initiated complaints were docketed against the following levels of the judiciary: 1 Supreme Court, 10 Court of Appeals, 50 District Court, 12 Metropolitan Court, 30 Magistrate Court, 22 Municipal Court, and 1 Other (entity not within the Commission's jurisdiction). No written, verified complaints were filed against Probate Court judges in FY 2005.

JUDICIAL BRANCH	VERIFIED COMPLAINTS	PERCENTAGE OF CASELOAD
<i>Supreme Court</i>	1	< 1%
<i>Court of Appeals</i>	10	8%
<i>District Court</i>	50	40%
<i>Metropolitan Court</i>	12	10%
<i>Magistrate Court</i>	30	24%
<i>Municipal Court</i>	22	17%
<i>Probate Court</i>	0	0%
<i>Other</i>	1	< 1%

CASE DISPOSITIONS

Of the cases completed and disposed in FY 2005, the Commission concluded 8 cases through formal proceedings (trials and/or Supreme Court proceedings), issued 11 letters of caution, and referred 1 judge for remedial assistance or counseling. The Commission dismissed or closed 69 cases as appellate in nature and 7 cases as outside its jurisdiction. The Commission dismissed 23 cases as not substantiated after investigation or inquiry. 1 case was closed after the complaint was withdrawn. No cases were closed because the subject judges resigned, died, or were not reelected.

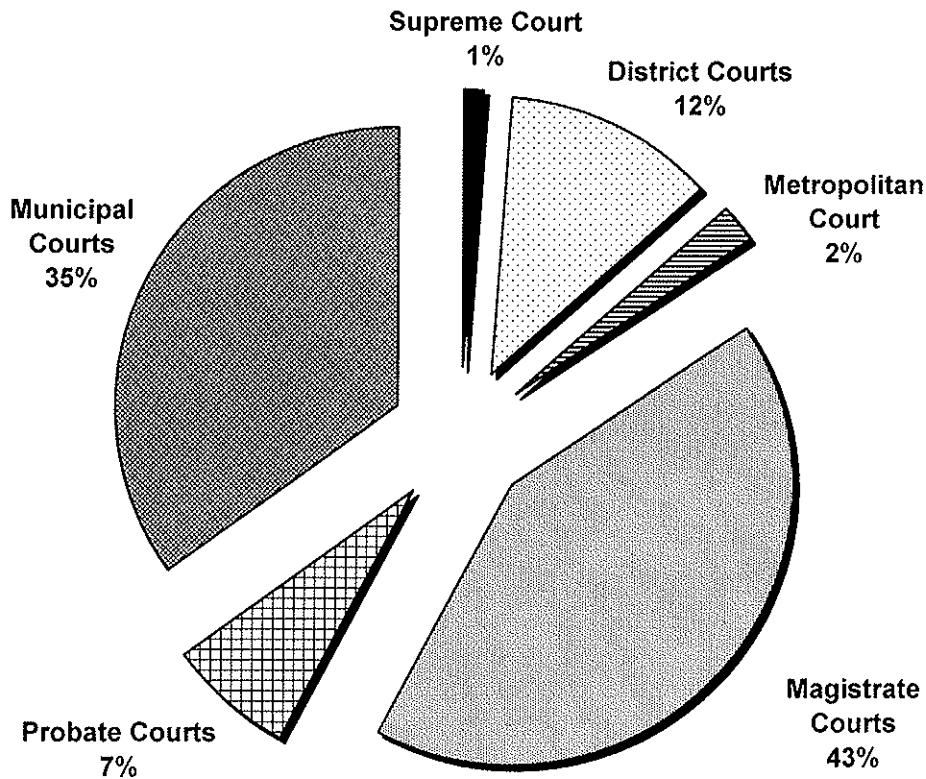


HISTORICAL SUMMARY OF CASES FILED IN SUPREME COURT

From 1968 through June 30, 2005, the Commission has filed 83 petitions for discipline and/or temporary suspension in the New Mexico Supreme Court involving 66 judges. By their nature, these cases involve the most serious questions of judicial misconduct or disability, thereby requiring the Commission to recommend sanctions, discipline, and/or immediate temporary suspension to the State's highest court.

Of the judicial branches concerned, the Commission's petitions to the Supreme Court involved the following levels of the State Judiciary: 1 Supreme Court, 10 district court, 2 metropolitan court, 35 magistrate court, 29 municipal court, and 6 probate court. The chart on the following page illustrates the proportional distribution of these filings.

ALL SUPREME COURT FILINGS (1968 - PRESENT)

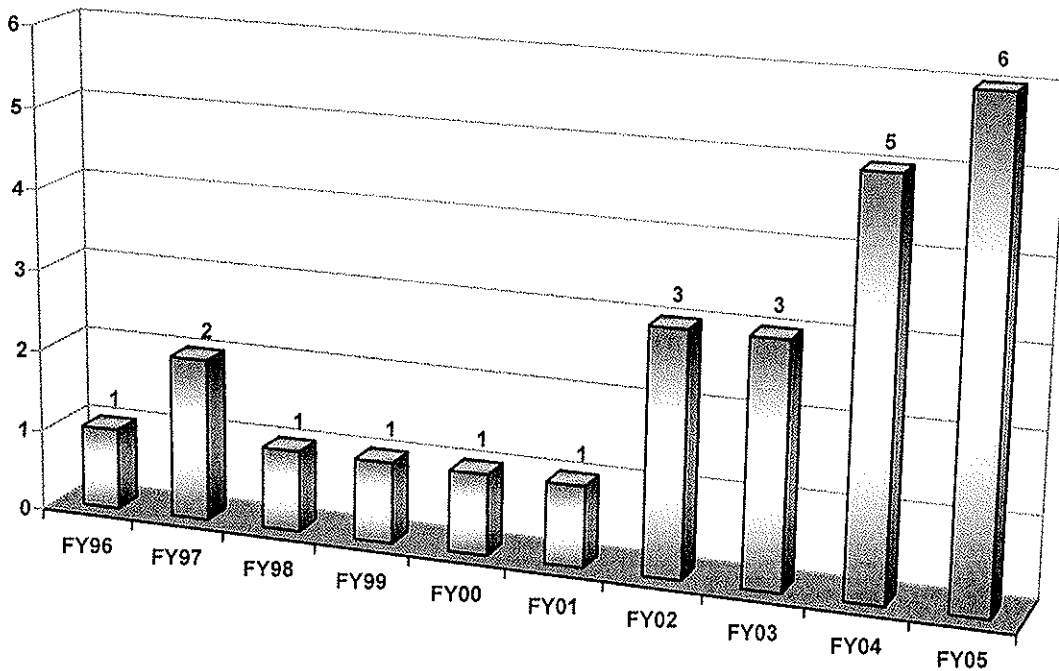


The table below indicates the levels of the judiciary and the corresponding applicable geographical areas involved in the Commission's filed 83 formal cases filed with the Supreme Court since 1968.

APPELLATE COURTS (1)	DISTRICT COURTS (10)	METROPOLITAN COURTS (2)	MAGISTRATE COURTS (35)	MUNICIPAL COURTS (29)	PROBATE COURTS (6)
Supreme Court 1	First 1 Second 2 Third 1 Fourth 1 Fifth 1 Seventh 1 Eleventh 3	Bernalillo County 2	Cibola 1 Colfax 1 Doña Ana 6 Eddy 1 Guadalupe 1 Hidalgo 1 Mora 1 McKinley 1 Rio Arriba 5 Sandoval 1 San Juan 3 San Miguel 2 Santa Fe 2 Socorro 1 Taos 4 Union 1 Valencia 3	Bernalillo 1 Bosque Farms 1 Cimarron 1 Clovis 2 Columbus 1 Espanola 2 Gallup 1 Grants 3 Hurley 1 Las Cruces 1 Las Vegas 2 Mountainair 3 Portales 1 Roswell 2 Ruidoso Downs 1 San Jon 1 Santa Fe 4 Taos 1	Sandoval 1 Taos 5

PUBLIC CASES DISPOSED BY TERMINATION OF JUDICIAL OFFICE

In FY 2005, 6 cases concerning 4 judges were disposed after termination of judicial office. Since its inception, the Commission has disposed of 63 cases concerning 37 judges after termination of judicial office. These cases for the past ten years are illustrated on the following chart and include removals, retirements, or resignations after the Commission had filed matters with and requested action by the Supreme Court.



FY 2005 LEGISLATIVE PERFORMANCE MEASURES

The New Mexico Legislature has instituted performance-based budgeting for all departments and agencies. In FY 2005 the following performance measures were voluntary and were reported to the New Mexico Legislature (these measures will be mandatory for FY 2006, but will be eliminated in FY 2007):

Average Time for Complaint to Reach Disposition (in months): 3.5 months.
Efficiency measure. No target.

Average Case Duration Rate by Meeting Cycle: 1.85 meetings.
Efficiency measure. Target: 5 meetings.

Number of Complaints/Inquiries: 1,639 (1,462 telephone/in-person, 126 written/verified or JSC initiated, and 51 written/not verified).

Percentage of Complaints Requiring Research and Investigation: 96%.

The following performance measures will be voluntary in FY 2006 and mandatory in FY 2007:

1. Upon knowledge of cause for emergency interim suspension, time for Commission to file petition for temporary suspension with Supreme Court (in days). Efficiency measure. Target: 2 days.
2. Time for release of annual report to the public from the end of the fiscal year (in months). Output measure. Target: 2 months.
3. For cases in which formal charges are filed, average time for formal hearings to be reached (in meeting cycles). Efficiency measure. Target: 3 meeting cycles.
4. Number of inquiries regarding judicial disciplinary matters. Explanatory Measure. No target.
5. Number of docketed complaints. Explanatory measure. No target.

HISTORICAL SUMMARY OF INFORMAL CASE DISPOSITIONS

Short of proceeding formally on a case not warranting dismissal, the Commission may dispose of a matter informally. Informal dispositions are not filed with the Supreme Court and remain confidential pursuant to Article VI, §32 of the New Mexico Constitution. Allegations disposed informally were found to have merit and significance, but due to their nature, the judges' experience and disciplinary history, or a number of other factors, the Commission determined that an informal disposition was the appropriate method to address the issues in question.

Informal dispositions include issuing private letters of caution, referring the judge for mentorship, or entering into a stipulation agreement concerning the conduct in question. Since its formation in 1968 through June 30, 2005, the Commission has informally disposed of 234 case files.

The following tables illustrate the distribution of the informal cautionary letter and mentorship dispositions. A brief discussion concerning stipulation agreements follows.

CAUTIONARY LETTERS (167 cases)	Judicial Branch Involved	Number of Case Files	Percentage of All Cautionary Letters
	Supreme Court	0	0%
	Court of Appeals	0	0%
	District Court	39	23%
	Metropolitan Court	17	10%
	Magistrate Court	62	37%
	Municipal Court	48	29%
	Probate Court	1	< 1%

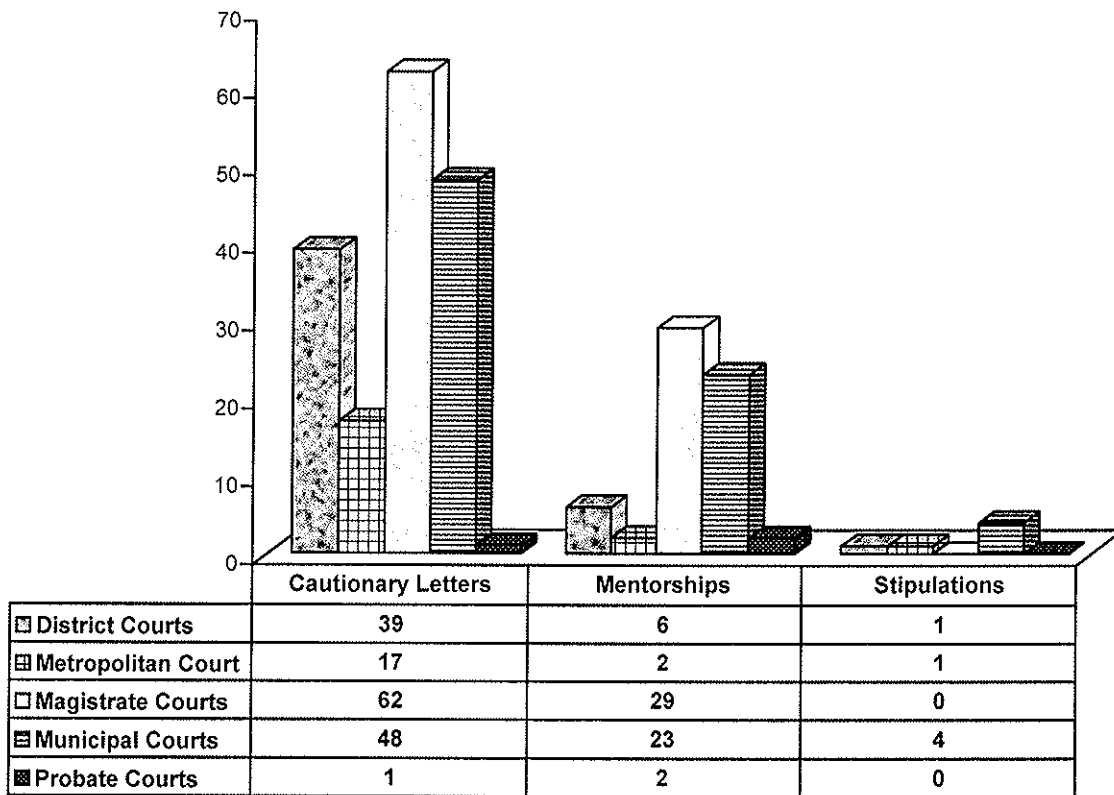
Judicial Branch Involved	Number of Case Files	Percentage of All Mentorships

**MENTORSHIPS
(62 cases)**

Supreme Court	0	0%
Court of Appeals	0	0%
District Court	6	10%
Metropolitan Court	2	3%
Magistrate Court	29	47%
Municipal Court	23	37%
Probate Court	2	3%

STIPULATIONS: In addition to private letters of caution and referrals to the mentor program, the Commission may informally dispose of cases through confidential stipulations with judges. Stipulations typically require judges to retire, resign, or cease improper conduct. In FY 2005, 1 case was dismissed by informal stipulation. Historically, the Commission has disposed of 6 cases through informal stipulation. The following chart illustrates the historical breakdown of all informal dispositions by judicial branch.

ALL INFORMAL DISPOSITIONS (1968 - PRESENT)





PROCEEDINGS BEFORE THE COMMISSION IN FY 2005

All of the Commission's proceedings that resulted in either formal or informal proceedings are summarized in this section.

Formal cases are matters the Commission found to involve the most serious ethical issues under the New Mexico Code of Judicial Conduct, thereby warranting formal review and proceedings before the Commission and/or the New Mexico Supreme Court. Informal cases, although less serious in nature and scope, involve significant issues that the Commission addresses through private letters of caution to the judges or by referring the judges to the Commission's informal mentor program.



FORMAL PROCEEDINGS

In FY 2005, the Commission had cases involving 15 judges before the New Mexico Supreme Court. These cases are summarized below:

IN RE HON. FRANCES GALLEGOS³

Municipal Judge, Santa Fe

Inquiry No. 2002-80

Supreme Court Docket No. 27,906

On November 6, 2002, the Commission issued a Notice of Preliminary Investigation to the Respondent. Respondent filed a response to the Notice of Preliminary Investigation on November 21, 2002. On January 27, 2003, Judge Gallegos agreed to enter into a Plea and Stipulation Agreement with the Commission, which was

³ This case was not completed by the end of reporting period for the Commission's FY 2004 Annual Report. This summary contains events that occurred during FY 2005.

filed on February 4, 2003. On February 5, 2003, the Commission issued Findings of Fact, Conclusions of Law and Recommendation for Discipline and filed a Verified Petition for Discipline with the Supreme Court. The Petition asked the Court to approve the Plea and Stipulation Agreement and order the agreed upon disciplinary measures.⁴ The stipulated factual and legal conclusions are set forth below⁵.

1. Although Judge Gallegos was required to reside within the city limits pursuant to Ordinance 2-3.3(B) of the Santa Fe Rev. Ord. Supp. (2001), she failed to maintain a continuous and significant physical presence at a residence within the city limits of Santa Fe from winter 2000 through November 2002.

2. Judge Gallegos asserted that she always maintained a physical address in the city of Santa Fe, was registered to vote in the City, used her Santa Fe address on her driver's license, tax returns, bank accounts, and other important documents, and believed that she had intent to reside in the City.

3. After the Commission initiated a formal investigation in this matter in November 2002, Judge Gallegos promptly resumed a continuous and significant physical presence at her City residence.

⁴ On February 13, 2003, the Commission issued Amended Findings of Fact, Conclusions of Law and Recommendation for Discipline and filed an Amended Verified Petition for Discipline with the Court to correct a drafting error in the original filings.

⁵ Judge Gallegos stipulated that the Commission had sufficient evidence to prove the factual allegations by the applicable clear and convincing standard.

In the plea and stipulation agreement with the Commission, Judge Gallegos further stipulated that the Commission had sufficient evidence to prove that her conduct violated the Code of Judicial Conduct (Canons 21-100 NMRA 1995, 21-200(A) NMRA 1991, and 21-500 (A)(3) and (A)(4) NMRA 1995) and that her conduct constituted willful misconduct in office.

On March 14, 2003, the Supreme Court issued an order granting the Commission's petition and ordering that Judge Gallegos be disciplined as follows:

- a. Formal reprimand from the Supreme Court, published in the *Bar Bulletin*.
- b. Reimburse complainant for \$285.80 for the private investigator fees and expenses he incurred in this matter.
- c. Comply with Santa Fe City Ordinance §2-3.3(B) and continue to reside within the city limits while holding office as Santa Fe Municipal Judge.
- d. Abide by all terms and conditions of the plea agreement and the Code of Judicial Conduct.

The Supreme Court further ordered that the parties would bear their own costs in the matter, as agreed in the plea agreement.

On April 15, 2003, the Supreme Court issued a formal reprimand to Judge Gallegos. The reprimand was published in the May 8, 2003 issue of the *Bar Bulletin*.

On November 21, 2003, the Commission filed a motion to take final disposition of the case under advisement until new allegations of misconduct, which allegedly occurred during the time Judge Gallegos was negotiating the plea and stipulation agreement in this case with the Commission and the Supreme Court. The Judge's counsel filed a response to the motion on December 4, 2003, to which the Commission filed a reply on December

5, 2003. The Supreme Court set oral argument on the motion for January 28, 2004.

On January 21, 2004, Judge Gallegos' counsel moved the Supreme Court to continue the oral argument setting. The Commission filed a response to this motion on January 26, 2004. The same day, the Supreme Court issued an order vacating the hearing and resetting oral argument for February 4, 2004.

On February 3, 2004, respondent and the Commission filed a joint motion to vacate the oral argument and requesting that the Court take final disposition of the case under advisement. In this motion, respondent specifically withdrew her response to the Commission's initial motion to take under advisement. Later the same day, the Supreme Court entered an order granting the motion, taking final disposition of this case under advisement, and vacating the pending oral argument.

On December 17, 2004, Respondent agreed to enter into a Stipulation Agreement and Consent to Discipline with the Commission concerning another matter (see summary for Inquiries 2003-58, 2003-89 & 2003-108 below), which was the new matter for which the Supreme Court took final disposition of Inquiry No. 2002-80 under advisement. Judge Gallegos and the Commission stipulated that the new matter related to Inquiry No. 2002-80 as follows:

Respondent's acts occurred prior to and during the time she was negotiating a plea and stipulation agreement with the Commission in Inquiry No. 2002-80 and when she became subject to the Supreme Court's disciplinary order in that matter, as set forth in the Commission's Motion to Take Final Disposition under Advisement filed with the Supreme Court.

The Supreme Court imposed the stipulated discipline in the new matter. However, at the end of FY 2005, Judge Gallegos had not yet completed the ordered disciplinary measures.

Subsequent events will be reported in the Annual Report for FY 2006.

IN RE HON. SUSANA CHAPARRO⁶
Magistrate Judge, Dona Ana County
Inquiry Nos. 2002-26 & 2002-43
Supreme Court Docket No. 27,923

The Commission issued a Notice of Preliminary Investigation in the above-referenced inquiry to Judge Chaparro on June 25, 2002. Respondent filed a response to the Notice of Preliminary Investigation on August 1, 2002. On September 3, 2002, the Commission issued a Notice of Formal Proceedings to Respondent. October 18, 2002, Respondent filed a response to the Notice of Formal Proceedings. On February 7, 2003, the Respondent agreed to enter into a Plea and Stipulation Agreement with the Commission, which was filed on February 12, 2003. The same day, the Commission issued Findings of Fact, Conclusions of Law, and Recommendation for Discipline and filed a Verified Petition for Discipline with the Supreme Court. The stipulated factual and legal conclusions are set forth below⁷.

1. From April 2001 - June 2002, Judge Chaparro became embroiled in a controversy with court interpreters for the Dona Ana County Magistrate Court. On occasions throughout the contract period, Judge Chaparro failed to be patient, dignified, and courteous with interpreters, another judge, and the court clerk.

On or about June 26, 2001, Judge Chaparro issued a warrant for a court interpreter's arrest on a criminal contempt charge, relating to a prior dispute over interpreting services. The interpreter

⁶ This case was not completed by the end of reporting period for the Commission's FY 2004 Annual Report. This summary contains events that occurred during FY 2005.

⁷ Judge Chaparro stipulated that the Commission had sufficient evidence to prove the factual allegations by the applicable clear and convincing standard.

was arrested the next morning (June 27, 2001) while working at the courthouse, was booked and placed in a holding cell. The District Court later released the interpreter, quashed the arrest warrant, ordered that no further warrants issue, and further ordered that the interpreter was permitted to be present in the Magistrate Court building to carry out the terms of her contract. On or about December 4, 2001, the Twelfth Judicial District Attorney (special prosecutor) completed his investigation of the matter and declined to prosecute the interpreter on the contempt allegations. The matter was closed on January 11, 2002.

2. On or about September 13, 2001, Judge Chaparro had *ex parte* communication with Magistrate Judge Anne Segal about presiding over Judge Chaparro's pending writ case (Cause No. M-14-MR-2001-999). Judge Segal reported feeling threatened and intimidated and eventually recused from the case.

In the plea and stipulation agreement with the Commission, Judge Chaparro stipulated that the Commission had sufficient evidence to prove that her conduct violated the following canons of the Code of Judicial Conduct: 21-100 NMRA 1995, 21-200(A) and (B) NMRA 1991, and 21-300(B)(2), (B)(3), (B)(4), (B)(5), (B)(7), (C)(1) and (C)(2) NMRA 1995. Judge Chaparro further stipulated that her conduct was a sufficient basis for the imposition of discipline pursuant to Article VI §32 of the New Mexico Constitution.

On March 14, 2003, the Supreme Court issued an order granting the Commission's petition and ordering that Judge Chaparro be disciplined as follows:

- a. Formal reprimand from the Supreme Court, published in the *Bar Bulletin*.
- b. Mentorship program.
- c. Attend and successfully complete the next "Ethics for Judges" course sponsored by the National Judicial College. Judge Chaparro shall bear at her own expense the tuition and all costs

required to attend and complete this course, including travel, accommodations, meals, and all other expenses incurred in relation to completing this requirement. Judge Chaparro shall promptly provide the Court and the Commission with proof of successful completion of this requirement.

d. Abide by all terms and conditions of the plea agreement and the Code of Judicial Conduct.

The Supreme Court further ordered that the parties would bear their own costs in the matter, as agreed in the plea agreement.

On March 27, 2003, the Supreme Court approved the Commission's mentor recommendation and appointed the Hon. Caleb Chandler (Retired) to mentor Judge Chaparro. On April 15, 2003, the Supreme Court issued a formal reprimand to Judge Chaparro. The reprimand was published in the May 8, 2003 issue of the *Bar Bulletin*.

Judge Chaparro completed her mentorship on June 3, 2003. Judge Chaparro completed the "Ethics for Judges" course in October 2003 at the National Judicial College in Reno, Nevada.

On November 4, 2003, the Commission filed a motion with the Supreme Court asking the Court to take final disposition of this case under advisement until the Commission had completed proceedings concerning new allegations of misconduct that allegedly occurred during the time Judge Chaparro was negotiating the plea and stipulation agreement with the Commission and became subject to the Supreme Court's disciplinary order. On December 2, 2003, the Supreme Court granted the Commission's motion and took final disposition of this case under advisement.

On February 7-9, 2005, the Commission held a trial in the new matter for which the Supreme Court took this matter under advisement (new matter was Inquiry No. 2003-82, see summary below). The Commission's findings of fact and

conclusions of law in the new matter are provided later in this annual report.

On June 22, 2005, the Supreme Court issued a Formal Reprimand order in the new matter (2003-82) imposing discipline against Judge Chaparro. The Court's order referenced the previous cases that had been taken under advisement as follows:

This is the third disciplinary matter involving Respondent. The first two matters (Nos. 2002-26 & 2002-43) were consolidated and resulted in Respondent being formally reprimanded on April 15, 2003, with the requirement that she participate in a mentorship program. . . . Important to our disposition of the present disciplinary matter is the fact that Respondent agreed to enter a Plea and Stipulation Agreement regarding those two matters on February 7, 2003, the very day she engaged in the conduct giving rise to the present disciplinary matter.

The Supreme Court imposed the following discipline against Judge Chaparro on June 22, 2005:

1. Respondent shall be suspended without pay for two weeks as soon as practicable beginning at a time selected by the Magistrate Division of the Administrative Office of the Courts. Thereafter, Respondent shall be suspended for six weeks, imposition of which shall be deferred on condition that Respondent successfully complete one year of supervised probation. Failure to satisfactorily complete the period of supervised probation shall result in the imposition of the full six-week deferred suspension without pay.

2. The Judicial Standards commission shall choose a supervising judge to supervise Respondent during the term of probation. Respondent shall meet with her supervising judge at the time(s) and place(s) selected by the supervising judge for counseling and assistance with the requirements of the Code of Judicial

Conduct. The supervising judge shall file a report with this Court and the Judicial Standards Commission concerning the results of Respondent's probation.

3. This Formal Reprimand shall be published in the Bar Bulletin.

4. The Judicial Standards Commission's costs and expenses are hereby assessed against Respondent in the amount of \$5,000.00 to be paid by the Respondent.

IN RE HON. WILLIAM A. VINCENT, JR.
Magistrate Judge, San Juan County
Inquiry No. 2003-99
Supreme Court Docket No. 27,266

After conducting an initial inquiry into a verified complaint, the Commission issued a Notice of Preliminary Investigation to Judge Vincent on January 26, 2004. The same day, the Commission filed a Verified Petition for Temporary Suspension with the Supreme Court. In the petition, the Commission informed the Court that Judge Vincent was being formally investigated on allegations that he committed acts that may constitute willful misconduct in office.

The Commission informed the Supreme Court that it was conducting a formal investigation into Judge Vincent's conduct. The Commission certified that immediate temporary suspension of Judge Vincent from judicial office was necessary for three reasons: to protect the public, to preserve the integrity of the judiciary, and to maintain the public's confidence in the judicial system. The Commission asked the Supreme Court to immediately suspend Judge Vincent from office pending completion of the Commission's proceedings against him.

On February 2, 2004, Judge Vincent filed a response to the Notice of Preliminary Investigation and the Verified Petition for Temporary Suspension with the Commission. On February 5, 2004, the Supreme Court issued an order requiring him to file a response to the

temporary suspension petition by February 16, 2004. On February 6, 2004, Judge Vincent filed the required response with the Supreme Court. The Commission filed a reply with the Court on February 16, 2004. On March 22, 2004, the Supreme Court issued an order denying the Commission's temporary suspension petition.

On April 16, 2004, Judge Vincent entered into a Plea and Stipulation Agreement with the Commission. In the agreement, the judge pleaded no contest to the following allegations:

1. On or about October 27, 2003, Judge Vincent presided over a jury trial in the matter of *State of New Mexico v. Jose Ruybalid*, Cause No. M-47-VR-2003-95-WV. After declaring a mistrial and excusing himself from the case, he displayed inappropriate behavior, made inappropriate statements, threatened, and yelled at the defendant and counsel.

Judge Vincent came off the bench and around the witness box. He again yelled to the defendant. The chief clerk of the court began to call to Judge Vincent repeatedly and in an increasingly concerned, louder voice. Judge Vincent came around the podium and defense counsel stood in front of the defendant and squared her body towards Judge Vincent, blocking his access to the defendant. As Judge Vincent approached the defendant and counsel, he was still yelling and threatening the defendant. Judge Vincent then passed through the swinging gates, turned, looked directly at defense counsel, pointed, and yelled, "You can write the longest letter you want to the Judicial Standards Committee and I will tell those pussies what I think of them."

Judge Vincent then went outside through the back door in the courtroom and brought the jury back into the courtroom. He explained that there had been a mistrial and then excused them. Once the jury was out of the courtroom and while counsel was packing up to leave, Judge Vincent attempted to make conversation with counsel. He told counsel that he was sorry if he "got a little upset."

In a subsequent conversation with defense counsel, Judge Vincent again apologized for his actions. He agreed with counsel that neither she nor her law partner could appear before him. Judge Vincent agreed to recuse himself from their cases for the time being.

2. The conduct set forth in paragraph (A) above violates the following Canons of the Code of Judicial Conduct: 21-100 NMRA 1995; 21-200(A) NMRA 1991; and 21-300(B)(2), (B)(3), and (B)(4) NMRA 1995. Such conduct also constitutes willful misconduct in office.

In the plea and stipulation agreement, Judge Vincent further consented to receive the following formal discipline from the Supreme Court:

A. Psychological Certification of Fitness for Full and Regular Judicial Duty. Judge Vincent shall submit to evaluation by a psychologist/psychiatrist selected by the Commission. The psychologist/psychiatrist shall certify in writing to the Supreme Court and the Commission whether Judge Vincent is psychologically fit for full and regular judicial duty. Judge Vincent shall pay the provider's professional fees and expenses. The judge shall provide the Supreme Court and the Commission with all waivers and releases necessary to authorize the commission to receive all records, reports, and information from the selected psychologist/psychiatrist, institution, or other facility regarding the judge's mental condition.

If the psychologist/psychiatrist determines that the judge is not psychologically fit for full and regular duty, the psychologist/psychiatrist shall notify the Supreme Court and the Commission in writing. Upon such notification, Judge Vincent stipulates that the Supreme Court shall immediately, summarily, and temporarily suspend him. During this period of temporary suspension, Judge Vincent shall receive ninety days pay, and thereafter the suspension would continue without pay. Judge Vincent shall comply with all recommendations, restrictions, and/or treatment suggested by the

psychologist/psychiatrist, which are intended to enable the judge to obtain an unrestricted fitness for duty certification.

B. Anger Management Program. Judge Vincent shall obtain a certificate of successful completion of an anger management program in San Juan County selected by the Commission and paid at Judge Vincent's own expense. Judge Vincent will file the original certificate with the Supreme Court and provide a copy to the Commission. The Judge shall provide the Supreme Court and the Commission with all waivers and releases necessary to authorize the commission to receive all records, reports, and information from the selected counselor, program, institution, or other facility regarding the judge's anger management.

C. Censure by the Supreme Court. The censure order will be published in the *Bar Bulletin*.

D. Six-Month Supervised Probation. Following completion of the terms set forth in paragraphs 2(A) - (C) above, Judge Vincent shall complete six months of supervised probation. The supervisor shall be a District Judge selected by the Commission and appointed by the Supreme Court. Judge Vincent shall meet with the supervisor at the times and places the supervisor designates for counseling and assistance with matters of judicial demeanor, temperament, and performance as governed by the Code of Judicial Conduct. The supervisor shall file a written report with the Supreme Court and the Commission concerning the results of Judge Vincent's probation.

E. Judge Vincent shall abide by all terms and conditions of the plea and stipulation agreement and the Code of Judicial Conduct.

F. The parties will bear their own costs and expenses incurred in this matter.

On April 20, 2004, the Commission filed a Petition for Discipline upon Stipulation with the Supreme Court. The Commission requested that

the Court approve the agreement, order the stipulated discipline, and appoint the Hon. Stephen Pfeffer of the First Judicial District Court as supervisor for Judge Vincent's probation. On May 4, 2004, the Supreme Court issued an order granting the Commission's disciplinary petition, finding willful misconduct in office, and ordering the stipulated disciplinary measures.

On May 19, 2004, the Supreme Court issued the Censure to Judge Vincent, which was later published in the *Bar Bulletin*. Judge Vincent successfully completed all of the disciplinary measures by August 22, 2005. The Commission subsequently notified the Supreme Court, filed the supervisor's report with the Court, and closed the matter.

IN RE HON. RUBEN GALVAN
Magistrate Judge, Dona Ana County
Inquiry No. 2003-48
Supreme Court Docket No. 28,609

After conducting an initial inquiry into a verified complaint, the Commission issued a Notice of Preliminary Investigation to Judge Galvan on November 3, 2003. On November 19, 2003, Judge Galvan filed a response to the Notice of Preliminary Investigation. On January 6, 2004, the Commission issued a Notice of Formal Proceedings to Judge Galvan. On February 13, 2004, he filed a response to the Notice of Formal Proceedings. On April 8, 2004, Judge Galvan agreed to enter into a Plea and Stipulation Agreement with the Commission, which the Commission accepted and filed on April 16, 2004. In the agreement, respondent admitted the following:

1. Judge Galvan presided over and/or took judicial action in several cases in which Assistant District Attorney Beth Hubbard appeared on behalf of the State of New Mexico. Judge Galvan had been engaged in a personal relationship with Ms. Hubbard during the time he presided over the matters and/or took the judicial actions. In cases where Ms. Hubbard appeared before him,

Judge Galvan did not inform all counsel or parties of record of his relationship with Ms. Hubbard.

2. Judge Galvan failed to be patient, dignified, and courteous to counsel by making inappropriate remarks to Assistant District Attorney Beth Hubbard about his rulings in front of defendant(s), defense counsel, and co-counsel. It is alleged that during a hearing on a motion to suppress breath test evidence in the matter of *State of New Mexico vs. Robert Marino*, Cause No. M-14-DR-200200703, Judge Galvan would not allow Ms. Hubbard to call the officer who administered the breath test to testify and granted the motion. He then commented from the bench something to the effect of "Let's see you prove your case now" or "Good luck trying to prove your case now."

The agreement further stipulated that Judge Galvan's conduct, as set forth in the Findings of Fact and the attached Plea and Stipulation Agreement, violated the following Canons of the Code of Judicial Conduct: 21-100 NMRA 1995; 21-200(A) and (B) NMRA 1991; 21-300(B)(2), (B)(3), (B)(4), (B)(5) and (B)(8) NMRA 1995; 21-400(A)(1) NMRA 1995; and 21-500(A).

On April 16, 2004, the Commission filed a Petition for Discipline upon Stipulation, requesting approval of the Plea and Stipulation Agreement and imposition of the agreed disciplinary measures against Judge Galvan. On May 4, 2004, the Commission also filed a recommendation that the Court appoint the Hon. Jerald A. Valentine to supervise Judge Galvan's probation.

On May 4, 2004, the Supreme Court issued an order granting the Commission's petition for discipline upon stipulation and ordering the following discipline for Judge Galvan:

1. 30-day suspension without pay. Imposition of the 30-day suspension was deferred upon condition that respondent successfully complete six months of supervised probation (May 4, 2004 through November 4, 2004);

2. Respondent shall be supervised by the Hon. Jerald A. Valentine during the term of probation;

3. Judge Valentine shall report to the Supreme Court and the Commission concerning the results of respondent's probation program;

4. Respondent shall receive a formal reprimand, which shall be administered in person on May 19, 2004, and shall be published in the *Bar Bulletin*;

5. Respondent shall be summarily and temporarily suspended without pay upon the filing of any of the following with the Supreme Court:

a) A report from Judge Valentine or the Judicial Standards Commission that respondent has failed to cooperate with Judge Valentine, failed to participate materially in the meetings with Judge Valentine, or otherwise failed to comply substantially with the terms of the probation; and/or

b) Notice from the Judicial Standards Commission that it is conducting formal proceedings against respondent.

The temporary suspension shall continue until the Supreme Court issues an order lifting the suspension after reviewing the results of the Commission's formal investigation and/or formal proceedings concerning these matters. Respondent agrees not to contest the summary temporary suspension; and

6. Respondent shall abide by the terms and conditions of the plea and stipulation agreement and the Code of Judicial Conduct.

The Court further ordered that the parties would bear their own costs in the matter and that the Commission shall initiate contempt proceedings in the Supreme Court concerning violations of the terms and conditions of probation.

On May 17, 2004, the Supreme Court issued the written formal reprimand to Judge Galvan.

Additionally, on May 19, 2004, Judge Galvan appeared before the Supreme Court and was formally reprimanded.

This case was ongoing at the end FY 2005. Subsequent events will be reported in the Commission's Annual Report for FY 2006.

IN RE HON. W. JOHN BRENNAN⁸
District Judge, Second Judicial District
Inquiry No. 2004-60
Supreme Court Docket No. 28,713

On May 29, 2004, the Hon. W. John Brennan was arrested and charged with felony Possession of a Controlled Substance (cocaine) and Tampering with Evidence. After conducting an initial inquiry on its own motion, the Commission issued a Notice of Preliminary Investigation to Judge Brennan on June 1, 2004. Concurrently, the Commission filed a Verified Petition for Temporary Suspension with the Supreme Court.

In the petition, the Commission informed the Court of Judge Brennan's pending criminal prosecution by the State and ongoing formal investigation by the Commission. The Commission requested the immediate suspension of the judge pending termination of the criminal and disciplinary proceedings.

On June 2, 2004, Judge Brennan filed his Preliminary Response to Petition for Immediate Temporary Suspension and a Response to the Commission's Notice of Preliminary Investigation. The same day, the Commission filed a Reply in Support of Petition for Immediate Temporary Suspension.

On June 3, 2004, the Supreme Court issued an order requiring Judge Brennan to file a written response on before July 9, 2004, showing cause

⁸ This case was not completed by the end of reporting period for the Commission's FY 2004 Annual Report. This summary contains events that occurred during FY 2005.

why he should not be immediately and temporarily suspended from his judicial duties pending completion of the State's criminal prosecution and the Commission's disciplinary proceedings. The Court ordered the judge to appear before it on July 14, 2004, ordered him not to act in any judicial capacity pending further order of the Supreme Court, ordered the Hon. Tommy Jewell to continue to serve as Acting Chief Judge of the Second Judicial District Court, and ordered that on or before September 1, 2004, the judges of the Second Judicial District Court shall select a Chief Judge pursuant to Rule 23-109 NMRA 2004 and shall disregard the time periods set forth in LR2-102.

On June 16, 2004, the Commission issued a Notice of Formal Proceedings to Judge Brennan, thereby preserving its jurisdiction over the matter pursuant to Judicial Standards Commission Rule 38.

On June 29, 2004, Judge Brennan filed a Final Response to Petition for Immediate Temporary Suspension with the Supreme Court, which included a copy of his letter (tendered to the Governor on the same date) advising of his retirement from his judicial office, effective July 9, 2004. Later on June 29, 2004, the Commission filed a Reply to Respondent's Final Response to Petition for Immediate Temporary Suspension. On July 6, 2004, the Supreme Court dismissed the Commission's petition as moot.

IN RE HON. RUBEN GALVAN⁹
Magistrate Judge, Dona Ana County
Inquiry No. 2004-99
Supreme Court Docket No. 28,609

Allegations included criminal investigation (and subsequent grand jury indictment) for felony criminal sexual penetration and solicitation of

⁹ This case was not completed by the end of reporting period for the Commission's FY 2004 Annual Report. This summary contains events that occurred during FY 2005.

bribery. Temporarily suspended with pay until formal charges issued and until Commission's proceedings completed. Formal charges issued and salary suspended. Matter is still open and pending before the Commission.

IN RE HON. FRANK W. GENTRY
Metropolitan Court Judge, Bernalillo County
Inquiry No. 2004-46
Supreme Court Docket No. 28,986

The Commission issued a Notice of Preliminary Investigation to the Respondent on July 8, 2004. On July 22, 2004, Judge Gentry submitted a response letter to the Commission, which the Commission treated as a response to the Notice of Preliminary Investigation. On September 23, 2004, the Commission issued a Notice of Formal Proceedings to Judge Gentry. On November 16, 2004, Respondent agreed to enter into a Stipulation Agreement and Consent to Discipline with the Commission, which the Commission accepted and filed on November 23, 2004. The stipulated facts are summarized below.

In December 2003, Judge Gentry improperly used his judicial position to advance private interests; initiated *ex parte* communications with Special Commissioner Reed Sheppard and Second District Judge Angela Jewell; and involved himself in, interfered with, and attempted to influence child placement in the matter of *Lynn Jeffers vs. Andrew Segura*, Second Judicial District Court Cause No. DV 2003-02008 (related to DM 2003-2876). Andrew Segura is Judge Gentry's nephew, a family member within the third degree of relationship. The matter was outside of Judge Gentry's jurisdiction and being handled by a higher court.

The agreement further stipulated that Judge Gentry's conduct, as set forth in the Findings of Fact and the attached Stipulation Agreement and Consent to Discipline, constituted willful misconduct in office and violated the following Canons of the Code of Judicial Conduct: 21-100 NMRA 1995; 21-200(A) and (B) NMRA 1991;

21-300(B)(2) and (B)(7) NMRA 1995; and 21-500(A)(1)-(A)(4) NMRA 1995.

On December 10, 2004, the Commission filed a Petition for Discipline upon Stipulation, requesting approval of the Plea and Stipulation Agreement and imposition of the agreed disciplinary measures against Judge Gentry. On January 14, 2005, the Supreme Court granted the Commission's disciplinary petition and imposed the following disciplinary measures against Judge Gentry:

A. One-Week Suspension without Pay (Suspended)/Unsupervised Probation. Judge Gentry shall receive a one-week suspension without pay. Imposition of the one-week suspension will be suspended upon the condition that Judge Gentry successfully complete six months of unsupervised probation and that no other formal disciplinary proceedings are initiated against him during the probationary period. The following additional terms apply to the probation:

i. Judge Gentry agrees that the Supreme Court may summarily and temporarily suspend him without pay upon the filing of the following with the Supreme Court: Notice from the Commission that it is conducting formal proceedings against Judge Gentry concerning violations of the Code of Judicial Conduct that may constitute willful misconduct in office, failure to perform judicial duties, persistent failure or inability to perform judicial duties, or habitual intemperance.

The temporary suspension shall continue until the Supreme Court issues an order lifting the suspension after reviewing the results of the Commission's formal investigation and/or formal proceedings concerning these matters. Judge Gentry agrees not to contest the summary temporary suspension.

ii. The Commission shall initiate contempt proceedings before the Supreme Court concerning violations of the terms of probation.

B. Formal Reprimand. Respondent shall receive a formal reprimand from the Supreme Court. The reprimand shall be published in the *Bar Bulletin* after Respondent completes the unsupervised probation set forth in subparagraph (A) immediately above.

C. Respondent shall abide by all terms and conditions of the plea and stipulation agreement and the Code of Judicial Conduct.

D. The parties will bear their own costs and expenses incurred in this matter.

On July 29, 2005, the Supreme Court issued the formal reprimand to Judge Gentry. The reprimand was then published in the August 15, 2005 issue of the *Bar Bulletin*.

IN RE HON. JAMES D. ATCITY¹⁰
Magistrate Judge, San Juan County
Inquiry Nos. 2003-35, 2003-38 & 2003-57
Supreme Court Docket No. 29,076

After conducting preliminary investigations into three verified complaints, on February 9, 2005, the Commission issued a Notice of Formal Proceedings to Respondent. The same day, Commission filed a Petition for Temporary Suspension with the Supreme Court. In the petition, the Commission informed the Court that Judge Atcity was being formally charged on allegations that he had a hearing disability that seriously interfered with the performance of his judicial duties and committed acts that may constitute willful misconduct in office. The petition stated:

I. Pursuant to Judicial Standards Commission Rule 8(A), Respondent was notified of the Commission's intent to compel respondent to undergo an independent medical evaluation. Respondent provided the necessary waivers and

¹⁰ This case was not completed by the end of reporting period for the Commission's FY 2004 Annual Report. This summary contains events that occurred during FY 2005.

voluntarily submitted to a medical panel evaluation by Medical Evaluation Center, Inc. (Barry M. Diskant, M.D. and Karl Horn, M.D.) on January 27, 2005, which included hearing assessments, tests, and evaluation.

2. The medical panel's written report of the results of the evaluation were being provided under seal with the petition. The report was submitted under seal because it contained other medical information concerning respondent not directly relevant to his hearing.

3. The medical panel cited the following impressions: "Profound bilateral hearing loss, AS > AD"; and "Profound impairment of speech determination AU (both ears)."

4. The medical panel opined and recommended that Judge Atcitty should undergo a cochlear implant to his left ear and obtain from an otologist a power digital hearing aid for use on his right ear, both of which "will restore his speech discrimination to a point where he can function effectively as a Judge."

5. Of critical note, on page 8 of the report, the medical panel concluded:

Until such time as Judge Atcitty undergoes the left cochlear implant and obtains the right power digital hearing aid, it is the opinion of the panel that he is temporarily unfit to continue working as a Magistrate. It is emphasized that this condition is expected to be temporary only.

The panel estimated that respondent's hearing could be corrected as recommended within approximately three months.

6. The Commission believes that respondent's inability to hear and impaired ability to determine speech render him unfit to continue serving in a judicial capacity until such time as he completes the treatment recommended by the medical panel (at his own expense).

7. In addition to respondent's inability to hear and impaired speech determination, respondent is alleged to have committed acts that may constitute willful misconduct in office, which are summarized as follows:

A. Respondent failed to follow substantive and procedural law while presiding over the matter of *David Kerr vs. HaulRite of Four Corners*, San Juan County Magistrate Court Cause No. M-47-CV-200201868. At trial during the defendant's opening statement, the plaintiff's attorney made an objection. Respondent failed to rule on the objection and instead stopped the proceeding and issued a judgment in plaintiff's favor. Respondent did not review or admit any evidence, hear any testimony, or otherwise afford the parties due process of law.

B. Respondent failed to follow substantive and procedural law to promptly and efficiently dispose of the matter of *State of New Mexico vs. Emerson Notah*, San Juan County Magistrate Court Cause No. M-47-TR-200300679 (charges of no insurance and no current registration). At trial in the case on April 24, 2003, respondent found the defendant guilty at trial and imposed a 30-day deferred sentence on the condition that the defendant was to obtain insurance and register the vehicle within 30 days. Respondent later invalidated the order and then directed his staff to reset the matter and issue notices of trial (April 29, 2003 notice for May 29, 2003 trial, and June 10, 2003 notice for July 3, 2003 trial). Respondent also issued Commitment Orders on April 24, May 29, and July 3, 2003, all blank except respectively indicating "Reset in 30 days", "Reset - 30 days" and "Reschedule" in the comments section of each form. The defendant ultimately complied by the end of July, approximately 90 days after the original order was entered.

C. Respondent is unable to conduct fair hearings because of an inability or compromised ability to hear.

The Supreme Court issued an order on February 17, 2005, requiring Judge Atcitty to file a response to the petition. After obtaining an extension, Respondent filed his response on March 16, 2005. In the response, Judge Atcitty pleaded that he did not deny the medical panel's findings or opinions (as set forth in paragraphs numbered 3, 4 and 5 above), but denied the misconduct charges in the underlying cases. On March 22, 2005, the Commission filed a reply in support of its temporary suspension petition.

On March 31, 2005, the Supreme Court issued an order denying the Commission's temporary suspension petition conditioned upon the following terms and conditions:

1. As Judge Atcitty offered in his response filed with the Supreme Court, the judge shall take medical leave with pay to remedy his medical condition. The leave shall begin as soon as practicable and to be for a period of up to 90 days subject to Judge Atcitty making proper arrangement with the AOC Magistrate Division including coverage of his caseload in his absence;

2. Judge Atcitty shall report to the AOC Magistrate Division and the Judicial Standards Commission concerning the results of the remediation and his ability to return to the job; and

3. In the event that Judge Atcitty does not seek appropriate medical remediation in a timely manner, or if such medical treatment should prove unsuccessful, the Commission may re-file with the Supreme Court for appropriate relief.

Respondent did not begin his Court-ordered medical leave until June 20, 2005. Because this case was not completed by the end of FY 2005, subsequent events will be reported in the Annual Report for FY 2006.

IN RE HON. THOMAS G. FITCH

*District Judge, Seventh Judicial District Court
Inquiry Nos. 2005-010 & 2005-015
Supreme Court Docket No. 29,082*

On February 11, 2005, the Hon. Thomas G. Fitch was arrested and charged with Aggravated Driving While Under the Influence of Intoxicating Liquor or Drugs (First Offense), Careless Driving and Open Container. After conducting an initial inquiry on its motion, the Commission issued a Notice of Preliminary Investigation to Judge Fitch on February 14, 2005. Concurrently, the Commission filed a Verified Petition for Immediate Temporary Suspension with the Supreme Court.

On February 17, 2005, the Supreme Court issued an order immediately suspending Thomas A. Fitch from judicial office. The Court also ordered Respondent to appear before the Court on May 19, 2005 to show cause why he should not be permanently removed from judicial office.

The Commission issued a Notice of Formal Proceedings to Respondent on March 17, 2005. Respondent filed a verified answer to the Notice of Formal Proceedings on April 1, 2005. On April 21, 2005, a hearing was held before the Judicial Standards Commission. The parties entered into stipulated findings of fact and conclusions of law and the issue of discipline was left to the discretion of the Commission. The Commission's findings of fact and conclusions of law are summarized as follows:

1. On Friday, February 11, 2005, while on official court business, and acting as Chief Judge for the Seventh Judicial District Court, and while driving a vehicle owned by and registered in the name of the Seventh Judicial District Court, State of New Mexico and en route to Santa Fe, NM, to attend and to testify during legislative budget hearings before the State House Appropriations Committee, Respondent was arrested and charged with Aggravated Driving While Under the Influence of Intoxicating Liquor or Drugs, First Offense (NMSA 1978, §66-8-102); Careless

Driving (NMSA 1978 §66-8-114); and Open Container (NMSA 1978 §66-8-138).

2. Earlier that day, after holding a hearing in Los Lunas at 9:00AM on Friday, February 11, 2005, Respondent had begun drinking vodka while driving the state-owned vehicle referenced above between Los Lunas and Santa Fe to attend the referenced budget hearings.

3. By the time Respondent reached the outskirts of Santa Fe, NM, he had consumed a sufficient quantity of vodka to place his blood alcohol level above .16, the level for an aggravated DWI offense. Two alcohol breathalyzer tests taken soon after the accident referenced below revealed that Respondent had a blood alcohol content of .16 and .17 respectively.

4. At approximately 12:50 PM on Friday, February 11, 2005, Respondent was driving the above-referenced vehicle southbound on the Frontage Road to State Road 599 approaching a sharp right curve in the road. Respondent failed to negotiate that curve, and as a result of that failure the vehicle he was driving left the roadway, became airborne for approximately 40 feet, landed in the bottom of a dry river bed, and rolled, causing extensive damage to the vehicle. To repair all the damage suffered by the state vehicle was estimated to cost \$18,418.49. Whereas the state vehicle was valued at \$13,825.00, it was considered a total loss.

5. The above-described incident was caused by Respondent being severely impaired as the result of drinking an excessive amount of vodka while driving the referenced vehicle.

6. On Tuesday, February 15, 2005, Respondent pled guilty to and was convicted of all criminal charges pending against him in the matter of *State of New Mexico v. Thomas Fitch*, Santa Fe County Magistrate Court Cause No. M-49-DR-2005-00110, Div. II, to wit: Aggravated Driving While Under the Influence of Intoxicating Liquor or Drugs, First Offense (NMSA 1978, §66-8-102); Careless Driving

(NMSA 1978 §66-8-114); and Open Container (NMSA 1978 §66-8-138).

7. In the weeks prior to the February 11, 2005 incident, Respondent had become increasingly concerned about his dependence upon alcohol and had sought help from doctors, from the Lawyers' Assistance Committee, from a judicial colleague, Hon. William F. Lang, and from Alcoholics Anonymous. Nevertheless, Respondent continued to serve in his judicial capacity, and did not place himself on any form of leave to enter into a substance abuse program.

8. Respondent did not bargain down any of the criminal charges he faced, or the resulting sanctions imposed by the Santa Fe County Magistrate Court, even though such bargaining is routinely available in similar cases to any other defendant. Respondent pled guilty to all of the charges and accepted the punishment deemed appropriate by the court.

9. The conduct subject to criminal sanctions was related to intoxicating liquor, and not to use of drugs or other substances considered unlawful under the provisions of the Controlled Substances Act.

10. Immediately after his arrest, Respondent voluntarily requested a leave of absence to be temporarily relieved of all judicial duties and self-committed to The Palmetto, a reputable inpatient residential substance abuse program in Louisiana, for a month-long stay.

11. Respondent had no criminal record, including alcohol-related offenses of any kind, nor did he have any history of discipline during his ten years of active service as a judge or his previous career as an attorney, before either the Judicial Standards Commission or the Disciplinary Board of the Supreme Court.

The Commission found that the behavior engaged in by Judge Thomas J. Fitch violated the following provisions Code of Judicial Conduct: 21-100 NMRA 1995 (judge shall uphold integrity and independence of judiciary); 21-200(A)

NMRA 1991 (judge shall avoid impropriety and appearance of impropriety in all activities); 21-500(A)(2)(judge shall conduct all of the judge's extra-judicial activities so that they do not demean the judicial office); and 21-500(A)(4) (judge shall conduct all of the judge's extra-judicial activities so that they do not violate the judge's oath and obligation to uphold the laws and constitutions of the United States and the State of New Mexico). The Commission found that the Respondent's conduct constituted willful misconduct in office.

On April 22, 2005, the Commission filed a Petition for Discipline recommending the Supreme Court impose the following discipline upon the Respondent:

A. Permanent removal from judicial office, never to hold, become a candidate for, run for, stand for election, or accept appointment to any judicial office in the future, including serving pro temper; and

B. Assessment of the Commission's costs and expenses.

The Respondent filed a consolidated response to the Order to Show Cause and the Petition for Discipline on April 23, 2005, in which he tendered to the Chief Justice of the New Mexico Supreme Court his letter of formal resignation as a New Mexico District Judge.

Subsequently, on May 3, 2005, the Parties filed a Stipulated Motion to Modify Discipline Upon Stipulated Agreement by the Parties, recommending permanent resignation from judicial office and assessment of the Commission's costs and expenses in lieu of the discipline recommended in the Petition for Discipline.

On May 10, 2005, the Supreme Court issued an Order granting the stipulated motion to modify discipline upon stipulated agreement and ordering that Respondent be disciplined as follows.

1. Respondent shall never again hold, become a candidate for, run for election to any judicial office in the future. Respondent shall never seek, accept appointment to, or serve *pro tempore* for any judicial office in the future.

2. Respondent shall abide by all terms and conditions of the stipulation agreement filed May 3, 2005, at Judicial Standards Commission.

3. The Commission's costs and expenses incurred in this matter are assessed against Respondent.

IN RE HON. LARRY E. WOOD

Magistrate Judge, Eddy County

Inquiry Nos. 2003-73 & 2003-95

Supreme Court Docket No. 29,085

The Commission issued a Notice of Preliminary Investigation to the Hon. Larry E. Wood on July 16, 2004. On July 28, 2004, Respondent obtained an extension in which to file his response. On August 5, 2004, Judge Wood filed his response to the Commission's Notice of Preliminary Investigation. On September 23, 2004, the Commission issued a Notice of Formal Proceedings, Notice of Trial and Pretrial Scheduling Order, and Discovery Order to Judge Wood. On January 11, 2005, Respondent agreed to enter into a Stipulation Agreement and Consent to Discipline with the Commission, which the Commission accepted and filed on January 24, 2005. The stipulated facts were the following:

Respondent knowingly failed to follow and/or apply the law (NMSA 1978, § 33-3-11) when he incarcerated citizens for failure to pay fines. He wrongfully credited inmates with only \$5.00 per day of time served toward payment of fines and fees.

The agreement further stipulated that Judge Wood's conduct, as set forth in the Findings of Fact and the attached Stipulation Agreement and Consent to Discipline, constituted willful misconduct in office and violated the following

Canons of the Code of Judicial Conduct: 21-100 NMRA 1995; 21-200(A) NMRA 1991; and 21-300(B)(2) NMRA 1995.

Judge Wood and the Commission stipulated that the following disciplinary measures would be recommended to the Supreme Court:

A. Respondent shall receive a formal reprimand from the Supreme Court, which shall be published in the *Bar Bulletin*.

B. Respondent shall abide by all terms and conditions of the plea and stipulation agreement and the Code of Judicial Conduct.

C. Respondent shall abide by all orders issued by superior courts.

D. The parties will bear their own costs and expenses incurred in this matter.

On February 15, 2005, the Commission filed a Petition for Discipline upon Stipulation, requesting approval of the Stipulation Agreement and Consent to Discipline and imposition of the agreed disciplinary measures against Judge Wood. On April 11, 2005, after hearing oral argument on the petition, the Supreme Court rejected the petition and remanded the matter to the Commission for further proceedings. The Supreme Court further suggested that the Commission consider filing a petition for temporary suspension pursuant to Rule 27-201 NMRA.

Following the Supreme Court hearing, Judge Wood advised that he intended to retire effective April 30, 2005. On April 15, 2005, the Commission entered into a new Stipulation Agreement and Stipulation to Discipline with Judge Wood. The factual stipulations remained unchanged, but the stipulated disciplinary measures to be recommended to the Supreme Court were the following:

A. Respondent shall permanently resign from his judicial position effective April 30, 2005. Respondent shall never again hold, become a candidate for, run for, or stand for

election to any judicial office in the future. Respondent shall never seek, accept appointment to, or serve *pro tempore* for any judicial office in the future.

B. Respondent shall receive a formal reprimand, which shall be published in the *Bar Bulletin*.

C. The parties will bear their own costs and expenses incurred in this matter.

Respondent tendered a letter of resignation to Governor Bill Richardson effective April 30, 2005. On April 19, 2005, the Commission filed a Second Petition for Discipline upon Stipulation with the Supreme Court.

On May 9, 2005, the Court issued an order granting the Commission's petition and imposing the stipulated discipline. On May 12, 2005, the Court also issued the Formal Reprimand to Judge Wood, was subsequently published in the *Bar Bulletin*.

IN RE HON. FRANCES GALLEGOS

Municipal Judge, Santa Fe

Inquiry Nos. 2003-58, 2003-89 & 2003-108

Supreme Court Docket No. 27,906

The Commission issued a Notice of Preliminary Investigation to the Respondent on November 17, 2003. On November 25, 2003, Judge Gallegos filed a response. On January 26, 2004, the Commission issued a Supplemental Notice of Preliminary Investigation to Respondent. She filed her response on February 13, 2004. On July 8, 2004, the Commission issued a Notice of Formal Proceedings to Judge Gallegos. She filed a response on July 28, 2004. On December 17, 2004, Respondent agreed to enter into a Stipulation Agreement and Consent to Discipline with the Commission, which the Commission accepted and filed on January 5, 2005. The Commission issued its Findings of Fact, Conclusions of Law, and Recommendation for Discipline and filed a Verified Petition for

Discipline upon Stipulation with the Supreme Court on February 15, 2005. The stipulated factual and legal conclusions are set forth below.

1. Respondent ordered defendants to attend a specific driving safety course, contrary to NMSA 1978, § 66-10-11. The paid instructor of this course was her Court Administrator, Mary Ann Caldwell.

2. Respondent allowed her Court Administrator, Mary Ann Caldwell, acting in Caldwell's personal for-profit business interests, to use the property and facilities of the Santa Fe Municipal Court for the "Alive at 25" driving safety course.

3. Respondent allowed her Court Administrator, Mary Ann Caldwell, to teach "Alive at 25" driving safety courses for profit while she was employed by respondent's court.

4. Respondent's acts occurred prior to and during the time she was negotiating a plea and stipulation agreement with the Commission in Inquiry No. 2002-80 and when she became subject to the Supreme Court's disciplinary order in that matter, as set forth in the Commission's Motion to Take Final Disposition under Advisement filed with the Supreme Court.

5. Respondent has ceased and will desist from the conduct set forth in subparagraphs (1) through (3) immediately above.

Judge Gallegos agreed and the Commission subsequently found that she had violated the following canons of the Code of Judicial Conduct: 21-100 NMRA 1995, 21-200(A) and (B) NMRA 1991, and 21-300(B)(2), (B)(5), and (C)(1) NMRA 1995.

On March 9, 2003, the Supreme Court heard oral argument from the Commission and Respondent and issued an order granting the Commission's petition and ordering that Judge Gallegos be disciplined as follows:

A. Thirty-Day Suspension without Pay (Suspended on Conditions). Judge Gallegos shall receive a thirty-day suspension without pay. Imposition of the suspension will be suspended upon the following conditions:

i. Formal Mentorship in Judicial Ethics and Court Administration. Judge Gallegos shall successfully complete a formal mentorship concerning her obligations under the Code of Judicial Conduct and concerning proper court administration. The Judicial Standards Commission will recommend the mentor for the Supreme Court's approval and appointment. The mentor shall report on the progress and outcome of the mentorship to the Supreme Court and the Commission.

ii. Judicial Ethics Course. Judge Gallegos shall attend and successfully complete the next administration of the "Ethics for Judges" course sponsored by the National Judicial College. Respondent shall attend the course on her own time (*i.e.*, shall take vacation or leave without pay) and shall bear at her own expense all costs required to attend and complete this course, including tuition, travel, accommodations, meals, and all other expenses incurred to complete this requirement. Respondent shall promptly provide the Supreme Court and the Commission with proof of successful completion of this requirement, including an affidavit concerning course attendance on her own time and at her own expense (including copies of her receipts).

Failure to comply with these detailed conditions shall constitute a material breach of this agreement.

Judge Gallegos agreed that the Supreme Court may summarily and temporarily suspend her without pay upon the filing of one of the following with the Supreme Court: (1) notice from the appointed mentor or the Commission indicating that Judge Gallegos failed to cooperate with the mentor, failed to participate materially in the meetings with the

mentor, or otherwise failed to comply substantially with the terms of the formal mentorship; or (2) notice from the appointed mentor or the Commission indicating that Judge Gallegos has failed to attend and successfully complete the "Ethics for Judges" course. If any of these events occur, the Commission shall initiate proceedings before the Supreme Court to hold respondent in contempt and to impose the full thirty-day suspension without pay.

B. Respondent shall abide by all terms and conditions of the plea and stipulation agreement and the Code of Judicial Conduct.

The Supreme Court further ordered that the parties would bear their own costs in the matter, as agreed in the stipulation agreement.

On March 22, 2005, the Commission recommended that the Hon. Barbara Vigil, First Judicial District Court Judge, be appointed to serve as Respondent's Court-ordered mentor. The Supreme Court approved the Commission's recommendation and appointed Judge Vigil on March 29, 2005.

At the end of FY 2005, Judge Gallegos had not yet completed the ordered disciplinary measures. Subsequent events will be reported in the Annual Report for FY 2006.

IN RE HON. SUSANA CHAPARRO
Magistrate Judge, Dona Ana County
Inquiry No. 2003-82
Supreme Court Docket No. 27,923

The Commission issued its Notice of Formal Proceedings to Respondent on January 5, 2004. A first amended notice of formal proceedings was issued and filed on January 12, 2005. Respondent filed a verified answer to the Notice of Formal Proceedings on February 1, 2005. On February 7-9, 2005, a trial was held before the Judicial Standards Commission. The Commission's findings of fact and conclusions of law are summarized as follows:

1. On the evening of August 29, 2002, Respondent's son, Michael Benavidez, was cited by Doña Ana County Deputy Sheriff A.J. Rodriguez for speeding and for not having proof of insurance. The matter was styled *State v. Michael Benavidez*, Doña Ana County Magistrate Court Cause Number M-14-TR-200205837.

2. On August 30, 2002, Respondent contacted Doña Ana County Sheriff Juan Hernandez about her son's allegations that Deputy Sheriff Rodriguez mistreated him and his passengers and held them for an excessive period of time at the scene. Sheriff Hernandez knew that Respondent was a sitting judge on the Doña Ana County Magistrate Court. He investigated the Respondent's allegations of mistreatment and concluded that no mistreatment occurred. The traffic stop by Deputy Sheriff Rodriguez was videotaped, which was reviewed by the Commission. Based on that review, the Commission also concluded that there was no mistreatment of defendant Benavidez.

3. At the request of Deputy Sheriff Rodriguez, the Third Judicial District Attorney through Assistant District Attorney Keythan Park filed an entry of appearance in the case on behalf of the State of New Mexico in the Benavidez matter. The entry of appearance was file stamped on September 19, 2002.

4. On November 7, 2002, Doña Ana County Magistrate Court received and file stamped a memorandum from the Third Judicial District Attorney's Office indicating that the District Attorney would not be entering an appearance in the matter of *State v. Benavidez*.

5. On December 20, 2002, the Honorable Patrick Curran initiated a pretrial hearing in the matter of *State v. Benavidez*. Respondent was present in the courtroom with her son, defendant Benavidez, who appeared *pro se* for the pretrial hearing.

6. Respondent and Judge Curran were both sitting judges on the Doña Ana County

Magistrate Court at the time Respondent was present in Judge Curran's courtroom with her son. Judge Curran called the case and asked the parties to come forward. Because Deputy Sheriff Rodriguez was not present in the courtroom, Judge Curran indicated his intent to dismiss the case. Deputy District Attorney Wallace informed Judge Curran that he was from the District Attorney's Office and was appearing on behalf of the State at the hearing. Judge Curran questioned the appearance based upon the November 7, 2002 memorandum. However, Judge Curran could not locate the memorandum in the *Benavidez* court file. Deputy District Attorney Wallace contended that the memorandum was sent in error since his office previously entered its appearance in the case on behalf of the State.

7. After this exchange, Respondent stepped forward and provided Judge Curran with a copy of the District Attorney's memorandum at issue. Members of the public were present in the courtroom and observed Respondent's interaction with Judge Curran. Respondent did not have the original court document in her possession. For reasons unclear, Judge Curran reset the pretrial hearing for December 27, 2002.

8. On December 27, 2002, on behalf of her son, Respondent called Judge Curran's clerk, Esther Baca, to inform Judge Curran that the "defendant's mother" called and requested a continuance for the pretrial hearing because her son was experiencing car trouble in Taos, New Mexico. Defendant Benavidez testified that he was stuck in Taos due to a snowstorm. Based on Respondent's communications with Ms. Baca, Judge Curran vacated the December 27, 2002, pretrial hearing and the matter was reset on February 7, 2003.

9. Judge Curran retired from the bench effective December 31, 2002. Honorable Reuben Galvan was elected in November 2002 and assumed Judge Curran's division and caseload on January 1, 2003, including the *Benavidez* case. On January 29, 2003, Deputy Sheriff Rodriguez transmitted via facsimile a request for

continuance of the trial of the *Benavidez* case set for February 7, 2003 because he would be attending mandatory training classes for his new position with the Bernalillo County Sheriff's Department. On February 5, 2003, Respondent asked a court clerk, Leticia Padilla, to bring Respondent the court file on her son's case. Respondent testified that she wanted to review the file because she heard that a continuance had been requested. Clerk Padilla retrieved the file from Judge Galvan's desk and gave it to Respondent as requested. Respondent reviewed the file and later returned it to Ms. Padilla for return to Judge Galvan's desk.

10. On February 7, 2003, Respondent's son appeared for his trial before Judge Galvan. The District Attorney's Office was not present. Deputy Sheriff Rodriguez was not present. Judge Galvan called out for the officer and waited. During the wait, Respondent came into Judge Galvan's courtroom and spoke with her son. Respondent then returned to her courtroom for a period of time before returning to Judge Galvan's courtroom to join her son. While the Respondent was present in Judge Galvan's courtroom, Judge Galvan called the *Benavidez* case and dismissed it.

11. Respondent and Judge Galvan were both sitting judges on the Doña Ana County Magistrate Court at the time Respondent was present in Judge Galvan's courtroom with her son. Members of the public were present in the courtroom and observed Respondent's interaction with Judge Galvan.

Based on the set of facts found to be true, the Commission concluded that Respondent Judge Chaparro had violated several provisions of the New Mexico Code of Judicial Conduct occurred, constituting willful misconduct in office. Specifically, the Commission concluded:

Respondent, by a pattern of conduct and repeated interaction with court personnel, improperly involved herself in, and interfered with, the adjudication of the Magistrate Court matter involving her son,

State v. Benavidez, Doña Ana County Magistrate Court Cause Number M-14-TR-200205837, and thereby gave the appearance of impropriety, gave the appearance that she was trying to influence the outcome of her son's case, and compromised the integrity, independence and impartiality of the judiciary in violation of Canons 21-100 NMRA 1995 and 21-200(A) and (B) NMRA 1995 of the Code of Judicial Conduct.

On March 10, 2005, the Commission filed a Petition for Discipline recommending the Supreme Court impose the following discipline upon the Respondent:

A. Sixty-day suspension deferred on the condition that Respondent successfully complete one year of supervised probation under the supervision of the Hon. Judith Nakamura.

B. Formal public reprimand by the Supreme Court.

C. Assessment of the Commission's costs and expenses, not to exceed \$5,000.00.

The Respondent filed a response to the Petition for Discipline on April 6, 2005.

On June 22, 2005, after reviewing the record of the proceedings before the Commission, after reviewing the Commission's Petition for Discipline and the Respondent's response to the Petition, and after hearing argument by the parties, the Supreme Court imposed greater discipline than recommended by the Commission and issued an Order that Respondent be disciplined as follows:

1. Respondent shall be suspended without pay for two weeks as soon as practicable beginning at a time selected by the Magistrate Division of the Administrative Office of the Courts. Thereafter, Respondent shall be suspended for six weeks, imposition of which shall be suspended for six weeks, imposition of which shall be deferred on condition that Respondent successfully complete

one year of supervised probation. Failure to satisfactorily complete the period of supervised probation shall result in the imposition of the full six-week deferred suspension without pay.

2. The Judicial Standards commission shall choose a supervising judge to supervise Respondent during the term of probation. Respondent shall meet with her supervising judge at the time(s) and place(s) selected by the supervising judge for counseling and assistance with the requirements of the Code of Judicial Conduct. The supervising judge shall file a report with this Court and the Judicial Standards Commission concerning the results of Respondent's probation.

3. This Formal Reprimand shall be published in the Bar Bulletin.

4. The Judicial Standards Commission's costs and expenses are hereby assessed against Respondent in the amount of \$5,000.00 to be paid by the Respondent.

IN RE HON. TONY F. MARTINEZ (RETIRED)

*Magistrate Judge Pro Tem, Rio Arriba County
Inquiry No. 2004-127*

Supreme Court Docket No. 29,180

The Commission issued a Notice of Formal Proceedings to Respondent on March 1, 2005. Respondent filed a response to the Notice of Formal Proceedings on March 14, 2005. On April 12, 2005, the Respondent agreed to enter into a Stipulation Agreement with the Commission, which was filed April 19, 2005. The same day, the Commission issued Findings of Fact, Conclusions of Law and Recommendation for Discipline and filed a Verified Petition for Discipline with the Supreme Court. The stipulated factual and legal conclusions are set forth below.

1. Hon. Tony F. Martinez is a magistrate court judge *pro tempore*. Judge Martinez permitted and engaged in several *ex parte* communications in

State of New Mexico vs. Edward Estrada, Rio Arriba County Magistrate Court Cause No. M-43-MR-200300218 with Gloria Estrada, the defendant's mother (a non-party and non-lawyer) regarding the disposition of the case; Judge Martinez allowed the defendant's mother to negotiate a plea agreement on her son's behalf; Judge Martinez failed to notify the defendant of court hearings; Judge Martinez failed to conduct an arraignment; Judge Martinez failed to advise the defendant of his constitutional rights; Judge Martinez failed to appoint legal counsel to represent the defendant; Judge Martinez held court proceedings in the absence of the defendant or an attorney for the defendant; and lastly, Judge Martinez signed a judgment and sentence order that falsely stated that the defendant appeared *pro se*, pleaded no contest/guilty, and was sentenced, when in fact the defendant was sitting in his jail cell and did not do any of the foregoing.

2. The Commission had previously referred the Respondent for an informal mentorship in 1997 for the following allegations in *State of New Mexico v. Daniel Reynoso*, Rio Arriba Magistrate Cause No. 17-01-97-0149M: failing to rule on numerous motions filed by the defendant; failing to appoint counsel to replace an assistant public defender, who was disqualified pursuant to the defendant's motion, even though the defendant was found, by the court, to be indigent and unable to obtain counsel; failing to respond to the defendant's request for a "panel list of prospective jurors"; and lastly, demonstrating bias against the Defendant.

In the plea and stipulation agreement with the Commission, Judge Martinez stipulated that the Commission had sufficient evidence to prove that his conduct violated the following canons of the Code of Judicial Conduct: 21-100 NMRA 1995; 21-200(A) NMRA 1991; 21-300(B)(2) NMRA 1995; 21-300(B)(4) NMRA 1995; 21-300(B)(5) NMRA (1995); 21-300(B)(7) NMRA 1995; and 21-300(B)(8) NMRA 1995. Judge Martinez further stipulated that his conduct was a sufficient basis for the imposition of discipline

pursuant to Article VI § 32 of the New Mexico Constitution.

On May 10, 2005, the Supreme Court issued an order granting the Commission's petition and ordering that Judge Martinez be disciplined as follows.

1. Respondent shall never again hold, become a candidate for, or run for election to any judicial office in the future. Respondent shall never seek, accept appointment to, or serve *pro tempore* for any judicial office in the future.

2. Respondent shall pay a \$500.00 fine on or before May 25, 2005.

3. Respondent shall abide by all terms and conditions of the stipulation agreement filed April 19, 2005, at Judicial Standards Commission.

4. Respondent shall receive a formal reprimand, which shall be published in the Bar Bulletin.

5. The parties will bear their own costs and expenses incurred in this matter.

On May 12, 2005, the Supreme Court issued a formal reprimand to Judge Martinez. The reprimand was published in the May 20, 2005 issue of the *Bar Bulletin*.

IN RE HON. JAVIER LOZANO
Municipal Judge, Columbus
Inquiry No. 2004-067
Supreme Court Docket No. 29,264

The Commission issued a Notice of Preliminary Investigation to the Respondent on September 23, 2004. On October 18, 2004, Respondent filed his response to the Commission's Notice of Preliminary Investigation. On January 12, 2005, the Commission issued a Notice of Formal Proceedings to Respondent. Respondent filed his response to the Notice of Formal Proceedings on February 9, 2005. On May 23, 2005,

Respondent and the Commission entered into a Stipulation Agreement and Consent to Discipline. The stipulated factual and legal conclusions are set forth below.

1. Respondent is the part-time Municipal Judge for Columbus, New Mexico.

2. Respondent had a business relationship with July McClure concerning J-Loz Auction Services, which had a contract with the Village of Columbus to conduct auction sales of vehicles that were impounded by the Columbus Police Department pursuant to Municipal Ordinance 12-12-18(F)(3). J-Loz Auction Services received a 17% commission or fee for conducting the auction sales.

3. Respondent received monetary compensation for his work with J-Loz Auction Services. Said compensation payments were made from the profits that the business earned from the auction sales of impounded vehicles.

4. As the Municipal Judge, respondent has jurisdiction to order the forfeiture or release of impounded vehicles pursuant to the municipality's ordinance. However, impound cases are not routinely filed in Respondent's court.

5. Respondent admits to exercising this jurisdiction once and ordered the release of an impounded vehicle.

6. Respondent's compensation from and business arrangement with July McClure and J-Loz Auction Services terminated in July 2004. The last vehicle auction that J-Loz Auction Services held for the Village of Columbus was on July 10, 2004 and its contract for such auctions expired on September 1, 2004. The contract was not renewed.

7. Respondent's conduct violated the following Canons of the Code of Judicial Conduct: 21-100 NMRA 1995; 21-200(A) and (B) NMRA 1995; 21-300(B)(2) NMRA 1995; 21-

400(A)(3) and (A)(5)(c) NMRA 1995; and 21-500(A)(1)-(4) and (D)(1)(a) NMRA 1995.

8. Respondent's conduct constitutes willful misconduct in office.

On June 2, 2005, the Commission filed a Petition for Discipline upon Stipulation with the Supreme Court. On June 14, 2005, the Commission filed its recommendation that the Hon. John R. Barber, retired Alamogordo Municipal Court Judge, be appointed as Judge Lozano's probation supervisor.

At the end of FY 2005, this matter was pending decision by the New Mexico Supreme Court. Subsequent events will be reported in the Annual Report for FY 2006.

IN RE HON. WILLIAM A. MCBEE

District Judge, Fifth Judicial District Court

Inquiry No. 2004-011

Supreme Court Docket No. 29,265

After conducting an initial inquiry into a verified complaint, the Commission issued a Notice of Preliminary Investigation to Judge McBee on April 29, 2005. On May 17, 2004, Judge McBee filed a response to the Notice of Preliminary Investigation. On July 21, 2004, the Commission issued a Notice of Formal Proceedings to the Judge. On August 10, 2004, Judge McBee filed a response to the Notice of Formal Proceedings. On June 2, 2005, the parties entered into a stipulation agreement. The same day, the Commission issued Findings of Fact, Conclusions of Law and Recommendation for Discipline and filed a Petition for Discipline upon Stipulation with the Supreme Court. The stipulated factual and legal conclusions are set forth below.

1. Respondent, Judge William McBee, agreed and acknowledged that his involvement in the adjudication of the criminal case of *State v. Busch*, CR-2002-378 (hereinafter "the Busch case" or "the Busch matter") at a minimum gave the appearance of impropriety. Respondent further

agreed and acknowledged that his involvement in the Busch matter could create in reasonable minds a perception that his ability to carry out his judicial responsibilities with integrity and impartiality was impaired because of his personal relationship with Max Proctor, who was at the time the boyfriend, and who subsequently became the husband, of the defendant in that matter, Tami Busch.

2. Respondent acknowledged that on November 7, 2002, the State of New Mexico filed a Criminal Information that charged Defendant Tami Busch with two counts of trafficking cocaine (2nd Degree Felonies) and five counts of distribution of methamphetamine (3rd Degree Felonies). This matter was initially assigned to Judge Gary L. Clingman, who was excused from the case by Defendant Busch on or about November 26, 2002.

3. Respondent was assigned the Busch case on November 27, 2002. Respondent did not recuse himself from the Busch matter at that time, even though he was aware that presiding over the Busch case, at a minimum, could give the appearance to a reasonable person that he was not impartial in that matter on the basis of his personal relationship with Max Proctor, boyfriend to, and attorney for, Defendant Busch, and who subsequently became Defendant's husband.

4. At an arraignment set for April 15, 2003, Defendant Busch pled no contest to all seven felony counts of an Amended Criminal Information filed against her on March 26, 2003. Her plea was accepted by Respondent at that time, but did not contain an agreement as to sentencing. Respondent ordered a pre-sentence report at the conclusion of the March 26, 2003 hearing, which concluded that Defendant Busch "was a drug dealer" and should be "held accountable for her actions." The pre-sentence report, dated May 7, 2003, recommended that Defendant Busch be sentenced to 18 years for the cocaine charges and 15 years for the methamphetamine charges, to run consecutively for a total of 33 years. It was further

recommended that the 33-year sentence be suspended except for 5 years, to be served in the Penitentiary of New Mexico, followed by 2 years mandatory parole.

5. Respondent ordered and commenced a sentencing hearing on May 12, 2003. Upon review of the Pre-Sentence report and all factors surrounding the case, Respondent indicated that he would consider assigning Defendant Busch to participate in a new program, the Lea County Family Drug Court, but continued the hearing to a future unspecified date because the Lea County Drug Court was not yet an available sentencing alternative.

6. On or about July 26, 2003, Respondent met with his Chief Judge, Jay Forbes, Fifth Judicial District. At that meeting, Respondent and Judge Forbes discussed whether it would be proper for Respondent to preside over the adjudication the Busch case because of his personal relationship with Max Proctor. As the result of this July 26, 2003 meeting, it was agreed that Respondent's continued involvement in the Busch matter gave, at a minimum, the appearance that his integrity and impartiality was impaired. As a result, Respondent recused from the Busch case, which recusal was filed on July 31, 2003.

7. The Busch case was assigned to Judge William P. Lynch on July 30, 2003, who set the matter for sentencing on October 6, 2003. Prior to that hearing, Defendant Busch requested that the State be bound by Respondent's comments during the May 12, 2003 sentencing hearing regarding Family Drug Court. Specifically, Defendant Busch wanted Judge Lynch to be required to order Family Drug Court as a sentencing alternative for her.

8. However, at the October 6, 2003 sentencing hearing, Judge Lynch indicated that he was not bound by Respondent's consideration to place Defendant Busch in Family Drug Court, at which point Defendant Busch requested to withdraw her pleas of "no contest" to all charges, since she held the belief that she was to be

sentenced to Family Drug Court, thereby avoiding incarceration.

9. Judge Lynch indicated that he was not inclined to allow Defendant Busch to withdraw her plea since there was no official court record memorializing any agreement on sentencing associated with her no-contest plea.

10. Nevertheless, Judge Lynch continued the sentencing hearing until October 31, 2003, in order to allow Defendant Busch to file any motions she believed were necessary to support of her position that she should be sentenced to Family Drug Court.

11. On or about October 31, 2003, Defendant Busch's sentencing hearing resumed. At that hearing, Defendant Busch renewed her argument that Respondent had already sentenced her on May 12, 2003 to Family Drug Court, that Respondent had improperly recused himself from her case, and that her case was not properly assigned to Judge Lynch for sentencing purposes.

12. For procedural reasons Judge Lynch recused himself from the Busch case on or about November 5, 2003, and issued an order expressing concern that "Ms. Busch seemed unusually well-informed about matters outside the record in [her] case." Specifically, Judge Lynch noted that:

Defendant Busch informed me that Judge McBee received a telephone call from Chief Justice Maes on July 31, 2003, and related details from that conversation. Defendant Busch told me that, if I recuse, Judge McBee will enter an order that will withdraw the recusal he filed as being improvidently ordered. Defendant Busch further told me that Judge McBee does not think he should have recused from this case. Perhaps there was no *ex parte* contact because the case was no longer pending before Judge McBee, or perhaps Judge McBee thought no party would gain a procedural or tactical advantage as a result of the communications. Because Assistant

District Attorney Terry Haake told me that he was not privy to those conversations, the conversations raise questions [of propriety] in my mind.

13. Subsequently, and consistent with Defendant Busch's prior statements to Judge Lynch, and in contravention to the agreement Respondent reached with Chief Judge Jay Forbes, on or about November 17, 2003 Respondent revoked his recusal from the Busch matter, and accepted jurisdiction over sentencing, despite having acknowledged that his participation in the Busch case at a minimum gave the appearance of impropriety. The District Attorney's office did not oppose Respondent's revocation of recusal and acceptance of jurisdiction over the Busch case.

14. Respondent then reset Defendant Busch's sentencing hearing for February 2, 2004, at which time Respondent deferred Defendant Busch's sentence for five years, ordered that Defendant Busch be placed on two years supervised probation, and that she enroll in Lea County Family Drug Court with the last three years of her deferral to be on unsupervised probation.

15. Respondent admitted herein that his revocation of recusal and acceptance of jurisdiction in the Busch matter gave, at a minimum, the appearance to a reasonable person that his integrity and impartiality was impaired.

16. Respondent stipulated to, and agreed that, the Commission had sufficient evidence to prove the facts as enumerated in the above paragraphs by the standard of clear and convincing evidence.

17. Respondent agreed and stipulated that the conduct set forth in the above paragraphs violates Canons 21-100 NMRA 1995; 21-200(A) and 21-200(B) NMRA 1991; 21-300(B)(7), 21-300(B)(8), 21-300(C)(1), NMRA 1995; and 21-400(A)(1) NMRA 1991 of the Code of Judicial Conduct and constitutes willful misconduct in office.

This case was ongoing at the end FY 2005. Subsequent events will be reported in the Commission's Annual Report for FY 2006.



INFORMAL PROCEEDINGS

PRIVATE LETTERS OF CAUTION. The Commission may dispose of a matter by privately cautioning the judge that his/her conduct may violate the standards of judicial conduct. In FY 2005, the Commission issued 11 private cautionary letters to judges addressing the issues listed below.

1. A judge allegedly failed to ensure that a criminal case was set for trial or tried within the six-month rule. The Commission cautioned the judge to abide by the applicable six-month rule and ensure that all criminal cases on the judge's docket are timely set for trial.

2. A judge allegedly used a court computer to access sexually explicit e-mails from the judge's personal e-mail account. The judge allegedly had previously been confronted about the improper e-mails, but continued to download personal e-mail that included sexually explicit content on the court computer. The judge also allegedly saved some of the e-mail on the court computer. The Commission cautioned the judge to not use the court's computers, networks, or other information technology to view, download, or otherwise access e-mail or internet web sites that contain sexually-explicit, adult-oriented content and to abide by the applicable internet, e-mail, and computer policies.

3. A judge allegedly used language in a campaign advertisement that could be construed as false or misleading. The ad called for the judge's re-election to judicial office, but the judge had been appointed and had not previously been elected to judicial office. The Commission cautioned the judge to not use language that could be construed as false or misleading in any

type of campaign advertisement or literature and to authorize all campaign materials and advertisements prior to publication and dissemination.

4. In a prior year, a judge was charged with, pleaded no contest to, and was convicted of unlawful procurement of an additional deer hunting license (a misdemeanor). The Commission cautioned the judge to respect and comply with the law at all times, including hunting and fishing laws and regulations.

5. A judge gave an in-chambers news interview wearing the judge's judicial robe regarding a driver improvement course concerning aggressive drivers. In the interview, the judge improperly announced a set sentencing policy for traffic cases involving repeat aggressive driving related violations. The judge stated that after being sentenced to the aggressive driving course, subsequent offenders will be sentenced to jail time. The judge specifically said, "It's a one time deal. Go one time. If you go and complete it, great. Hopefully this is not going to happen to you again because if it does, I'm not going to deal with you next time. I'm just going to put you in jail."

The Commission cautioned the judge to (1) not announce set sentencing policies for cases that come before the judge, (2) ensure that all parties appearing before the judge are afforded with constitutional due process, (3) not compromise the independence and impartiality of the court, (4) not make public comment on pending or impending cases, and (5) with respect to cases, controversies, or issues that are likely to come before the court, do not make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

6. A judge adjudicated a DWI case where the defendant allegedly worked at the judge's primary place of employment. The defendant allegedly failed to comply with the sentence, and over a period of time, multiple bench warrants were issued, but the judge failed to sign the warrants

and the defendant failed to complete the sentence and assessment requirements. The Commission cautioned the judge to (1) take all steps necessary to fulfill judicial obligations to ensure that defendants and litigants timely comply with the judge's orders, and (2) promptly address all failures to comply with judicial orders.

7. A judge allegedly changed the disposition on a traffic case that came before the judge in a bench trial after the judge had found the defendant guilty and imposed a fine and court costs. The judge changed the case disposition without conducting a hearing regarding the modification of sentence and without providing notice of the changed ruling to all parties. The Commission cautioned the judge to comply with the applicable procedural rule regarding modification of sentences.

8. A judge allegedly dined with attorneys and business individuals who regularly appeared before the judge. The Commission cautioned the judge to avoid the appearance of impropriety.

9. During the adjudication of a residential property eviction case, a judge allegedly told the defendant in open court that if "the mobile home park in question were my property, I would have burned down [the defendant's] mobile home." The Commission cautioned the judge to use caution when making statements from the bench that would give the appearance of impropriety, partiality, or bias.

10. A judge allegedly met *ex parte* in chambers with a defendant's counselors, probation officer, the alleged victim, and other unknown individuals. The defendant was participating in an alternative sentencing program for domestic violence offenders (pursuant to the order of another judge to whom the case was assigned). During the meeting, the judge allegedly allowed or engaged in *ex parte* communications with the alleged victim. After the judge allegedly determined that the defendant had violated the terms of the program, the judge allegedly did not refer the case back to the assigned judge for sentencing, but instead summarily sentenced the

defendant (who was not present) to 364 days in jail.

The Commission cautioned the judge to (1) not permit or engage in any prohibited *ex parte* communications, (2) review and adhere to Canon 21-400 (Disqualification) of the Code of Judicial Conduct, and (3) unless there is specific legal or procedural basis, do not intervene, take substantive action, or otherwise interject into any case that is assigned to another judge unless there is a recusal or disqualification order on file and the case in question has been appropriately re-assigned to the judge.

11. A judge allegedly questioned a male *pro se* litigant in open court as to why he was not wearing a coat and tie. The applicable rule of the court does not require *pro se* litigants to wear such attire. The Commission cautioned the judge to review and adhere to the applicable attire rule, to review the comments in question from a transcript of the proceeding, and to not demean or unfairly criticize anyone appearing before the judge.

INFORMAL MENTORSHIPS. The Commission may elect to refer judges to a confidential informal mentor program. In the program, the Commission selects an experienced judge who is asked to structure an informal program to meet with the subject judge, address the Commission's issues of concern, and provide the judge being mentored with any needed help and advice. Participation in the mentor program is voluntary.

In FY 2005, 1 judge completed the informal mentor program. The issues addressed in the case referred are listed below.

1. A judge allegedly displayed improper judicial temperament and demeanor with the court's bailiff, detention center staff, litigants, defendants, and the public.



PROCEEDINGS BEFORE THE NEW MEXICO SUPREME COURT SINCE FY 2000



CASES FILED IN THE SUPREME COURT

Following is a summary of cases Commission filed with and disposed by the New Mexico Supreme Court since FY 2000. Cases are listed in sequential order of filing.

Matter of Hon. John W. "Buddy" Sanchez, Valencia County Magistrate Judge, JSC Inquiry No. 99-16, Supreme Court Docket No. 25,821 (N.M. 1999). Allegations included agreeing to submit an Abstract of Record to the Motor Vehicle Division reporting the disposition of a DWI case differently from actual disposition; withholding a DWI abstract from MVD; and failing to impose the mandatory minimum sentence in a DWI case. Judge publicly censured, suspended two weeks without pay, ordered to participate in mentor program, placed on six-month unsupervised probation, and ordered to pay Commission's costs.

Matter of Hon. Toribio L. (Tody) Perea, Valencia County Magistrate Judge, JSC Inquiry Nos. 98-65 & 99-06, Supreme Court Docket No. 25,822 (N.M. 1999). Allegations included delaying the signing and filing of judgment and sentence orders in three DWI cases (including one where defendant was a municipal judge); failing to impose mandatory minimum sentences in two DWI cases; failing to submit Abstracts of Record to MVD within the time required by law in three DWI cases, and one careless driving case (in which defendant was a district judge); and having *ex parte* communications pertaining to the disposition of DWI case. Judge publicly censured, suspended two weeks without pay, placed on six-month unsupervised probation, and ordered to pay Commission's costs.

Matter of Hon. Angie Vigil-Perez, Santa Fe County Magistrate Judge, JSC Inquiry Nos. 99-15 & 99-70, Supreme Court Docket No. 26,028 (N.M. 2000). Allegations included 121 initial counts summarized as follows: presiding over and improperly dismissing nephew's case; failing to recuse from a DWI case for a political/personal friend and failing to adjudicate matter prior to the expiration of the six-month rule; dismissing case previously adjudicated by another judge and improperly amending or instructing staff to amend Abstracts of Record for submission to the MVD; frequently discussing or boasting about drinking alcoholic beverages, getting drunk, nightclubbing, partying, or being hung over with court staff, within hearing of the public; having odor of liquor on breath at court; leaving court training conference with another magistrate, drinking liquor, and returning to conference while appearing intoxicated and while having the odor of liquor on breath; asking clerk for condoms in front of court staff and the public; using profanity and foul language in front of court staff and the public; making racist or ethnically biased comments about court employees; failing to adjudicate at least 27 criminal cases prior to expiration of six-month rule, including six aggravated DWI cases, two DWI cases, three battery/domestic violence cases, one drug offense, and others; improperly dismissing at least 44 criminal cases, including one DWI case, one battery/domestic violence case, one drug offense, one minor in possession of alcohol case, and others; dismissing at least 20 criminal cases assigned to other judges; holding or being in possession of at least two criminal cases not assigned to her, which caused/led to dismissal on expiration of six-month rule; failing to hold office hours a minimum of 40 hours per

week; failing to perform adjudicate matters promptly and efficiently, causing excessively high number of dismissals on six-month rule; excessively recusing from cases to reduce her civil caseload; improper demeanor with at least one defendant; improper demeanor with at least two law enforcement officers; countermanding the request or order of presiding judge; exhibiting pattern of improper demeanor with or concerning presiding judge, including criticizing, ridiculing, profaning, name-calling, and commenting in front of other judge(s), court staff, defendant(s), and the public; exhibiting pattern of improper demeanor with or concerning numerous court staff, including mistreating, criticizing, publicly reprimanding, yelling, demeaning, ridiculing, picking on, using sarcasm, embarrassing, threatening, or gossiping in presence of other staff and public. Judge temporarily suspended without pay pending completion of Commission's proceedings. Judge resigned prior to completion of proceedings before Commission. Commission abated proceedings and filed Motion to Dismiss without Prejudice, indicating intent to resume proceedings if judge ever regained a judicial position in the future. Supreme Court dismissed cause without prejudice.

Matter of Hon. Beatrice R. Vigil, Taos County Probate Judge, JSC Inquiry No. 99-04, Supreme Court Docket No. 26,328 (N.M. 2000). Allegations included failing to timely file gross receipts tax reports, to timely pay gross receipts taxes, to timely file personal income tax returns, to timely pay income tax due, using court facilities for private business activities, failing to timely pay private business photocopy charges to County, and failing to cooperate with Commission. Judge suspended two weeks without pay, publicly reprimanded, and placed on six-month supervised probation. Judge ordered to pay outstanding tax liabilities to State, to pay outstanding photocopy bill liabilities to county, and to cease all non-judicial use of court facilities and equipment. Judge failed to comply with Supreme Court order. On show cause order, Court ordered judge's supervised probation would continue until May 31, 2001 on

specific terms and conditions. Judge again failed to comply with Supreme Court's order and second order to show cause issued. Judge resigned from judicial office two days before Supreme Court hearing.

Matter of Hon. John W. "Buddy" Sanchez, Valencia County Magistrate Judge, JSC Inquiry No. 2000-32, Supreme Court Docket No. 25,821 (N.M. 2001). Original allegations included asking and/or pressuring a State Police officer to not prosecute or arrest a close friend for aggravated DWI; releasing friend from jail to judge's custody and taking friend to judge's home; having odor of alcohol on breath while at jail releasing friend; attempting to interfere in an ongoing police investigation; and retaliating against a State Police lieutenant for filing complaint with Commission regarding matter. Supreme Court rejected petition for judge's temporary suspension. On plea and stipulation with Commission, judge admitted involving himself in friend's pending criminal case (including (1) speaking with the arresting State Police officer by cellular telephone during the traffic stop/arrest; (2) personally going to detention center and ordering his friend's release, and taking friend to judge's home; (3) asking nurse to draw independent blood sample from friend; and (4) having an alcoholic drink before going to the jail to release friend). Judge publicly reprimanded and ordered to participate in mentorship.

Matter of Hon. Archie A. Valdez, Colfax County Magistrate Judge, JSC Inquiry No. 2000-42, Supreme Court Docket No. 26,551 (N.M. 2001). Allegations included grand jury indictment for thirteen criminal counts, including six counts of battery, two counts of criminal sexual contact, one count of stalking, two counts of demanding or receiving bribe, and two counts of criminal solicitation to commit felony. Acts alleged to have occurred in judge's chambers with female litigants, defendants, or family members or friends of litigants/defendants. On stipulation, judge temporarily suspended. On subsequent plea

agreement, judge permanently resigned from judicial office.

Matter of Hon. Frederick Arnold, Portales Municipal Judge, JSC Inquiry No. 99-101, Supreme Court Docket No. 26,645 (N.M. 2001). Allegations included having *ex parte* communications with police officers concerning defendants' out-of-court demeanor, attitude or behavior with officers. Communications included officers' drawing "smiling" and "frowning" faces on traffic citations. Judge publicly reprimanded and ordered to participate in mentorship program.

Matter of Hon. Beatrice R. Vigil, Taos County Probate Judge, JSC Inquiry No. 2000-53, Supreme Court Docket No. 26,328 (N.M. 2001). Allegations included intentionally issuing three worthless checks. Judge publicly reprimanded and ordered to continue supervised probation that was previously ordered in Inquiry No. 99-04. Prior to completing supervised probation period, judge resigned from judicial office.

Matter of Hon. Barbara A. Brown, Bernalillo County Metropolitan Judge, JSC Inquiry Nos. 2001-88, 2001-93 & 2001-95, Supreme Court Docket No. 27,250 (N.M. 2002). Allegations included criminal charges for disorderly conduct, propulsion of missiles, assault, and use of telephone to terrify, intimidate, threaten, harass, annoy or offend; using prestige of judicial office to advance private interests; publicly commenting on and criticizing police department's "Party Patrol" unit and citations; threatening and abusing court staff, and encouraging, promoting, or otherwise enabling friend to threaten or intimidate court staff with physical violence; conveying or allowing friend to convey impressions that friend is in special position to influence judge and that friend benefits from power and prestige of judge's office; allowing friend to use judge's home and cellular telephones to make harassing telephone calls, and during one call, judge identifying herself as "Judge Barbara Brown" and attempting to speak to victim of call; acting as an arbitrator or mediator in private capacity and engaging in

practice of law; using prestige of judicial office to advance friend's private interests in domestic violence matter and conveying or allowing friend to convey impression that friend is in special position to influence the judge or another judge. Judge immediately suspended with pay. At subsequent hearing, temporary suspension continued with 90 days pay and thereafter without pay. During formal proceedings, Judge stipulated to permanent resignation from judicial office. Judge resigned.

Matter of Hon. Thomas G. Cornish, Dona Ana County District Judge, JSC Inquiry No. 2001-96, Supreme Court Docket No. 27,253 (N.M. 2002). Allegations included conviction for DWI and driving with no headlamps. Upon stipulation, judge summarily and temporarily suspended with pay not to exceed 90 days, and thereafter without pay. Upon further stipulation, judge publicly reprimanded and ordered to complete alcohol counseling and in-patient alcohol rehabilitation program. Supreme Court ordered judge to remain suspended from judicial office without pay. On stipulation, judge permanently resigned.

Matter of Hon. William A. Vincent, Jr., San Juan County Magistrate Judge, JSC Inquiry Nos. 2001-30, 2001-31, 2001-32, 2001-34, 2001-35 & 2001-36, Supreme Court Docket No. 27,266 (N.M. 2002). Allegations included making age and gender biased references to female attorneys; threatening public defender's office and its employees; abusing judicial process, failing to recuse, and exhibiting bias or prejudice during arraignment; after recusing from case, physically and verbally interjecting himself into hearing and testifying against defense motion; telephoning legislators while on bench to support or oppose pending legislation and discussing political views on various subjects; referring to female judge (a colleague) in derogatory, gender-biased manner; criticizing female attorney from public defender's office concerning nature of employment and inappropriately comparing her to other attorney; illegally and verbally modifying *ex parte* a judgment and other order after defense filed notice of appeal from ruling. Judge publicly reprimanded, ordered to participate in

mentorship program, and ordered to attend (at own expense) a national judicial education course in building a bias-free environment in court.

Matter of Hon. Charles Maestas, Espanola Municipal Judge, JSC Inquiry No. 2001-09, Supreme Court Docket No. 27,348 (N.M. 2002). Allegations included soliciting favored treatment from police officers for judge's friend. On stipulation, judge suspended two days without pay, publicly reprimanded, and ordered to attend (at own expense) a national judicial ethics course. Supreme Court took final disposition under advisement pending completion of criminal prosecution and Commission proceedings on another matter (Inquiry No. 2002-40 reported below). After conviction and upon incarceration, judge resigned.

Matter of Hon. George A. Harrison, San Juan County District Judge, JSC Inquiry Nos. 2000-39, 2001-48, 2001-53, 2001-55, 2001-58 & 2001-74, Supreme Court Docket No. 27,380 (N.M. 2002). Allegations included asking municipal judge and police chief to dismiss friend's Aggravated DWI case; interfering in criminal investigation and ordering police to perform blood alcohol testing on friend after friend had refused; calling detention center and ordering friend's release on own recognizance when not assigned or designated to preside over case; having improper financial relationship with attorney who regularly appears before judge's court; drinking alcohol with criminal defendant scheduled to be sentenced by judge on next day; taking plea in chambers after consuming alcoholic beverages while playing golf; and attempting to coerce detention center personnel to release friend partially on bail and partially on own recognizance when friend's case was not assigned to judge's court. Supreme Court denied Commission's petition to temporarily suspend judge. During formal proceedings, judge stipulated to permanent resignation from judicial office. Judge resigned.

Matter of Hon. Anthony Fuller, Bosque Farms Municipal Judge, JSC Inquiry No. 2002-07, Supreme Court Docket No. 27,431 (N.M. 2002).

Allegations included failing to perform judicial duties for several months while accepting judicial salary. Temporarily suspended without pay. Judge resigned.

Matter of Hon. Rhoda A. Hunt, McKinley County Magistrate Judge, JSC Inquiry Nos. 2002-24 & 2002-32, Supreme Court Docket No. 27,525 (N.M. 2002). Allegations included criminal charges for making false public records and fraud, and non-criminal allegation of ignoring or concealing a notice of dismissal in traffic case. Supreme Court denied Commission's temporary suspension petition. At preliminary hearing on criminal charges, trial court determined charges not supported and dismissed them. Following dismissal of criminal charges, Commission dismissed all allegations of inquiry and closed matter.

Matter of Hon. Charles E. Maestas, Espanola Municipal Judge, JSC Inquiry No. 2002-40, Supreme Court Docket No. 27,348 (N.M. 2002). Allegations included grand jury indictment and prosecution for eight counts of criminal sexual penetration, two counts of criminal sexual contact, nine counts of extortion, eight counts of official acts prohibited, and one count of stalking. Allegations concerned judge promising or exchanging leniency for sexual favors from defendants. On stipulation, judge temporarily suspended. Supreme Court ordered the suspension with 90 days pay, and thereafter no pay. Judge convicted of five felony counts of Official Acts Prohibited and five felony counts of Criminal Sexual Penetration. Judge resigned while incarcerated.

Matter of Hon. Edward L. Brown, Cimarron Municipal Judge, JSC Inquiry No. 2002-21, Supreme Court Docket No. 27,577 (N.M. 2002). Allegations included making false and misleading statements regarding educational background, military experience, and work history during campaign for judicial office. Temporary suspension petition filed. On stipulation, judge permanently resigned.

Matter of Hon. Frances Gallegos, Santa Fe Municipal Judge, JSC Inquiry No. 2002-80, Supreme Court Docket No. 27,906 (N.M. 2003); JSC Inquiry No. 2002-80. Allegations included failing to reside within city limit (a qualification to hold the judicial office). On stipulation, publicly reprimanded, ordered to reimburse complainant for private investigator fees, and ordered to reside within city limits while holding office as Municipal Judge. See also JSC Inquiry Nos. 2003-58, 2003-89 & 2003-108 below for related information.

Matter of Hon. Susana Chaparro, Dona Ana County Magistrate Judge, JSC Inquiry Nos. 2002-26 & 2002-43, Supreme Court Docket No. 27,923 (N.M. 2003). Allegations included becoming embroiled in controversy with court interpreters; failing to be patient, dignified, and courteous with interpreters, another judge, and the court clerk; issuing warrant and having interpreter arrested on contempt charge relating to interpreting services; and having *ex parte* communication with judge who was presiding over respondent's pending writ case. On stipulation, publicly reprimanded, ordered to participate in mentorship program, and ordered to attend (at own expense) a national judicial ethics course. Supreme Court has taken final disposition of this matter under advisement. See also JSC Inquiry No. 2003-82 below for related information.

Matter of Hon. Rudy C. Montoya, Mora County Magistrate Judge, JSC Inquiry Nos. 2002-62, 2002-76, 2002-83, 2003-11 & 2003-81, Supreme Court Docket No. 27,988 (N.M. 2003). Allegations included adjudicating cases for close family and friends, releasing two criminal defendants without bond in contravention to terms of and without amending conditions of prior release order, and lying to rape victim about fact and terms of defendants' release. On preliminary stipulation, temporarily suspended with 90 days pay, and thereafter with no pay. Judge ultimately stipulated to resign permanently from judicial office.

Matter of Hon. David J. Ramos, Jr., Hurley Municipal Judge, JSC Inquiry No. 2003-76, Supreme Court Docket No. 28,327 (N.M. 2004). Allegations included arrest on charge of DWI. On stipulation, temporarily suspended with 90 days pay, thereafter without pay. Judge pleaded guilty and was convicted of DWI First Offense. Resigned from judicial office.

Matter of Hon. William A. Vincent, Jr., San Juan County Magistrate Judge, JSC Inquiry No. 2003-99, Supreme Court Docket No. 27,266 (N.M. 2004). Allegations included display of inappropriate behavior after declaring mistrial and recusing from domestic violence case; offensive and inappropriate statements; yelling at, berating, confronting, threatening, and challenging the defendant to fight; and challenging defense counsel to report to the Commission, which he referred to as "pussies." Supreme Court denied Commission's petition for temporary suspension. On stipulation, judge ordered to undergo psychological evaluation/fitness for duty evaluation and anger management counseling; received public censure, and shall complete six-month supervised probation.

Matter of Hon. Ruben Galvan, Dona Ana County Magistrate Judge, JSC Inquiry No. 2003-48, Supreme Court Docket No. 28,609 (N.M. 2004). Allegations included engaging in a clandestine relationship with prosecutor and failing to recuse from cases where she appeared before him; and improper demeanor with prosecutor after their clandestine relationship ended. Judge disciplined (30-day suspension without pay and in-person formal reprimand. Imposition of suspension was suspended on conditions: (1) that judge complete six months of supervised probation and (2) that his salary would be summarily suspended if the Commission initiated formal proceedings against him in any other matter. Formal proceedings were later initiated in Inquiry No. 2004-99, which concerned criminal investigation, indictment, and proceedings on allegations of felony criminal sexual penetration and solicitation of bribery. Upon notice and motion

by the Commission, Supreme Court summarily suspended judge's salary until criminal matters and Commission proceedings in Inquiry No. 2004-99 terminated. Judge resigned during period of temporary suspension.

Matter of Hon. Jesus Gonzales, Taos County Probate Judge, JSC Inquiry No. 2004-53, Supreme Court Docket No. 28,658 (N.M. 2004). Allegations included court determination that judge was legally incompetent to stand trial on criminal charges arising from a motorcycle crash allegedly caused while judge was driving while intoxicated. Commission petitioned for immediate temporary suspension based on questions of mental incompetency. Judge stipulated to temporary suspension, but resigned from judicial office prior to Supreme Court ruling on petition and stipulation.

Matter of Hon. W. John Brennan, Second Judicial District Court Judge, JSC Inquiry No. 2004-60, Supreme Court Docket No. 28,713 (N.M. 2004). Allegations included arrest on charges of felony possession of a controlled substance (cocaine) and tampering with evidence. Commission petitioned for temporary suspension. Supreme Court issued show cause order and scheduled hearing. Judge retired from judicial office prior to hearing and Supreme Court dismissed Commission petition as moot. Retired judge was subsequently charged with aggravated DWI, pleaded guilty to aggravated DWI and possession of cocaine, and sentenced on aggravated DWI charge to 90 days incarceration (88 days suspended and 2 days electronic monitoring) and 364 days of probation. Drug possession charge conditionally discharged pending successful completion of sentencing conditions.

Matter of Hon. Melissa Miller-Byrnes, Las Cruces Municipal Judge, JSC Inquiry No. 2003-92, Supreme Court Docket No. 28,716 (N.M. 2004). Allegations included making false or misleading statements during radio broadcast debate that no judicial disciplinary complaints had been filed against her with Judicial Standards

Commission. On stipulation, Supreme Court formally reprimanded judge.

Matter of Hon. Ruben Galvan, Dona Ana County Magistrate Judge, JSC Inquiry No. 2004-99, Supreme Court Docket No. 28,609 (N.M. 2004). Allegations included criminal investigation (and subsequent grand jury indictment) for felony criminal sexual penetration and solicitation of bribery. Temporarily suspended with pay until formal charges issued and until Commission's proceedings completed. Formal charges issued and salary suspended. Judge resigned while on period of temporary suspension.

Matter of Hon. Frank W. Gentry, Bernalillo County Metropolitan Court Judge, JSC Inquiry No. 2004-46, Supreme Court Docket No. 28,986 (N.M. 2005). Allegations included use of judicial position to advance private interests; *ex parte* communication; and involvement, interference, and attempt to influence child placement in nephew's domestic relations case. Judge received one-week suspension without pay (deferred on completion of six months unsupervised probation and no other formal proceedings initiated against him) and formal reprimand.

Matter of Hon. James D. Atcitty, San Juan County Magistrate Judge, JSC Inquiry Nos. 2003-35, 2003-38 & 2003-57, Supreme Court Docket No. 29,076 (N.M. 2005). Allegations included inability to conduct fair hearings because of profound hearing loss in both ears and profound impairment of speech determination; and failing to follow substantive and procedural law while presiding over cases. Commission ordered independent medical examination, which concluded that judge is temporarily unfit to continue working as a Magistrate. Commission petitioned for judge's temporary suspension. Supreme Court denied petition on following conditions: (1) take paid medical leave as soon as practicable for up to 90 days to remedy medical condition, (2) report to AOC Magistrate Division and Commission concerning remediation and ability to return to job, and (3) if judge does not seek appropriate medical remediation in a timely

manner, or if medical treatment should prove unsuccessful, Commission may re-file for appropriate relief. Respondent did not begin his Court-ordered medical leave until June 20, 2005. Case pending.

Matter of Hon. Thomas G. Fitch, Seventh Judicial District Court Judge, JSC Inquiry Nos. 2005-010 & 2005-015, Supreme Court Docket No. 29,082 (N.M. 2005). Allegations included that while on official court business, while acting as Chief Judge for his District Court, and while driving a State vehicle en route to Santa Fe to testify at legislative budget hearings, Respondent arrested and charged with aggravated DWI (first offense), careless driving, and open container. After trial (on stipulated factual findings and legal conclusions), Commission found willful misconduct and recommended permanent removal and costs. Upon further stipulation, judge permanently resigned and ordered to pay Commission costs.

Matter of Hon. Larry E. Wood, Eddy County Magistrate Court Judge, JSC Inquiry Nos. 2003-73 & 2003-95, Supreme Court Docket No. 29,085 (N.M. 2005). Allegations included knowingly failing to follow and/or apply the law when incarcerating citizens for failure to pay fines. Judge only credited inmates with \$5.00 per day of time served toward payment of fines and fees, rather than the greater amount required by statute. Supreme Court rejected initial stipulation with judge, but approved second. Judge permanently resigned and received formal reprimand.

Matter of Hon. Frances Gallegos, Santa Fe Municipal Court Judge, JSC Inquiry Nos. 2003-58, 2003-89 & 2003-108, Supreme Court Docket No. 27,906 (N.M. 2005). Allegations included ordering defendants to attend a specific driving safety course, contrary to statute, for which the paid course instructor was the judge's court administrator; allowing court administrator (acting in court administrator's personal for-profit business interests) to use the property and facilities of the judge's court for the administrator's driving safety course; allowing

court administrator to teach driving safety courses for profit while administrator is employed by the court. Judge's acts occurred prior to and during time she negotiated stipulation agreement with Commission in Inquiry No. 2002-80 and when she became subject to Supreme Court's disciplinary order. Judge ceased and agreed to desist from newly stated conduct. Judge suspended 30 days without pay (deferred on conditions: formal mentorship in judicial ethics and court administration, and complete "Ethics for Judges" course at National Judicial College on own time and at own expense. Case was ongoing at end of FY 2005.

Matter of Hon. Susana Chaparro, Dona Ana County Magistrate Court Judge, JSC Inquiry No. 2003-82, Supreme Court Docket No. 27,923 (N.M. 2005). Allegations included improper involvement in and interference with adjudication of a matter involving her son (*State of New Mexico vs. Michael Benavidez*, Cause No. M-14-TR-200205837), and thereby giving the appearance that she was trying to influence the outcome of her son's case and compromising the integrity, independence and impartiality of the judiciary. After merits hearing, Commission found that Respondent's conduct constituted willful misconduct in office and recommended a sixty-day suspension deferred on the condition that Respondent successfully complete one year of supervised probation, a formal public reprimand by the Supreme Court and assessment of the Commission's costs. Supreme Court imposed greater discipline than recommended by Commission and suspended Respondent without pay for two weeks, along with a year of supervised probation, a formal reprimand, and assessed \$5,000 of costs against Respondent.

Matter of Hon. Tony F. Martinez (Retired), Rio Arriba County Magistrate Judge Pro Tem, JSC Inquiry No. 2004-127, Supreme Court Docket No. 29,180 (N.M. 2005). Allegations included permitting and engaging in *ex parte* communications with the defendant's mother; allowing defendant's mother to negotiate plea agreement; failing to notify defendant of court

hearings; failing to conduct arraignment; failing to advise defendant of constitutional rights; failing to appoint legal counsel for defendant; holding court proceedings in defendant's absence; and signing judgment and sentence order that falsely stated that the defendant appeared *pro se*, pleaded no contest/guilty, and was sentenced (when in fact defendant was incarcerated and did none of the foregoing). On stipulation, judge publicly reprimanded, ordered to pay \$500.00 fine, and permanently resigned from judicial office.

Matter of Hon. Javier Lozano, Columbus Municipal Court Judge, JSC Inquiry No. 2004-67, Supreme Court Docket No. 29,264, (N.M. 2005). Allegations included having business relationship concerning J-Loz Auction Service, which had contract with Village of Columbus to auction impounded vehicles for 17% commission fee; receiving compensation for work with J-Loz Auction Service paid from profits of the auctions; and having jurisdiction to order the forfeiture or release of the impounded vehicles. Case was ongoing at end of FY 2005.

In re Hon. William A. McBee, Fifth Judicial District Court Judge, JSC Inquiry No. 2004-11, Supreme Court Docket No. 29,265 (N.M. 2005). Allegations included failing to recuse from criminal case, *State v. Busch*, CR-2002-378, after personally and verbally acknowledging that he should recuse because he could not be impartial in the adjudication and because his impartiality had been compromised because of his personal relationship with the defendant's attorney, boyfriend, and husband. Case was pending before the New Mexico Supreme Court at end of FY 2005.



PUBLISHED OPINIONS OF THE NEW MEXICO SUPREME COURT

Following is a listing of all opinions the New Mexico Supreme Court and Court of Appeals have published in the *New Mexico Reports*

concerning judicial discipline, matters affecting the Commission, and references to the Commission.

Sangre de Cristo Development Corp., Inc. v. City of Santa Fe, 84 N.M. 343, 503 P.2d 323 (1972).

Cooper v. Albuquerque City Commission, 85 N.M. 786, 518 P.2d 275 (1974).

Matter of Martinez, 99 N.M. 198, 656 P.2d 861 (1982).

Matter of Romero, 100 N.M. 180, 668 P.2d 296 (1983).

Matter of Terry, 101 N.M. 360, 683 P.2d 42 (1984).

Matter of Lucero, 102 N.M. 745, 700 P.2d 648 (1985).

Inquiry Concerning Perea, 103 N.M. 617, 711 P.2d 894 (1986).

Matter of Rainaldi, 104 N.M. 762, 727 P.2d 70 (1986).

State ex rel. Rivera v. Conway, 106 N.M. 260, 741 P.2d 1381 (1987).

Matter of Atencio, 106 N.M. 334, 742 P.2d 1039 (1987).

Southwest Community Health Services v. Smith, 107 N.M. 196, 755 P.2d 40 (1988).

Matter of Garcia, 108 N.M. 411, 773 P.2d 356 (1989).

Matter of Castellano, 119 N.M. 140, 889 P.2d 175 (1995).

State ex rel. New Mexico Judicial Standards Com'n v. Espinosa, 2003-NMSC-017, 134 N.M. 59, 73 P.3d 197 (2003).



FY 2005 EXPENDITURES AND COST REIMBURSEMENT

As an independent agency of the State, the Commission is funded through general appropriation each year by the New Mexico Legislature. The Commission's appropriation is separate from the appropriations made to any other state agency or court. At the end of each fiscal year, any appropriations the Commission has not expended revert to the State's general fund. The state legislature appropriated \$428,400.00 for Commission operations in FY 2005. With support of Governor Bill Richardson, the New Mexico Supreme Court, and key state legislators, the Commission sought and successfully secured \$50,000.00 of that appropriation to cover salary and benefit expenses that were not included in the Commission's initial legislative appropriation. Even with these additional funds, the Commission still did not receive sufficient funding to carry out its statutory and constitutional mandate to investigate and prosecute allegations of judicial misconduct. Thus, the Commission sought a State Board of Finance grant to cover trial costs for FY 2005, as well as to fund an additional staff attorney for half of the fiscal year. The Commission did not receive the grant, but did receive a loan in the amount of \$100,952.00.

In FY 2005, the Commission's expenditures totaled \$515,810.65. The Commission was able to make a payment on the State Board of Finance loan in the amount of approximately \$6,100.00, and reverted to the general fund \$13,541.35. This reversion was due to an over-encumbrance in contractual services, and the late settlement of cases set for the June trailing docket. A summary categorization of the expenditures is provided below.

FY 2005 EXPENDITURES

DESCRIPTION	AMOUNT	PERCENTAGE
Employee Salaries	\$263,819.58	51.1%
Employee Benefits	\$ 92,059.46	17.9%
Employee Training & Licensing	\$ 2,935.60	0.6%
Commission Travel	\$ 12,312.92	2.4%
Investigation & Prosecution	\$ 48,699.83	9.4%
Contractual Services ¹¹	\$ 23,878.86	4.6%
Overhead & Rent	\$ 65,342.09	12.7%
Supplies & Postage	\$ 6,762.31	1.3%
Total	\$515,810.65	100%

¹¹ Contractual services costs are expenditures made in support of investigation and prosecution of Commission cases. However, these costs are budgeted, tracked, and managed as a separate line item. Thus, total investigation and prosecution costs represent 14% of total expenditures, not including staff salaries and benefits.

The Commission is authorized to seek imposition of fines and cost reimbursement from the Supreme Court. Historically, the Commission has not made these disciplinary recommendations to the Supreme Court, but began to do so in FY 2005. Since then, the Supreme Court has assessed fines and cost reimbursement in several cases that have gone before the Commission with a disciplinary recommendation to the Supreme Court.

Cost reimbursements are received and processed by Commission staff. Fines are received by Commission staff, and forwarded to the New Mexico Supreme Court Clerk for processing.

FY 2005 SUPREME COURT IMPOSED FINES AND COST REIMBURSEMENT

DESCRIPTION	FINE	COST REIMBURSEMENT
2005-010, Thomas G. Fitch		\$ 2,814.00
2004-127, Tony F. Martinez	\$ 500.00	
2003-082 ¹² , Susana Chaparro		5,000.00
Total	\$ 500.00	\$ 7,814.00

¹² Imposed during FY2005, but not collected until FY2006.

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