



NEW MEXICO

JUDICIAL STANDARDS COMMISSION

ANNUAL REPORT

Fiscal Year 2007





FY 2007 ANNUAL REPORT

JUDICIAL STANDARDS COMMISSION

CURRENT COMMISSION MEMBERS

DAVID S. SMOAK, Chairman
GLORIA TARADASH, PH.D., Vice-Chair
LARRY GARCIA
HON. BUDDY J. HALL
HON. JAMES A. HALL

ALBERT J. LAMA, ESQ.
HON. NAN G. NASH
HON. DAN SOSA, JR. (RETIRED)
BOB F. TURNER, ESQ.
WILLIAM R. VALENTINE, D.M.D.

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
Paralegal

DOUGLAS H. CARVER
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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:

The progress I have seen in the last three years is remarkable. The Commission itself has been diligent in making themselves available for meetings, trials, hearings, retreats and other activities to further our work and achieve the mission of maintaining the public's confidence in the State's judiciary. The Commission staff has been greatly strengthened, their abilities have improved and we have become a much more efficient organization.

The Judicial Standards Commission is but one piece of the mechanism in place to build and strengthen our judicial system. The Supreme Court, the Governor and the Judicial Performance Evaluation Commission have played active roles in this process. Judicial education continues to improve. I believe the results are that we have a stronger, better-qualified judiciary today than we did three years ago.

Our Commission is proud to have played a part in this and we hope to continue to improve and find innovative ways to improve and refine the processes to make it even better. We thank the Supreme Court, the Legislature and the Governor for their support and look forward to doing our part to continue the progress.

Yours truly,

A handwritten signature in black ink that reads "David S. Smoak".

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:

Fiscal year 2007 presented new and unique challenges to the Judicial Standards Commission. FY07 marked the first time the Commission ordered the drug testing of a sitting judge. The respondent judge challenged the Commission's order, but the Supreme Court upheld the Commission's authority to order drug testing, and found the respondent judge in contempt for, among other things, failing to comply with the Commission's order.

The Commission and Supreme Court also faced their first fitness-for-duty cases in FY07. One case involved an issue of physical impairment, while the other involved an issue of both physical and psychological impairment.

In addition to these unusual cases, the Commission broke new ground in its investigations. Working with the New Mexico Attorney General, Commission Examiners secured "use immunity" for criminal defendants to testify before the Commission in a matter relating to judicial misconduct. At the end of fiscal year 2007, this matter remained pending before the Commission.

The number of written verified complaints received by the Commission in FY07 dropped by 16%, from 130 in FY06 to 109 in FY07. Nevertheless, the Commission remained active, and reduced the number of cases carrying over into subsequent fiscal years by 43%, from 53 active cases going into FY07, to 29 active cases going into FY08. As a result, even though the Commission received 109 new cases in FY07, it resolved a total of 133 cases in FY07, thereby reducing the total carryover of cases by 24. Of those 133 cases resolved, 17% went through formal proceedings before the Commission, 9% were resolved informally, 4% were resolved through the judge's departure from office, and the remaining 70% were dismissed as frivolous, unsubstantiated, appellate, or outside the Commission's jurisdiction.

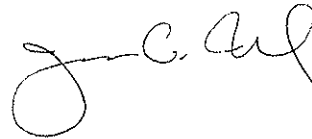
As was noted in the Commission's FY06 Annual Report, in January 2006 an individual who had filed a complaint against a judge with the Commission subsequently filed a federal lawsuit challenging the confidentiality provisions of the New Mexico Constitution (Art. VI, §32). The complainant/plaintiff in that federal case claimed his first amendment right to free speech was being violated by the state constitution and the Commission's rules because those confidentiality provisions, as he represented to the court, prevented him from publicly disclosing his complaint against the judge. In a *Memorandum Opinion and Order* issued by the court in January 2007, Hon. Judith Herrera concluded that the confidentiality provisions of Art VI, §32 of the New Mexico Constitution do not restrict the speech of third party complainants as alleged in the lawsuit, but those confidentiality provisions do actively

restrict disclosures by the Commission and its staff. At the end of FY07, this case remained pending before the federal district court of New Mexico.

The end of fiscal year 2007 also marked the end of terms with the Commission for Hon. Frank Wilson, Hon. Buddy Hall, and Mr. Paul Sena. The Supreme Court reappointed Hon. Buddy Hall to the Commission and appointed Hon. Nan Nash to fill the vacant position. Judge Wilson and Mr. Sena will be missed, but we take this opportunity to welcome Judge Nash to the Commission.

On behalf of the Commission and its staff, thank you for your support. We welcome your comments and suggestions.

With best regards,

A handwritten signature in black ink, appearing to read "J. C. Noel". The signature is fluid and cursive, with a large initial "J" and "C".

JAMES A. NOEL
Executive Director & General Counsel



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COMMISSIONERS & STAFF

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 are not paid a salary, but receive *per diem* and reimbursement for expenses as provided by law. Each year the Commissioners elect a Chair and Vice-Chair from the lay membership.

STATUTORY POSITION TERMS AS OF JUNE 30, 2007

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

<u>Position No.</u>	<u>Filled By</u>	<u>Appointed By</u>	<u>Statutory Term</u>
1	David S. Smoak (D)	Governor	7/1/04-6/30/09
2	William R. Valentine, D.M.D. (R)	Governor	7/1/05-6/30/10
3	Gloria Taradash, Ph.D. (D)	Governor	7/1/06-6/30/11
4	Paul F. Sena (D)	Governor	7/1/02-6/30/07
5	Hon. Dan Sosa, Jr. (Retired) (D)	Governor	7/1/03-6/30/08
6	Albert J. Lama, Esq.	Bar Commissioners	7/1/06-6/30/10
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	7/1/05-6/30/09
10	Larry Garcia (R)	Governor	7/1/04-6/30/09
11	Hon. Buddy J. Hall	Supreme Court	7/1/03-6/30/07

Pursuant to NMSA 1978, §34-10-1(A), no more than four of the six positions appointed by the Governor may be occupied by persons from the same political party. Party affiliations are noted above in parentheses for the gubernatorial appointees (positions 1-5 and 10).

COMMISSIONER BIOGRAPHIES



LARRY GARCIA was appointed to the Commission by Governor Bill Richardson in 2004. He is a New Mexico native and proprietor of Suits Unlimited, a full-line, men's clothing and specialty store in Albuquerque. 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 discharged honorably after 14 years of regular and reserve service. Mr. Garcia is a strong community and political activist. He served as chairman and treasurer for numerous city, county and state political campaigns. He has also served on a variety of boards, 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 and reappointed in 2007. 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 First Judicial 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.



ALBERT J. LAMA, ESQ. was appointed to the Commission by the State Bar Board of Bar Commissioners in 2006. He has been in government law practice for the past 19 years. Mr. Lama received his juris doctor degree from the Creighton University School of Law and his bachelor of arts degree in English from the University of Arizona. He began his public law career as staff counsel to the New Mexico Department of Public Safety. In December 1990, he began working as an Assistant Attorney General for New Mexico Attorney General Tom Udall. In 1999, he was appointed Civil Division Director by Attorney General Patricia Madrid. In 2004, Mr. Lama was appointed Chief Hearing

Officer for the New Mexico Taxation and Revenue Department. He returned to the New Mexico Attorney General's office in early 2007, and currently serves as Chief Deputy Attorney General for New Mexico Attorney General Gary K. King. Mr. Lama is a member of the State Bar of New Mexico, U.S. District Court for the District of New Mexico, and serves as immediate past president of the Public Law Section of the New Mexico State Bar. He is also a former U.S. delegate to South Korea and the Republic of Turkey for the American Council of Young Political Leaders. He currently serves as a board member for Southwest Care Center, a Santa Fe based non-profit organization that serves the medical needs of New Mexicans living with HIV/AIDS.



PAUL F. SENA was appointed to the Commission by Governor Bill Richardson in 2003. His term expired June 30, 2007. Mr. Sena earned a bachelor of business administration degree from Eastern New Mexico University. He 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. He has served as chairman of the Commission since 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. (RETIRED) 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 and reappointed in 2006. She was elected vice-chair of the Commission in August 2004. Dr. Taradash is an independent education consultant focusing on issues of giftedness and diversity. She 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. Since 2004, Dr. Taradash has served as past-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 State Bar 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 Judicial 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.

COMMISSION STAFF

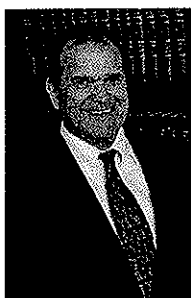
The Commission employs a full-time staff to conduct its day-to-day business, assist the public, investigate complaints, and handle administrative matters. The staff consists of the personnel pictured below.



From left to right: James A. Noel, Evonne Sanchez, Randall D. Roybal, Krista M. Gianes, Shariessa T. McCannon, Elizabeth A. Garcia, and Douglas H. Carver.

STAFF BIOGRAPHIES

EXECUTIVE DIRECTOR & GENERAL COUNSEL



JAMES A. NOEL, ESQ. joined the Judicial Standards Commission in January 2004 as Executive Director and General Counsel. Mr. Noel earned a bachelor of arts degree in political science and anthropology in 1985, and a masters degree in business administration in 1988 from Indiana University. Subsequently Mr. Noel held environmental management and engineering 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 doctorate degree in 2000 from the University of New Mexico. Prior to joining the Commission, Mr. Noel was in private practice handling complex litigation, personal injury and insurance bad faith cases. Mr. Noel has participated in or served on various legal, civic, and governmental organizations, including the Association of Judicial Disciplinary Counsel, Albuquerque Bar Association, New Mexico Trial Lawyers Association, Association of Trial Lawyers of America, Federalist Society, Judicial Selection Commissions for Metropolitan Court (2002 & 2003), New Mexico Legislature's Election Reform Task Forces (2004 & 2005), and Governor Bill Richardson's Ethics Reform Task Forces (2006 & 2007).

DEPUTY DIRECTOR & CHIEF STAFF ATTORNEY



RANDALL D. ROYBAL, ESQ. joined the Commission staff in 1998 and serves as Deputy Director and 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 practiced in the areas of civil litigation, administrative licensing prosecutions before various state boards and commissions, judicial writs defense, and complex prison reform litigation. Before entering public service, Mr. Roybal practiced law privately for five years, both as an associate of an insurance defense firm and as the principal of his own general practice firm. In 2007, Mr. Roybal was elected to a three-year term on the board of directors for the Association of Judicial Disciplinary Counsel, the national association of judicial disciplinary prosecutors and investigators. He has also participated in, or served on, other legal, civic and charitable organizations, including: American Constitution Society for Law and Policy, Albuquerque Bar Association, American Bar Association, Association of Trial Lawyers of America, New Mexico Trial Lawyers Association, New Mexico State Bar Committee on Women in the Profession, New Mexico State Bar Committee on Minorities in the Profession, New Mexico State Bar Young Lawyers Division AIDS Law Panel, New Mexico Domestic Violence Legal HELpline, and the board of directors of 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, current co-chair of the New Mexico State Bar Committee on Women and the Legal Profession, the New Mexico State Bar Pro Bono Subcommittee, New Mexico Hispanic Bar Association, New Mexico Women's Bar Association, Albuquerque Bar Association, EmergeNM, Washington and Lee NM Alumni Chapter-Board of Directors/Treasurer, and the University of New Mexico 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 the Albuquerque area coordinator for the division's continuing legal education programs and serves on the committee for statewide CLE programs. She is a native New Mexican and has legal assistant and paralegal experience spanning over 20 years. Prior to joining the Commission staff, the majority of Ms. Sanchez' legal work was performed as a 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.

PARALEGAL/FINANCIAL SPECIALIST



KRISTA M. GIANES joined the Commission staff in 2005 as Paralegal/Financial Specialist. She earned her paralegal certificate from the Albuquerque Technical Vocational Institute in 2006 and is an active member of the Paralegal Division of the State Bar of New Mexico. Ms. Gianes was appointed to sit on the Paralegal Advisory Committee for Central New Mexico Community College beginning November 2007. Prior to joining the Commission, she was employed for over three years at the Second Judicial District Court, Children's Court Division.

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 20 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 assisting in complex litigation, personal injury, and nursing home cases.

LAW CLERK



DOUGLAS H. CARVER joined the Judicial Standards Commission in the summer of 2005 as the Commission's first 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 is currently on a leave of absence. While in law school, Mr. Carver was active in many student organizations, including the Student Bar Association, Environmental Law Society, Native American Law Students Association, Mexican American Law Students Association, Phi Alpha Delta legal fraternity, and student member of the State Bar of New Mexico Young Lawyers Division.



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 of the Supreme Court and all other judges within the judicial branch, including the Court of Appeals, district courts, metropolitan court, magistrate courts, probate courts, and municipal courts. The Commission does not have jurisdiction over special commissioners, hearing officers, or administrative judges of another branch of government (*e.g.*, workers' compensation administration judges). 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

Anyone may file a complaint against a justice or judge using 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 that 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
Censure
Reprimand
Fine
Assessment of Costs
or
Any Combination of Above

**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

❧ PAST CHAIRS ❧

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



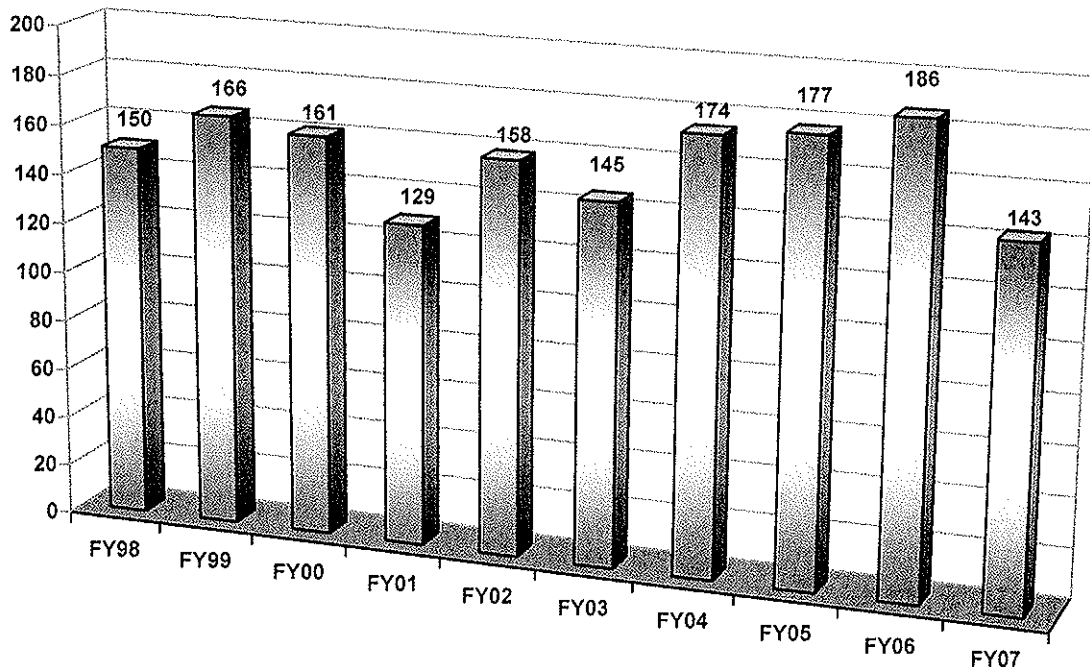
STATISTICS

JULY 1, 2006 TO JUNE 30, 2007

COMPLAINTS

In FY 2007, the Commission received 143 written complaints in the following categories: 109 verified complaints (includes Commission-initiated complaints) and 34 unverified complaints.

10-YEAR HISTORY OF WRITTEN COMPLAINTS

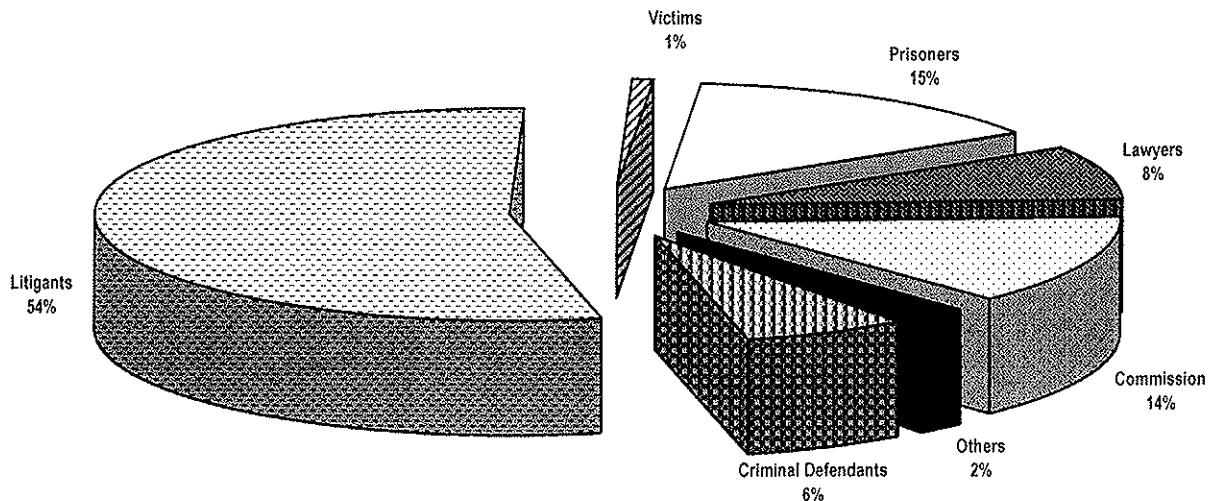


The Commission has an established pre-screening process for telephonic and in-person complaints. Staff members make every effort to discuss callers' situations in detail as appropriate. Staff informs callers about the limited scope of the Commission's jurisdiction under state law and spends substantial time assisting each person assess the merits of his or her allegations in light of the Commission's jurisdictional scope and to determine what results the callers desire. Complaint forms are mailed to all callers who request one. Since October 2001, complaint forms and detailed filing instructions have also been available to download from the Commission's web site.

SOURCES OF VERIFIED COMPLAINTS

Of the verified complaints filed with the Commission, most were filed by litigants followed by prisoners. The distribution of the sources of written, verified complaints was the following: 59 by litigants or litigants' family/friends, 7 by criminal defendants or criminal defendants' family/friends, 16 by prisoners, 9 by lawyers, 1 by victim(s) and/or victims' family/friends, and 2 by other(s). Additionally, 15 complaints were initiated by the Commission on its own motion. The chart below illustrates these figures.

COMPLAINT SOURCES



JUDGES REVIEWED PURSUANT TO VERIFIED COMPLAINTS

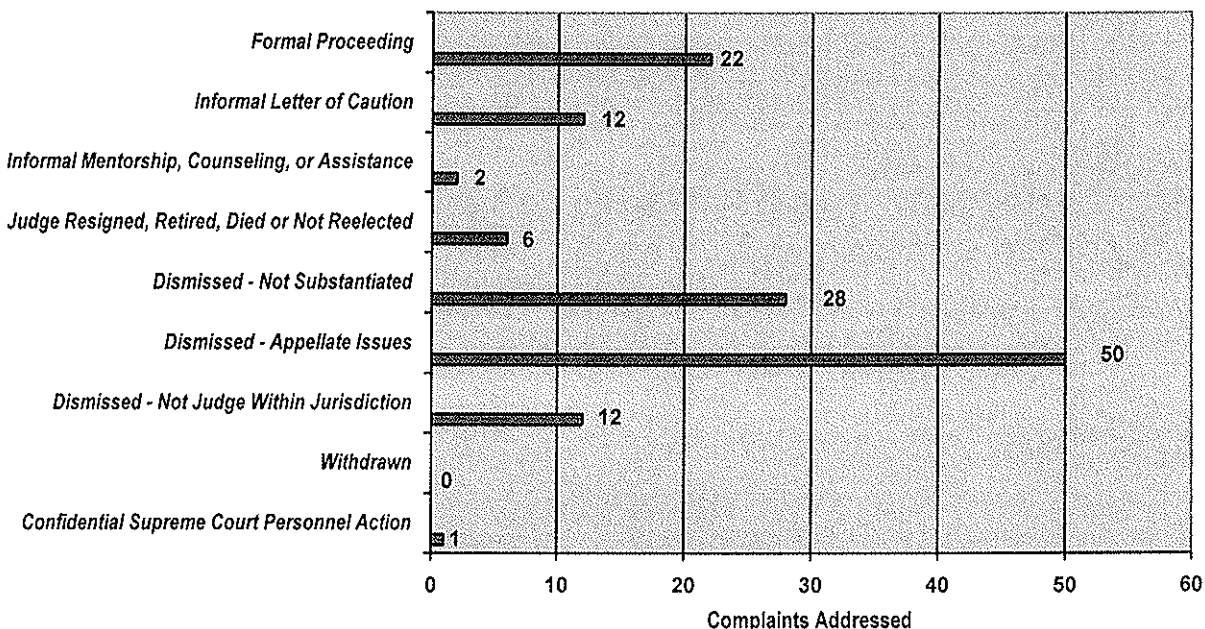
Judges in most levels of the judiciary were the subjects of written, verified complaints in FY 2007. Most complaints were filed against judges of the district courts (43%), followed by magistrate judges (28%), municipal judges (11%), metropolitan judges (6%), and Supreme Court Justices (5%). No complaints were filed against judges of the Court of Appeals or the probate courts. Complaints against individuals who are not within the scope of the Commission's jurisdiction accounted for 7% of the complaints (e.g., hearing officers, special commissioners, and court staff members).

JUDICIAL BRANCH	VERIFIED COMPLAINTS	CASELOAD %
<i>Supreme Court</i>	5	5%
<i>Court of Appeals</i>	0	0%
<i>District Court</i>	47	43%
<i>Metropolitan Court</i>	7	6%
<i>Magistrate Court</i>	30	28%
<i>Municipal Court</i>	12	11%
<i>Probate Court</i>	0	0%
<i>Other</i>	8	7%

CASE DISPOSITIONS

Inquiries Pending at Beginning of FY 2007 (July 1, 2006) ¹	53
New Written/Verified Complaints and Inquiries in FY 2007	109
Inquiries Concluded in FY 2007	133
Inquiries Pending at End of FY 2007 (June 30, 2007)	29

Of the 133 cases completed and disposed in FY 2007 the Commission concluded 22 cases through formal proceedings (trials and/or Supreme Court proceedings) and issued 12 informal letters of caution. The Commission dismissed or closed 50 cases because they were appellate in nature and 12 cases because outside the Commission's jurisdiction. The Commission dismissed 28 cases that were not substantiated after initial inquiry. 6 cases were closed because the subject judge resigned, died, or was not reelected. 2 judges were referred for informal remedial measures, which may have included mentorship, education, counseling, or other assistance. 1 judge received a confidential personnel action directly by the Supreme Court, which was reported to the Commission.



Of the 22 inquiries involving 11 judges in which the Commission conducted formal proceedings in FY 2007, 4 cases involved 2 district court judges, 0 cases involved metropolitan court judges, 13 cases involved 4 magistrate court judges, 5 cases involved 5 municipal judges, and 0 cases involved other judges (appellate or probate). 1 matter that proceeded to a formal hearing before the Commission resulted in the Commission finding no willful misconduct and dismissing the matter with prejudice.

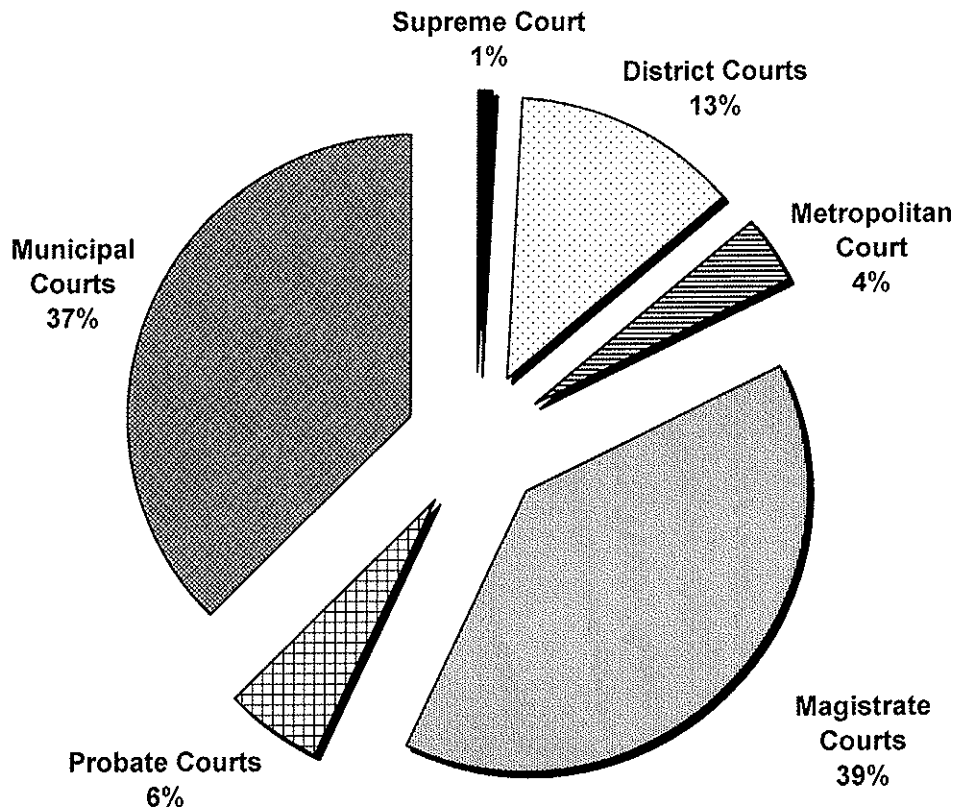
¹ Last year's annual report underreported the matters completed by one. The matter inadvertently omitted was completed in FY 2006 by issuing an informal letter of caution. The correct number of cases pending at the end of FY 2006 and, thus, pending at the beginning of FY 2007 was actually 53.

HISTORICAL SUMMARY OF CASES FILED IN SUPREME COURT

From 1968 through June 30, 2007, the Commission filed 107 petitions for discipline and/or temporary suspension in the New Mexico Supreme Court involving 78 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, 14 district courts, 4 metropolitan court, 42 magistrate courts, 40 municipal courts, and 6 probate courts. The chart on the following page illustrates the proportional distribution of these filings.

ALL SUPREME COURT FILINGS (1968 - PRESENT)

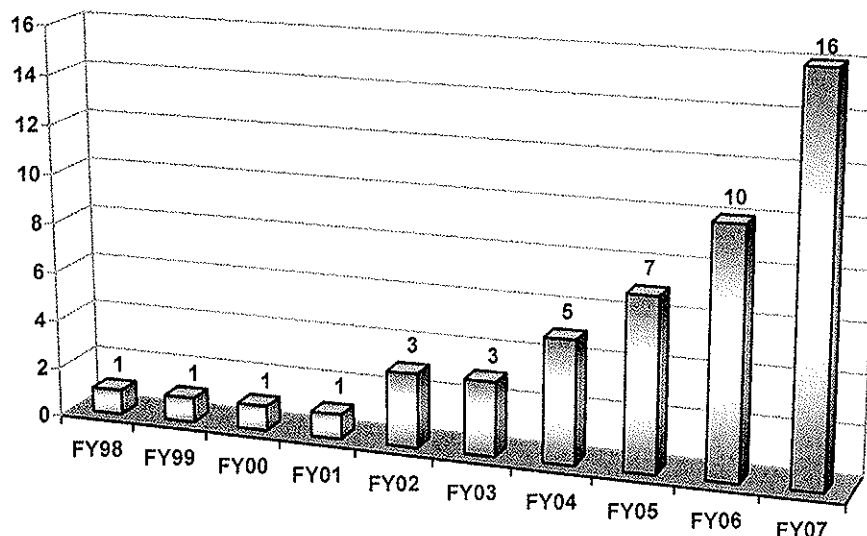


The table below indicates the levels of the judiciary and the corresponding geographical areas involved in the Commission's filed 107 formal cases the Commission filed with the Supreme Court since 1968.

APPELLATE COURTS (1)	DISTRICT COURTS (14)	METROPOLITAN COURTS (4)	MAGISTRATE COURTS (42)	MUNICIPAL COURTS (40)	PROBATE COURTS (6)
Supreme Court 1	First 1 Second 2 Third 3 Fourth 1 Fifth 1 Seventh 1 Ninth 1 Eleventh 3 Thirteenth 1	Bernalillo County 4	Cibola 1 Colfax 1 Doña Ana 8 Eddy 1 Guadalupe 1 Hidalgo 1 McKinley 3 Mora 1 Rio Arriba 5 Sandoval 1 San Juan 4 San Miguel 2 Santa Fe 2 Socorro 1 Taos 5 Union 1 Valencia 4	Bernalillo 1 Bosque Farms 1 Cimarron 1 Ciovis 2 Columbus 1 Dexter 1 Española 2 Gallup 2 Grants 3 Hurley 1 Las Cruces 6 Las Vegas 2 Mountainair 3 Portales 1 Roswell 4 Ruidoso Downs 1 San Jon 1 Santa Fe 6 Taos 1	Sandoval 1 Taos 5

PUBLIC CASES DISPOSED BY TERMINATION OF JUDICIAL OFFICE

In FY 2007, 16 cases concerning 5 judges were disposed after termination of judicial office. Since its inception, the Commission has disposed of 89 cases concerning 46 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 2007 LEGISLATIVE PERFORMANCE MEASURES

Following are the State Legislature's mandatory performance measures for the Commission:

Upon knowledge² of cause for emergency interim suspension, time for Commission to file petition for temporary suspension with Supreme Court (in days): 1.6 days.

Efficiency measure. Target: 2 days.

Target satisfied.

Time for release of annual report to public from end of the fiscal year (in months): 2 months.

Output measure. Target: 2 months.

Target satisfied.

For cases in which formal charges are filed, average time for formal hearings to be reached (in meeting cycles): 4.25 meeting cycles.

Efficiency measure. Target: 3 meeting cycles.

Target not satisfied.

Number of inquiries regarding judicial disciplinary matters: 2,451.

Explanatory Measure. No target.

Number of docketed complaints: 109.

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, 2007, the Commission has informally disposed of 257 case files.

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

² Knowledge is marked when the Commission is informed by its staff of allegations that a judge has engaged in serious misconduct or disability requiring the filing of an emergency petition with the Supreme Court.

**CAUTIONARY LETTERS
(188 cases)**

Judicial Branch Involved	Number of Case Files	Percentage of All Cautionary Letters
Supreme Court	0	0.0%
Court of Appeals	0	0.0%
District Court	50	26.6%
Metropolitan Court	19	10.1%
Magistrate Court	69	36.7%
Municipal Court	49	26.1%
Probate Court	1	0.5%

**MENTORSHIPS
(63 cases)**

Judicial Branch Involved	Number of Case Files	Percentage of All Mentorships
Supreme Court	0	0.0%
Court of Appeals	0	0.0%
District Court	6	9.5%
Metropolitan Court	2	3.2%
Magistrate Court	30	47.6%
Municipal Court	23	36.5%
Probate Court	2	3.2%

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 2007, no cases were 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 2007

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 2007, the Commission had 18 cases before the New Mexico Supreme Court. These cases are summarized below:

MATTER OF HON. REUBEN GALVAN
Magistrate Judge, Doña Ana County
Inquiry No. 2003-048
Supreme Court Docket No. 28,609

Respondent admitted to presiding over and/or taking 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. 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.

On May 4, 2004, the Supreme Court accepted the Commission's Petition for Discipline upon Stipulation, and ordered a number of disciplinary measures, including a 30-day suspension without pay (deferred upon successful completion of six months of supervised probation); supervised probation under the supervision of Hon. Jerald A. Valentine; and an in-person formal reprimand, which was also published in the *Bar Bulletin*.

In September of 2004, the Commission, upon information that Judge Galvan became the subject of a criminal investigation on allegations of rape and solicitation of a bribe, docketed a new inquiry on its own motion (Inquiry No. 2004-99) and petitioned the Supreme Court to temporarily suspend Judge Galvan. On September 22, 2004, the Supreme Court heard oral argument on the Commission's petition, decided to grant the Commission's petition, and temporarily suspended the Judge with pay. The Court further ordered that in the event that formal Judicial Standards Commission proceedings were initiated, respondent shall be summarily and temporarily suspended without pay during the pending action by the Commission.

On October 26, 2004, the Commission filed formal charges against Judge Galvan in Inquiry 2004-99. Pursuant to the Supreme Court's September 22, 2004 order, the Commission filed a notice of the charges and moved the Court to apply the summary salary suspension. The Supreme Court issued such an order on November 1, 2004.

On July 20, 2006, the New Mexico Supreme Court ordered that Reuben Galvan is permanently barred from ever holding judicial office in the State of New Mexico.

MATTER OF HON. REUBEN GALVAN
Magistrate Judge, Doña Ana County
Inquiry No. 2004-099
Supreme Court Docket No. 28,609

On April 11, 2006, a trial was held before the Judicial Standards Commissions concerning allegations that included engaging in *ex parte* communications with a young woman concerning her husband's case, *State of New Mexico vs. Eligio Soto*, Cause No. M-14-VR-200400128, pending before the Doña Ana County Magistrate Court; engaging in sexual conduct in the public area of a bar with the same young woman; driving his vehicle while under the influence of intoxicating liquor on August 25, 2004; driving his vehicle carelessly, including driving while speeding and while engaging in sexual activity on August 25, 2004 with the same young woman; engaging in sexual intercourse in his vehicle with the same young woman; requesting sexual favors from the young woman in exchange for dropping pending criminal charges against her incarcerated husband; requesting sexual favors from the same young woman in exchange for assistance in arranging an inmate visitation for the woman's friend; and engaging in *ex parte* communications with the same young woman in chambers concerning the case involving her incarcerated husband.

The Commission found:

Respondent engaged in egregious conduct off the bench that damaged public confidence in his integrity, eroded public confidence in the judiciary, and undermined the credibility of the Doña Ana County Magistrate Court. A reasonable member of the public observing the behavior of the respondent at the Hurricane Alley bar and/or on the public streets of Las Cruces would find respondent's behavior unacceptable and inconsistent with

the dignified behavior expected of a member of the judiciary.

The Commission concluded that respondent's conduct constituted willful misconduct in office and recommended permanent bar from judicial office and assessment of costs and expenses. Notably, the respondent did not file a response to the Commission's petition with the Supreme Court.

On July 20, 2006, the Supreme Court ordered that Reuben Galvan is permanently barred from ever holding judicial office in the State of New Mexico.

MATTER OF HON. JAMES D. ATCITY
Magistrate Judge, San Juan County
Inquiry Nos. 2003-035, 2003-038 & 2003-057
Supreme Court Docket No. 29,076

Prior to FY 2007, the Commission issued a *Notice of Formal Proceedings* to Judge Atcity on February 9, 2005. The same day, the 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 that he had committed acts that may constitute willful misconduct in office.

On March 31, 2005, the Supreme Court denied the petition on the following conditions: (1) Judge Atcity shall take paid medical leave as soon as practicable for up to 90 days to remedy medical condition, (2) Judge Atcity shall report to the Administrative Office of the Courts ("AOC") Magistrate Division and the Commission concerning remediation and ability to return to job, and (3) if Judge Atcity did 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. During the paid medical leave, the only

remediation that Judge Atcitty obtained was to purchase new hearing aids.

On September 14, 2005, the Commission received a letter from Judge Atcitty's attorney stating that the judge believed his hearing was sufficient to return to work and had his clerks schedule a docket for September 16. The day after receiving the letter, the Commission filed an *Emergency Motion to Extend Medical Leave and Request for Temporary Suspension*. The grounds stated in the motion were that Judge Atcitty had not been reevaluated by the independent panel of experts whose evaluation formed the basis for the Supreme Court-ordered paid medical leave; the judge had not provided the Court, the Commission, or the AOC with a medical report from a licensed medical doctor certifying that his hearing disability had been cured and that the Judge was fit to resume his judicial duties.

On September 16, 2005, the Supreme Court issued an order extending Judge Atcitty's leave with pay until further order of the Court, requiring him to file a response to the Commission's emergency motion by September 30, 2005, and setting oral argument on the motion for October 5, 2005. On September 29, 2005, Judge Atcitty filed his response to the emergency motion with the Supreme Court. On October 4, 2005, the Commission promptly filed a reply to the response with the Court. The same day, Judge Atcitty underwent a second evaluation by the independent medical panel.

The Court heard oral argument from the parties on October 5, 2005. After considering the arguments and the pleadings, the Court ordered that Judge Atcitty's leave with pay be continued for six weeks ending November 18, 2005. Thereafter, Judge Atcitty would be on leave without pay until the merits of the allegations pending before the Commission were resolved. The Court ordered that Judge Atcitty shall not return to the bench until resolution was final.

On December 21, 2005, the Commission filed a *Motion for Summary Retirement* with the Supreme Court. The Court ordered Judge Atcitty to file a

response to the motion by January 17, 2006. On January 4, 2006, the judge filed his response to the motion. The Court set oral argument on the motion for February 1, 2006. On January 31, 2006, the Commission filed a *Supplement to its Motion for Summary Retirement*, providing a copy of the written report of the independent medical panel concerning the follow-up evaluation that took place on October 4. After hearing the arguments of counsel on February 1, 2006, the Court denied the Commission's motion.

In June 2006, Judge Atcitty lost the primary for his reelection to office. His term of office was then set to end on December 31, 2006.

On July 28, 2006, Judge Atcitty filed a *Motion to Terminate Suspension and for Immediate Restoration of Respondent's Position as Magistrate Judge*. On July 31, 2006, the Commission filed a *Motion to Strike Respondent's Inclusion of a Non-Party from Pleadings*. Respondent had listed the new AOC Director, Arthur Peppin, as a party on his motion.

This case was tried on the merits before the Commission on August 7-8, 2006. After considering the evidence and arguments of counsel, the Commission found, in pertinent part:

COUNT 1

1. On or about April 25, 2003, during the defendant's opening statement at the trial of *David Kerr vs. HaulRite of Four Corners*, San Juan County Magistrate Court Cause No. M-47-CV-200201868, the plaintiff's attorney made an objection.

2. Respondent failed to rule on plaintiff's objection.

3. Instead, Respondent shuffled through the file, located the Complaint, and began writing numbers down on a judgment worksheet.

4. Respondent asked the plaintiff's attorney to confirm the amount his client was suing for

and told him to add attorney's fees, which had not been requested and were not awardable in this type of case.

5. Respondent completed the judgment, handed it to plaintiff's attorney and said something to the effect of "Here's your judgment."

6. At the time of issuing the judgment, Respondent had not heard the remainder of the defendant's opening statement, had not reviewed or admitted any evidence, heard any testimony from witnesses, or otherwise afforded the parties due process of law.

7. The defendant objected to Respondent's judgment to the plaintiff, without the benefit of hearing defendant's case.

8. The plaintiff's attorney attempted to explain to Respondent that Respondent could not lawfully issue the judgment in that manner, since plaintiff had not yet proven anything or tendered any evidence to the Court and since defendant had not had an opportunity to present his case.

9. Respondent did not respond to the objections and statements of the parties and prepared to move onto the next case on his docket.

10. As in all judicial matters, Respondent's was obligated in the *Kerr* case by substantive and procedural law and the Code of Judicial Conduct to perform his judicial duties competently, to respect and comply with the law, and to conduct fair hearings, without exception. Respondent's sensory hearing or lack thereof did not negate or eliminate Respondent's duties.

11. Respondent improperly 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.

12. Respondent denied the parties constitutional due process; denied the parties a reasonable opportunity to be heard; committed a gross error of law; and demonstrated a critical lack of understanding of due process, court procedures, the law, and limits of jurisdiction.

COUNT 3

13. Respondent has a profound hearing disability in both ears.

14. Respondent has an impaired ability to determine or discriminate speech in both ears.

15. Respondent's profound hearing disability and impaired ability to determine or discriminate speech are permanent or are likely to become permanent.

16. Respondent's hearing disability and impaired ability to determine speech seriously interfere with the performance of his judicial duties.

17. Respondent is unable to hear in his courtroom as it is equipped and while otherwise performing his judicial duties.

18. Prior to and upon taking the bench, Respondent failed to report to the Supreme Court, the AOC, the Judicial Education Center, or the San Juan County Magistrate Court that he had a hearing disability which interfered with the performance of his judicial duties.

19. In November 2002 at the Magistrate Judges and Clerks conference (which included Respondent's initial training sessions), a staff member of Respondent's court, Judicial Lead Worker (now Chief Clerk) Gloria Reid, observed and experienced that Respondent had substantial difficulty or inability to hear during their interactions and attempts to converse with Respondent.

20. In November 2002 at the Magistrate Judges and Clerks conference (which included

Respondent's initial training sessions), Karen Jaynes, Director of the AOC Magistrate Court Division, observed and experienced that Respondent had substantial difficulty or inability to hear during her interactions and attempts to converse with Respondent. Ms. Jaynes discussed her observations and experiences with AOC management and staff.

21. After taking the bench in January 2003 and for the duration of Respondent's time as an active Magistrate Court Judge, the management and staff of Respondent's court observed and experienced that that Respondent had substantial difficulty or inability to hear during court proceedings and daily interactions at the court. The management and staff of Respondent's court reported these observations and experiences to management of the Administrative Office of the Courts ("AOC"), including Karen Jaynes, Director of the Magistrate Court Division.

22. The management and staff of Respondent's court repeatedly reported to the AOC their observations of and experiences with Respondent's substantial difficulty or inability to hear during court proceedings and daily interactions at the court.

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

24. Dr. Karl Horn is an expert medical doctor, duly licensed to practice in New Mexico. Dr. Horn is an expert in the fields of otolaryngology and neurotology.

25. The medical panel (Drs. Diskant and Horn) cited the following impressions: "Profound bilateral hearing loss, AS > AD"; and "Profound impairment of speech determination AU (both ears)." Medical Panel Findings and Recommendations Report at page 7 (emphasis added).

26. 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." Medical Panel Finding and Recommendations Report at page 8.

27. On page 8 of the report (emphasis added), 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.

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

29. On February 9, 2005, the Commission filed a Verified Petition for Temporary Suspension with the New Mexico Supreme Court, with the medical report attached as a sealed exhibit.

30. On March 31, 2005, the Supreme Court issued an order denying the Commission's petition on the following conditions:

A. 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 Atcitty making proper arrangement with the AOC Magistrate Division including coverage of his caseload in his absence;

B. 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

C. 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.

31. Respondent did not begin his Court-ordered medical leave until June 20, 2005.

32. While on the ordered 90 days of paid leave, Respondent did not have the surgical implant recommended by Drs. Diskant and Horn. Instead, Respondent purchased new hearing aids.

33. On September 16, 2005, the Supreme Court issued an order extending Judge Atcitty's medical leave with pay until further order of the Court.

34. On October 4, 2005, Respondent had a second independent medical evaluation with Drs. Diskant and Horn.

35. Respondent wore his new hearing aids to this second evaluation.

36. After reevaluation by both Drs. Diskant and Horn, and retesting by Dr. Horn, the results of the second evaluation, and the impressions and opinions of the physicians were unchanged from the prior evaluation of January 27, 2005.

37. During the October 4, 2005 evaluation, Respondent advised Dr. Horn that he wanted to have the cochlear implant surgery.

38. On October 5, 2005, the Supreme Court ordered that Judge Atcitty's paid medical leave would be extended for six weeks (ends November 21, 2005) and that thereafter his leave would continue without pay.

39. When Respondent underwent his pre-surgery evaluation with Dr. Horn later in October, it was apparently discovered that

Respondent had coronary arterial disease, which would need to be resolved before the ear surgery could occur. Respondent was referred to a cardiologist at the Heart Hospital of New Mexico, had a procedure to remedy the problem, and was placed on a related prescription medication through April 2006. As a result, Respondent's cochlear implant surgery was postponed until April 2006.

40. Respondent did not return to the Heart Hospital of New Mexico for evaluation in or after April 2006.

41. Respondent has abandoned his plan to have a cochlear implant.

42. Respondent is currently on unpaid medical leave until further order of the Supreme Court.

43. Due to Respondent's profound hearing disability and inability to determine/discriminate speech, he is unable to conduct fair hearings.

CONCLUSIONS OF LAW

44. The Judicial Standards Commission has jurisdiction over the parties and the subject matter under N.M. Const., art. VI, §32 (as amended), and NMSA 1978, §34-10-2.1 (as amended).

45. The Judicial Standards Commission does not have jurisdiction to investigate, hear, decide, or recommend that accommodations be made to ameliorate the effects of a judge's disability. Such matters are within the sole jurisdiction of the Judiciary's administrative agency: the Administrative Office of the Courts ("AOC").

COUNT 1

46. As alleged in COUNT 1 of the Commission's Notice of Formal Proceedings, Respondent failed to follow substantive and procedural law while presiding over the matter of *David err vs. HaulRite of Four Corners*, San Juan

County Magistrate Court Cause No. M-47-CV-200201868.

47. Respondent denied the parties constitutional due process; denied the parties a reasonable opportunity to be heard; committed a gross error of law; and demonstrated a critical lack of understanding of due process, court procedures, the law, and limits of jurisdiction.

48. Respondent's conduct as alleged in COUNT 1 violated Canons 21-100 NMRA 1995; 21-200(A) NMRA 1995; and 21-300(B)(2), (B)(7) and (B)(8) NMRA 1995 of the Code of Judicial Conduct.

49. As alleged in COUNT 1, Respondent's conduct constituted willful misconduct in office.

COUNT 2

50. Although Respondent may have been negligent in the handling of the Emerson Notah case, the Commission DOES NOT FIND clear and convincing evidence of the allegations in COUNT 2, which are dismissed.

COUNT 3

51. As alleged in COUNT 3 of the Commission's Notice of Formal Proceedings, Respondent is unable to conduct fair hearings because of an inability or compromised ability to hear.

52. As alleged in COUNT 3, Respondent is in violation of Canons 21-100 NMRA 1995; and 21-200(A) NMRA 1995 of the Code of Judicial Conduct.

53. As alleged in COUNT 3, Respondent has a disability seriously interfering with the performance of the judge's duties, which is, or is likely to become, of a permanent character.

54. As alleged in COUNT 3, Respondent has persistently failed or is unable to perform a judge's duties.

55. The Commission concludes that the testimony of Dr. Karl L. Horn was credible and that there is clear and convincing evidence that Respondent has a disability seriously interfering with the performance of the judge's duties, which is of a permanent character.

56. Taken as a whole, the Findings of Fact and Conclusions of Law herein establish, by clear and convincing evidence, that Respondent Hon. James D. Atcitty has violated the following provisions of the Code of Judicial Conduct: [21-100; 21-200(A); 21-300(B)(2), (B)(7), and (B)(8).

57. Respondent's conduct and disability were established by clear and convincing evidence.

58. Article VI §32 of the New Mexico Constitution provides that, "In accordance with this section, any justice, judge or magistrate of any court may be disciplined or removed for willful misconduct in office, persistent failure or inability to perform a judge's duties, or habitual intemperance, or he may be retired for disability seriously interfering with the performance of his duties that is, or is likely to become, of a permanent character."

On August 10, 2006, the Commission filed a motion with the Supreme Court to take under advisement respondent's July 28 motion to terminate suspension because the Commission would be filing a dispositive disciplinary recommendation with the Court in the near future. Respondent's counsel filed a response to the Commission's motion on August 15, 2006. On August 17, 2006, the Supreme Court issued an order granting the Commission's motion and taking respondent's motion to terminate suspension under advisement.

After obtaining an extension from the Presiding Officer, the *Certified Memorandum of Costs* was provided to the Commission, but was not filed. On August 29, 2006, Respondent filed a motion in opposition to the costs.

The Commission's findings, conclusions, and recommendations were issued on September 28, 2006. The same day, the Commission fax filed its *Petition for Discipline and Retirement* with the Supreme Court. The record was filed the following day. In October 2006, the Commission determined what costs would be requested in the matter. It then subsequently filed its costs memorandum with the Court.

Judge Atcitty's counsel filed a response to the Commission's *Petition for Retirement and Discipline* with the Supreme Court on October 17, 2006. On October 24, 2006, Judge Atcitty also filed a response to the Commission's costs memorandum and requested oral argument. The Supreme Court did not set a hearing on these matters, but instead issued an order on November 29, 2006 granting the Commission's petition in part. The order granted the following relief: permanent retirement and reimbursement of \$7,202.40 of the Commission's costs (the Commission's reimbursement request was over \$17,000).

On December 11, 2006, Judge Atcitty's counsel filed a *Motion Requesting Oral Arguments for Reconsideration whether Judge Atcitty Was Reasonably Accommodated for his Disability*. On December 15, 2006, the Supreme Court ordered the Commission to file a response to the motion by January 3, 2007. The response was prepared and timely filed. On January 11, 2007, the Supreme Court issued an order denying Judge Atcitty's motion.

Judge Atcitty's reimbursement of costs was due on January 29, 2007, but he failed to pay as ordered by the Supreme Court. On February 2, 2007, the Commission filed a *Motion for Order to Show Cause, for Assessment of Interest, and for Attorneys' Fees Due to Respondent's Failure to Pay Costs* with the Supreme Court. On February 8, 2007, Judge Atcitty filed a response to the Commission's motion, essentially stating that he had not worked for over a year, had no money, and was not paying the costs ordered.

A transcript of the Supreme Court's judgment was filed in various counties in New Mexico. In April 2007, the Commission closed this matter and the cost collection matter will continue to be pursued as an administrative matter. On June 12, 2007, the Supreme Court issued an order denying the Commission's *Motion for Order to Show Cause, for Assessment of Interest, and for Attorneys' Fees Due to Respondent's Failure to Pay Costs*.

MATTER OF HON. WILLIAM A. MCBEE
District Judge, Fifth Judicial District Court
Inquiry No. 2004-011
Supreme Court Docket No. 29,265

A *Stipulation Agreement and Consent to Discipline* was entered between Judge McBee and the Commission in June 2005 and a *Petition for Discipline upon Stipulation* was filed with the Supreme Court. The stipulated facts included failing to recuse from criminal case, *State v. Busch*, CR-2002-378, after personally and verbally acknowledging that Judge McBee should recuse because he could not be impartial in the adjudication and because his impartiality had been compromised due to his personal relationship with the defendant's attorney/boyfriend who the defendant subsequently married. The Court agreed that the stipulated disciplinary measures for Respondent's violations of the Code of Judicial Conduct were appropriate and disciplined Judge McBee as follows:

Respondent shall receive a public reprimand, which shall be published in the *Bar Bulletin*;

Respondent shall recuse from the matter of *State v. Tami Busch*, CR-2002-378, as well as any additional current or future matters involving Ms. Busch, and all matters coming before Respondent in which attorney Max Proctor is a party or serves as counsel;

Respondent shall disclose to all parties appearing before him in matters in which attorney C. Barry Crutchfield appears as

either a party or counsel to a party, all instances in which Mr. Crutchfield represented Respondent;

Respondent shall abide by all terms and conditions of the second stipulation and consent to discipline as well as the Code of Judicial Conduct;

Respondent shall pay a \$1,000.00 fine to a non-profit drug treatment organization or affiliated state agency upon approval by the Supreme Court of the intended recipient;

Respondent shall pay \$2,500.00 in cost reimbursement to the Commission on November 30, 2005;

Respondent shall be suspended for seven days without pay on February 2, 2006, in consultation with the Human Resources Division of the Administrative Office of the Courts;

Respondent shall be suspended for an additional thirty days without pay, which shall be deferred for a period of one year and which shall be dismissed upon successful completion of a twelve-month probationary period during which he shall have a mentor who shall monitor Respondent's docket and provide periodic reports to the Commission. Upon successful completion of probation, the mentor shall certify to the Commission that Respondent has completed his probation. The thirty-day suspension shall be imposed only by this Court by order following notice and opportunity to be heard;

Respondent shall be held in contempt of the Commission should he fail to comply with any one of the conditions and terms contained in the formal reprimand and opinion, the second stipulation agreement and consent to discipline, or the amended order of discipline entered by the Court on November 2, 2005.

The Court ordered that Respondent receive a public reprimand, which the Court issued as a formal opinion on May 16, 2006: *In the Matter of Hon. William A. McBee*, 2006-NMSC-024, 138 N.M. 482, 134 P.3d 769 (2006). In its opinion, the Court noted that Respondent's conduct violated several provisions of the Code of Judicial Conduct and constituted willful misconduct in office. The Court noted "at every turn, the choices Respondent made with regard to Ms. Busch's case were in conflict with his obligations under the Code of Judicial Conduct." *Id.*, ¶ 12. In fact, the Court stated that Respondent's unwillingness to acknowledge the appearance of personal bias in favor of Ms. Busch and his failure to take action to eliminate any appearance of impropriety arising from his participation in Ms. Bush's case was at the center of this case. The Court found that by failing to step aside even though he knew he should, Respondent's conduct breached several fundamental ethical duties that every judge is obligated to uphold under the Code of Judicial Conduct.

On January 11, 2006, the Commission filed a recommendation for the appointment of Hon. Richard Knowles, Division XV of the Second Judicial District, as the probation supervisor. On February 16, 2006, the Supreme Court issued an order appointing Judge Knowles as the probation supervisor, thereby beginning the one-year term of Judge McBee's supervised probation. On March 16, 2007, the Commission received Judge Knowles' final written probation report. After review of all probation reports filed by Respondent's probation supervisor, including the final report, the Commission concluded on April 16, 2007, that Respondent failed to complete his probation successfully in the referenced inquiry and filed a *Notice of Unsuccessful Completion of Probation*.

MATTER OF HON. HECTOR PINEDA
Municipal Judge, Roswell
Inquiry Nos. 2005-025
Supreme Court Docket No. 29,479

The Commission issued a *Notice of Preliminary Investigation* to Judge Hector Pineda on May 17, 2005. The allegations concerned improper demeanor and summary determination of a criminal defendant's guilt and sentencing during the prosecutor's opening statement. The judge filed his response on May 24, 2005. On June 9, 2005, the Commission issued formal charges against Judge Pineda through a *Notice of Formal Proceedings*. The judge filed his response to the charges on July 14, 2005.

On September 13, 2005, Judge Pineda agreed to enter into a *Stipulation Agreement and Consent to Discipline*. In the agreement, Judge Pineda admitted the following:

On March 15, 2005, Respondent displayed improper demeanor towards a *pro se* defendant in the matter of *City of Roswell v. John Herrera*, Cause No. 2005-702. Respondent failed to maintain order and decorum in a judicial proceeding and failed to be patient, dignified and courteous to the *pro se* defendant.

During a bench trial, Respondent became agitated with and yelled at John Herrera. While yelling at Mr. Herrera, Respondent stood up from his chair and hit his gavel on his bench so hard that it caused debris, including but not necessary limited to paper clips, to scatter across the room. Mr. Herrera and the prosecuting Police Officer reported that the debris and/or paper clips struck them. Judge Pineda reported that he did not see the debris scatter or strike the men.

Respondent's conduct violates the following Canons of the Code of Judicial Conduct: 21-100 NMRA 1995; 21-200(A) NMRA 1995; and 21-300(B)(2), (B)(3) and (B)(4) NMRA 2004.

Respondent's conduct constitutes willful misconduct in office.

Judge Pineda asserted that Mr. Herrera was not following his verbal directives from the bench concerning the procedure for cross-examining the prosecuting officer. Respondent further asserted that Mr. Herrera told Respondent to find him guilty, that Respondent was unreasonable, and that he (Mr. Herrera) would appeal Respondent's ruling.

The Commission conducted a formal presentment hearing on October 3, 2005, in which all matters contained in and relevant to the stipulation agreement and consent to discipline were formally placed on record. At the conclusion, the Commission adopted and entered into the agreement.

On October 4, 2005, the Commission entered *Findings of Fact, Conclusions of Law, and Recommendation for Discipline* consistent with the agreement. The Commission also filed a *Petition for Discipline upon Stipulation* with the Supreme Court the same day. On October 5, 2005, the Commission filed the formal record of the stipulation presentment proceedings with the Court.

On October 14, 2005, the Supreme Court issued an order imposing the discipline that Judge Pineda stipulated to receive. Specifically, the Court ordered:

Formal reprimand to be published in the *Bar Bulletin*;

\$500.00 fine to be paid on or before October 31, 2005;

Formal mentorship (remedial training) concerning obligations and responsibilities under the Code of Judicial Conduct and concerning proper judicial demeanor and temperament; and

Supervised probation for six months.

The Court further ordered that if the Commission initiated formal proceedings against Judge Pineda in any new matter, he shall be summarily temporarily suspended without pay until the new formal proceedings are terminated by the Commission.

On November 7, 2005, the Commission filed a notice with the Court that Judge Pineda had timely paid his fine. The payment was concurrently forwarded to the Supreme Court. On November 10, 2005, the Commission filed a recommendation with the Supreme Court that Hon. David W. Bonem, retired District Judge, serve as the mentor and probation supervisor. On November 29, 2005, the Supreme Court issued the written formal reprimand to Judge Pineda, which was published in the *Bar Bulletin* later. On December 12, 2005, Judge Bonem was appointed as Judge Pineda's mentor and probation supervisor.

Judge Pineda completed his supervised probation on July 12, 2006. The matter was subsequently closed.

MATTER OF HON. FLORENCIO "LARRY"
RAMIREZ

*District Judge, Third Judicial District
Inquiry Nos. 2004-097 & 2005-009
Supreme Court Case No. 29,552*

The Commission issued a *Notice of Preliminary Investigation* to Respondent Judge Florencio "Larry" Ramirez on January 12, 2005. On January 26, 2005, Respondent filed his response to the *Notice of Preliminary Investigation*. On May 17, 2005, the Commission issued a *Notice of Formal Proceedings* to Respondent. Respondent filed his response to the *Notice of Formal Proceedings* on June 2, 2005.

On November 14, 2005, the Commission conducted a presentment hearing placing on record all matters contained in and related to the stipulation agreement that was negotiated by

Examiner and Respondent's counsel. After the conclusion of the hearing, the Commission adopted entered the *Stipulation Agreement and Consent to Discipline*.

Based upon the *Stipulation Agreement and Consent to Discipline*, in accordance with the Judicial Standards Commission Rules, and upon the majority vote of its Commissioners, the Commission entered the *Findings of Fact, Conclusions of Law, and Recommendation for Discipline to the New Mexico Supreme Court* consistent with the agreement.

The admitted facts included improper involvement in an incident where the judge's son and friends were being cited by city police officers for drinking alcohol at a park in violation of a local municipal ordinance, identifying himself to officers, as his son's father by showing the officer his court identification card and his driver's license without being requested; collected citations after issuance; improperly involving himself in and using his volunteer bailiff to assist son and friends in responding to the cases at the Las Cruces Municipal Court; called and left message for a judge presiding on some of the cases that he was sending his son and some of his friends in to the court to change their pleas on a specific date; and in an unrelated matter, while acting in his judicial capacity during a juvenile court hearing, Respondent failed to be patient, dignified, and courteous and displayed improper demeanor toward a defense attorney appearing before him. Specifically, Respondent raised his voice with the attorney, prevented the attorney from making full objections for the record and admonishing the attorney in front of her client.

Judge Ramirez agreed that the foregoing conduct violated several provisions of the Code of Judicial Conduct, constituted willful misconduct in office, and consented to receive the following formal discipline from the Supreme Court:

Formal reprimand.

Six-month supervised probation and formal mentorship.

National Judicial College "Ethics for Judges" course at own expense.

Reimbursement of Commission's costs in the amount of \$1,500.00.

On November 22, 2005, the Commission filed a *Petition for Discipline upon Stipulation* with the Supreme Court. On December 8, 2005, the Court scheduled oral argument on the petition for December 21, 2005. On December 9, 2005, the Supreme Court issued an order requiring the parties to be prepared to discuss the consistency of the proposed stipulated discipline with other similarly situated cases. On December 13, 2005, the Commission filed the formal record of the Commission's stipulation presentment hearing with the Supreme Court.

The Supreme Court heard oral argument on December 21, 2005. At the conclusion, the Court ordered that the disciplinary petition was granted and imposed the stipulated discipline.

On January 25, 2006, the Commission filed its *Recommendation for Appointment of Mentor and Probation Supervisor* with the Court. The Commission recommended the appointment of Hon. Lynn Pickard of the New Mexico Court of Appeals.

On March 16, 2006, the Supreme Court issued an order appointing Judge Pickard to serve as Judge Ramirez's probation supervisor and mentor.

On April 11, 2006, in a new matter, the Commission filed a new *Verified Petition for Temporary Suspension without Pay and to Seal the Court File* with the Supreme Court. See Inquiry No. 2006-038 below.

On May 5, 2006, the Supreme Court issued its formal reprimand and substantive opinion concerning the conduct in this case. The

opinion was later published in the *New Mexico Reports* and may be located with the following citation: 2006-NMSC-021, 139 N.M. 529, 135 P.3d 230.

During the proceedings in Judge Ramirez's new matter before the Commission and the Supreme Court (Inquiry No. 2006-038), the probation and mentorship with Judge Pickard was abated. On June 2, 2006, Judge Ramirez tendered a letter of resignation to the Chief Justice of the Supreme Court, effective the same day.

In February 2007, the Commission abated further proceedings in this matter. A *Notice of Abatement of Actions* was filed in the Supreme Court on February 13, 2007.

MATTER OF HON. FLORENCIO "LARRY" RAMIREZ

District Judge, Third Judicial District

Inquiry No. 2006-038

Supreme Court Case No. 29,552

After conducting an investigation into a verified complaint, on April 11, 2006, the Commission filed a *Verified Petition for Temporary Suspension without Pay and to Seal the Court File* with the Supreme Court. On April 20, 2006, the Supreme Court granted the Commission's *Motion to Seal File* and designated Court of Appeals Judge A. Joseph Alarid to participate in this case. Respondent filed his response to the Petition on May 1, 2006. The Supreme Court heard oral argument on the Commission's *Petition for Temporary Suspension* on May 3, 2006, and denied the petition without prejudice.

The Commission filed a *Second Verified Petition for Temporary Suspension without Pay* on May 4, 2006 with the Supreme Court. On May 15, 2006, the Commission filed a *First Supplement in Support of the Second Verified Petition for Temporary Suspension without Pay*. On May 16, 2006, the Supreme Court, on its own motion, ordered Respondent to file a response to the Commission's petition to be filed by May 30, 2006. Respondent filed an *Offer of Settlement* with the Supreme Court on

May 26, 2006. Respondent subsequently tendered his resignation as district judge to the Supreme Court on June 1, 2006.

On June 12, 2006, the Supreme Court filed a *Show Cause Order* to the Commission regarding Respondent's *Offer of Settlement*. The Commission filed its *Response to the Court's Show Cause Order* on June 21, 2006. The Commission also filed a *Motion for an Order to Show Cause* and a *Motion to Unseal Portions of the Court File* on June 23, 2006.

On July 21, 2006, the Supreme Court issued an order requiring a response to the Commission's *Motion for an Order to Show Cause* and a *Motion to Unseal Portions of the Court File*. Judge Ramirez filed the responses on August 4, 2006. No order was issued.

In February 2007, the Commission decided to abate further proceedings in this matter. On February 13, 2007, the Commission filed a *Notice of Abatement of Actions* with the Supreme Court.

MATTER OF HON. CARLOS GARZA
Magistrate Judge, Doña Ana County
Inquiry No. 2005-003
Supreme Court Docket No. 29,764

On March 23, 2005, Judge Garza agreed to enter into a *Plea and Stipulation Agreement* with the Commission concerning allegations that he became improperly involved in the matter of *State of New Mexico v. Lauren Spilsbury*, M-14-DR-200400146, in which he had a personal relationship with the defendant, Lauren Spilsbury, and then engaged in *ex parte* communications about that case with other Magistrate Court judges who presided over the case. The Commission filed a *Petition for Discipline upon Stipulation* with the Supreme Court. The Court granted the petition and ordered that Judge Garza receive the recommended discipline: a formal reprimand, six months of supervised probation and formal mentorship, and costs.

Formal proceedings were later initiated in Inquiry Nos. 2006-021, 2006-040, 2006-070, 2006-071, 2006-072, and 2006-076, which concerned new allegations of willful misconduct in office, including the use of prestige of judicial office for Lauren Spilsbury in the same case, *State of New Mexico v. Lauren Spilsbury*, M-14-DR-200400146. On August 7, 2006, the Supreme Court temporarily suspended the Respondent with pay until the pay period ending November 3, 2006. The Supreme Court subsequently suspended Respondent without pay for thirty days for failure to comply with a Commission Rule 8 order for drug screening. Respondent had not yet completed his probationary period in 2005-003.

The new matter proceeded through trial before the Commission (see summary below) and permanent removal was recommended to the Supreme Court. On November 8, 2006, the Court ordered that Respondent be permanently barred from judicial office in the future. This inquiry was abated by the Commission after the Supreme Court's November 8, 2006 order.

MATTER OF HON. STEPHEN K. QUINN
District Judge, Ninth Judicial District
Inquiry No. 2005-006
Supreme Court Docket No. 29,765

The Commission issued a *Notice of Preliminary Investigation* to Judge Stephen K. Quinn on July 14, 2005. The allegations were that the judge had excessively delayed in issuing decision, judgments, rulings, orders, or otherwise resolving cases on his docket. The Commission included a non-exclusive listing of cases that were under advisement and substantially overdue for decision. Judge Quinn filed a response to the preliminary investigation notice on August 5, 2005. On September 1, 2005, the Commission issued formal charges against Judge Quinn in a *Notice of Formal Proceedings*. The same day, the Commission also issued an order to Judge Quinn requiring him to show cause why the Commission should not petition the Supreme Court to suspend him. On September 16, 2005,

Judge Quinn filed his response to the formal proceedings notice.

An amended show cause order was issued on September 26, 2005, which provided that the order would be rescinded if Judge Quinn provided the Commission with documented proof that he issued and entered all decisions, judgments, rulings, and orders in the matters that had been taken under advisement and that were substantially overdue for decision. Judge Quinn resolved the overdue matters he had under advisement. On September 28, 2005, Judge Quinn filed the requested documentation with the Commission. On October 4, 2005, the Commission issued an *Order Dismissing Order to Show Cause*.

The Commission set the matter for trial on April 10, 2006. The Examiner and Judge Quinn filed a stipulation to the relevant facts of the case, which the Commission accepted. The Commission heard closing arguments and disciplinary recommendations from the Examiner and Judge Quinn. The Commission decided to recommend that the Supreme Court impose the following discipline: formal reprimand, one-year supervised probation, and reimbursement of the Commission's costs.

On April 24, 2006, the Commission filed a *Petition for Discipline* and the *Record of Formal Proceedings before the Judicial Standards Commission* with the Supreme Court. On April 24, 2006, the Commission filed a *Certified Memorandum of Costs* with the Supreme Court, requesting that Judge Quinn be assessed and reimburse the Commission for \$1,106.17 of costs incurred in the disciplinary proceedings.

On May 15, 2006, Judge Quinn filed a *Response to Findings of Fact, Conclusions of Law and Recommendation for Discipline* with the Supreme Court. In his response, Judge Quinn did not dispute the basis for the formal proceedings, but disagreed with the formal reprimand recommended as a disciplinary measure by the Commission.

On May 16, 2006, the Supreme Court issued its disciplinary order in this matter. The Court imposed only the recommended supervised probation and assessment of the Commission's costs and expenses. The Court further ordered Judge Quinn to reimburse the Commission for the costs by May 31, 2006. On May 30, 2006, the Commission received Judge Quinn's payment of costs. The following day, the Commission notified the Court of the costs payment.

On September 15, 2006, the Commission filed a recommendation that Hon. Stephen Pfeffer of the First Judicial District Court be appointed as Judge Quinn's probation supervisor. The Supreme Court issued an order on October 3, 2006 appointing Judge Pfeffer to the position. Judge Quinn's supervised probation is scheduled to terminate on October 2, 2007.

This case was ongoing at the end FY 2007. Subsequent events will be reported in the Commission's Annual Report for FY 2008.

MATTER OF HON. CHARLES MCCLAIN
Municipal Judge, Dexter
Inquiry No. 2004-113
Supreme Court Docket No. 29,767

The Commission issued a *Notice of Preliminary Investigation* to Judge Charles McClain on May 23, 2005. Judge McClain filed a response to the preliminary investigation notice on June 15, 2005. On August 30, 2005, the Commission issued formal charges against Judge McClain in a *Notice of Formal Proceedings*. On October 7, 2005, Judge McClain filed his response to the formal proceedings notice.

The Commission set the matter for trial on April 10, 2006. The Examiner and Judge McClain filed a stipulation to the relevant facts of the case, which the Commission accepted. The Commission heard closing arguments and disciplinary recommendations from the Examiner and Judge McClain.

The Commission concluded in pertinent part:

1. Respondent improperly failed to recuse from the matter of *City of Dexter v. Connie Bass*, Cause No. 5817A; summarily tried Ms. Bass on the charge on October 20, 2004; and demonstrated a critical lack of understanding of due process, court procedures, the law, and limits of jurisdiction.

Respondent's conduct violated Canon 21-400(A)(1), NMRA 2004 of the Code of Judicial Conduct and constituted willful misconduct in office.

2. Respondent improperly failed to recuse from the matter of *City of Dexter v. Anita Gonzalez*, Cause No. 5819A; summarily tried Ms. Gonzalez on the charge on October 20, 2004; and demonstrated a critical lack of understanding of due process, court procedures, the law, and limits of jurisdiction.

Respondent's conduct violated Canon 21-400(A)(1) NMRA 2004 of the Code of Judicial Conduct and constituted willful misconduct in office.

3. Respondent improperly failed to recuse from the matter of *City of Dexter v. Michelle Alvidrez*, Cause No. 5820; summarily tried Ms. Alvidrez on the charge on October 20, 2004; and demonstrated a critical lack of understanding of due process, court procedures, the law, and limits of jurisdiction.

Respondent's conduct violated Canon 21-400(A)(1) NMRA 2004 of the Code of Judicial Conduct and constituted willful misconduct in office.

The Commission recommended that the Supreme Court impose the following discipline on Judge McClain:

Formal reprimand.

\$250.00 fine.

One-year supervised probation and formal mentorship in constitutional due process, proper court procedures, direct and indirect contempt, limits of municipal court jurisdiction, and the Code of Judicial Conduct.

Refund/pay witnesses for fines and fees paid, and compensate for community service.

Expungement of defendants' cases from the Dexter Municipal Court records.

Assessment of the Commission's costs and expenses.

On April 21, 2006, the Commission filed a *Petition for Discipline*, the *Record of Formal Proceedings before the Judicial Standards Commission*, and a *Certified Memorandum of Costs* with the Supreme Court. The petition asked for imposition of the recommended disciplinary measures, based on the grounds for discipline fully set forth in the Commission's *Findings of Fact, Conclusions of Law, and Recommendation for Discipline*. The record was comprised of the certified copies of pleadings filed with the Commission and the original stenographic transcript of the formal proceedings with original exhibits admitted into evidence. The *Certified Memorandum of Costs* requested that Judge McClain be assessed and reimburse the Commission for \$1,409.30 of direct costs incurred in the disciplinary proceedings.

On April 28, 2006, Judge McClain filed objections to the Commission's *Findings of Fact, Conclusions of Law, and Recommendation for Discipline* and to the Commission's costs memorandum. The Commission filed responses to the objections on May 8, 2006.

On The Supreme Court heard oral argument on the Commission's disciplinary petition, costs memorandum, and Respondent's objections. The Supreme Court issued its disciplinary order

imposing the following discipline against Judge McClain:

Respondent shall pay Michelle Alvidrez \$123.60 by certified check made payable to Michelle Alvidrez, and shall deliver said check to the Judicial Standards Commission on or before August 4, 2006. Respondent shall promptly file proof of payment with this Court and with the Judicial Standards Commission.

On or before July 26, 2006, Respondent shall expunge the respective contempt/false testimony cases numbered 5817A, 5819A, and 5820 from the Dexter Municipal Court records concerning Connie Bass, Anita Gonzales, and Michelle Alvidrez. Respondent shall promptly notify each defendant in writing of the Expungement. Respondent shall file proof with the Court and the Commission of the expungement and of the notice given to the defendants on or before July 31, 2006.

Additionally, the Court ordered that Judge McClain was required to take a course in constitutional law as related to due process rights of an accused and specifically contempt vs. perjury. In the event no such course was available, the Court accepted the offer from Judge McClain's attorney (a former district court judge) to provide the instruction. All other recommended discipline was denied.

Judge McClain complied with the reimbursement and expungement requirements. Judge McClain was unable to find an applicable course, so Judge McClain was received instruction from his attorney as ordered by the Court. On April 9, 2007, Judge McClain's attorney submitted a letter indicating that the Judge had completed the educational instruction. The Commission subsequently closed the matter.

MATTER OF HON. JOHN W. POPE
District Judge, Thirteenth Judicial District
Inquiry No. 2006-046
Supreme Court Docket No. 29,778

After conducting an initial inquiry on its own motion, on April 26, 2006, the Commission issued a *Notice of Preliminary Investigation* and a *Rule 8 Order to Provide Waivers and Releases* to Judge Pope pursuant to Judicial Standards Commission Rule 8. The same day, the Commission filed a *Verified Petition for Temporary Suspension or for Immediate Administrative Medical Leave* with the Supreme Court. In the petition, the Commission informed the Court that Judge Pope had failed to perform his judicial duties since April 17, 2006, failed to notify the Chief Judge or Court Administrator of his extended absence, left a criminal jury trial unfinished prior to the defense concluding its case (ultimately resulting in substantial prejudice, error, and a mistrial), and failed to make arrangements for coverage of his daily dockets.

The Commission further notified the Supreme Court that it was formally investigating whether Judge Pope's conduct constituted persistent failure or inability to perform judicial duties and/or willful misconduct in office. The Commission certified that immediate temporary suspension or administrative medical leave was necessary pending completion of the Commission's proceedings.

On April 27, 2006, the Supreme Court noticed a hearing on the Commission's petition for May 3, 2006. On May 1, 2006, Judge Pope's counsel entered an appearance in the case and moved to vacate the setting. The Court granted the motion on May 2, 2006.

On May 9, 2006, the Commission filed a *First Amended Verified Petition for Immediate Temporary Suspension*, supplemental supporting medical records, and a companion *Motion to Seal Supplemental Records* (the records supporting the amended petition). The Supreme Court sealed

the supplemental records, and *sua sponte*, sealed the Commission's amended petition.

The same day, Respondent's counsel filed a *Request for Confidentiality and Motion to Seal* with the Supreme Court. The Supreme Court issued an order granting the Commission's *Motion to Seal Supplemental Records* and the Respondent's *Request for Confidentiality and Motion to Seal*. The following day, the Commission filed a *Response to Respondent's Request for Confidentiality and Motion to Seal*, which the Court sealed *sua sponte*.

Respondent agreed to enter into a *Stipulation Agreement and Consent to Discipline* with the Commission. On May 15, 2006, the Commission filed a *Petition for Discipline upon Stipulation* with the Supreme Court. The Court sealed the petition *sua sponte*.

On May 16, 2006, the Court issued an order that (1) required Respondent to file a written response to the petition, (2) placed Respondent on medical leave with pay until further order of the Court, and (3) denied Respondent's request for an order to show cause. Respondent timely filed his response on May 30, 2006, which the Court sealed *sua sponte*. The following day, the Commission filed a *Reply and Request for Remand*, which was sealed by the Court.

On June 9, 2006, Respondent filed a *Request to Supplement the Record; for Leave to File a Sur-Response; and for Oral Argument*. The Commission filed a *First Amended Reply and Request for Remand* later the same day. The Court sealed these pleadings *sua sponte*.

On June 19, 2006, the Supreme Court issued an order requiring the parties to file responses addressing specific matters. The responses were timely filed by the parties. On July 20, 2006, the Supreme Court issued an order granting the *Petition for Discipline upon Stipulation*.

On July 20, 2006, the Court issued an order granting the petition in its entirety. The ordered discipline was as follows:

A. 30-Day In-Patient Alcohol/Substance Abuse Rehabilitation and 30-Day Follow-up Program During Which Time Respondent Will be Off the Bench on Medical Leave With Pay. Respondent shall successfully complete a 30-day in-patient alcohol/substance abuse rehabilitation program at Parker Valley Hope Substance Abuse Treatment Center in Parker, Colorado. After respondent successfully completes the 30-day in-patient program, which success shall be determined by the director (or designee) of the Parker Valley Hope Substance Abuse Treatment Center, respondent shall successfully complete a 30-day follow-up program, and may only resume his judicial bench after completion of both the inpatient alcohol treatment program provided for herein and the follow-up program, and fulfilling the conditions provided for in paragraph C below.

B. Formal Reprimand. Respondent shall receive a formal reprimand from the Supreme Court, which will state that respondent failed to fulfill his judicial duties by failing to report to work and to complete the trial, which had been commenced on April 13, 2006, and his failure to report was the result of respondent's abuse of alcohol and the disease of alcoholism. The Supreme Court will publish respondent's formal reprimand in the *Bar Bulletin* along with the other conditions outlined.

C. Letter of Explanation and Apology to Members of the Jury and the Judicial Standards Commission. Respondent shall write a letter to the jurors advising them of the reasons underlying his failure to appear and complete the jury trial they had been empanelled to hear. The letter shall fairly state the reasons for that failure, which shall include an admission that he failed to appear because of his alcohol abuse and not because he had a heart attack, but may do so recognizing that respondent suffers from a disease, namely the disease of alcoholism for which he is receiving treatment.

In addition, respondent shall write a letter to the members of Judicial Standards Commission apologizing for his failure to respond fully and

accurately to the reporter who called him. Respondent's letter shall acknowledge the duties and obligations of the Judicial Standards Commission and the fact that his failure to respond fully to Ms. Garcia's inquiry did result in at least some of the readers of her article misconstruing the actions of the Commission. The letter shall also fairly state the reasons for his failure to appear for work, which shall include an admission that he failed to appear because of his alcohol abuse and not because he had a heart attack.

D. Suspension without Pay. For the periods respondent failed to appear for work when he was not receiving medical treatment, respondent shall be suspended without pay for April 17-18 and pay an additional fine of \$1,000.00 within 15 days of issuance of the Supreme Court Order in this inquiry. Payment shall be by certified check made payable to the State of New Mexico. Respondent shall promptly file proof of payment with the Judicial Standards Commission.

E. No Alcohol or Drug Use. For the entire duration of respondent's service as a judge in the State of New Mexico, specifically including service as a judge *pro tempore*, respondent shall comply with the following conditions:

- 1) Respondent shall not buy, sell, consume, possess or distribute any alcoholic beverages.
- 2) Respondent shall not at any time enter what is commonly known as a bar or lounge where alcoholic beverages are served or sold for consumption on the premises.
- 3) Respondent shall not buy, sell, consume, possess or distribute any controlled substances except those legally prescribed for respondent's use by a New Mexico certified medical doctor.

F. Permanent Supervised Probation and Monitoring, 12-Step Program(s), and Random Alcohol/Drug Testing. For the entire duration of respondent's service as a judge in the State of New Mexico, specifically including service as a judge *pro tempore*, respondent shall be on

permanent supervised probation, be monitored for compliance with this agreement, shall attend at a minimum three meetings per week of a 12-step program for the first 90 days upon his return to the bench, and thereafter as respondent deems appropriate and necessary, but in no event any less than once per week, and shall be subject to random alcohol/drug testing.

i. Supervised Probation and Monitoring. Respondent's permanent probation shall be supervised and monitored by a person recommended by the Judicial Standards Commission and appointed by the Supreme Court. The probation supervisor will not be a judge, but will be an employee of a drug court compliance program or a similar person chosen by the Judicial Standards Commission. Respondent shall check in weekly with the appointed probation supervisor in the manner(s) required by the supervisor.

ANY infraction or violation of any term of this agreement or the Supreme Court's disciplinary order, no matter how minor, shall constitute a breach of this agreement, a violation of the Court's order, and grounds for summary permanent removal from judicial office. The probation supervisor shall immediately report all infractions or violations to the Judicial Standards Commission. If the Judicial Standards Commission or the probation supervisor believes that respondent has committed an infraction or violation of any term of this agreement or the Supreme Court's disciplinary order, the Commission may issue an order to the respondent requiring him to show cause why the Commission should not petition the Supreme Court to summarily, immediately, and permanently remove the respondent from judicial office. The Supreme Court will review any petitions or motions brought by the Commission on the show cause proceedings.

ii. 12-Step Program(s). For the entire duration of Respondent's service as a judge in the State of New Mexico, specifically including service as a judge *pro tempore*, respondent shall participate in and attend at a minimum three

meetings per week of Alcoholics Anonymous or other 12-step program for the first 90 days upon his return to the bench, and thereafter as respondent deems appropriate and necessary, but in no event any less than once per week. The Alcoholics Anonymous Program or such other 12-step program shall be one recommended by the inpatient treatment program professionals and the probation supervisor. Respondent shall provide proof of compliance with this term to his probation supervisor.

iii. Random Alcohol and Drug Testing. For the entire duration of respondent's service as a judge in the State of New Mexico, specifically including service as a judge *pro tempore*, respondent shall voluntarily provide urine, breath, blood, and/or hair for purposes of alcohol and drug screening, testing, and laboratory analysis upon request of the Supreme Court, the Judicial Standards Commission, and/or the appointed probation supervisor and monitor, in accordance with the procedures of the Supreme Court and the Judicial Standards Commission. Said alcohol and drug testing is random and shall not require a showing of good cause.

G. Respondent shall comply with all terms and conditions of this stipulation agreement and the Code of Judicial Conduct.

H. The Commission and the respondent shall bear their own costs and expenses in this matter.

Judge Pope timely paid his fine and otherwise complied with the order. On July 25, 2006, the Commission filed notice of payment of the fine and of Respondent's completion of the immediate requirements under the Court's order. On July 27, 2006, the Supreme Court issued an order allowing Respondent to resume his judicial duties, and requiring him to meet with the Chief Judge of his court periodically to verify appropriate management of his docket and to comply with all other conditions of the petition for discipline upon stipulation.

The Commission filed a recommendation with the Supreme Court for appointment of Catherine Hartman, Drug Court Supervisor for the Second Judicial District Court as Judge Pope's probation supervisor. The Supreme Court made the appointment on November 17, 2006. Judge Pope's probation and supervision is ongoing. In June 2007, the Supreme Court issued its formal reprimand to Judge Pope.

This case was not completed by the end of FY 2007. Subsequent case events will be reported in the FY 2008 Annual Report.

MATTER OF HON. JOHN W. "BUDDY" SANCHEZ
Magistrate Judge, Valencia County
Inquiry No. 2005-031
Supreme Court Docket No. 25,281

After conducting an initial inquiry on its own motion, and following significant collateral litigation relating to its investigation of this matter, on November 22, 2005, the Commission issued a *Notice of Preliminary Investigation* to Judge Sanchez pursuant to Judicial Standards Commission Rule 8. The Judge filed his response to the *Notice of Preliminary Investigation* on December 20, 2005 and ultimately entered into a *Stipulated Agreement Concerning Release and Use of Medical and Psychological Records*. The Commission issued and filed its *Notice of Formal Proceedings* on April 25, 2006, to which the judge timely responded on May 12, 2006.

In June of 2006, Judge Sanchez underwent an independent medical evaluation to determine his fitness for duty, the results of which concluded he was neither physically nor psychologically capable of performing his judicial duties. On July 14, 2006, the Commission filed its *Verified Petition for Immediate Temporary Suspension or for Immediate Administrative Medical Leave* and a *Motion to Seal* based on the inclusion of excerpts from the results of an independent medical examination of the respondent. The same day, the Supreme Court granted the motion to file pleadings under seal. Shortly thereafter, the Supreme Court granted the petition for immediate administrative medical leave, and

placed Judge Sanchez on paid medical leave as of July 16, 2006. Judge Sanchez filed his response to the *Verified Petition for Immediate Temporary Suspension or for Immediate Administrative Leave*. The Commission filed a *Reply to Respondent's Response* on August 15, 2006.

On December 6, 2006, the Supreme Court requested counsel to submit a status report reflecting the current status of Judge Sanchez's condition, to which both parties of record submitted a joint response. On January 31, 2007, the Supreme Court ordered a second status report, to which both parties submitted a second status report. The Supreme Court subsequently ordered oral argument, which was set for March 8, 2007, to review Judge Sanchez's ongoing status of paid administrative medical leave.

Judge Sanchez underwent a second independent medical evaluation in January 2007, the results of which concluded again that Judge Sanchez was neither physically nor psychologically capable of performing his judicial duties, but did outline certain conditions which, if met by Judge Sanchez, might enable him to return to the bench. On March 8, 2007, the Supreme Court issued its order requiring that Judge Sanchez comply with those conditions, and ordered his return to the bench. To remain on the bench, the Supreme Court required that Judge Sanchez first demonstrate his serum ammonia levels were below 45 umol/L. He was also required to certify by affidavit that he was enrolled in an alcohol treatment program. In addition, he was ordered to abstain from all alcohol consumption, and comply with random drug and alcohol screening until further order of the Court. Judge Sanchez was also required to undergo random testing of his serum ammonia levels. The Supreme Court also ordered that failure to comply with the terms and conditions of its order, including any failed screenings, shall serve to bar his return to the bench. The Supreme Court further ordered that should Judge Sanchez fail to comply with any of the terms and conditions of the Court's order, the Commission "shall proceed to seek [his] removal or retirement."

On June 6, 2007, the Commission filed its *Motion for Retirement or Removal From Office Pursuant to [the Supreme Court's] Order of March 8, 2007, as Amended, Due to Respondent's Failure to Comply* on the basis that Judge Sanchez failed to comply with the conditions set forth by the Supreme Court governing his return to the bench. The Supreme Court ordered a response from Judge Sanchez, which was to be filed no later than July 2, 2007.

Because this matter was not completed by the end of FY 2007, subsequent events will be reported in the Annual report for FY 2008.

MATTER OF HON. CARLOS GARZA
Magistrate Judge, Doña Ana County
Inquiry Nos. 2006-042, 2006-071, 2006-076
Abated Inquiry Nos. 2005-003, 2006-021, 2006-040, 2006-070, 2006-072, 2006-078
Supreme Court Case No. 29,764

On July 28, 2006, the Commission filed a *Petition for Immediate Temporary Suspension*, under seal, centered on new allegations of willful misconduct in Commission Inquiry Nos. 2006-021, 2006-070, 2006-071, and 2006-076. At the time of the filing, respondent was on a six-month supervised probation for his actions in Inquiry 2005-003 for his improper involvement with the adjudication of *State of New Mexico v. Lauren Spilsbury*, M-14-DR-200400146, in which he had a personal relationship with the defendant. On August 7, 2006, the Supreme Court issued an order temporarily suspending respondent with pay through the pay period ending November 3, 2006.

Based upon good cause shown, including complaints alleging that respondent is, or may be, incapacitated brought on by the use of unlawful drugs, on August 17, 2006, the Commission issued its *Rule 8 Order* requiring respondent to undergo drug testing. Respondent was ordered to appear for the collection of urine and hair samples within 24 hours of service of the Commission's *Rule 8 Order*. Respondent was

served with the Commission's *Rule 8 Order* on August 18, 2006.

Respondent failed to comply with all the provisions of the Commission's *Rule 8 Order*. As a result, on August 23, 2006, the Commission filed its *Verified Petition for Immediate Suspension Without Pay; For an Immediate Order from This Court Mandating Compliance with the Commission Rule 8 Order for Drug Screening; and For an Order to Show Cause Why Respondent Should Not be Held in Contempt of the Supreme Court*.

Respondent filed his *Response and Request for Relief to the Commission's Petition* on August 30, 2006. The Commission subsequently filed a *First Supplement to Its Verified Petition* on August 31, 2006. The Commission also issued a *Notice of Formal Proceedings, Notice of Trial and Pretrial Scheduling Order* and *Discovery Order* to respondent on September 7, 2006, to which respondent filed a *Verified Answer to the Notice of Formal Proceedings*.

After hearing oral argument on the Commission's *Petition for Immediate Suspension without Pay* from both parties on September 20, 2006, the Supreme Court ruled:

1. Respondent was suspended without pay for a period of 30 days for failure to comply with the *Rule 8 Order* issued by the Commission of which he had actual knowledge. Either party could petition for review of the suspension without pay at the end of the thirty-day period.

2. Respondent was ordered to comply with the Commission's *Rule 8 Order* by close of business that same day, September 20, 2006.

3. Respondent's oral motion to recuse Chief Justice Richard C. Bosson was denied.

4. The matter of contempt was remanded to the Commission.

Respondent timely appeared at the S.E.D. Laboratory in Albuquerque, NM, on September 20, 2006 as ordered by the Supreme Court, and

submitted to hair sampling pursuant to the Commission's *Rule 8 Order*. S.E.D. Laboratory collected a sample of hair from respondent's head, which sample was sent to Omega Laboratories for analysis in accordance with the necessary chain of custody protocols. Because of the short length of the hair on respondent's head, on September 21, 2006 the Commission issued a second *Rule 8 Order* requiring respondent to submit to a second collection of hair from his body. Respondent timely appeared at the S.E.D. Laboratory in Las Cruces, NM, on September 22, 2006, where body hair samples were collected. Both hair samples collected tested positive for cocaine.

On October 10-11, 2006, a trial was held before the Commission. The Commission, after hearing testimony from eighteen witnesses and reviewing all exhibits admitted into evidence, found:

1. Respondent willfully and knowingly used a drug considered unlawful under the Controlled Substances Act and tested positive for the use of cocaine.

2. Respondent knowingly and willfully failed to comply with a valid *Rule 8 Order* from the Commission and ultimately did not comply until ordered by the Supreme Court to comply.

3. Respondent knowingly and willfully evaded lawful service of process upon him of the Commission's *Rule 8 Order*, obstructed lawful business of the Commission, and committed contempt of the Commission.

4. Respondent knowingly and willfully attempted to influence/intimidate Deputy Jeremy Hash of the Mesilla Marshall's Office in an effort to gain preferential treatment for Lauren Spilsbury, with whom he had a personal relationship.

5. Respondent knowingly and willfully used the prestige of judicial office to gain preferential treatment for Lauren Spilsbury by ordering court staff to issue clearance of Ms. Spilsbury's driver's

license before all of her legal obligations had been met. Respondent was recused from the case and had a personal relationship with Spilsbury.

6. Respondent's conduct in these matters took place while Commission Inquiry No. 2005-003 was pending with the Commission (specifically pertaining to respondent's involvement and use of prestige of judicial office for Lauren Spilsbury in this same case, *State of New Mexico vs. Lauren Spilsbury*, Doña Ana County Magistrate Court Cause No. M-14-DR-200400146). Respondent had been notified in Inquiry 2005-003 that he was being investigated for willful misconduct in office with respect to his actions in the Spilsbury case.

7. In addition to the findings of misconduct in Inquires 2006-042, 2006-071 and 2006-076, the Commission had before it the prior disciplinary history of the respondent concerning similar misconduct involving the same individual (Lauren Spilsbury). The Commission had before it evidence of the failure or refusal of the respondent to engage in meaningful discussions with the Magistrate Advisory Committee who sought to help him. The respondent demonstrated an inability to understand and appreciate the gravity of his actions and how his conduct impacted those who are directly or indirectly subject to his authority. Respondent demonstrated an inability to self-monitor the use of his authority and an inability to recognize when his conduct violates the Code of Judicial Conduct. The respondent demonstrated his failure to take responsibility for his illegal drug use and demonstrated an inability to understand how his extra-judicial conduct detracts from the integrity and impartiality of the judiciary.

The Commission found that respondent's behavior violated the following provisions Code of Judicial Conduct: 21-100 NMRA 1995 (judge shall uphold integrity and independence of judiciary); 21-200(A) NMRA 1995 (judge shall avoid impropriety and appearance of impropriety in all activities); 21-200(B) NMRA 1995 (judge shall not lend the prestige of judicial office to

advance the private interest of the judge or others); 21-300(B)(2) NMRA 2004 (judge shall be faithful to the law and maintain professional competence in it); 21-200(B)(4) NMRA 2004 (judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge's official capacity); and 21-500(A)(1)(2)(3)(4) NMRA 1995 (judge shall conduct all of the judge's extra-judicial activities so that they do not demean the judicial office). The Commission found that the Respondent's conduct constituted willful misconduct in office.

On October 13, 2006, the Commission filed a *Petition for Permanent Removal from Judicial Office*, recommending the Supreme Court impose the following discipline upon the Respondent:

A. Permanent removal from judicial office pursuant to Article VI, Section 32 of the New Mexico Constitution.

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

On October 25, 2006, respondent filed his *Response to the Commission's Petition for Permanent Removal from Judicial Office*, in which he argued that there was not reliable evidence as to any wrongdoing by respondent.

The Commission also filed a *Motion to Extend the Suspension without Pay*. After considering respondent's response to the Commission's motion, the Supreme Court denied the Motion and ordered that respondent's continued suspension after October 26, 2006 be with pay until further order of the Court.

The Supreme Court held oral argument on the Commission's *Petition for Permanent Removal from Judicial Office* on November 8, 2005, one day after he was reelected to office, running unopposed and receiving more than 24,000 votes. The Supreme Court issued an Order granting the *Petition for Permanent Removal from*

Judicial Office and ordered that respondent be disciplined as follows:

1. Respondent is permanently removed from judicial office effective immediately and shall never again hold, become a candidate for, or be permitted to accept appointment to any judicial office in the future, nor be permitted to seek, accept appointment to, or serve *pro tempore* for any judicial office.

2. Respondent shall pay the Commission's costs and expenses as stated in the certified memorandum of costs filed in this Court on November 1, 2006, and said costs and expenses shall be reduced to a transcript of judgment.

In a formal opinion dated June 13, 2007, the Court, recognizing that judicial power must never be taken lightly or abused, noted that the "drafters of our constitutional safeguards wisely recognized the potential for abuse of judicial power and how, if left unchecked, exploitations by individual judges could weaken the judiciary and our system of government." The Court concluded that Judge Garza's use of cocaine violated multiple canons of judicial conduct and found that the judge's "deliberate efforts to elude ordered drug testing demonstrated his lack of regard for the judiciary, his judicial position, and the law." Concluding that removal was the only appropriate remedy, the court stated:

Respondent's use of illegal drugs simply cannot be tolerated. His actions are a direct threat to the integrity and independence of the judiciary, to the judiciary's commitment to the law, and to the public trust. Although Respondent may, and we sincerely hope that he does, address whatever addictions may haunt him, we cannot pretend that Respondent would ever be able to restore the public trust essential to serving as a judge.

Moreover, we cannot allow an individual who would flout the law himself to continue to serve as a judge and to have power over members of his community, including having access to confidential information necessary

for determinations on issuing warrants, as well as having the power to impose sentences upon other citizens for violations of the law that may be lesser in degree than his own. We cannot allow a situation to continue that leaves one questioning what interest Respondent is serving. To do so would make a mockery of the judiciary and of justice itself.

The Commission subsequently filed a *Notice of Abatement of Actions* with respect to JSC Inquiry Nos. 2005-003, 2006-021, 2006-040, 2006-070, 2006-072, and 2006-078.

MATTER OF HON. HECTOR PINEDA
Municipal Judge, Roswell
Inquiry No. 2005-095
Supreme Court Docket No. 29,479

The Commission issued a *Notice of Preliminary Investigation* to Judge Hector Pineda on November 22, 2005. Judge Pineda filed a response to the preliminary investigation notice on December 8, 2005. On January 9, 2006, the Commission issued formal charges against Judge Pineda in a *Notice of Formal Proceedings*. On January 25, 2006, Judge Pineda filed his response to the formal proceedings notice.

The Examiner and Judge Pineda filed a stipulation to the relevant facts of the case, which the Commission accepted on August 9, 2006. The Commission heard closing arguments and disciplinary recommendations from the Examiner and Judge Pineda's counsel and concluded the following facts, in pertinent part:

1. Respondent is the Municipal Judge for Roswell, New Mexico.

2. As the Commission charged in Count I of the *Notice of Formal Proceedings*, since March 2, 2005, Respondent has required all citizens who need to appear before his court to present photo identification prior to such appearances being allowed, including appearances from defendants in criminal or traffic matters, from legal

guardians for minors, and from persons seeking civil marriages.

3. As the Commission charged in Count II of the *Notice of Formal Proceedings*, Defendant William Oden was required to appear before Respondent for trial on or about October 5, 2005 at 3:00 p.m., in the matter of *City of Roswell vs. William Oden*, Roswell Municipal Court Cause No. CR-2005-0003421. Mr. Oden arrived at Respondent's court approximately ten minutes early. He was advised by the court staff that he would need photo identification in order to appear in court. Mr. Oden left to go to the Motor Vehicle Division to acquire a new driver's license. The court staff advised Respondent that Mr. Oden had left the court to obtain photo identification. When Mr. Oden's case was called, Respondent noted that Mr. Oden failed to appear. Mr. Oden returned to Respondent's court at approximately 3:40 - 4:00 p.m., but was informed that Respondent was out and that Mr. Oden should return the following day at 9:00 a.m. Mr. Oden complied with the direction.

On October 6, 2005, Respondent issued a bench warrant for Mr. Oden's arrest based upon Respondent's determination that he failed to appear the previous day. When Mr. Oden returned to Respondent's court on October 6, 2005, Mr. Oden was arrested on the bench warrant and had a \$1,000 cash only bond that Respondent set as requirement for his release. Mr. Oden was incarcerated when he did not post bond.

4. Respondent was familiar with defendant William Oden and had presided over two prior criminal cases against Oden within the six months prior to his appearance before Respondent in the present matter.

5. In the prior cases, Mr. Oden made personal appearances before Respondent and proceedings were conducted. The prior cases were:

A. *City of Roswell vs. William Oden*, No. 2005001625, charges: no license plate, no registration, no proof of insurance, and no driver's license. Filed April 28, 2005, guilty plea proceedings and disposition on May 3, 2005.

B. *City of Roswell vs. William Oden*, No. 2005002216-CR, charge: eluding or attempting to elude police officer. Filed June 15, 2005, guilty plea proceedings and disposition on June 15, 2005.

After considering the arguments of counsel, the Commission rendered the following conclusions of law:

1. As alleged in COUNT I of the Commission's *Notice of Formal Proceedings*, Respondent's photo identification policy exceeded the limits of his jurisdiction as a Municipal Court judge.

2. As applied, Respondent's photo identification policy has denied lawful access to the Respondent's court and denied criminal defendants and civil litigants due process, including reasonable opportunity to be heard.

3. Respondent's conduct as alleged in COUNT I violated Canons 21-100 NMRA 1995; 21-200(A) NMRA 1995; and 21-300(B)(2), (B)(7) and (B)(8) NMRA 2004 of the Code of Judicial Conduct.

4. As alleged in COUNT I of the Commission's *Notice of Formal Proceedings*, Respondent's conduct constituted willful misconduct in office.

5. As alleged in COUNT II, Respondent denied criminal defendant William Oden constitutional due process of law; committed gross errors of law; committed gross abuse of discretion and judicial authority; denied constitutional due process; and demonstrated a critical lack of understanding of due process,

court procedures, the law, and limits of jurisdiction.

6. Respondent's conduct as alleged in COUNT II violated Canons 21-100 NMRA 1995; 21-200(A) NMRA 1995; and 21-300(B)(2), (B)(7), and (B)(8) NMRA 2004 of the Code of Judicial Conduct.

7. As alleged in COUNT II, Respondent's conduct constituted willful misconduct in office

8. Taken as a whole, the Findings of Fact and Conclusions of Law herein establish, by clear and convincing evidence, that Respondent Hon. Hector Pineda has violated the stated provisions of the Code of Judicial Conduct.

9. Respondent's conduct was established by stipulation and by clear and convincing evidence.

The Commission recommended that the Supreme Court impose the following discipline on Judge Pineda:

As to Count I:

A. Discontinuation or Modification of Photo Identification Policy. Respondent shall either (1) immediately discontinue his photo identification policy or (2) immediately modify the policy so as not to deny lawful access to the Respondent's court or to deny criminal defendants and civil litigants due process, including reasonable opportunity to be heard. Respondent shall provide the Supreme Court and the Judicial Standards Commission with documented proof of his compliance with this provision and a copy of the modified policy, if any, within seven (7) days of the Supreme Court's issuance of a disciplinary order in this matter.

B. Formal Reprimand. Respondent shall receive a formal reprimand from the Supreme Court. Formal reprimands are published in the *New Mexico Bar Bulletin*.

As to Count II:

C. One-Week Suspension without Pay. Respondent shall be suspended from his judicial office for one week without pay.

D. \$1,000.00 Fine. A \$1,000.00 fine to be paid by Respondent within fifteen (15) days of issuance of the Supreme Court's disciplinary order in this matter. Payment shall be by certified check made payable to the State of New Mexico and delivered to the Judicial Standards Commission. Respondent shall promptly file proof of payment with the Supreme Court and the Judicial Standards Commission.

E. Formal Reprimand. Respondent shall receive a formal reprimand from the Supreme Court. Formal reprimands are published in the *New Mexico Bar Bulletin*.

F. One-Year Supervised Probation and Mentorship. Respondent shall successfully complete one (1) year of supervised probation by a District Judge mentor. The Judicial Standards Commission will recommend the probation supervisor for the Supreme Court's approval and appointment. The period of supervised probation shall begin upon the Supreme Court's appointment of the probation supervisor. The probation supervisor shall report in writing concerning the progress and outcome of the probation/mentorship program to the Supreme Court and the Commission.

G. Costs and Expenses. The parties shall bear their own costs and expenses.

On October 13, 2006, the Commission filed a *Petition for Discipline* with the Supreme Court. The petition asked for imposition of the recommended disciplinary measures, based on the grounds for discipline fully set forth in the Commission's *Findings of Fact, Conclusions of Law, and Recommendation for Discipline*. The Supreme Court issued an order on October 19, 2006, requiring Judge Pineda to file a response to the petition. The same day, the Commission filed

the *Record of Formal Proceedings before the Judicial Standards Commission*. The record was comprised of the certified copies of pleadings filed with the Commission and the original stenographic transcript of the formal proceedings with original exhibits admitted into evidence.

The Supreme Court set a hearing in the matter for November 21, 2006. Judge Pineda timely filed his response to the petition with the Court. In his response, Judge Pineda asserted two primary arguments: (1) that his photo identification policy served important public policies that outweighed individuals' due process rights and (2) enforcement of the policy was not willful misconduct in office. On November 17, 2006, the Supreme Court vacated the hearing on its own motion. On November 30, 2006, the Supreme Court rescheduled the oral argument for January 24, 2007.

After hearing the oral arguments of the parties, the Supreme Court granted the Commission's disciplinary petition and ordered the following discipline against Judge Pineda:

- (1) Respondent shall immediately discontinue the photo identification policy;
- (2) Respondent shall receive a formal reprimand that shall be published in the *Bar Bulletin*;
- (3) Respondent shall be suspended from judicial office for one week without pay;
- (4) Respondent shall pay a \$1,000.00 fine on or before February 9, 2007; and
- (5) Respondent shall successfully complete one year of supervised probation by a district court judge mentor. The Commission shall recommend a probation supervisor for the court's approval and appointment.

Judge Pineda timely paid the fine. On February 20, 2007, the Commission filed with the

Supreme Court a recommendation for appointment of Hon. Linda M. Vanzi of the Second Judicial District Court as the probation supervisor. On March 9, 2007, the Supreme Court appointed Judge Vanzi to the position. The period of probation would expire March 8, 2008. The Supreme Court issued the formal reprimand to Judge Pineda on June 18, 2007, and was subsequently published in the *Bar Bulletin*.

This case was ongoing at the end FY 2007. Subsequent events will be reported in the Commission's Annual Report for FY 2008.

MATTER OF HON. JAMES T. LOCATELLI
Municipal Judge, Las Cruces
Inquiry No. 2004-134
Supreme Court Docket No. 29,508

The Commission issued a *Notice of Preliminary Investigation* to Judge James Locatelli on April 5, 2005. Judge Locatelli filed an answer to the preliminary investigation notice on April 27, 2005. On June 9, 2005, the Commission issued formal charges against Judge Locatelli in a *Notice of Formal Proceedings*. On July 11, 2005, Judge Locatelli filed his answer to the formal proceedings notice.

On August 9, 2006, a trial was held before the Judicial Standards Commission. The Commission found in pertinent part:

1. In April 2004, the City of Las Cruces initiated a criminal complaint in Las Cruces Municipal Court against Megan Lynn LaMotte, styled *City of Las Cruces v. Megan Lynn LaMotte*, Case No. 2004-6733-PM. Respondent was the presiding judge in the *LaMotte* case.

2. On April 23, 2004, Ms. Milner filed a Notice of Appeal for a trial *de novo* with the Third Judicial District Court captioned *City of Las Cruces v. Megan Lynn LaMotte*, Case No. CV-2004-514. The case was assigned to Judge Robert E. Robles. The District Court scheduled the appeal for a trial *de novo* on August 10, 2004.

3. After hearing argument from both parties on whether Ms. LaMotte was an aggrieved party entitled to appeal the Municipal Court Action, Third Judicial District Court Judge Robert E. Robles denied the City's motion to dismiss and permitted the appeal to go forward. Ms. LaMotte then agreed to enter another plea and the District Court issued a new sentence.

4. On or about October 25, 2004, Respondent improperly issued a criminal complaint on behalf of the City of Las Cruces in the matter of *City of Las Cruces v. Richard Jacquez*, Case No. 2004-0019378-PM, and *City of Las Cruces v. Marcia Milner*, Case No. 2004-19377-PM, charging Assistant City Attorney Richard Jacquez and attorney Marcia Milner with indirect contempt of court for their actions before the Third Judicial District Court in *City of Las Cruces v. LaMotte*, Case No. CV-04-514.

5. Ms. Milner had never appeared before Respondent in any capacity prior to the hearing of October 25, 2006.

6. Mr. Jacquez was responsible for handling the appeal of the *LaMotte* case to the Third Judicial District Court. Prior to handling the *LaMotte* appeal, Mr. Jacquez was not involved in any lower court municipal court hearings in the *LaMotte* case.

7. Despite the fact that the October 25, 2004 hearing was noticed as a sentencing hearing, the actual purpose of Respondent scheduling a "sentencing hearing" in the *LaMotte* case was to issue the criminal contempt citations against Mr. Jacquez and Ms. Milner for their arguments before the Third Judicial District Court.

8. Ms. LaMotte was never called to the bench the day of the purported "sentencing hearing", although she was present in the courtroom when the case was called.

9. Respondent admits that he became angry over the appeal of the *LaMotte* case and further

that he displayed this anger at the October 25 hearing in which the indirect contempt proceedings against Richard Jacquez and Marcia Milner were initiated.

10. Respondent's basis for issuing criminal contempt charges against Ms. Milner was:

Indirect Contempt of Court, Contrary to Rule 8-119, SCRA 1986.

On or About the 28th [sic] day of April 2004 in the City of Las Cruces, State of New Mexico, the above named defendant did file a notice of appeal from the Municipal Court to the Third Judicial District Court knowing that the Defendant had plead guilty to the charges in the Municipal Court and was not an "aggrieved party" and did not seek to first have the plea withdrawn.

11. Respondent's basis for issuing criminal contempt charges against Mr. Jacquez was:

Indirect Contempt of Court, Contrary to Rule 8-119, SCRA 1986.

On or about the 18th day of April 2004 in the City of Las Cruces, State of New Mexico, the above named defendant did prepare, sign and confirm a judgment and sentence in the Third Judicial District Court knowing that the Defendant was not an "aggrieved party" pursuant to NM law and that the appeal from the Municipal Court was contrary to law because the defendant plead guilty to the charges in Municipal Court.

12. Respondent did not review a copy of the tape log or the tape of the hearing before Judge Robles before issuing the criminal complaint for contempt against Mr. Jacquez and Ms. Milner. Respondent's decision to initiate and prosecute the criminal contempt proceedings against the two attorneys was based, at least in part, on Respondent's previously formed opinion of the lack of professional competency of Richard Jacquez and the prior conflicts between the

Municipal Court and the Office of the City Attorney.

13. Respondent admits that he “had created an appearance of impartiality by [his] angry pronouncements, and that he would need to recuse himself had [he] not dismissed the charges.” Respondent states that he “regretted this display of temper,” and “letting my personal feelings affect my judicial demeanor.”

The Commission concluded in pertinent part:

1. Respondent on October 25, 2004 improperly issued criminal complaints on behalf of the City of Las Cruces in the matter of *City of Las Cruces v. Richard Jacquez*, Case No. 2004-0019378-PM, and *City of Las Cruces v. Marcia Milner*, Case No. 2004-19377-PM, charging City Attorney Richard Jacquez and attorney Marcia Milner with indirect contempt of court for their actions before the Third Judicial District Court in *City of Las Cruces v. Megan Lynn LaMotte*, CV-04-514.

Respondent abused the contempt power in violation of Canons 21-100 NMRA 1995; 21-200(A) NMRA 1995; 21-300(B)(2) and (B)(4) NMRA 2004 of the Code of Judicial Conduct and constituted willful misconduct in office.

2. Respondent improperly failed to recuse from *City of Las Cruces v. Jacquez*, and *City of Las Cruces v. Milner* after his angry pronouncements during the October 25, 2004 sentencing hearing in *City of Las Cruces v. Megan Lynn LaMotte*, Case No. 2004-6733-PM.

Respondent’s conduct violated Canons 21-300(B)(1), 21-300(B)(2), 21-400(A), and 21-400(A)(1) NMRA 2004 of the Code of Judicial Conduct and constituted willful misconduct in office.

The Commission recommended that the Supreme Court impose the following discipline on Judge Locatelli:

A. Expungement of the attorney’s contempt cases from the Las Cruces Municipal Court records.

B. Formal public reprimand.

C. Ethics for Judges course at the National Judicial College at Respondent’s own expense.

D. One year supervised probation and formal mentorship with a district judge concerning Respondent’s misconduct and obligations imposed by the New Mexico Code of Judicial Conduct.

E. Assessment of the Commission’s Costs and Expenses.

On October 17, 2006, the Commission filed a *Petition for Discipline*, and a *Certified Memorandum of Costs* with the Supreme Court. The petition asked for imposition of the recommended disciplinary measures, based on the grounds for discipline fully set forth in the Commission’s *Findings of Fact, Conclusions of Law, and Recommendation for Discipline*.

On October 26, 2006, Judge Locatelli filed an *Unopposed Motion for Extension of Response Time and Page Limits*, which requested permission for briefing, which the Supreme Court granted. Judge Locatelli filed his response brief to the petition on November 13, 2006. In his brief, Judge Locatelli argued that his actions did not violate the Code of Judicial Conduct by initiating the contempt cases and that even if he had committed legal error, it should not expose him to discipline. The Commission filed its reply on November 28, 2006, arguing that Respondent’s abuse of contempt power constituted willful misconduct and that he improperly failed to recuse from the contempt cases.

On June 14, 2007, the Supreme Court issued a formal opinion denying the petition for discipline and held that the Commission failed to prove that Judge James Locatelli committed willful misconduct when he charged two

attorneys with criminal contempt for their role in an appeal from his court. The Supreme Court, however, clarified that “when a judge suspects that an attorney has violated a duty of competence, diligence, or candor toward the court, the preferred course of action is to report the attorney to the Disciplinary Board.” *Inquiry Concerning Locatelli*, 2007-NMSC-029, Vol. 46, No. 27, SBB 23 (June 14, 2007).

The Court noted that it was specifically concerned with whether any misconduct was willful. The Court found that because the judge “failed to procure the transcript of the district court proceedings to ascertain the facts before acting on his suspicions that the attorneys were ignoring or attempting to circumvent his order, his actions were negligent.” The Court, however, opined that willful misconduct is more than mere error of judgment or an act of negligence. (The New Mexico constitution does not include conduct prejudicial to the administration of justice as one of the grounds for discipline.) Thus, negligent violations of the Code of Judicial Conduct do not justify discipline or removal. The Court was not persuaded that there was clear and convincing evidence that Respondent’s actions constituted willful misconduct.

The Court emphasized that “Respondent has not informed us of a case, and we are not aware of one, that has specifically upheld a judge’s order holding an attorney in contempt for filing an appeal from the judge’s order, and we do not wish to encourage such a course of action.” In this case, the Court found that neither attorney was clearly disobeying a court order. The Court noted that “challenging a judgment by appealing is not the same as disobeying a court order, even if there is no right to such an appeal. In circumstances like those in this case, when a judge suspects that an attorney has violated a duty of competence, diligence, or candor toward the court, the preferred course of action is to report the attorney to the Disciplinary Board.”

The Court also concluded that the Commission’s findings did not show that Respondent’s anger was expressed in a manner that constituted a

willful violation of his duty to be dignified and courteous, noting that although the judge acknowledged that he had been angry and upset in open court, the Commission did not find that he had been abusive, shouted, or appeared disrespectful. The Court also concluded that the judge did not act in the case after he knew he should have recused, noting that although additional hearings were set automatically, none actually occurred. The Court did state that “a better course of action would have been to enter an order dismissing the case immediately upon deciding to do so.”

MATTER OF HON. WILLIAM A. VINCENT, JR.
Magistrate Judge, San Juan County
Inquiry Nos. 2006-028
Supreme Court Case No. 27,266

The Commission issued a *Notice of Preliminary Investigation* to Judge William A. Vincent, Jr. on March 17, 2006 based on his public endorsement of a mayoral candidate that appeared in the local newspaper. Judge Vincent filed an *Answer to the Preliminary Investigation* notice on March 31, 2006. On April 19, 2006, the Commission issued formal charges against Judge Vincent in a *Notice of Formal Proceedings*. On May 4, 2006, Judge Vincent filed his *Response to the Notice of Formal Proceedings*.

The Commission set the matter for trial on December 11, 2006. On November 27, 2006, Judge Vincent filed a *Motion to Dismiss*, arguing that his endorsement of a mayoral candidate was protected by the First Amendment. Examiner filed a *Response in Opposition to Respondent’s Motion to Dismiss*, noting that Judge Vincent’s action violated the Code, specifically Canon 21-700(A)(3)(b), which states that a judge shall not “publicly endorse or publicly oppose a candidate for public office through the news media or in campaign literature.”

The Examiner and Judge Vincent filed a stipulation to the relevant facts of the case, which the Commission accepted during the trial. The Commission heard closing arguments and

disciplinary recommendations from the Examiner and Judge Vincent.

The Commission found the following facts to be material in this matter:

1. At all times material to this inquiry, Respondent was and continues to be a full-time Magistrate for San Juan County Magistrate Court, San Juan County, New Mexico.
2. Respondent publicly endorsed Bill Standley for reelection to the public office of Mayor for Farmington, New Mexico.
3. Respondent's endorsement was published in the March 6, 2006 edition of *The Daily Times* newspaper in Farmington, New Mexico.
4. Respondent authorized in writing the use of his name for the endorsement.

The Commission concluded in pertinent part:

Based on the stipulation of the facts and the matters presented on the record, there is clear and convincing evidence that Respondent violated section 21-700 (A)(3)(b) of the Code of Judicial Conduct by publicly endorsing a candidate and section 21-700(B) of the Code of Judicial Conduct by lending the prestige of the judicial office to the private interests of another. Respondent's conduct constitutes willful misconduct in office.

The Commission recommended that the Supreme Court impose the following discipline on Judge Vincent: a formal reprimand published in the *New Mexico Bar Bulletin*.

On December 18, 2006, the Commission filed a *Petition for Discipline* and subsequently filed the *Record of Formal Proceedings before the Judicial Standards Commission* with the Supreme Court. The Petition asked for imposition of the recommended disciplinary measure, a formal reprimand, based on the grounds for discipline

fully set forth in the Commission's *Findings of Fact, Conclusions of Law, and Recommendation for Discipline*.

On December 28, 2006, Judge Vincent filed *Respondent's Response to Petition for Discipline*. Judge Vincent subsequently filed *Respondent's Unopposed Motion for Permission to File Briefs*. The Supreme Court issued an *Order Establishing Briefing Schedule* on January 12, 2007. Judge Vincent filed *Respondent's Brief in Chief*, arguing that he could not be disciplined for his public endorsement of a mayoral candidate as his conduct was protected by the First Amendment of the United States Constitution, challenging the constitutional validity of Canon 21-700(A)(3)(b). The Commission's *Reply Brief* argued that Respondent's endorsement of a candidate for public office in a widely circulated Farmington newspaper violated the New Mexico Code of Judicial Conduct. The Commission noted that Canon 21-700(A)(3)(b) is unambiguous, necessary, reasonable and constitutional, and strikes a fully constitutional balance between limitation of a judge's speech and the government's interest in maintaining the independence and integrity of the judiciary.

On April 15, 2007, the Supreme Court heard oral argument on the Commission's disciplinary petition, and Respondent's objections. After full briefing and argument by the parties, the Supreme Court issued an order stating:

1. The Court finds Rule 21-200(B) and 21-700(A)(3)(b) NMRA to be constitutional.
2. It is ordered that the petition for discipline hereby is granted and a formal reprimand shall issue.

The Commission filed a *Motion for Formal Opinion* on April 27, 2007, arguing that this case presented a matter of first impression in New Mexico, and that a formal opinion from the Court would serve the public interest and enhance and develop this body of law in the State of New Mexico. Respondent filed a *Motion for*

Written Order and Findings of Fact and Conclusions of Law on May 7, 2007. The Commission responded to the motion on May 10, 2007. The Supreme Court's reprimand has not yet issued.

MATTER OF HON. GEORGE GALANIS
Magistrate Judge, McKinley County
Inquiry No. 2006-130
Supreme Court Docket No. 30,198

After conducting an initial inquiry on its own motion, on January 16, 2007, the Commission filed a *Verified Petition for Temporary Suspension without Pay with the Supreme Court*. Pursuant to the New Mexico Supreme Court's August 29, 2006 Order directing the Supreme Court Clerk's Office to file under seal all petitions for immediate suspension and responses thereto, the Petition was sealed.

Local media reported that several sources claimed the charges stemmed, at least in part, from allegations that the judge had been spending too much time on his outside businesses and not enough time in the courtroom, had come in late, left work early, on several occasions, failed to show up, and improperly conducted court business while at a restaurant in which he is a part owner.

Respondent subsequently tendered his resignation as magistrate judge to the Supreme Court on February 9, 2007.

On February 12, 2007, the Commission filed a *Motion to Dismiss the Case without Prejudice* in the Supreme Court. The next day, the Commission filed a *Notice of Abatement* of the Commission's underlying case with the Supreme Court. On February 26, 2007, the Supreme Court granted the Commission's *Motion to Dismiss* and dismissed the *Petition for Immediate Temporary Suspension without Pay* without prejudice on the basis that the matter was now moot.

MATTER OF HON. J. WAYNE GRIEGO
Metropolitan Judge, Bernalillo County
Inquiry No. 2005-051
Supreme Court Docket No. 30,203

The Commission issued a *Notice of Preliminary Investigation* to Judge J. Wayne Griego on June 2, 2005. On a grant of extension, Judge Griego filed his response to the preliminary investigation notice on July 7, 2005. On September 14, 2005, the Commission issued formal charges against Judge Griego in a *Notice of Formal Proceedings*. On October 11, 2005, Judge Griego filed his response to the formal proceedings notice.

After conducting discovery and routine pretrial matters, the Examiner and Judge Griego submitted a proposed *Stipulation Agreement and Consent to Discipline* to the Commission on November 29, 2006. The Commission held a presentment hearing on December 11, 2006, to consider the proposed stipulation agreement. After hearing from the Examiner, Respondent, and Respondent's counsel, the Commission accepted, entered into, and filed the stipulation agreement on December 11, 2006. In the stipulation agreement, Judge Griego admitted the following:

a. Judge J. Wayne Griego was at all times relevant to this matter and currently is a full-time Metropolitan Judge for Bernalillo County, New Mexico.

b. On Monday, April 25, 2005, Respondent improperly delegated his judicial duties to his secretary, Jackie Saavedra. Respondent was in Las Vegas, Nevada on a personal vacation. On the morning of April 25, 2005, Respondent knew that he would not be returning to Albuquerque until the afternoon. Respondent telephoned Ms. Saavedra about his delayed return and instructed her to handle his cases for him. Ms. Saavedra followed Respondent's directive and performed Respondent's judicial duties for his traffic docket, using Respondent's signature stamp for endorsement. Respondent did not return to his court to perform his duties until approximately

3:00 p.m. After his return and after the Chief Judge, Presiding Criminal Division Judge, court staff, and the media learned of and reported on the situation, Respondent reviewed and signed all of the cases that Ms. Saavedra handled in his absence.

c. The conduct set forth in paragraph b violates Canons 21-100 NMRA 1995; 21-200(A) NMRA 1995; 21-300(A), (B)(1), (B)(2), (B)(4), (B)(7), (B)(8), (C)(1), and (C)(2) NMRA 2004; and 21-500(A)(1)-(4) NMRA 1995 of the Code of Judicial Conduct.

d. Respondent's conduct constituted willful misconduct in office.

Judge Griego consented to accept the following substantive discipline from the Supreme Court: formal reprimand; \$500.00 fine; six-month supervised probation and formal mentorship.

Based on the stipulations, the Commission rendered findings of fact, conclusions of law and a recommendation for discipline on January 19, 2007, consistent with the stipulation agreement. The same day, the Commission filed a *Petition for Discipline upon Stipulation* with the Supreme Court.

On January 24, 2007, the Commission filed the *Record of Presentment Proceedings before the Judicial Standards Commission*. The record was comprised of the original stenographic transcript of the presentment hearing.

On February 6, 2007, the Supreme Court issued an order granting the *Petition for Discipline upon Stipulation* and imposing the stipulated discipline. On February 16, 2007, the Commission filed a recommendation for appointment of Hon. Neil C. Candelaria of the Second Judicial District Court as Judge Griego's mentor and probation supervisor. On February 20, 2007, the Supreme Court issued an order appointing Judge Candelaria as the mentor and probation supervisor. The period of supervised

probation and mentorship would run until August 19, 2007.

Judge Griego paid the fine on February 22, 2007. The Supreme Court issued the formal reprimand on June 13, 2007, which was subsequently published in the *Bar Bulletin*.

This case was ongoing at the end FY 2007. Subsequent events will be reported in the Commission's Annual Report for FY 2008.

MATTER OF A JUDGE *Inquiry No. 2005-077*

In April 2007, the Commission held a trial concerning allegations that a judge demonstrated disregard for fair and proper court procedure and deprived an individual of due process and the individual's constitutional rights by conducting an unscheduled late night hearing at a police department to release the individual to the custody of the police department for the purpose of the individual's direct participation in an undercover drug deal, and that the judge improperly destroyed court records pertaining to the hearing.

At the conclusion of the proceedings, the Commission found that there was not clear and convincing evidence that the judge engaged in willful misconduct in office and dismissed the matter. No filing was made to the Supreme Court.



INFORMAL PROCEEDINGS

PRIVATE LETTERS OF CAUTION. The Commission may dispose of a matter by privately cautioning the judge that the conduct alleged may violate the Code of Judicial Conduct. The allegations in these cases were not proven by clear and convincing evidence and no specific findings of willful misconduct were made. However, the Commission was concerned that if true, the conduct may violate the Code, which required the matters to be addressed. In FY 2007, the

Commission issued 14 private cautionary letters to judges addressing the issues listed below:

1. A judge allegedly failed to take action on a petition for writ of habeas corpus as required by the rules of criminal procedure. Additionally, the petition was received in the judge's court, but was never properly filed in the court record. The Commission remained concerned that the judge's actions in the matter may have been inconsistent with procedural requirements. The Commission cautioned the judge to (1) review and comply with the procedures and deadlines mandated by the rules of criminal procedure, (2) with respect to the case underlying the complaint, review the judge's own actions and comply with the procedures and deadlines mandated by the applicable procedural rule.

2. A judge allegedly committed gross legal error, gross abuse of discretion, and/or failed to perform judicial duties by issuing a temporary restraining order against a person, in the absence of personal jurisdiction and without the legally required factual basis, contrary to the established limits of the law. After the judge completed a mentorship with an experienced appellate judge, the Commission cautioned the respondent judge to: (1) prior to taking judicial action in cases, particularly, temporary restraining order matters, ensure that the judge has proper jurisdiction over the parties and the subject matter and that there is sufficient factual and legal bases for the judge's actions; and (2) do not apply the domestic relations TRO/injunction standards to civil TRO/injunction matters.

3. As part of sentencing in a traffic matter, a judge required the defendant to donate to a domestic violence shelter, which is not one of the entities authorized by NMSA 1978, §31-20-6(E) for such a requirement. The Commission cautioned the judge to ensure that the judge's sentences comply with the law, particularly with respect to donations.

4. A judge allegedly accepted jurisdiction in a case involving a juvenile criminal matter over which the judge did not have proper jurisdiction,

engaged in *ex parte* communications with a law enforcement officer, considered the defendant/defendant's family's automobile insurance coverage as a basis to dismiss the matter, and failed to make a complete and proper record of the judge's rulings in the case. The Commission cautioned the judge to (1) carefully study and closely follow the applicable rules or procedure in all proceedings; (2) be aware of the jurisdictional limits of the court, and especially cognizant of the limits of jurisdiction in cases involving juvenile matters; (3) refrain from initiating, permitting, or considering *ex parte* conversations with litigants, including their family and friends, concerning a pending or impending proceeding; (4) refrain from considering insurance coverage as a basis for a decision to dismiss a case, (5) make a complete and proper record of rulings in cases; and lastly, (6) comply with NMSA 1978, §66-8-135 when preparing abstracts of record. The Commission asked the judge to attend at own expense a specified ethics course and to reimburse the Commission's costs in holding a hearing in the matter.

5. A judge allegedly was the founder and board member of a non-profit organization that provides housing for persons who would otherwise be incarcerated due to circumstances stemming from alcohol and drug abuse. The organization's website referenced the judge's judicial position, solicited donations, and listed the judge's role on the board of directors. The Commission was concerned that the judge was alleged to have a conflict of interest in case where defendants were sentenced to the organization and the financial solicitation materials listing the judge and the judge's judicial position may violate the Code of Judicial Conduct. After dismissing the conflict issue, the Commission cautioned the judge to ensure that the judge's name and judicial title were not used on materials soliciting contributions for organizations.

6. A judge allegedly failed to recuse from a case where a former law partner had entered an appearance in a case a few months after the judge

left the law firm. The Commission cautioned the judge that where a party, a party's lawyer, or any other person involved in a case pending before the judge was a client or a former partner or associate with his prior law practice, the judge must determine whether the judge is disqualified and required to recuse from the matter pursuant to Canon 21-400(A) of the Code of Judicial Conduct. If the judge determines that recusal is not required, the judge should refrain from taking any action in the case without first disclosing the prior legal representation on the record to all involved parties so that the parties may decide (outside the judge's presence) whether to request the judge's excusal or agree to waive the issue as set forth in Canon 21-400(C). The judge was provided copies of three published opinions from the Advisory Commission on the Code of Judicial Conduct, 89-6, 95-4, and 97-8, which note that the appearance of a former law partner or associate before a judge within a short period of time after the judge has left the partnership may give the appearance of impropriety, especially to the public.

7. A judge allegedly had a pre-established and set bond amount and bond posting restriction in domestic violence cases. Additionally, the judge allegedly made public comments published in the media that may have violated the Code of Judicial Conduct. The Commission cautioned the judge to (1) refrain from restricting victims or other individuals from posting bonds, where such restrictions are not specifically identified in an applicable statute or procedural rule; and (2) review Canon 21-300(B)(10) and (B)(11) of the Code and take care to ensure that the judge complies with the Code when making comments to the media in the future.

8. A judge allegedly improperly and excessively delayed in adjudicating a case and then subsequently failed to timely recuse from the case on the eve of trial. The judge's failure to recuse and failure to set the matter for trial improperly and unreasonably delayed adjudication of this case. The Commission was specifically concerned about the timeliness of the

judge's recognition of the circumstances that led the judge to recuse on the eve of trial. The Commission cautioned the judge to review and abide by the Code of Judicial Conduct, particularly Canon 21-300(B)(8) - a judge shall dispose of all judicial matters promptly, efficiently and fairly; Canon 21-300(A) - the judicial duties of a judge take precedence over all the judge's other activities; and Canon 21-400(A)(1) - a judge is disqualified and shall recuse in a proceeding where the judge's impartiality might reasonably be questioned, or in the alternative, improper recusal in violation 21-300(B)(1) - a judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

9. A judge allegedly held an *ex parte* hearing on a dispositive defense motion in a civil case. The plaintiff was incarcerated and was therefore not present. The judge's staff mailed notice of the hearing to the incarcerated plaintiff, but the court record showed no transport order or directions for appearing by telephone. The Commission cautioned the judge to (1) ensure in civil cases involving incarcerated *pro se* litigants that all parties are afforded with due process, including a reasonable opportunity to be heard at hearings, particularly concerning dispositive matters; and (2) keep in mind the judge's affirmative duty under the Code of Judicial Conduct not to conduct *ex parte* proceedings and to avoid the appearance of impropriety. The Commission acknowledged that while transport orders may not be the appropriate option in civil matters, the judge should consider possible alternatives, including telephonic hearings or deciding matters on the merits of the parties' pleadings where legally sufficient and appropriate.

10. In the preceding election campaign, a judge allegedly accepted anonymous contributions that exceeded the \$500.00 aggregate limit imposed by NMSA 1978, §1-19-34(B). Additionally, the judge accepted four anonymous contributions that exceeded the \$100.00 individual contribution limit imposed by

the statute. The judge allegedly failed to donate the contributions exceeding the limits as required by NMSA 1978, §1-19-34(D). The Commission cautioned the judge to refrain in future campaigns from accepting anonymous contributions in excess of the applicable individual and aggregate limits imposed by NMSA 1978, §1-19-34(B). The Commission further suggested that an appropriate course of action would be for the judge to donate the excess contributions immediately as required by §1-19-34(D), and provide the Commission with proof of compliance within thirty days.

11. A judge allegedly was involved improperly in a case from which the judge had recused and over which another judge was presiding. At a hearing, the other judge decided to dismiss the case and left the courtroom to get an order form. While out of the courtroom, the other judge spoke with the recused judge who advised the other judge that the dismissal was not proper. The recused judge accompanied the other judge back into the courtroom where the decision to not grant the dismissal was announced. The Commission cautioned the respondent judge to not be involved or take action in cases from which the judge has recused.

12. A judge allegedly issued a show cause order, but failed to sign it. The order instead contained a certificate of service signed by a court staff member. The judge also allegedly held a hearing in the case off the record. The hearing was originally scheduled as a telephone conference, but became a hearing where orders were issued. The judge did not have the proceeding recorded or place the substance of the proceeding and orders on the record.

* * *

Additionally, the following summary was inadvertently omitted from the FY 2006 Annual Report.

A judge allegedly wrote a letter on behalf of an individual who had been detained in another country in order to prove that the individual was

not a felon. The Commission cautioned the judge to (1) avoid lending the prestige of judicial office for the advancement of the private interests of others; and (2) exercise caution when serving as a reference or writing recommendation letters on behalf of others to ensure the judge's compliance with the Code of Judicial Conduct.

INFORMAL REMEDIAL MEASURES. The Commission may elect to dispose of matters informally by referring judges for remedial measures, including mentorship, counseling or other assistance. In the mentor 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 programs is accomplished through stipulation. In FY 2007, 3 judges were referred for informal remedial measures, which are discussed below.

1. After the Commission conducted a preliminary investigation and issued formal charges in a matter, the judge and examiner negotiated a proposed stipulation agreement and consent to informal disposition. The Commission accepted and entered into the agreement, in which the respondent judge admitted arraigning a defendant on a lesser charge of DWI first offense (non-aggravated) based on an incorrect arraignment form, rather than the actual charges of Aggravated DWI, Roadways Laned for Traffic, and Possession of Alcoholic Beverage in Open Container in a Motor Vehicle. The judge failed to review the criminal complaint or the citation, which were contained in the case file prior to the arraignment. The defendant pleaded guilty to the lesser charge and was sentenced.

Additionally, the judge improperly failed to recuse from cases where a business was a party, but the business owner was a friend of the judge, served as campaign manager for the judge's judicial election, and donated the single largest campaign contribution (in-kind) to the judge's

campaign. The cases were disposed by default judgments signed by the judge or by dismissal by the plaintiff after settlement with the defendants. The judge acknowledged and admitted the impropriety, actual and apparent, caused by his failure to recuse from these cases.

Finally, the judge improperly issued a Final Order on Criminal Complaint postdated by one year where the sentence was deferred for that period. The clerk's office dismissed the case on the date the order was signed. The respondent judge falsely stated on August 4, 2005 in the postdated order that the deferred sentence had been completed and the all terms and conditions of the deferred sentence were satisfied.

In mitigation, the conduct occurred in the early days of respondent's term and there was no prior disciplinary history.

The stipulated informal disposition included the following remedial measures: (1) the Commission took the matter under advisement for a period of 180 days; (2) respondent judge attended at the judge's own expense the "Ethics for Judges" class offered by the National Judicial College; and (3) respondent successfully completed a mentorship with a district judge concerning the admitted misconduct and the judge's obligations imposed by the Code of Judicial Conduct.

2. The Commission conducted a preliminary investigation and issued formal charges into allegations that a judge vacated a criminal trial based on *ex parte* discussions with the criminal defense attorney. The judge subsequently brokered an *ex parte* plea deal with the defense attorney that the judge later presented *ex parte* to the prosecutor in the matter.

The judge entered into a stipulation agreement with the Commission in which the judge admitted that an attorney appeared in the judge's office while another judge was present. The attorney asked for the respondent judge's assistance in a criminal matter pending before the

judge and for which the attorney was representing the defendant. No prosecutor was present. The attorney expressed concerns that if the matter went to trial, the defendant may be deported from the United States. The respondent judge informed the attorney that the trial would be canceled and asked the attorney to return to the office to discuss the matter in detail to pursue a deal in the matter. The respondent judge canceled the trial and worked out a deal in the case *ex parte*, which the respondent judge presented *ex parte* to the prosecutor. The respondent judge admitted that the conduct violated specific provisions of the Code of Judicial Conduct and constituted willful misconduct in office.

Respondent agreed to accept the following disposition from the Commission:

a. Commission will take the matter under advisement for 180 days.

b. Respondent will attend and pay for a specified ethics course.

c. Respondent will inform the probation supervisor of this matter.

d. Respondent will abide by the terms of the agreement and the Code of Judicial Conduct.

e. Respondent agreed that any failure to comply with one of the stipulated measures shall constitute contempt of the Commission.

f. At the end of the period of advisement, and if respondent timely and successfully completed the stated terms, respondent will receive a letter of caution.

The respondent judge successfully completed the terms of the agreement, a cautionary letter issued, and the matter was closed.

3. The Commission conducted a preliminary investigation and issued formal charges into allegations that a judge allegedly afforded preferential treatment to an individual by

allowing the individual to enter a telephonic plea and by directing court staff to clear the restrictions on the individual's license to drive, contrary to the normal practice of the judge's court.

Additionally, the judge failed to recuse from the case. The judge knew the defendant and considered the defendant's parent to be a friend. The defendant's parent helped fund one or more of the judge's election campaigns by providing a billboard.

The judge entered into a stipulation agreement with the Commission and consented to accept the following remedial measures:

a. Complete a specified ethics course at own expense.

b. Complete an informal mentorship concerning the obligations/restrictions imposed by the New Mexico Code of Judicial Conduct, including but not limited to, prohibitions against use of judicial office to advance private interests, (Rule 21-300(B)(2), 21-300(B5) NMRA); disposition of all matters promptly and fairly (Rule 21-300(B)(8)); recusal from matters where Respondent's "*impartiality may be reasonably questioned*" (Rule 21-400(A)(1-5) NMRA); and conducting all extra-judicial activities in accordance with the code of judicial conduct (21-500(A)(1-4) NMRA).

c. Upon the timely and successful completion of the terms, the Commission will issue a cautionary letter pursuant to Rule 4(A) of the Judicial Standards Commission Rules.



PROCEEDINGS BEFORE THE NEW MEXICO SUPREME COURT FY 2002 – FY 2006

Following is a summary of cases that the Commission filed with the New Mexico Supreme Court during the five prior fiscal years. Cases are listed in sequential order of their filing.

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 the judge who was presiding over a 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. Reuben 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. The only remediation respondent completed was to purchase new hearing aids. The Court later extended Respondent's leave until further order. Judge underwent a second independent medical evaluation. Another order was later issued to extend the leave but terminate his salary after six additional weeks. Thereafter judge was on leave without pay until final resolution of case. The matter was ultimately tried on the merits in August 2006. On recommendation from the Commission, judge was involuntarily retired and ordered to pay over \$7,200.00 in costs.

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).

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, 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 judge's conduct constituted willful misconduct in office and recommended a sixty-day suspension deferred on the condition that judge 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 \$5,000.00 in costs.

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 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. 2004-067, 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. On stipulation, judge ordered to never again maintain employment, have business relationships, or engage in other financial dealings that could be affected by proceedings that could come before him that may reasonably be perceived to exploit his judicial position or that involve frequent transactions or continuing business relationships with persons likely to come before the judge. Judge also reprimanded and ordered to pay \$500.00 fine and be on supervised probation for duration of current term.

Matter of Hon. William A. McBee, Fifth Judicial District Court Judge, JSC Inquiry No. 2004-011, Supreme Court Docket No. 29,265 (N.M. 2005). Allegations included failing to recuse from criminal case 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. Judge reprimanded and ordered to recuse from the case and all other matters involving the defendant or her attorney/boyfriend. Judge was also ordered to disclose his attorney-client relationship in this disciplinary matter to all parties appearing before him where his attorney will appear. Further ordered to pay \$1,000.00 fine, \$2,500.00 in costs, suspended seven days without pay, and suspended additional thirty days (deferred for one year supervised probation with conditions).

Matter of Hon. Erminio Martinez, Taos County Magistrate Judge, JSC Inquiry No. 2005-024, Supreme Court Docket No. 29,309 (N.M. 2005). Allegations included that during the months of January, February, and March 2005, Respondent, while employed as a full-time Magistrate Judge for Taos County, also served as a Tribal Judge for Taos Pueblo Tribal Court, and was paid \$840.00 for 28 hours (3.5 days) of services rendered to Taos Pueblo as Tribal Court Judge Pro Tempore, during hours in which he was being paid by the State of New Mexico to serve as a Taos County Magistrate Judge. On stipulation, judge publicly reprimanded, ordered to pay an \$840.00 fine, and placed on a 3.5-day suspension without pay.

Matter of Hon. Charles Barnhart, Bernalillo County Metropolitan Court, JSC Inquiry Nos. 2004-126 & 2005-059, Supreme Court Docket No. 29,379 (N.M. 2005). Allegations included violating courthouse security policies, threatening security officer's job, harassing and challenging security personnel about established policies; engaging in pattern of hostile behavior and routinely using offensive language toward court security personnel; abusive behavior toward court employees, tossed objects at staff, yelled, pounded fist on desk, and asserted that only he could communicate with his trial court administrative assistant ("TCAA") pertaining to court business; disregarded court policy on how traffic arraignments were to be handled, violated court

rules and agreements with colleagues, causing increased workload for the other judges; permitted his TCAA to behave in an unprofessional manner; condoned and assisted TCAA in violating court policies; failed to prohibit TCAA from being rude to court employees; and incessantly complaining about the chief judge, presiding criminal judge, court administration, and court policies; disregarded state law and court policy by waiving *a priori* supervised probation costs for all criminal cases where such costs were statutorily imposed; engaged in pattern and practice of improperly disqualifying from traffic cases to avoid additional work for himself and his TCAA; and during Commission inquiry failed to adhere to almost all provisions of the Commission's orders and directives, failed to appear for noticed hearings, and failed to appear for his own properly noticed and subpoenaed deposition. On stipulation, Supreme Court ordered judge to submit letter of retirement, pay \$1,000.00 fine, and formal reprimand.

Matter of Hon. Frances Gallegos, Santa Fe Municipal Court Judge, JSC Inquiry No. 2005-019, Supreme Court Docket No. 27,906 (N.M. 2005). Allegations included failing to conduct constitutionally proper arraignments (only informed defendants of options to plead guilty or no contest, but did not inform of right to plead not guilty); conducted flawed arraignment and a summary trial against a *pro se* defendant, ignoring defendant's requests for an attorney, not allowing presentation of evidence on a charge, and imposing summary sentence; implemented an established policy of sentencing all DWI offenders to a specific six-month aftercare program, regardless of the results of the defendant's screening results; and conducted a summary trial against a *pro se* defendant in two animal ordinance cases, summarily imposing a sentence for a failure to appear charge where defendant had not been arraigned, had no noticed hearing on the charge, and had no reasonable opportunity to defend against the charge. Supreme Court temporarily suspended judge for 90 days with pay. Commission noticed

a trial on the merits, judge resigned prior to trial, trial conducted as noticed, but judge failed to appear. Commission filed recommendation for permanent removal from judicial office and record. Supreme Court denied petition, sealed and ordered return to Commission of record proper.

Matter of Hon. Frances Gallegos, Santa Fe Municipal Court Judge, JSC Inquiry No. 2005-076, Supreme Court Docket No. 27,906 (N.M. 2005). Allegations included failure to prepare and forward to the Department of Motor Vehicles accurate and complete abstracts of record for traffic matters, in violation of NMSA 1978, §66-8-135; attributed failure to clerical error; and began amending all DWI matters she adjudicated in an attempt to enhance falsely her standing with the public (substantively amended records to show increased sentences than was contained on her judgment and sentence orders); failed to maintain professional competence in judicial administration; failed to inform and require court staff to observe standard of fidelity and diligence that applied to performance of her legal and judicial duties; and failed to train, supervise and manage staff regarding abstracts of record. Commission petitioned for immediate temporary suspension and presented oral argument. Supreme Court ordered petition held in abeyance. Judge later resigned and Commission abated case unless or until judge returned to a judicial position in the future.

Matter of Hon. Hector Pineda, Roswell Municipal Court, JSC Inquiry No. 2005-025, Supreme Court Docket No. 29,479 (N.M. 2005). Allegations included displaying improper demeanor during a criminal trial toward a *pro se* defendant. Judge became agitated with and yelled at a *pro se* defendant, stood up from chair and hit gavel on bench so hard it caused debris to scatter across courtroom, which hit prosecuting police officer and defendant. On stipulation, judge reprimanded, paid \$500.00 fine, completed six-month supervised probation, and completed formal mentorship in judicial demeanor, temperament, and responsibilities under the Code of Judicial Conduct.

Matter of Hon. Melissa Miller-Byrnes, Las Cruces Municipal Court Judge, JSC Inquiry Nos. 2004-072 & 2004-077, Supreme Court Docket No. 28,716 (N.M. 2006). Allegations included that on May 25, 2004, June 9, 2004, and June 16, 2004, Respondent and her fellow judge, Hon. James Locatelli, sent an improper memorandum/letter to the Las Cruces City Mayor, City Manager, and all City Councilors, addressing accusations of improper management and conduct of the Las Cruces Police Department and City Attorney's Office, thereby compromising the independence and impartiality of the Las Cruces Municipal Court. Additionally, on June 13, 2004, judge granted an interview with a reporter from the *Las Cruces Sun-News*, wherein judge made improper public comments about an Assistant City Attorney and the City Manager. Commission found that Judge engaged in conduct or language calculated to erode public confidence, and compromised the integrity, independence, and impartiality of the judiciary and constituted willful misconduct in office, recommended that judge receive a formal public reprimand by the Supreme Court, a thirty-day suspension without pay, and an assessment of 25% of costs incurred in the matter. The Supreme Court found that judge's verbal remarks to a reporter were inconsistent with the Code of Judicial Conduct Rule 21-300(B)(4) NMRA, requiring that a judge be "patient, dignified and courteous" towards litigants, lawyers, and others when acting in an official capacity. The Court further directed that this order shall be made part of judge's permanent records including her record with the Judicial Standards Commission.

Matter of Hon. James Locatelli, Las Cruces Municipal Court Judge, JSC Inquiry Nos. 2004-073 & 2004-081, Supreme Court Docket No. 29,508 (N.M. 2006). Allegations included that on May 25, 2004, June 9, 2004, and June 16, 2004, judge and his fellow judge, Hon. Melissa Miller-Byrnes, sent an improper memorandum/letter to the Las Cruces City Mayor, City Manager, and all City Councilors, addressing accusations of improper management and conduct of the Las Cruces Police

Department and City Attorney's Office, thereby compromising the independence and impartiality of the Las Cruces Municipal Court. Additionally, judge wrote a letter to the editor for publication in the *Las Cruces Sun-News*, which addressed continued accusations of mismanagement and misconduct of Las Cruces Police Department and City Attorney's Office. Commission found that as to judge engaged in conduct or language calculated to erode public confidence, and compromised the integrity, independence, and impartiality of the judiciary and constituted willful misconduct in office. Commission recommended that judge receive a formal public reprimand by the Supreme Court, a \$500.00 fine, a twelve-month formal mentorship, and an assessment of 25% of costs incurred in the matter. The Supreme Court denied the Commission's requested relief for failure to prove willful misconduct by clear and convincing evidence.

Matter of Hon. Florencio "Larry" Ramirez, Third Judicial District Court Judge, JSC Inquiry Nos. 2004-097 & 2005-005, Supreme Court Docket No. 29,552 (N.M. 2005). Allegations included improper involvement in incident where his son and friends were being cited by city police officers for drinking alcohol at a park, identifying himself to officers, showing court identification card and driver's license without being requested; collected citations after issuance; improperly involving himself in and using his volunteer bailiff to assist son and friends in responding to the cases at the Las Cruces Municipal Court; called and left message for a judge presiding on some of the cases that he was sending his son and some of his friends in to the court to change their pleas on a specific date; and in an unrelated matter, displayed improper demeanor toward a defense attorney at a proceeding, preventing her from making her full objections for the record and admonishing her in front of her client. On stipulation, Supreme Court formally reprimanded judge, and ordered him to complete six months of supervised probation and formal mentorship, complete a national ethics course at his own expense, and reimburse the Commission for costs of

\$1,500.00. While on probation, a new matter arose for which the Commission petitioned for temporary suspension, which the Court granted. Judge resigned and the Commission abated proceedings.

Matter of Hon. Rhoda Hunt, Magistrate Judge, McKinley County, JSC Inquiry No. 2005-113, Supreme Court Docket No. 27,535 (N.M. 2005). Allegations included a criminal investigation by the FBI into possible felony criminal violations by judge and other acts that may constitute willful misconduct in office. Commission petitioned for temporary suspension. On day of scheduled argument before the Supreme Court, judge stipulated with Commission to resign permanently from judicial office. That same day, the Supreme Court issued an order quashing its show cause order, vacating the hearing, and granting the parties' motion to accept judge's permanent resignation from judicial office and to dismiss without prejudice.

Matter of Hon. Linda G. Padilla, Gallup Municipal Court Judge, JSC Inquiry No. 2005-114, Supreme Court docket No. 29,558 (N.M. 2005). Allegations included throwing away traffic citations and providing preferential treatment for a specified group of individuals and their families. Commission petitioned for immediate temporary suspension. After oral argument, Supreme Court denied the Commission's petition.

Matter of Hon. Susana Chaparro, Magistrate Court Judge, Doña Ana County, JSC Inquiry Nos. 2004-074 & 2005-005, Supreme Court Supreme Court Docket No. 27,923 (N.M. 2006). Allegations included improperly retaliated against, harassed, interfered with, intimidated, and prohibited work of duly authorized contract language interpreter. Additionally, and in demonstration of judge's ongoing harassment and dissatisfaction with the interpreter because of the interpreter's confrontation with judge's sister, judge began routinely to conduct court proceedings in the Spanish language in order to bypass the official court interpreter(s), inappropriately and improperly assuming that

function. After being instructed by the court consulting judge to discontinue the harassment and improper treatment of the interpreter, including instructing the interpreter and/or other interpreters to use consecutive instead of simultaneous translation, and to discontinue conducting court proceedings in Spanish, judge continued to routinely conduct court proceedings in Spanish. Supreme Court granted the Commission's *Petition to Accept Stipulation to Permanent Resignation from Judicial Office*.

Matter of Hon. Florencio "Larry" Ramirez, District Judge, Third Judicial District, JSC Inquiry No. 2006-038, Supreme Court Supreme Court Docket No. 29,552 (N.M. 2006). Allegations cannot be listed due to Supreme Court order sealing file and no public hearing in the case. Judge subsequently tendered his resignation as district judge to the Supreme Court on June 1, 2006. In February 2007, the Commission decided to abate further proceedings in this matter.

Matter of Hon. Carlos Garza, Doña Ana County Magistrate Judge, JSC Inquiry No. 2005-003, Supreme Court Docket No. 29,764 (N.M. 2006). Allegations included improper involvement and interference with the adjudication of a criminal case, in which he had a personal relationship with the defendant. Judge permitted and engaged in *ex parte* communications about the case with the successive presiding judges in the case. On stipulation, judge publicly reprimanded, ordered to complete six months of supervised probation and a formal mentorship concerning the obligations and restrictions imposed by the Code of Judicial Conduct, and directed to pay \$600.00 in costs.

Matter of Hon. Charles McClain, Municipal Judge, Dexter, JSC Inquiry No. 2004-113, Supreme Court Supreme Court Docket No. 29,767 (N.M. 2006). Allegations included improperly failing to recuse from three municipal court cases, summarily trying the three named individuals, and demonstrating a critical lack of understanding of due process, court procedures,

the law, and limits of jurisdiction. The Commission recommended that the Supreme Court impose the following discipline on judge: (1) formal reprimand; (2) \$250.00 fine; (3) one-year supervised probation and formal mentorship in constitutional due process, proper court procedures, direct and indirect contempt, limits of municipal court jurisdiction, and the Code of Judicial Conduct; (4) refund/pay witnesses for fines and fees paid, and compensate for community service; (5) expungement of defendants' cases from the Dexter Municipal Court records; and lastly, (6) assessment of the Commission's costs and expenses. The Supreme Court issued its disciplinary order imposing the following discipline against judge: (1) pay one of the named defendants \$123.60 (monetary value of community service performed); (2) expunge the respective contempt/false testimony cases from court records concerning the three individuals; and lastly, (3) take a course in constitutional law as related to due process rights of an accused and specifically contempt versus perjury. In the event no such course was available, the Court accepted the offer from judge's attorney (a former district court judge) to provide the instruction. All other recommended discipline was denied.

Matter of Hon. Stephen K. Quinn, District Court, Ninth Judicial District, JSC Inquiry No. 2005-006, Supreme Court Docket No. 29,765 (N.M. 2006). Allegations included the judge had excessively delayed in issuing decision, judgments, rulings, orders, or otherwise resolving cases on his docket. After hearing closing arguments and disciplinary recommendations based on stipulated facts, Commission decided to recommend that the Supreme Court impose the following discipline: formal reprimand, one-year supervised probation, and reimburse the Commission's costs. The Supreme Court imposed only the recommended supervised probation and assessment of the Commission's costs and expenses.

Matter of Hon. John W. Pope, District Court, Thirteenth Judicial District, JSC Inquiry No. 2004-046, Supreme Court Docket No. 29,778

(N.M. 2006). Allegations included failing to perform judicial duties, failing to notify the Chief Judge or Court Administrator of his extended absence, left a criminal jury trial unfinished prior to the defense concluding its case (ultimately resulting in substantial prejudice, error, and mistrial), and failed to make arrangements for coverage of his daily dockets. On stipulation, judge required to participate in a thirty day in-patient alcohol/substance abuse rehabilitation and thirty day follow-up program, publicly reprimanded, write a letter of explanation and apology to members of the jury and the Judicial Standards Commission, suspension without pay for two days (the period of time judge failed to appear for work when he was not receiving medical treatment), pay a fine of \$1000, and for the entire duration of Respondent's service as a judge in the State of New Mexico, the following discipline: (1) permanent supervised probation; (2) participation in Alcoholics Anonymous or other twelve-step program at least once a week, (3) random alcohol and drug testing, and lastly (4) no alcohol or drug use.



PUBLISHED OPINIONS AND ORDERS 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 substantive 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).

In re Romero, 100 N.M. 180, 668 P.2d 296 (1983).

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

In re 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).

Matter of Ramirez, 2006-NMSC-021, 139 N.M. 529, 135 P.3d 230 (2006).

Matter of McBee, 2006-NMSC-024, 139 N.M. 482, 134 P.3d 769 (2006).

State v. Maestas, 2007-NMSC-001, 140 N.M. 836, 149 P.3d 933 (2006).

Matter of Garza, 2007-NMSC-028, ___ N.M. ___, 161 P.3d 876 (2007).

Matter of Locatelli, 2007-NMSC 029, ___ N.M. ___, 161 P.3d 252 (2007).



FY 2007 EXPENDITURES AND COST REIMBURSEMENT

As an independent agency of the State, the Commission is funded through a 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 unencumbered/uncosted funds revert to the State's general fund.

For FY 2007, the state legislature appropriated \$656,789.00 from the general fund, \$30,000.00 in other state revenue for cost reimbursement, and an additional \$25,000.00 in budget authority for the same purpose. Finally, the Commission entered FY 2007 with unspent loan proceeds, which do not revert, in the amount of \$2,064.00. The Commission received budget authority to incorporate this balance into the Commission's FY 2007 budget. The FY 2007 general fund appropriation represents a 13.2% increase over the Commission's FY2006 general appropriation.

While the New Mexico Supreme Court ordered cost reimbursement of approximately \$24,000.00 in FY 2007, these funds were unrecoverable during FY 2007. The New Mexico Legislature recognized the Commission would fall short in its budget because of these unrecoverable funds, and passed a special appropriation in the amount of \$30,000.00 in the General Appropriation Act of 2007 to ensure the Commission had adequate budget to maintain its FY 2007 operations.

Entering into FY 2007 the Commission had two outstanding loan obligations to the New Mexico State Board of Finance consisting of Loan #209-88, with an outstanding balance of \$94,839.00; and Loan 209-101, with an outstanding balance of \$57,318.96. The total outstanding balance was \$152,318.96. These loans were made in FY2005 and FY2006 in order to cover shortfalls in the general appropriations for those fiscal years. The Commission appeared before the State Board of Finance on May 15, 2007, seeking a conversion of these loans into grants. The State Board of Finance granted the Commission's request, and converted these loans into grants. With this conversion, the Commission has no further outstanding debt.

In FY 2007, the Commission's expenditures totaled \$688,812.69. The Commission did not expend \$40.43 of its appropriation, which was reverted to the general fund. A summary categorization of the Commission's expenditures is provided below.

FY 2007 EXPENDITURES

DESCRIPTION	AMOUNT	PERCENTAGE
Employee Salaries	\$374,156.05	54.3%
Employee Benefits	123,946.95	18.0%
Employee Training & Licensing	6,500.80	0.9%
Commission Travel	10,823.24	1.6%
Investigation & Prosecution	32,164.46	4.7%
Contractual Services ³	49,810.02	7.2%
Overhead & Rent	78,913.20	11.5%
Supplies & Postage	12,497.85	1.8%
Total	\$688,812.57	100%

FY 2007 FINES AND COST REIMBURSEMENT

The Supreme Court may impose fines against judges upon recommendation by the Commission. Fines are paid to the State of New Mexico and deposited in the general fund through the Supreme Court. Cost reimbursements are received and processed by Commission staff.

Costs may be assessed by the Supreme Court or may be reimbursed on stipulation with the respondent judge. Costs are paid to the State of New Mexico and deposited into the Commission's account with the Office of the State Treasurer for the Commission's use during the fiscal year in which the reimbursement was received.

In FY 2007, the Supreme Court assessed costs to two different Respondent judges, both of whom were compelled to leave the bench permanently by Supreme Court Order. Both judges failed to make the payments ordered by the Supreme Court. The Commission subsequently recorded transcripts of judgment as to both judges in selected counties in New Mexico. Neither of the FY 2007 cost reimbursements was recovered in FY 2007.

DESCRIPTION	FINE	COST REIMBURSEMENT
2006-042, 2006-071, 2006-076 In the Matter of Carlos Garza		\$16,760.92
2003-035, 2003-038, 2003-057 In the Matter of James D. Atcitty		\$7,202.40
Total	\$ 0.00	\$ 23,963.32

³ Contractual services costs are expenditures made in support of investigation and prosecution of Commission cases and include medical/psychological evaluations. However, these costs are budgeted, tracked, and managed as a separate line item. Thus, total investigation and prosecution costs represent 11.9% of total expenditures. Including staff salary and benefits (approximating 70% of staff resources are dedicated to investigation, representing 38.1% of Commission costs), total investigation and prosecution represents 50% of Commission costs.

FY 2007 BUDGET APPROPRIATION COMPARED TO FY 2007 EXPENDITURES

FY 2007 APPROVED BUDGET	\$ 656,789.00	
FY 2007 Budget Adjustments		
<i>Special Appropriation for unrecoverable revenues:</i>	30,000.00	
<i>Unspent Loan Proceeds</i>	2,064.00	
Total Adjusted Budget	\$ 688,853.00	
Total FY 2007 Expenditures		\$ (688,812.57)
FY 2007 Reversion to General Fund ⁴		(40.43)
Total Expenditures and Reversion		\$ (688,853.00)

⁴ Reversion represents .006% of the Commission's total adjusted budget.



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