

STATE OF NEW MEXICO
JUDICIAL STANDARDS COMMISSION
POST OFFICE BOX 27248
ALBUQUERQUE, NEW MEXICO 87125-7248
(505) 222-9353
WWW.NMJSC.ORG



NEW MEXICO JUDICIAL STANDARDS COMMISSION  2009 ANNUAL REPORT

State of New Mexico



2009
ANNUAL
REPORT

Judicial Standards Commission



FY 2009 ANNUAL REPORT

COMMISSIONERS

David S. Smoak
Chairman

Gloria Taradash, Ph.D.
Vice-Chair

Larry Garcia
Hon. Buddy J. Hall
Jesse James Johnson
Albert J. Lama, Esq.
Rosemary L. Maestas-Swazo, Esq.
Hon. Nan G. Nash
Hon. Jerry H. Ritter, Jr.
Julia Y. Seligman
William R. Valentine, D.M.D.

STAFF

Randall D. Roybal, Esq.
Executive Director

Elizabeth A. Garcia, Esq.
Trial Counsel

Evonne Sanchez
Paralegal

Eileen E. Casadevall
Paralegal

Shariesse T. McCannon
Administrative/Legal Assistant

Krista M. Gianes
Financial Specialist

Douglas H. M. Carver
Law Clerk

MAILING ADDRESS

P.O. Box 27248
Albuquerque, NM 87125-7248

PHYSICAL ADDRESS

111 Lomas Blvd. NW, Ste. 220
Albuquerque, NM 87102-2368

TELEPHONE

(505) 222-9353

INTERNET

www.nmjsc.org

PRODUCTION

Writing & Editing

Randall D. Roybal, Esq.
Elizabeth A. Garcia, Esq.
Krista M. Gianes
Eileen E. Casadevall
Shariesse T. McCannon
Douglas H. M. Carver

Graphic Design & Layout

Randall D. Roybal, Esq.

Photos

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JUDICIAL STANDARDS COMMISSION



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DAVID S. SMOAK
CHAIRMAN
GLORIA TARADASH, PH.D.
VICE-CHAIR

LARRY GARCIA
HON. BUDDY J. HALL
JESSE JAMES JOHNSON
ALBERT J. LAMA, ESQ.
ROSEMARY L. MAESTAS-SWAZO, ESQ.
HON. NAN G. NASH
HON. JERRY H. RITTER, JR.
JULIA Y. SELIGMAN
WILLIAM R. VALENTINE, D.M.D.

August 31, 2009

RANDALL D. ROYBAL, ESQ.
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:

We continue to perform our role and move the Commission forward. In the past five years we have moved from a commission that did its best with what it had to being recognized as a leader among its peers. By doing the job the Constitution envisioned we have made progress in protecting and maybe improving the credibility of the judiciary in New Mexico. The members of the Commission have worked hard; given substantially of their time to make sure we do what is necessary to enforce the Code of Judicial Conduct in a fair manner.

We have seen improvement in the quality of our judiciary. Care has been taken at every level to appoint better judges, provide better education, and provide more resources to assist judges when they may need it. These changes have been made by others in the judicial, executive, and legislative branches but we can see the results. We hope that the budget problems facing us all does not slow, stop or reverse this progress.

At the end of this year we lost our Executive Director, Jim Noel, to a new challenge for Jim and we thank him for all of his many efforts over nearly the past six years. Jim's focus and devotion certainly played a major role in advancing our Commission to the high level of performance we have seen. We wish him well.

We have now hired a new Executive Director, Randall Roybal. Randy is well known to the Commission as the Deputy Director for the last eleven years. Randy brings the knowledge, skill and deep commission background to his new job and we look forward to continued success under Randy's leadership. Our search process yielded a number of highly qualified candidates and we were fortunate to have choices of such high quality.

We thank the staff for all of their support this past year. We also appreciate all the help we have gotten from the Supreme Court, the Governor and the Legislature and we look forward to asking for more of your help in the future.

Sincerely yours,

A handwritten signature in black ink that reads "David S. Smoak". The signature is written in a cursive style with a large, stylized initial "D".

David S. Smoak
Chairman



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COMMISSION TERMS & POSITIONS

As set forth in Article VI, §32 of the New Mexico Constitution and New Mexico Statutes Annotated §34-10-1 through §34-10-4, 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.

Pursuant to NMSA §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 below in parentheses for the gubernatorial appointees (positions 1–5 and 10).

STATUTORY POSITION TERMS AS OF JUNE 30, 2009

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	07/01/04–06/30/09
2	William R. Valentine, D.M.D. (R)	Governor	07/01/05–06/30/10
3	Gloria Taradash, Ph.D. (D)	Governor	07/01/06–06/30/11
4	Julia Y. Seligman (D)	Governor	07/01/07–06/30/12
5	Jesse James Johnson (D)	Governor	07/01/08–06/30/13
6	Albert J. Lama, Esq.	State Bar	07/01/06–06/30/10
7	Rosemary L. Maestas-Swazo, Esq.	State Bar	07/01/08–06/30/12
8	Hon. Nan G. Nash	Supreme Court	07/01/07–06/30/11
9	Hon. James A. Hall	Supreme Court	07/01/05–06/30/09
10	Larry Garcia (R)	Governor	07/01/04–06/30/09
11	Hon. Buddy J. Hall	Supreme Court	07/01/07–06/30/11

Outgoing Member: Hon. James A. Hall (Position 9 on June 30, 2009).

Incoming Member: Hon. Jerry H. Ritter, Jr. (Position No. 9 on July 1, 2009).



COMMISSIONERS & STAFF



COMMISSION MEMBERS

AS OF JUNE 30, 2009



Standing from left to right: Larry Garcia, Hon. Buddy J. Hall, Albert J. Lama, Esq., Hon. James A. Hall, Hon. Nan G. Nash, and William R. Valentine, D.M.D. *Seated from left to right:* Julia Y. Seligman, Vice-Chair Gloria Taradash, Ph.D., Chairman David S. Smoak, Rosemary L. Maestas-Swazo, Esq., and Jesse James Johnson.



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 (current chairman), Clerks' Manual Review Panel, and the Magistrate Training Conference Panel. Judge Hall has also served with 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, and the Valley Volunteer Fire Department. He also serves as the public address announcer for the Fort Sumner High School football games and volunteers at the school for other athletic as well as academic events. He is also a lay minister.

HON. JAMES A. HALL was appointed to the Commission by the New Mexico Supreme Court in 2004 to fill a vacancy, and then reappointed in 2005. Judge Hall became a District Judge in the First Judicial District Court in Santa Fe in April 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. From September 2001 to April 2008, Judge Hall served as Chief Judge of the First Judicial District Court.



JESSE JAMES JOHNSON was appointed to the Commission by Governor Bill Richardson in July 2008. He is a 1988 graduate of Raton High School and earned a certificate from the Phoenix Institute of Technology in 1989. He is an activity director with the Miners Colfax Medical Center, working with acute and long-term care patients, and is also the Mayor-Pro Tem and an elected City Commissioner for the city of Raton. Mr. Johnson previously served as a motor transportation inspector with the New Mexico Department of Motor Transportation, and for 13 years as the Wholesale Manager for Duran Oil Company operating in northeast New Mexico and southeast Colorado. Mr. Johnson has held offices with the Elks Lodge and the Knights of Columbus, and he is the area chairman for the Employer Support of Guard and Reserve, a joint effort of the state and federal national guard. Mr. Johnson has also worked with the Colfax County Citizen's Police Academy, Youth Police Academy, and managed Little League teams.



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 recently served as 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.





ROSEMARY L. MAESTAS-SWAZO, ESQ. was appointed to the Commission by the State Bar Board of Bar Commissioners in July 2008. She earned a bachelor of arts degree in political science from the University of New Mexico in 1983, a bachelor of accountancy degree *summa cum laude* from the College of Santa Fe in 1985, a masters of business administration degree *summa cum laude* from the College of Santa Fe in 1987, and a juris doctor degree from the University of New Mexico Law School in 1995. Ms. Maestas-Swazo served as corporate counsel at the Public Service Company of New Mexico for four years. She previously served for six years as an assistant attorney general to both Attorneys General Tom Udall and Patricia Madrid, in the Civil and Special Consumer Projects Divisions, and served as the first Special Counsel on Indian Affairs. Ms. Maestas-Swazo previously served as the interim deputy CEO and in-house legal counsel for Tsay Corporation, San Juan Pueblo; as an associate attorney with the Nordhaus, Haltom, Taylor, Taradash & Frye law firm; and as an appellate attorney with the U.S. Department of Justice, Environmental and Natural Resources Division, Appellate Section. Prior to practicing law, Ms. Maestas-Swazo held several positions within the Mechanical and Electronics Engineering Division of the Los Alamos National Laboratory. Her volunteer activities and awards include past president of the New Mexico Indian Bar Association, past president of the State Bar of New Mexico's Indian Law Section, Tsay Corporation board of directors, State Bar Code of Professional Conduct Committee, State Bar Commission on Professionalism, H. Vearle Payne Inn of the Courts, deputy chair of LANL Women's Committee, LANL Selection and Hiring Committee for Deputy Officer of AAEEEO, and the LANL American Indian Heritage Planning Committee. In 2004, Ms. Maestas-Swazo received both the YWCA Women on the Move Award and the State Bar of New Mexico's Outstanding Contribution Award.



HON. NAN G. NASH was appointed to the Commission by the New Mexico Supreme Court in 2007. Judge Nash earned a bachelor of science degree in 1985 in environmental biology and public policy and a juris doctor degree in 1989 from Indiana University. She is a district judge and has served on the bench of the Second Judicial District Court in Bernalillo County since 2003. Judge Nash served as the presiding judge of the family court from 2004 to 2007, and is currently assigned to the civil court. Prior to taking the bench, she was a family court hearing officer, a special commissioner in domestic violence, director of the court alternatives division, and an associate attorney at an insurance defense law firm in Albuquerque. Judge Nash is also an adjunct professor at the University of New Mexico School of Law and has taught courses in alternative dispute resolution, a family violence seminar, and family mediation training. Judge Nash is involved in numerous professional committees and task forces, particularly in the areas of domestic violence and alternative dispute resolution.



JULIA Y. SELIGMAN was appointed to the Commission by Governor Bill Richardson in July 2008. She earned a bachelor's degree from the University of Michigan and a master's degree in political science from Columbia University. Ms. Seligman has a long, distinguished professional and service history. She worked for Nelson Rockefeller in the Department of Inter-American Affairs, for U.S. Senator Dennis Chavez (D-NM), as a secretary at the American Consulate in Mexico. During World War II, she worked as the public relations representative for RKO Pictures and as a script supervisor in Hollywood. Upon moving after the war to her husband's family home in Bernalillo, she worked as secretary to Judge John Simms, Sr. for a little over one year, but left to work in the Seligman family's Indian jewelry business. Most recently, she worked for 19 years as the manager and buyer for the Albuquerque Museum Gift Shop. Ms. Seligman received the Women of Courage and Vision Award in 2001, the Lifetime Achievement Award from the Commission on the Status of

Women in 2007, and the Living Legend Award from the Rotary Club of Albuquerque in 2007. Ms. Seligman has an extensive history of community service. Current leadership roles include the Jewish Community Center, Hubbell House Alliance, Wheels Museum, and Casa Angelica Foundation. In 2007, she completed ten years of service on the Judicial Performance Evaluation Commission. Past community service leadership roles include the Albuquerque Museum of Art and History, Albuquerque Museum Foundation, and Albuquerque Museum Board of Trustees, New Mexico Natural History Museum, National Hispanic Cultural Center, League of Women Voters, Rotary Club of Albuquerque, Arts Alliance, Albuquerque Little Theater, Girl Scouts of America, All Faiths Receiving Home, Assistance League of Albuquerque, Salvation Army, Albuquerque Community Chest (now United Way of New Mexico), Congregation Albert Sisterhood, National Council of Jewish Women, Maxwell Museum, Friends of Albuquerque Library, Better Albuquerque Committee, Women's Resource Group, Planned Parenthood of New Mexico, and Dance Theater Albuquerque.

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.



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.

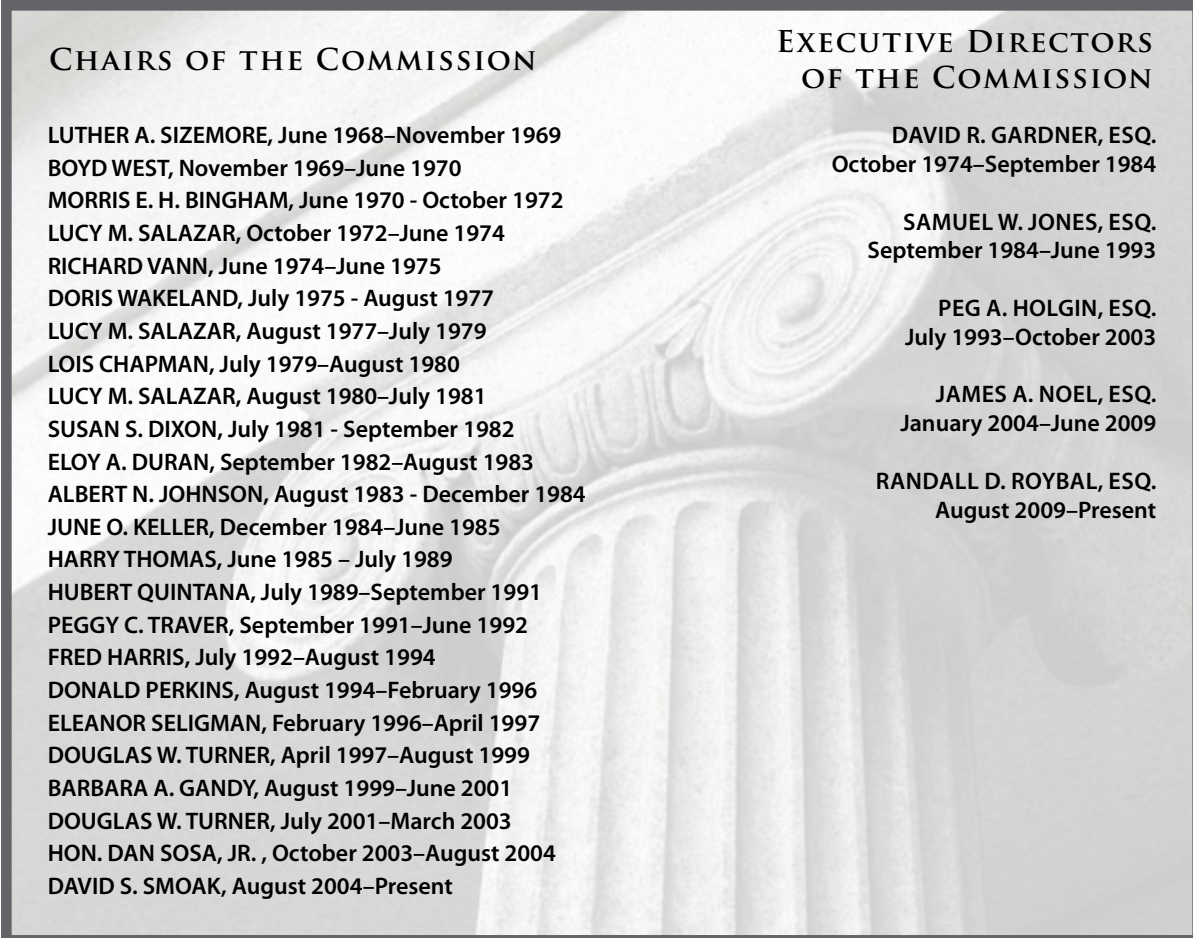


WILLIAM R. VALENTINE, D.M.D. was appointed to the Commission by Governor Bill Richardson in 2003. He received a bachelor of science degree in chemistry in 1966 and his doctor of dental medicine degree in 1970 from the University of Pittsburgh. He is a dentist who has served New Mexico in a number of 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 and as a consultant for the New Mexico Dental Association.



INCOMING COMMISSIONER IN FY 2010 (beginning July 1, 2009)

HON. JERRY H. RITTER, JR. was appointed to the Commission by the New Mexico Supreme Court in 2009. Judge Ritter has been a District Judge for the Twelfth Judicial District (Otero and Lincoln Counties) since 1997. He is a graduate of New Mexico State University and the University of New Mexico School of Law. From 1987 to 1992, Judge Ritter practiced law in Alaska with a small firm and as general counsel to an Alaska Native Regional Corporation. Returning to New Mexico, he was in private practice until 1994 when he became an Assistant District Attorney for the Twelfth Judicial District. He serves on the New Mexico Sentencing Commission, the statewide Judiciary Budget Committee, and other court committees, and presides over a juvenile drug court. He is active in his church as a youth leader and with the Boy Scouts of America. He is married with seven children.



CHAIRS OF THE COMMISSION	EXECUTIVE DIRECTORS OF THE COMMISSION
LUTHER A. SIZEMORE, June 1968–November 1969	DAVID R. GARDNER, ESQ. October 1974–September 1984
BOYD WEST, November 1969–June 1970	
MORRIS E. H. BINGHAM, June 1970 - October 1972	
LUCY M. SALAZAR, October 1972–June 1974	SAMUEL W. JONES, ESQ. September 1984–June 1993
RICHARD VANN, June 1974–June 1975	
DORIS WAKELAND, July 1975 - August 1977	PEG A. HOLGIN, ESQ. July 1993–October 2003
LUCY M. SALAZAR, August 1977–July 1979	
LOIS CHAPMAN, July 1979–August 1980	
LUCY M. SALAZAR, August 1980–July 1981	JAMES A. NOEL, ESQ. January 2004–June 2009
SUSAN S. DIXON, July 1981 - September 1982	
ELOY A. DURAN, September 1982–August 1983	
ALBERT N. JOHNSON, August 1983 - December 1984	RANDALL D. ROYBAL, ESQ. August 2009–Present
JUNE O. KELLER, December 1984–June 1985	
HARRY THOMAS, June 1985 – July 1989	
HUBERT QUINTANA, July 1989–September 1991	
PEGGY C. TRAVER, September 1991–June 1992	
FRED HARRIS, July 1992–August 1994	
DONALD PERKINS, August 1994–February 1996	
ELEANOR SELIGMAN, February 1996–April 1997	
DOUGLAS W. TURNER, April 1997–August 1999	
BARBARA A. GANDY, August 1999–June 2001	
DOUGLAS W. TURNER, July 2001–March 2003	
HON. DAN SOSA, JR. , October 2003–August 2004	
DAVID S. SMOAK, August 2004–Present	



COMMISSION STAFF MEMBERS

EXECUTIVE DIRECTOR

RANDALL D. ROYBAL, ESQ. joined the Commission staff in 1998 and was appointed Executive Director in August 2009. He previously served as the Commission's Deputy Director and Chief Staff Attorney. Mr. Roybal 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, handling civil litigation, administrative licensing prosecutions before state boards and commissions, judicial writs defense, and complex prison reform litigation. Before entering public service, Mr. Roybal practiced law privately in Albuquerque for five years. In July 2009, Mr. Roybal was elected as vice-president of the Association of Judicial Disciplinary Counsel, of which he has been a member of the board of directors since 2007, and an association member since 1999. Past professional memberships in other legal, civic and charitable organizations include: Albuquerque Bar 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.



TRIAL COUNSEL

ELIZABETH A. GARCIA, ESQ. joined the Commission staff in 2005 and serves as Trial Counsel. She earned a bachelor of arts degree cum laude in political science in 1995 from the University of New Mexico, 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 handling violent felony cases. 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 with various legal, civic and charitable organizations, including the Association of Judicial Disciplinary Counsel, American Bar Association, past 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 staff in 2004 as Paralegal. She earned her paralegal certificate from the University of New Mexico in 1996. She has been an active member of the Paralegal Division of the State Bar of New Mexico since 2000, and was elected to the board of directors in January 2009. She is the Albuquerque area coordinator for the division's Continuing Legal Education programs and chair of the committee for statewide CLE programs. She has legal assistant and paralegal experience spanning over 21 years. Prior to joining the Commission staff, the majority of Ms. Sanchez's 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

EILEEN E. CASADEVALL joined the Commission staff in August 2008 as a paralegal. She started with the Commission in June 2008 as a temporary part-time clerk. She earned an associate of applied science degree in paralegal studies in May 2008 from Central New Mexico Community College. She also earned associate certificates in casualty claim law and automobile claim law in 2006 and 2001, respectively, and a claim specialist certificate in legal principles in 2000 from the American Educational Institute. She has more than 30 years of experience as a legal assistant and paralegal and has been an active member of the Paralegal Division of the State Bar of New Mexico since June 2009. Prior to joining the Commission staff, Ms. Casadevall worked for twelve years as a senior

staff administrative assistant and LAN administrator for the Albuquerque staff counsel's office of a major insurance company. She also previously served as a legal assistant/paralegal with an Albuquerque insurance defense law firm and with other law firms throughout the western United States. Ms. Casadevall also served as court clerk to Hon. H. Jeffrey Coker of the Coconino County Superior Court in Flagstaff, Arizona.



ADMINISTRATIVE/LEGAL ASSISTANT

SHARIESSE T. MCCANNON joined the Commission staff in 2004 and serves as Administrative/Legal Assistant. She is the Clerk of the Commission and also serves as Human Resources Manager. Ms. McCannon graduated from Eldorado High School in Albuquerque, attended the University of New Mexico, and earned her diploma in Computer Information Systems from Albuquerque Technical-Vocational Institute in 1981. Ms. McCannon earned her Accredited Legal Secretary (ALS) certificate in 1995 from the National Association of Legal Secretaries, for which she later taught legal assistant courses and organized court clerk workshops. She has experience as a legal assistant and paralegal, including extensive trial experience, dating back to 1990. Prior

to joining the Commission, Ms. McCannon was employed as a paralegal for a prominent Albuquerque plaintiff's law firm, concentrating in mass tort litigation, personal injury, and nursing home litigation. Ms. McCannon is involved in her community, founding and serving as President/board member of her neighborhood association for many years.



FINANCIAL SPECIALIST

KRISTA M. GIANES joined the Commission staff in 2005 as Paralegal/Financial Specialist and serves as Financial Specialist. She earned an associate of applied science degree in paralegal studies from the Albuquerque Technical Vocational Institute in 2006. She is a member of the Paralegal Division of the State Bar of New Mexico and in 2007 was appointed to the Paralegal Advisory Committee for Central New Mexico Community College. Prior to joining the Commission, Ms. Gianes served for three years as a court clerk to Hon. Marie Baca of the Second Judicial District Court, Children's Court Division.

LAW CLERK

DOUGLAS H. M. 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, after a leave of absence, received his *juris doctor* degree in May 2009.



OUTGOING STAFF IN FY 2009

EXECUTIVE DIRECTOR & GENERAL COUNSEL (Departed June 8, 2009)

JAMES A. NOEL, ESQ. joined the Judicial Standards Commission in January 2004 and served as Executive Director and General Counsel until June 8, 2009, when he became the Deputy Secretary of the New Mexico Energy, Minerals and Natural Resources Department. 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 doctor* degree in 2000 from the University of New Mexico School of Law. Prior to joining the Commission, Mr. Noel was in private practice handling complex litigation, personal injury and insurance bad faith cases. Mr. Noel has participated in or served with various legal, civic, and governmental entities, 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).





ORGANIZATIONAL OVERVIEW

JURISDICTION & AUTHORITY

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.



See Appendices I, J, and K for the Commission’s constitutional authority, statutory authority, and the Code of Judicial Conduct, respectively.

The Commission’s jurisdiction extends over complaints made against currently serving Justices of the Supreme Court and all other judges within the state judicial branch, including the Court of Appeals, district courts, metropolitan court, magistrate courts, probate courts, and municipal courts. The Commission also has jurisdiction over judicial candidates as provided in the New Mexico Code of Judicial Conduct, NMSA §§21-001,

et seq. The Commission does not have jurisdiction over special masters, special commissioners, hearing officers, federal judges, Workers’ Compensation Administration judges, other administrative law judges, or attorneys. Where necessary, the Commission holds hearings and, if allegations are proven, recommends appropriate sanctions to the New Mexico Supreme Court.

CONFIDENTIALITY

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 Supreme Court’s docket sheets, files and hearings are open and available to the public, unless otherwise sealed by order or rule of the Court. However, confidentiality is maintained at the Commission level.

A complainant’s name may be disclosed to the judge who is the subject of a complaint, only if required by the Judicial Standards Commission Rules. Commission staff cannot respond to requests for information regarding a complaint or any other proceeding before the Commission. Commission staff may direct inquiries to the Supreme Court for public information. However, all complainants will receive written notification of disposition of a complaint, subject to the limits of confidentiality.

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 filing of a complaint with the Commission does not by itself require

a judge to recuse or be disqualified from an underlying court case. The Commission and its staff do not provide legal advice.

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 allegations 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 by 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 staff 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.

ACTIONS 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 constitute misconduct, 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 after initial inquiry 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.



See Appendix A for a flow chart of the Commission process, Appendix L for the Commission’s procedural rules, and Appendix M for the Supreme Court’s procedural rules for review of Commission cases.

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 after preliminary investigation 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

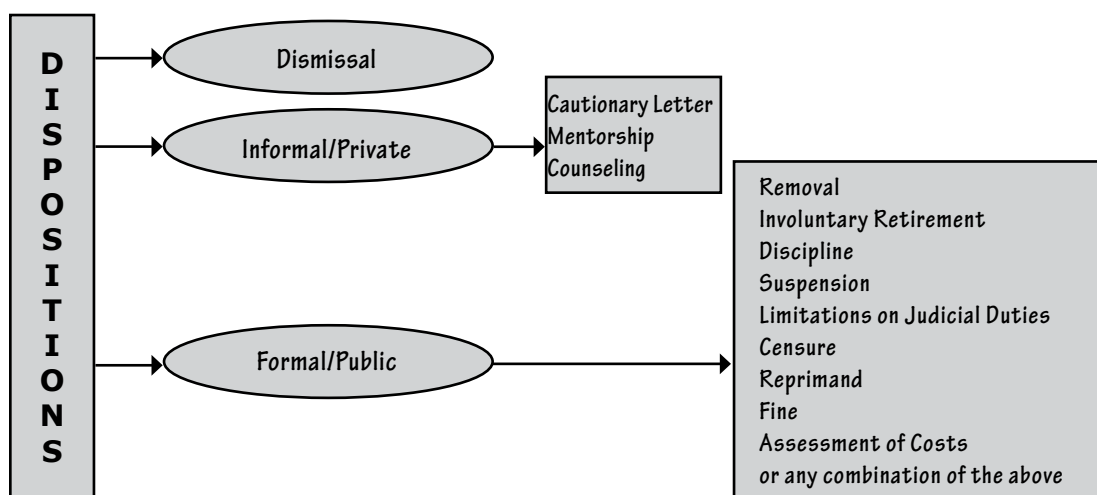
is not affected by subsequent resignation or termination from office. The judge's answer to the notice of formal proceedings is due within fifteen days of service.

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 a determination of misconduct and in recommending removal, retirement or other 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.



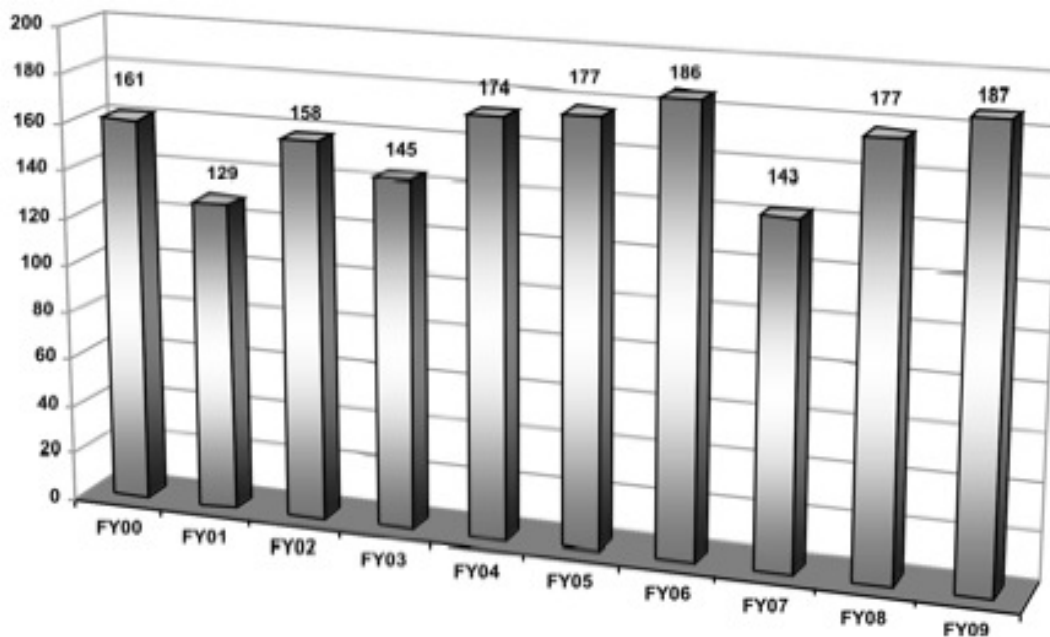


COMPLAINTS, DISPOSITIONS & PERFORMANCE JULY 1, 2008–JUNE 30, 2009

COMPLAINTS RECEIVED

In FY 2009 the Commission received 187 written complaints in the following categories: 149 verified complaints (includes Commission-initiated complaints) and 38 unverified complaints.

10-YEAR HISTORY OF WRITTEN COMPLAINTS

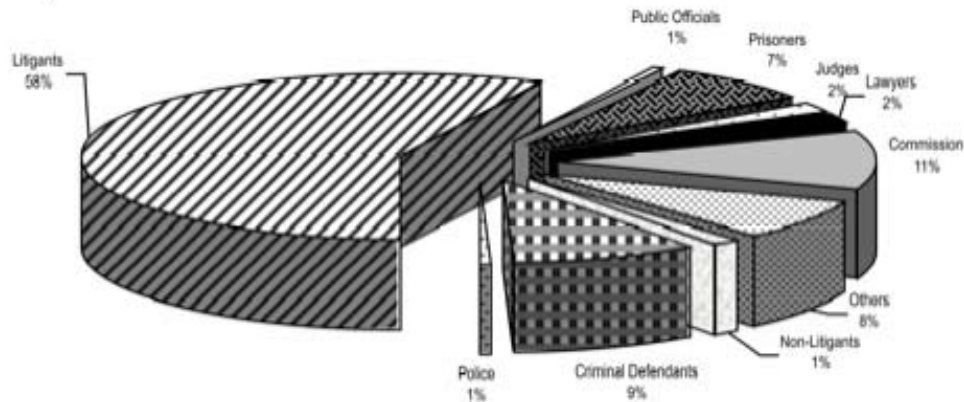


The Commission has an established pre-screening process for telephonic and in-person complaints. Staff members make every effort to discuss callers' situations in detail as appropriate. Staff informs callers about the limited scope of the Commission's jurisdiction under state law and spends substantial time assisting each person assess the merits of his or her allegations in light of the Commission's jurisdictional scope and determining 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. The distribution of the sources of written, verified complaints was the following: 85 by litigants or litigants' family/friends, 14 by criminal defendants or criminal defendants' family/friends, 2 by non-litigants, 3 by lawyers, 3 by judges, 1 by a police officer, 11 by prisoners, 12 by others, and 1 by a witness. Additionally, 17 complaints were initiated by the Commission on its own motion. The chart on the following page illustrates these figures.

COMPLAINT SOURCES



JUDGES REVIEWED ON VERIFIED COMPLAINTS

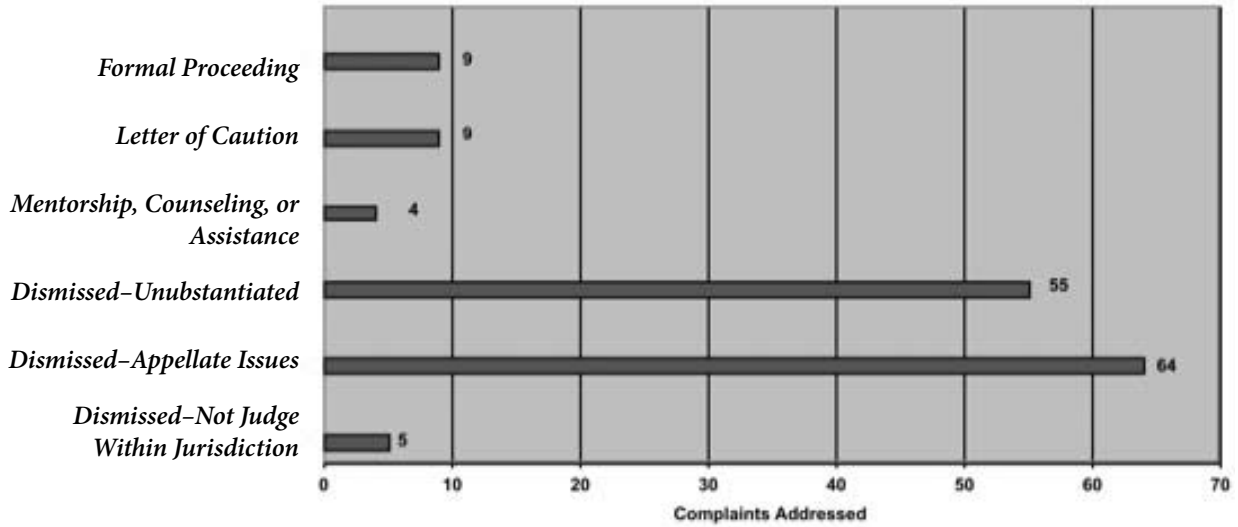
Judges in most levels of the judiciary were the subjects of the 149 written, verified complaints in FY 2009. Most complaints were filed against judges of the district courts (47.65%), followed by magistrate judges (26.85%), municipal judges (12.75%), metropolitan judges (6.04%), Supreme Court Justices (2.68%), and Court of Appeals judges (0.67% each). Complaints against individuals who are not within the scope of the Commission's jurisdiction accounted for 3.36% of the complaints (e.g., complaints against federal judges, hearing officers, court staff members, former judges, deceased judges, and attorneys).

JUDICIAL BRANCH	VERIFIED COMPLAINTS	PERCENT OF CASELOAD
<i>Supreme Court</i>	4	2.68%
<i>Court of Appeals</i>	1	0.67%
<i>District Court</i>	71	47.65%
<i>Metropolitan Court</i>	9	6.04%
<i>Magistrate Court</i>	40	26.85%
<i>Municipal Court</i>	19	12.75%
<i>Probate Court</i>	0	0.0%
<i>Other</i>	5	3.36%

CASE DISPOSITIONS

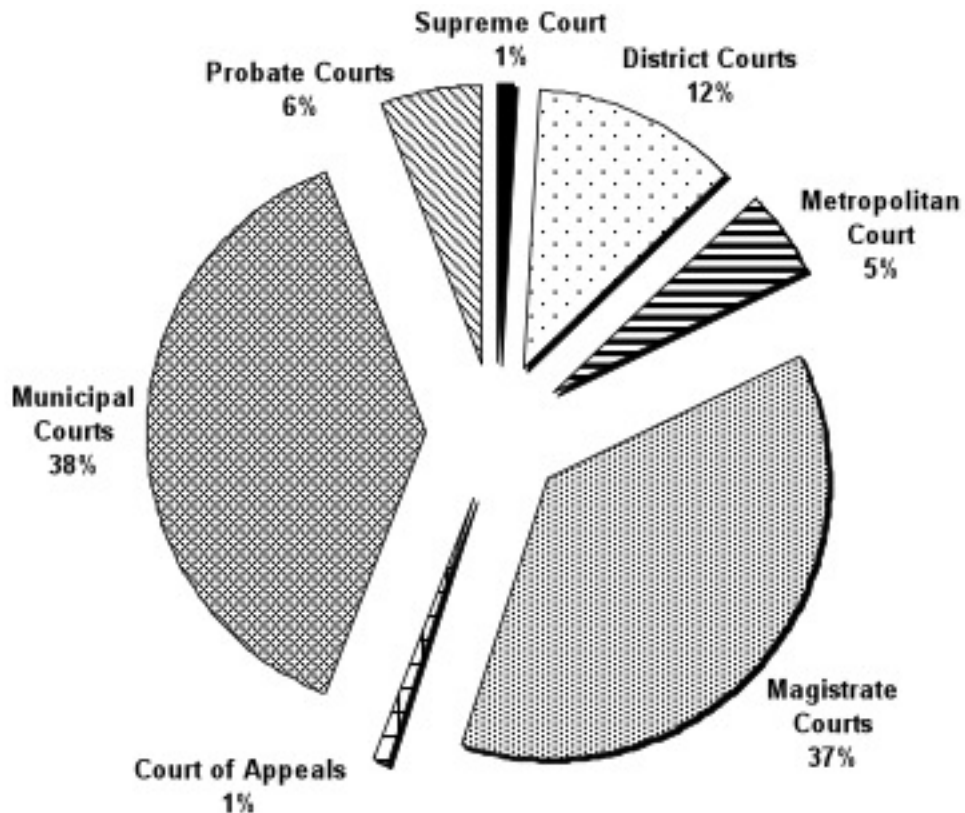
Inquiries Pending at Beginning of FY09 (July 1, 2008)	35
New Written/Verified Complaints and Inquiries in FY09	149
Inquiries Concluded in FY09	146
Inquiries Pending at End of FY09 (June 30, 2009)	38

Of the 146 cases completed and disposed in FY 2009, the Commission concluded 9 cases (involving 6 judges and including 1 FY 2008 case not previously reported) through formal proceedings (trials and/or Supreme Court proceedings) and issued 9 informal letters of caution. The Commission dismissed or closed 64 cases because they were appellate in nature, and 5 cases because they concerned individuals beyond the Commission's jurisdiction. The Commission dismissed 55 cases that were not substantiated. 4 judges were referred for informal remedial measures, which may have included mentorship, education, counseling, or other assistance. These figures are illustrated in the graph on the following page.



HISTORICAL SUMMARY OF CASES FILED IN SUPREME COURT

From 1968 through June 30, 2009, the Commission filed 118 petitions for discipline and/or temporary suspension in the New Mexico Supreme Court involving 87 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, 1 Court of Appeals, 14 district courts, 6 metropolitan court, 44 magistrate courts, 45 municipal courts, and 7 probate courts.



The table below indicates the levels of the judiciary and the corresponding geographical areas involved in the 118 formal cases the Commission has filed with the Supreme Court since 1968.

APPELLATE COURTS (2)	DISTRICT COURTS (14)	METROPOLITAN COURT (6)	MAGISTRATE COURTS (44)	MUNICIPAL COURTS (45)	PROBATE COURTS (7)
Supreme Court 1	First 1	Bernalillo 6	Cibola 1	Aztec 1	Cibola 1
Court of Appeals 1	Second 2		Colfax 1	Bernalillo 1	Sandoval 1
	Third 3		Doña Ana 8	Bosque Farms 1	Taos 5
	Fourth 1		Eddy 1	Cimarron 1	
	Fifth 1		Guadalupe 1	Clovis 2	
	Seventh 1		Hidalgo 1	Columbus 1	
	Ninth 1		McKinley 4	Dexter 1	
	Eleventh 3		Mora 1	Española 2	
	Thirteenth 1		Rio Arriba 6	Gallup 2	
			Sandoval 1	Grants 3	
			San Juan 4	Hatch 1	
			San Miguel 2	Hurley 1	
			Santa Fe 2	Las Cruces 6	
			Socorro 1	Las Vegas 2	
			Taos 5	Mountainair 3	
			Union 1	Portales 1	
			Valencia 4	Red River 1	
				Roswell 5	
				Ruidoso Downs 1	
				San Jon 1	
				Santa Fe 6	
				Sunland Park 1	
				Taos 1	

PUBLIC CASES DISPOSED BY TERMINATION OF JUDICIAL OFFICE

In FY 2009, 1 case concerning 1 judge was disposed after termination of judicial office. Since its inception, the Commission has disposed of 100 cases concerning 53 judges after termination of judicial office. These cases include removals, retirements, or resignations after the Commission had filed matters with and requested action by the Supreme Court.

FY 2009 LEGISLATIVE PERFORMANCE MEASURES

Following are the mandatory performance measures that the State Legislature has established for the Commission:

Upon knowledge of cause for emergency interim suspension, time for Commission to file petition for temporary suspension with Supreme Court (in days): N/A
 Efficiency measure. Target: 2 days. Target satisfied. None filed in FY 2009.
Note: "Knowledge" occurs when Commission is informed of allegations requiring petition.

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): 3 meeting cycles.
 Efficiency measure. Target: 3 meeting cycles. Target satisfied.

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 of informally were found to merit notice to the judge, but due to their nature, the judge’s experience and disciplinary history, or a number of other factors, the Commission determined that an informal disposition was appropriate to address the issues in question. With informal dispositions, there are no findings of misconduct.

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, 2009, the Commission has informally disposed of 284 case files. The following tables illustrate the distribution of the informal cautionary letter and mentorship dispositions. A brief discussion concerning confidential stipulation agreements follows thereafter.

CAUTIONARY LETTERS (209 CASES)

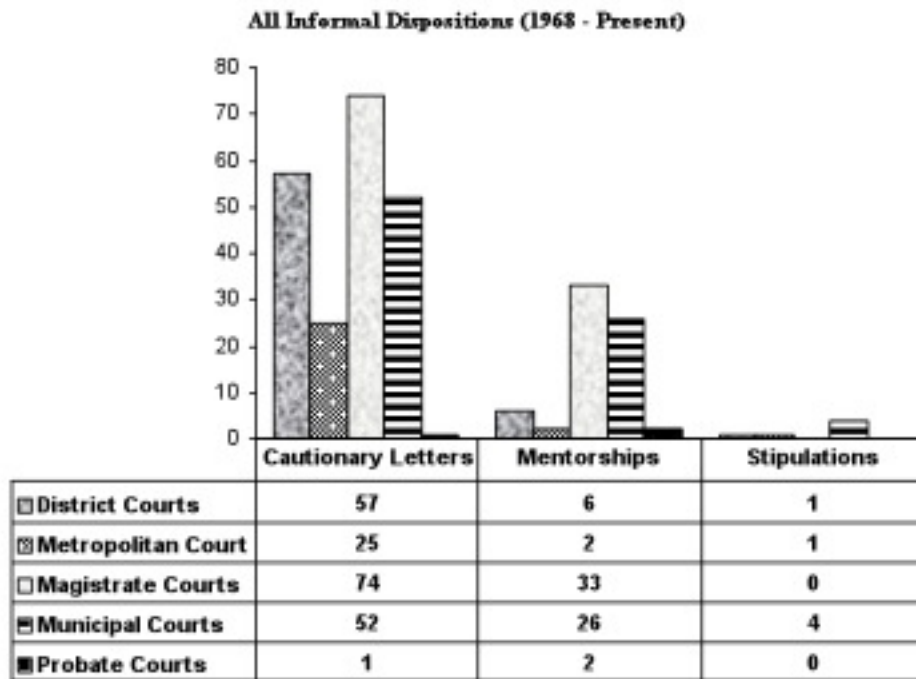
JUDICIAL BRANCH INVOLVED	NUMBER OF CASE FILES	PERCENT OF ALL CAUTIONS
Supreme Court	0	0%
Court of Appeals	0	0%
District Court	57	27%
Metropolitan Court	25	12%
Magistrate Court	74	35%
Municipal Court	52	25%
Probate Court	1	1%

MENTORSHIPS (69 CASES)

JUDICIAL BRANCH INVOLVED	NUMBER OF CASE FILES	PERCENT OF ALL MENTORSHIPS
Supreme Court	0	0%
Court of Appeals	0	0%
District Court	6	8.7%
Metropolitan Court	2	2.9%
Magistrate Court	33	47.8%
Municipal Court	26	37.7%
Probate Court	2	2.9%

CONFIDENTIAL 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 2009, 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.





PROCEEDINGS BEFORE THE COMMISSION JULY 1, 2008–JUNE 30, 2009

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.



See Appendix G for a copy of the Supreme Court’s order of August 26, 2006 regarding Commission filings.

Please note that pursuant to the Supreme Court’s order of August 29, 2006, petitions and responses in temporary suspension matters filed with the Supreme Court after that date are sealed, absent a contrary order from the Court. However, all Supreme Court hearings, docket sheets, and orders are available to the public, unless otherwise ordered by the Court.

FORMAL PROCEEDINGS

In FY 2009, the Commission concluded 9 cases by formal proceedings before the Commission and/or the New Mexico Supreme Court (8 cases in FY 2009 and 1 case completed and reported in the previous year, but inadvertently not closed out on statistics until the current reporting year). All public and ongoing or completed cases in FY 2009 are summarized below:

MATTER OF HON. THOMAS R. RODELLA
Rio Arriba County Magistrate Court
JSC Inquiry Nos. 2006-133, 2007-062, 2007-071 & 2007-078
Supreme Court Docket No. 31,806

On April 15-17, 2008, a trial was held before the Commission in this matter. The Commission heard testimony from sixteen witnesses in three separate inquiries and reviewed all exhibits admitted into evidence. The Commission specifically found that Respondent’s testimony in many respects was not credible. The Commission did not find Respondent’s testimony regarding two matters, specifically a landlord-tenant case and a domestic violence matter, to be credible. For the Commission to have accepted Respondent’s testimony as true, the Commission would have needed to find that all of the other witnesses in these matters perjured themselves. The Commission did not find Respondent’s explanation of his conduct regarding the DWI case to be reasonable bearing in mind his ethical obligations under the

Code of Judicial Conduct. The Commission further specifically found as aggravating circumstances, and to be most disturbing, Respondent's egregious behavior in the potential intimidation of a witness. The Commission concluded that permanent removal from office was the appropriate discipline in light of the misconduct involved in this matter.

On April 29, 2008, the Commission filed its *Petition for Discipline* in the Supreme Court recommending permanent removal from office. On May 6, 2008, new counsel entered an appearance for Judge Rodella and filed his Response to the Commission's *Petition for Discipline*.

The New Mexico Supreme Court held oral argument on the Commission's *Petition for Discipline* on May 28, 2008. That same day, the Supreme Court issued an Order finding willful misconduct in office and granted the petition for removal. The Court ordered that Respondent be disciplined as follows:

1. It is . . . ordered that Thomas R. Rodella hereby is immediately removed from the bench pursuant to Rule 27-401(A)(7) NMRA;
2. It is further ordered that Judicial Standards Commission shall submit a cost bill to this Court and Thomas Rodella may file objections thereto. The Court shall take under advisement any assessment of costs.

The Commission filed a *Memorandum of Costs* on May 29, 2008. On June 5, 2008, Respondent filed *Respondent's Objections to Commission's Memorandum of Costs*.

In a formal opinion dated August 7, 2008, the New Mexico Supreme Court adopted the Commission's recommendation that Judge Rodella be permanently removed from office. *Matter of Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 228 (2008). While the Court did not agree with all of the findings and conclusions of the Commission, the Court held, based on its own review of the record, that there was sufficient clear and convincing evidence to conclude that Judge Rodella committed willful misconduct. The Court further opined that Judge Rodella's "lack of credibility and an apparent unwillingness to admit mistakes, combined with sufficient evidence of willful misconduct, lead us to conclude that Judge Rodella cannot serve as a judge."

The Court concluded that Respondent's "poor judgment . . . was not improved by training and mentoring and, instead, appears to have established a pattern of misconduct demonstrated in the willful misconduct in the subsequent cases." The Court also stated it was "deeply troubled by the Commission's determination, which our independent review of the record supports, that Judge Rodella's testimony lacked credibility." In adopting the Commission's recommendation that Judge Rodella be permanently removed from the bench, the Court opined:

When a new judge, through lack of knowledge, experience or judgment, acts in ways that are inconsistent with his or her new role, we hope that such conduct can be corrected through discipline in the form of training, mentoring, and supervision. However, when a judge denies making mistakes, he or she cannot learn from the mistakes, and there is little that can be done to correct the behavior. Under such circumstances, to allow a judge who is not truthful to remain on the bench betrays the public trust and threatens the integrity and the independence of the judiciary as a whole.

On August 8, 2008, the Supreme Court issued its order assessing costs of \$3,573.62 against Respondent. On August 13, 2008, the Commission filed a *Transcript of Judgment* with the Supreme Court. Respondent was subsequently ordered on August 15, 2008, to pay the costs by February 13, 2009.

On September 25, 2008, the Commission received Respondent's payment of the assessed costs. On October 6, 2008, the Commission filed a *Satisfaction of Judgment* with the Supreme Court. The matter was subsequently closed.

MATTER OF HON. IRA ROBINSON

Court of Appeals

JSC Inquiry No. 2007-070

Supreme Court Docket No. 31,188

On October 23, 2007, the Commission issued a *Notice of Preliminary Investigation* to Judge Ira Robinson. Judge Robinson filed his answer on November 19, 2007. On December 13, 2007, the Commission issued a *Notice of Formal Proceedings* to Judge Robinson, to which response was filed on January 14, 2008.

On June 25, 2008, Judge Robinson and the Commission entered into a *Stipulation to Permanent Retirement from Judicial Office*. The same day, the Commission filed a *Petition to Accept Stipulation to Permanent Retirement from Judicial Office* with the Supreme Court. The petition provided in part:

Upon a unanimous vote (with one Commissioner recused), the Commission entered into a *Stipulation to Permanent Retirement from Judicial Office* with the Respondent on June 25, 2008, which provides in pertinent part the following:

- A. Respondent agrees to permanently retire as Judge of the New Mexico Court of Appeals effective close of business on August 16, 2008. Upon acceptance of this stipulation by the New Mexico Supreme Court, Respondent shall submit duplicate original letters of retirement to the Chief Justice of the New Mexico Supreme Court and to the Governor. Respondent shall concurrently provide a copy of the retirement letter to the Commission. Upon retirement, Respondent shall never again hold, become a candidate for, run for, or stand for election to any New Mexico judicial office in the future. Respondent shall never seek, accept appointment to, or serve *pro tempore* for any New Mexico judicial office in the future. New Mexico judicial office includes the posts of judge in municipal court, probate court, magistrate court, metropolitan court, district court, Court of Appeals, and justice of the Supreme Court.
- B. The Commission will file under seal with the New Mexico Supreme Court a *Petition to Accept Stipulation to Permanent Retirement from Judicial Office*, attaching a copy of this agreement.
- C. The Commission and Respondent agree that the Supreme Court shall determine whether this agreement should remain under seal.
- D. The Commission's position on the sealing issue is that the Commission has a duty pursuant to Article VI, §32 of the New Mexico Constitution, its enabling

legislation, and its procedural rules (A) to protect the public from any improper conduct and behavior of judges; (B) to preserve the integrity of the judicial process; (C) to maintain public confidence in the judiciary; (D) to create a greater awareness of proper judicial behavior on the part of the judiciary and the public; and (E) to provide for the expeditious and fair disposition of complaints of judicial misconduct. The Commission believes that this stipulation agreement as part of its petition to the Supreme Court should be public. Respondent's position is that sealing this stipulation does not conflict with Article VI, §32 of the Constitution because this stipulation makes no admission of misconduct. If the Supreme Court considers unsealing this stipulation, Respondent requests the ability to brief the issue.

E. Upon execution of this *Stipulation to Permanent Retirement from Judicial Office* and acceptance by the Supreme Court, the Commission will abate and close this matter (Inquiry No. 2007-070).

. . . Upon Order from this Court, the attached *Stipulation to Permanent Retirement from Judicial Office* is enforceable by the Commission before the Supreme Court.

. . . It is in the best interests of justice and integrity of the New Mexico Judiciary that the Supreme Court issue an order accepting Respondent Hon. Ira Robinson's permanent retirement from judicial office.

. . . The Supreme Court should also determine whether this petition and the underlying *Stipulation to Permanent Retirement from Judicial Office* should remain sealed.

On June 26, 2008, the Supreme Court issued an order requiring briefing on whether the stipulation and filings with the Court should remain sealed. The order further stated: "The Court is not inclined to accept the resignation with a suggested date of August 16, 2008, but is inclined to accept a resignation effective on or after September 10, 2008. Are the parties willing to amend the stipulation to change the effective date of resignation to September 10, 2008, or to a later specific date?"

On June 27, 2008, Judge Robinson and the Commission entered into an *Amendment to Stipulation to Permanent Retirement from Judicial Office*, which amended the effective date of Judge Robinson's proposed permanent retirement to September 16, 2008. That same day, the Commission filed a *Motion to Amend Stipulation to Permanent Retirement from Judicial Office* with the Supreme Court.

On July 1, 2008, Judge Robinson filed a *Motion to Unseal Stipulation* with the Supreme Court. The following day, the Commission filed a response. On July 9, 2008, the Commission filed with the Supreme Court the required *Brief in Support of Removing the Seal on the Stipulation and Filings* in Inquiry No. 2007-070. On July 11, 2008, Judge Robinson filed a *Response to Commission's Further Brief on Sealing*.

On July 14, 2008, the Supreme Court issued its final order in this matter. The order granted the Commission's *Motion to Amend Stipulation to Permanent Retirement* thereby accepting Judge Robinson's permanent retirement from judicial office effective September 16, 2008. The Supreme Court also granted the

Respondent's motion to unseal and ordered that the entire case shall be unsealed at the Supreme Court. Upon Judge Robinson's retirement on September 16, 2008, the Commission closed this matter.

MATTER OF HON. HORACIO FAVELA

Sunland Park Municipal Court

JSC Inquiry No. 2008-012

Supreme Court Docket No. 30,987

On March 4, 2008, Respondent won the election for Municipal Judge of Sunland Park, New Mexico. On March 7, 2008, the Commission filed a *Petition for Immediate Temporary Suspension*, asking the Supreme Court to suspend judge-elect Favela from office on the basis that he had pending felony criminal charges. The Commission also filed a *Petition for Writ of Quo Warranto*, seeking to prevent judge-elect Favela from taking office on the basis that he was not a resident of Sunland Park, New Mexico, and thus ineligible to hold the office of Sunland Park Municipal Judge.

On January 8, 2008, Respondent filed his declaration of candidacy with the city clerk of Sunland Park, New Mexico, to run for the office of Municipal Judge. Shortly before the Municipal Election of March 4, 2008, Respondent was criminally charged with the fourth degree felony of false voting. The criminal complaint alleged that in the 2004 general election, candidate Favela cast an absentee ballot in El Paso County, Texas, based on his voter registration in El Paso County, Texas, and also cast an absentee ballot in Doña Ana County, New Mexico, based on his voter registration in Doña Ana County, New Mexico, contrary to §1-20-8 NMSA. It was also alleged that candidate Favela was a resident of Texas, not of New Mexico, and as such was not qualified to serve as a municipal court judge in the State of New Mexico.

The Supreme Court held oral argument on both of the Commission's petitions on March 26, 2008. The Supreme Court granted the Commission's *Petition for Immediate Temporary Suspension*, but denied without prejudice the Commission's *Petition for Writ of Quo Warranto*.

On June 24, 2008, the Commission reached agreement with Judge Favela on *Stipulation to Permanent Resignation from Judicial Office*, which was filed by petition in the Supreme Court. The Supreme Court granted the Commission's petition on July 15, 2008, accepting Judge Favela's permanent resignation from judicial office.

MATTER OF HON. BARBARA ALDAZ-MILLS

Aztec Municipal Court

JSC Inquiry No. 2008-051

Supreme Court Docket No. 31,197

On June 27, 2008, the Commission filed a *Verified Petition for Immediate Temporary Suspension* concerning Judge Barbara Aldaz-Mills with the Supreme Court. On July 2, 2008, the judge filed her response to the Commission's petition. On July 30, 2008, the Supreme Court issued an order denying the Commission's *Petition for Immediate Temporary Suspension*.

On November 14, 2008, Judge Aldaz-Mills entered into a *Stipulation Agreement and Consent to Discipline* with the Commission. In the agreement, Judge Aldaz-Mills admitted that the Commission had sufficient evidence to prove the facts and code violations enumerated below by the standard of clear and convincing evidence:

1. On or about May 6, 2008, Mr. Daniel Goldberg, Sr. (hereinafter "Mr. Goldberg"), arrived at Respondent's court to obtain a certified copy of the bond for Mr. Thomas Vigil in the matter of *State v. Vigil*, 20060001116-CR. When Mr. Goldberg disputed the court

clerk's refusal to provide Mr. Goldberg with a certified copy of the bond, Respondent became involved. Respondent then questioned Mr. Goldberg as to why he wanted a certified copy of the bond, to which he responded that he was investigating a possible probation violation by Mr. Vigil, and that if there was a violation, Mr. Goldberg was going to revoke Mr. Vigil's bond and take him into custody.

2. Respondent then authorized the clerk to provide Mr. Goldberg with a certified copy of the bond, and within ten minutes of Mr. Goldberg's departure, Respondent placed a phone call to Mr. Vigil on his family cell phone.

3. When Mr. Vigil did not answer this call, Respondent left a voice mail message for Mr. Vigil stating the following: "This message is for Thomas. I have an emergency message for you. Please call Barbara at 505-334-7641. Uh, again, please call immediately. Uh, trying to help you out on a situation."

4. Mr. Vigil returned Respondent's call very soon thereafter. Respondent then told Mr. Vigil that Mr. Goldberg was on his way and may try to place him in custody. Respondent also told Mr. Vigil to "try not to get arrested, and then come into [Respondent's] court [the following day] to straighten this out."

5. On May 7, 2008, in response to Respondent's telephone conversation with him of May 6, 2008, Mr. Vigil did appear in Respondent's court. Respondent had a conversation with Mr. Vigil in which she indicated that the press had been calling her and that as a result Respondent could not help him.

6. Respondent has known both Thomas and Eva Vigil for ten or more years and is on a first name basis with them. Respondent has heard numerous traffic and criminal cases involving Thomas Vigil during the ten years she has known Thomas and Eva Vigil, including those pending at the time of the conduct outlined herein. Respondent's familiarity with and knowledge of Thomas and Eva Vigil arises from her frequent encounters with Thomas Vigil as a defendant in her court.

7. The conduct set forth violates Canons 21-100 NMRA 1995 and 21-200(A) NMRA 1995 of the New Mexico Code of Judicial Conduct.

In the stipulation agreement, Judge Aldaz-Mills consented to accept the following discipline from the Supreme Court:

1. **Formal Reprimand.** Respondent agrees to accept a formal reprimand from the Supreme Court concerning the charges set forth in the Notice of Formal Proceedings. Formal reprimands are published in the New Mexico Bar Bulletin.

2. **Twelve-Month Supervised Probation and Formal Mentorship.** Respondent shall complete twelve months of supervised probation and formal mentorship, commencing upon the Supreme Court's appointment of a supervisor/mentor. The mentorship shall address the obligations and restrictions imposed by the New Mexico Code of Judicial Conduct, which relate to the admitted facts set forth above. The Judicial Standards Commission will recommend the probation supervisor/mentor for the Supreme Court's approval and appointment. The period of supervised probation and mentorship shall begin upon the Supreme Court's appointment of the probation supervisor. The probation supervisor/mentor shall report on the progress and outcome of the probation and mentorship program to the Supreme Court and the Commission.

On November 20, 2008, the Commission filed a *Petition for Discipline upon Stipulation* with the Supreme Court. On December 30, 2008, the Supreme Court issued an Order granting the petition and imposing the stipulated discipline. On April 8, 2009, the Commission filed a recommendation that the Hon. Ann Yalman of the City of Santa Fe Municipal Court serve as Judge Aldaz-Mill's probation supervisor and mentor. The Supreme Court issued an order on April 14, 2009 appointing Judge Yalman to the position.

The Supreme Court issued its formal reprimand in this case on May 21, 2009. The reprimand was published in the Bar Bulletin. In its formal reprimand, the Court agreed that the stipulated factual findings supported the conclusion that Judge Aldaz-Mills violated Canons 21-100 and 21-200. The Court specifically noted that "by intervening in the lawful investigation of a possible probation violation and by calling the defendant and warning him that the agent was on his way to possibly place the defendant in custody, Judge Aldaz Mills failed to maintain the integrity and independence of the judiciary and failed to act in a manner that promotes public confidence in the integrity and independence of the judiciary." The Court further found:

While there is no finding that Judge Aldaz-Mills knew that the defendant had violated the conditions of his probation, by telling him that the enforcement agent was on his way and that the defendant should "try not to get arrested" and to come to her court the following day to "straighten this out," she abandoned her role as an impartial fact finder, and her conduct undermined the principles of judicial integrity, impartiality, and independence that form the basis of our judicial system. . . .

Judge Aldaz-Mills is on supervised probation and mentorship until April 14, 2010.

MATTER OF HON. BEN FALLIN
Red River Municipal Court (Alternate Judge)
JSC Inquiry No. 2008-098
Supreme Court Docket No. 31,663

On January 14, 2009, the Commission issued to Judge Ben Fallin a letter of inquiry pursuant to Judicial Standards Commission Rule 12(B) to which Judge Fallin replied on January 26, 2009. On March 13, 2009, the Commission issued to Judge Fallin a *Notice of Formal Proceedings*, to which he responded through counsel on March 31, 2009.

The Commission and Judge Fallin entered into a *Stipulation to Permanent Resignation from Judicial Office* on April 14, 2009. The same day, the Commission filed a *Petition to Accept Stipulation to Permanent Resignation from Judicial Office* with the Supreme Court. The petition provided in part:

* * *

4. The Commission and Judge Fallin entered into [an agreement] on April 14, 2009, which provides in pertinent part the following:

A. Respondent agrees to permanently resign as Alternate Judge of the Red River Municipal Court effective close of business on April 17, 2009. Respondent shall submit a letter of resignation to the Hon. Jack A. Griffin, Red River Municipal Judge, and shall concurrently tender copies of the resignation letter to the Judicial Standards Commission and to the Mayor of Red River. After resignation, respondent shall never again hold, become a candidate for, run for, or stand for election to any New Mexico judicial office in the future. Respondent shall never seek, accept appointment to, or serve pro tempore for any New Mexico judicial office in the future. New Mexico judicial office shall include

municipal court, probate court, magistrate court, metropolitan court, district court, Court of Appeals, and the New Mexico Supreme Court.

B. Upon respondent's resignation, the proceedings now pending before the Judicial Standards Commission will be abated based upon the Commission's acceptance of the terms of this stipulation. The Commission will file with the New Mexico Supreme Court a *Petition to Accept Stipulation to Permanent Resignation from Judicial Office*, attaching a copy of this agreement.

5. Upon Order from this Court, the attached *Stipulation to Permanent Resignation from Judicial Office* is enforceable by the Commission before the Supreme Court.

6. It is in the best interests of justice and the integrity of the New Mexico Judiciary that the Supreme Court issue an order accepting Respondent Hon. Ben Fallin's permanent resignation from judicial office.

On April 23, 2009, the Supreme Court issued an order denying the petition without prejudice. The order further stated:

The parties may submit a statement under seal of the facts and charges alleged in the *Notice of Formal Proceedings* that was issued on March 13, 2009. Without this information, the Court cannot exercise its discretion as to whether to accept or reject the stipulation to permanent resignation. The Court will accept the filing under seal because the matter has not reached a full evidentiary hearing before the Judicial Standards Commission and the Constitution permits matters before the Commission to remain confidential.

On May 13, 2009, Judge Fallin and the Commission entered into a *Stipulation to Permanent Resignation from Judicial Office in Lieu of Disciplinary Proceedings*. That same day, the Commission filed a *Petition to Accept Stipulation to Permanent Resignation from Judicial Office in Lieu of Disciplinary Proceedings*, and attached a copy of the *Notice of Formal Proceedings* as a sealed exhibit.

On June 4, 2009, the Supreme Court granted the Commission's *Petition to Accept Stipulation to Permanent Resignation from Judicial Office in Lieu of Disciplinary Proceedings*.

MATTER OF HON. SABINO RAMIREZ
Hatch Municipal Court
JSC Inquiry No. 2008-115
Supreme Court Docket No. 31,664

On January 16, 2009, the Commission issued a *Notice of Preliminary Investigation* to Judge Sabino Ramirez. Judge Ramirez filed his answer on January 29, 2009. On February 12, 2009, the Commission issued formal charges against Judge Ramirez in a *Notice of Formal Proceedings*. On March 2, 2009, Judge Ramirez filed *Respondent's Answer to Notice of Formal Proceedings*.

On April 14, 2009, Judge Ramirez entered into a *Stipulation Agreement and Consent to Discipline* with the Commission. In the agreement, Judge Ramirez admitted the following facts:

1. Beginning in September 2008, Respondent improperly involved himself in, and engaged in ex parte communications with David Trujillo about, Mr. Trujillo's private financial dispute with Leland and Lynette Jones. There was no case pending before Respondent's court concerning the dispute, although the matter may have possibly come before Respondent's court. Respondent improperly invoked and used his judicial position,

title, stationery, and prestige of office, in attempts to resolve the private financial dispute outside the court system to the favor of Mr. Trujillo, without affording due process of law to the Joneses.

Respondent's improper conduct includes making a telephone call on or about September 29, 2008, to the Jones' residence regarding the matter. Respondent left the following message on the Jones' answering machine:

Hello, Lynne Jones, this is Judge Ramirez in Hatch. The reason for my call is a claim from David Trujillo in reference to Lynette Jones residence here in Hatch for a clean-up. And he explained the situation to me. He says he received a check for partial payment and you put down final payment on it and we want to get this cleared up. So can you please call me at the police department here in Hatch its area code 575-267-3021. Again, this is Municipal Judge Sabino Ramirez. I expect a call from you as soon as I can get it. I can get this thing over and done with and cleared out, so please give me a call. Thank you bye-bye.

Respondent also wrote a letter to the Joneses on or about October 16, 2008, on Village of Hatch stationery, using his judicial title and court name to advance Mr. Trujillo's private interests under threat of legal action. The letter indicates that Respondent may have prejudged the matter in Mr. Trujillo's favor. Respondent's letter stated:

On September 29, 2008 I called your residence and left a message requesting that you call me back to make arrangements regarding the matter brought forth by David Trujillo in reference to working for you. Mr. Trujillo states that he did clean your property located at 204 Carr Street and I have seen pictures taken before the work was done and request that you come to an arrangement with Mr. Trujillo regarding full payment before the matter escalates. If we do not hear from you soon, there will be a civil suit against you requiring your appearance. If you could please call me regarding this matter as soon as possible, I can be reached at (575) 267-3021.

2. Respondent's admitted conduct . . . violates the following Canons of the Code of Judicial Conduct: 21-100 NMRA 1995; 21-200(A) and (B) NMRA 1995; and 21-300(B)(2), (B)(4), (B)(5), (B)(7), (B)(8), (B)(10) and (B)(11) NMRA 2004; and 21-500(A) NMRA 1995.

3. On or about October 29, 2008, Respondent issued a summons in the matter of Village of Hatch vs. Leland Jones that was written in letter form and in a manner that failed to comply with Rule 8-204(C) of the Rules of Procedure for the Municipal Courts. The summons did not conform to the Supreme Court's approved summons form. The summons was not signed by Respondent or his clerk, and did not contain a case number or the name of the prosecuting law enforcement officer.

4. Respondent's admitted conduct . . . violates the following Canons of the Code of Judicial Conduct: 21-100 NMRA 1995; 21-200(A) NMRA 1995; and 21-300(C)(1) and (C)(2) NMRA 2004.

5. On or about October 29, 2008, when the matter of *Village of Hatch vs. Leland Jones* was filed in his court, Respondent failed to recuse from the matter, even though

Respondent was actively using his judicial position to advance David Trujillo's private interests in the final dispute against Mr. Jones.

6. Respondent's admitted conduct . . . violates the following Canons of the Code of Judicial Conduct: 21-100 NMRA 1995; 21-200(A) and (B) NMRA 1995; and 21-400(A) NMRA 2004

7. Respondent agrees that his admitted conduct . . . constitutes willful misconduct in office and provides sufficient basis for the New Mexico Supreme Court to impose discipline against Respondent pursuant to Article VI, §32 of the New Mexico Constitution.

In the stipulation agreement, Judge Ramirez consented to accept the following discipline from the Supreme Court:

1. **Formal Reprimand.** Respondent agrees to accept a formal reprimand from the Supreme Court concerning the conduct admitted in this Stipulation Agreement and Consent to Discipline. Formal reprimands are published in the Bar Bulletin.

2. **Six-Month Supervised Probation and Formal Mentorship.** Respondent agrees to participate in a six-month supervised probation and formal mentorship. The Commission shall recommend the probation supervisor/mentor, for consideration and appointment by the Supreme Court. The probation supervisor/mentor shall report on the progress and outcome of the mentorship to the Supreme Court and the Commission.

On April 14, 2009, the Commission filed a *Petition for Discipline upon Stipulation* with the Supreme Court. On May 20, 2009, the Supreme Court issued an Order granting the *Petition for Discipline upon Stipulation* and imposing the stipulated discipline. On June 18, 2009, the Commission filed a recommendation that the Hon. Ronald M. Hall of the Grant County Magistrate Court serve as Judge Ramirez's probation supervisor. The Supreme Court issued an order on June 23, 2009 appointing Judge Hall to the position.

The Supreme Court issued its formal reprimand in this case on June 26, 2009, which was published in the Bar Bulletin. In its formal reprimand, the Court agreed that the stipulated factual findings supported the conclusion that Judge Ramirez violated Canons 21-100, 21-200, 21-300 and 21-500. The Court noted that Judge Ramirez's advocacy of the interests of one party undermined the public trust in the independence of the judiciary. The Court also noted that when Judge Ramirez used his authority to promote the interests of one party, he undermined the integrity and impartiality of the judiciary. Furthermore, the Court stated, "It is not a judge's job to resolve disputes that are not before the court," and thus Judge Ramirez should not have placed a telephone call to a party to encourage the making of an agreement.

The procedural rules are designed to assure an orderly process to afford the parties a full and fair opportunity to present their case and obtain a result from a dispassionate judge . . . In this case, the telephone message can be interpreted as being from a judge who was already familiar with the facts of a case and who had already prejudged the matter.

The Court further noted that the letter that Judge Ramirez sent subsequent to the telephone call compounded the doubt cast on Judge Ramirez's impartiality, and could have interfered with attempts at receiving a fair trial in this matter in any court with jurisdiction.

Additionally, the Court also pointed to Judge Ramirez's failure to recuse from the Village's nuisance case, as it involved the same property that was the subject of the private dispute with which Judge Ramirez had become involved. Canon 21-400(A)(1), the Court noted, requires a judge to recuse when the judge has personal knowledge of disputed evidentiary facts, yet Judge Ramirez failed to recuse as required.

Additionally, Judge Ramirez's recusal was required as his impartiality could be suspect given his involvement in the earlier dispute, where he appeared to have prejudged the matter.

Finally, the Court noted that Judge Ramirez's failure to follow established Rules of Procedure for the Municipal Courts undermined the public's confidence in the integrity of the judiciary. The Court held that all of the factual circumstances in this matter constituted willful misconduct.

Judge Ramirez is currently on supervised probation until December 23, 2009.

MATTER OF HON. KENNETH HOWARD
McKinley County Magistrate Court Judge
JSC Inquiry Nos. 2007-098 & 2008-108
Supreme Court Docket No. 31,730

The Commission issued a *Notice of Preliminary Investigation* to Judge Kenneth Howard on June 9, 2008. Judge Howard filed an *Answer to the Preliminary Investigation* notice on June 25, 2008. On November 14, 2008, the Commission issued formal charges against Judge Howard in a *Notice of Formal Proceedings*. On December 8, 2008, Judge Howard filed his response.

Commission Proceedings

On April 14-16, 2009, a trial was held before the Commission. The Commission heard testimony from seventeen witnesses in two separate inquiries and reviewed all exhibits admitted into evidence. On May 28, 2009, the Commission filed a *Petition for Discipline* and subsequently filed the *Record of Formal Proceedings before the Judicial Standards Commission* with the Supreme Court.

In its petition, the Commission recommended to the Supreme Court that Judge Kenneth Howard be formally reprimanded and placed on a one year supervised probation for referring three traffic defendants as part of their sentences to a traffic safety school that was not certified by the state and conducting part of at least two civil court proceedings in the Navajo language when the plaintiffs in the cases did not speak Navajo and the parties had not requested a court interpreter.

In its findings of fact, the Commission found that in the spring of 2007, the owner of the Diné Traffic Safety School spoke with the judge about the school, her work in the tribal courts, and prospective referrals from the magistrate court. The Diné Traffic Safety School is a unique school, grounded in the Navajo culture, teachings, and language. When the judge indicated to the court clerk that he intended to refer traffic defendants to the school as an alternative sentencing option, the chief court clerk indicated that such referrals would have to be approved by the presiding magistrate judge. The Commission found that the judge knowingly made three referrals after that conversation without determining whether the course or instructor were certified by the state as required by the New Mexico Department of Transportation Bureau of Traffic Safety. As a matter of law and pursuant to NMSA § 66-10-11, the Commission took judicial notice that when a person is convicted of a penalty assessment misdemeanor or other misdemeanor committed while operating a motor vehicle, each court is authorized to and shall consider ordering that offender to take any driving safety course certified by the bureau but shall not specify a particular provider. The Commission concluded that Judge Howard's referral of three traffic defendants to an uncertified driving safety school constituted willful misconduct in office and failure or inability to perform judicial duties.

After the judge awarded judgment in the civil case of *Furniture Warehouse v. Cayaditto*, M-35-CV-2007-00487, the defendants asked in English if they would have gone to jail if they had not appeared for court that day because of the summons they had received. The judge answered the defendants in Navajo, speaking for two to three minutes, and the plaintiff did not know what the judge said. The clerk got up and went to

get the chief clerk because she observed the plaintiff standing there unable to understand. When the clerk and chief clerk went back to the courtroom, the judge directed the defendant to address the court in English. The plaintiff took extra measures during and after the proceeding to ensure that the amount of the award to her did not change based on the exchange between the judge and the defendant.

In a second civil case of *Gentry Finance v. Mike*, No. M-35-CV-2007-00585, with both parties at the bench, the judge asked the defendant if she agreed with the amount the plaintiff was suing for, to which she replied “yes.” The judge then spoke to the defendant in Navajo for approximately two and a half minutes although the defendant was able to speak English and had not requested a court interpreter. The plaintiff was Navajo but did not understand the Navajo language.

The Commission found that the judge essentially denied due process to the respective Plaintiffs in both cases. The Commission concluded that such conduct constituted willful misconduct in office and failure or inability to perform judicial duties.

On June 18, 2009, Respondent filed his *Response to the Petition for Discipline*, in which he denied making referrals to the traffic safety school and denied conducting any court proceedings in the Navajo language which may have denied the plaintiffs due process of law. Respondent argued that the judge did not commit misconduct in office and that the Court should dismiss the *Petition for Discipline*.

Supreme Court Proceedings

On July 15, 2009, the Supreme Court heard oral argument on the Commission’s disciplinary petition, and Respondent’s objections. After review of the Commission’s petition and Respondent’s response and argument by the parties, the Supreme Court issued its ruling denying the Commission’s *Petition for Discipline* because the judge’s conduct did not rise to the level of willful misconduct in office.

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, requiring the matters to be addressed. In FY 2009, the Commission issued 8 private cautionary letters to judges addressing the issues listed below (one additional letter is included in current year’s disposition statistics since the matter was closed statistically in the current reporting year, but was issued and narratively reported in the prior year’s annual report):

1. A judge allegedly issued duplicative orders in a case without stating proper bases for the orders or indicating whether proceedings were held. The judge issued an order of dismissal without clarification in the order as to its basis or indication of proper appellate procedure. The judge then issued an order of remand dismissing the matter a second time and stating in the order that the plaintiff failed to prosecute the matter. The Commission cautioned the judge to ensure that a proper basis for the dismissal is stated when issuing orders of dismissal, and to state what procedure prompted the order. The Commission further cautioned the judge that if a case is to be remanded to a lower court for further action, make sure that fact and the required action are properly indicated on the order.

2. A judge allegedly improperly entered an *ex parte* custody order in a domestic relations case in direct contravention of a preexisting temporary order of protection. The *ex parte* custody order, issued six days after the first order and without any hearing, reversed temporary custody of the children and ordered

their immediate removal from the custodial parent, in contravention to the standing order of protection. The Commission cautioned the judge to be sure to set a hearing when issuing reversal orders, especially where child custody is at issue.

3. A judge allegedly summarily held a district attorney and a deputy district attorney in criminal contempt of court without any hearing or due process based on the deputy district attorney's late attendance to a pretrial conference. The Commission cautioned the judge to be cognizant that summary contempt proceedings are improper where an attorney fails to appear in court at the time designated by the judge. Notice and a hearing are required on the issue of a valid excuse for the failure to appear.

4. A judge allegedly failed to recuse from a case in which the judge had previously served as the lawyer in the matter in controversy, contrary to Canon 21-400(A)(2). The case was assigned to the judge for post-conviction proceedings and the judge took action on a motion to amend the judgment and sentence. The Commission cautioned the judge that when a case comes before the judge on habeas corpus review or for post-conviction proceedings, the judge should carefully examine the file and determine whether the case requires recusal because the judge previously served as a lawyer in the matter in controversy. The Commission reminded the judge to take all practical steps necessary to ensure that the judge's impartiality is not reasonably questioned.

5. A judge allegedly denied or limited access by an individual to DWI case records in violation of the Inspection of Public Records Act, NMSA 1978, §14-2-1, and misrepresented facts pertaining to the document request. The Commission cautioned the judge to comply fully with the New Mexico Inspection of Public Records Act for all public records requests made to the court. The Commission requested that the judge attend Inspection of Public Records Act training provided by the Office of the Attorney General, which the judge completed.

6. A judge allegedly failed to recuse from several matters involving the significant other/spouse of a court clerk. The judge allowed the clerk to make several entries on the court docket for these cases. The Commission cautioned the judge to be consistent in adhering to Canon 21-400 of the Code of Judicial Conduct and in applying established standards for determining whether recusal is required in a matter. The Commission further cautioned the judge to recuse whenever the judge's impartiality may be reasonably questioned. The Commission reminded the judge that if the judge should recuse from a defendant's criminal case under 21-400(A)(1), then the judge should recuse from all of that defendant's cases, including traffic matters. The Commission noted that the type of case is not a recognized factor or established exception to 21-400.

7. A judge allegedly dismissed a criminal case, contrary to court rules, because the officer failed to put the year of the vehicle or the social security number of the defendant on the citation. When the officer referred to the rule, the judge noted that the judge did not care what the rule was and that the judge's rule took precedence. The Commission cautioned the judge to comply with the specific rule when adjudicating citations and complaints. The Commission further cautioned the judge to always be patient, dignified, and courteous to police officers, litigants, jurors, witnesses, lawyers and others with whom the judge deals with in the judge's official capacity.

8. A judge allegedly initiated, permitted, considered, and/or engaged in four instances of *ex parte* communications with a litigant. The Commission referred the judge to complete a mentorship with a more experienced judge, which was successfully completed. Upon completion of the mentor program, the Commission cautioned the judge to comply with Canon 21-300(B)(7), which provides that: "A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding. . . ."

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 2009, 4 judges were referred for informal remedial measures, which are discussed below.

1. A judge allegedly improperly invoked a rule to exclude people from the courtroom and ordered the audience to leave the courtroom prior to a hearing. Neither party involved in the case had requested application of the exclusion rule. The members of the audience were not witnesses in the underlying case. Defense counsel objected to the judge's order on the grounds that the proceedings were public as provided by law and that the spectators were not witnesses in the case. The Commission referred the judge to complete a mentorship, which was successfully completed.

2. A judge allegedly issued an amended judgment and sentence order, in which the judge issued a sentence beyond the time limits of the court's jurisdiction and set up an improper automatic sentence extension, without providing due process to the defendant for an alleged violation. The defendant unsuccessfully appealed the judge's judgment and sentence. On remand, the judge amended the judgment and sentence order but miscalculated the start date of the probation period and did not credit the defendant for the probation time already completed. When the defendant brought this error to the judge's attention at the hearing, the judge refused to correct it. The Commission referred the judge to complete a mentorship, which was successfully completed.

3. A judge allegedly accepted a verbal counterclaim in a case contrary to the applicable rules of civil procedure. The rule requires the facts and circumstances of a counterclaim be pled in a written answer to the complaint. The Commission referred the judge to complete a mentorship, which was successfully completed.

4. A judge allegedly made comments manifesting bias or prejudice concerning national origin, ethnicity, and/or sexual orientation. The Commission referred the judge to a one-year mentorship, including training on eliminating bias in the courtroom. The mentorship is ongoing and the matter has been closed administratively pending successful completion of the program.

***CURRENT OR FORMER JUDGES WITH ONGOING PROBATION,
MONITORING, OR COMPLIANCE WITH SUPREME COURT ORDERS***

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

Pursuant to the Supreme Court order of July 20, 2006, Judge Pope for the duration of his service as a judge in the State of New Mexico, shall: (1) be on permanent supervised probation; (2) participate in Alcoholics Anonymous or other twelve-step program at least once a week, (3) submit to random alcohol and drug testing, and (4) not use alcohol or illegal drugs. Judge Pope is fully complying with these conditions ordered by the Supreme Court.

MATTER OF HON. JOHN W. "BUDDY" SANCHEZ

Valencia County Magistrate Court

JSC Inquiry No. 2005-031

Supreme Court Docket No. 25,281

Pursuant to the Supreme Court's order of November 20, 2008, the current monitoring and compliance requires screening of Judge Sanchez's serum ammonia levels, which the Court directed in its March 8, 2007 order be ordered and monitored by the director of the Administrative Office of the Courts ("AOC") with notice to the Commission. Random drug and alcohol screening was discontinued by the Supreme Court's November 20, 2008 order, upon Judge Sanchez's motion that was granted in part.

MATTER OF [FORMER JUDGE] THERESA GOMEZ

Bernalillo County Metropolitan Court

JSC Inquiry No. 2006-128

Supreme Court Docket No. 30,549

Pursuant to the October 24, 2007 order of the Supreme Court, the former judge Theresa Gomez is obligated to pay in monthly installments the \$17,000.00 constituting unpaid rent due to the Region III State Housing Authority, its successor, agent, or assign.



PROCEEDINGS BEFORE THE SUPREME COURT FY 2004–FY 2009

Following is a summary of cases that the Commission filed with the New Mexico Supreme Court during the five prior fiscal years, in addition to this reporting year. (More detailed summaries for this year’s cases may be found in the preceding section.) Cases are listed in sequential order of their filing.

Matter of Hon. David J. Ramos, Jr., Hurley Municipal Court, JSC Inquiry No. 2003-76, Supreme Court Docket No. 28,327 (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 Court, JSC Inquiry No. 2003-99, Supreme Court Docket No. 27,266 (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 complete six-month supervised probation.

Matter of Hon. Reuben Galvan, Doña Ana County Magistrate Court, JSC Inquiry No. 2003-48, Supreme Court Docket No. 28,609 (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 Court, JSC Inquiry No. 2004-53, Supreme Court Docket No. 28,658 (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, JSC Inquiry No. 2004-60, Supreme Court Docket No. 28,713 (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 Court, JSC Inquiry No. 2003-92, Supreme Court Docket No. 28,716 (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. Reuben Galvan, Doña Ana County Magistrate Court, JSC Inquiry No. 2004-99, Supreme Court Docket No. 28,609 (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, JSC Inquiry No. 2004-46, Supreme Court Docket No. 28,986 (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. Atcity, San Juan County Magistrate Court, JSC Inquiry Nos. 2003-35, 2003-38 & 2003-57, Supreme Court Docket No. 29,076 (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, JSC Inquiry Nos. 2005-010 & 2005-015, Supreme Court Docket No. 29,082 (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, JSC Inquiry Nos. 2003-73 & 2003-95, Supreme Court Docket No. 29,085 (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, JSC Inquiry Nos. 2003-58, 2003-89 & 2003-108, Supreme Court Docket No. 27,906 (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; and 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, Doña Ana County Magistrate Court, JSC Inquiry No. 2003-82, Supreme Court Docket No. 27,923 (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 trial, 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 Court (*Pro Tem*), JSC Inquiry No. 2004-127, Supreme Court Docket No. 29,180 (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, JSC Inquiry No. 2004-067, Supreme Court Docket No. 29,264, (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, JSC Inquiry No. 2004-011, Supreme Court Docket No. 29,265 (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 Court, JSC Inquiry No. 2005-024, Supreme Court Docket No. 29,309 (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 (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, tossing objects at staff, yelling, pounding fist on desk, and asserting that only he could communicate with his trial court administrative assistant ("TCAA") pertaining to court business; disregarding court policy on how traffic arraignments were to be handled; violating court rules and agreements with colleagues, causing increased workload for the other judges; permitting his TCAA to behave in an unprofessional manner; condoning and assisting TCAA in violating court policies; failing to prohibit TCAA from being rude to court employees; and incessantly complaining about the chief judge, presiding criminal judge, court administration, and court policies; disregarding state law and court policy by waiving *a priori* supervised probation costs for all criminal cases where such costs were statutorily imposed; engaging in pattern and practice of improperly disqualifying from traffic cases to avoid additional work for himself and his TCAA; and during Commission inquiry failing to adhere to almost all provisions of the Commission's orders and directives, failing to appear for noticed hearings, and failing 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, JSC Inquiry No. 2005-019, Supreme Court Docket No. 27,906 (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, JSC Inquiry No. 2005-076, Supreme Court Docket No. 27,906 (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 were 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 (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, JSC Inquiry Nos. 2004-072 & 2004-077, Supreme Court Docket No. 28,716 (2006). Allegations included that Respondent and her fellow judge, Hon. James Locatelli, sent an improper memorandum/letter to the Mayor, City Manager, and all City Councilors, addressing accusations of improper management and conduct of the 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, 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, JSC Inquiry Nos. 2004-073 & 2004-081, Supreme Court Docket No. 29,508 (2006). Allegations included that Respondent and his fellow judge, Hon. Melissa Miller-Byrnes, sent an improper memorandum/letter to the Mayor, City Manager, and all City Councilors, addressing accusations of improper management and conduct of the 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 local newspaper, which addressed continued accusations of mismanagement and misconduct of the police department and City Attorney's Office. 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. 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, JSC Inquiry Nos. 2004-097 & 2005-005, Supreme Court Docket No. 29,552 (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; collecting 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; calling and leaving a message for the 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, displaying 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, McKinley County Magistrate Court, JSC Inquiry No. 2005-113, Supreme Court Docket No. 27,535 (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, JSC Inquiry No. 2005-114, Supreme Court docket No. 29,558 (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, Doña Ana County Magistrate Court, JSC Inquiry Nos. 2004-074 & 2005-005, Supreme Court Supreme Court Docket No. 27,923 (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, Third Judicial District Court, JSC Inquiry No. 2006-038, Supreme Court Supreme Court Docket No. 29,552 (2006). Judge tendered his resignation to the Supreme Court on June 1, 2006. In February 2007, the Commission abated proceedings in this matter.

Matter of Hon. Carlos Garza, Doña Ana County Magistrate Court, JSC Inquiry No. 2005-003, Supreme Court Docket No. 29,764 (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, Dexter Municipal Court, JSC Inquiry No. 2004-113, Supreme Court Docket No. 29,767 (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, Ninth Judicial District Court, JSC Inquiry No. 2005-006, Supreme Court Docket No. 29,765 (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, Thirteenth Judicial District Court, JSC Inquiry No. 2004-046, Supreme Court Docket No. 29,778 (2006). Allegations included failing to perform judicial duties, failing to notify the Chief Judge or Court Administrator of his extended absence, leaving a criminal jury trial unfinished prior to the defense concluding its case (ultimately resulting in substantial prejudice, error, and mistrial), and failing 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.

Matter of Hon. John W. "Buddy" Sanchez, Valencia County Magistrate Court, JSC Inquiry No. 2005-031, Supreme Court Docket No. 25,281 (2007). The Commission filed a *Petition for Immediate Temporary Suspension or for Immediate Administrative Medical Leave* which concerned the judge's fitness for duty. The Supreme Court granted the Commission's Motion to Seal the pleadings. After hearing oral argument

from the parties, the Supreme Court ordered that Judge Sanchez: (1) demonstrate his serum ammonia levels were below 45 umol/L; (2) abstain from all alcohol consumption, and comply with random drug and alcohol screening until further order of the Court; and (3) undergo random testing of his serum ammonia levels. The Supreme Court ultimately denied the Commission's *Motion for Retirement or Removal from Office*. On October 1, 2008, the judge filed a motion to discontinue the Supreme Court's requirement that Respondent continue to undergo random drug and alcohol screening, and periodic serum ammonia screening. The Commission filed a response in opposition to this screening on October 6, 2008, and the Respondent filed his reply brief on October 9, 2008. On November 20, 2008, the Supreme Court granted in part and denied in part the judge's motion. The Supreme Court ordered that the random drug and alcohol screening be discontinued, but the screening of the judge's serum ammonia levels continue.

Matter of Hon. Carlos Garza, Doña Ana County Magistrate Court, JSC Inquiry Nos. 2006-021, 2006-070, 2006-071, 2006-072, 2006-076, Supreme Court Docket No. 29,764 (2006). Allegations included that the Respondent knowingly and willfully attempted to influence/intimidate a law enforcement officer in an effort to gain preferential treatment for a woman with whom he had a personal relationship, and again used the prestige of judicial office to gain preferential treatment on behalf of that same person by ordering court staff to issue clearance of her driver's license before all of her legal obligations had been met (despite being notified by the Commission that it was investigating his communications to other magistrate court judges regarding the woman's DWI case). After a hearing on the merits, the Commission found that the Respondent's conduct constituted willful misconduct in office and recommended permanent removal from judicial office and costs. Given the recurring pattern of misconduct to use his judicial office to attempt to benefit someone with whom he was personally interested, along with Respondent's use of illegal drugs (Inquiry No. 2006-042 reported below), the Supreme Court granted the Commission's *Petition for Permanent Removal from Judicial Office* and awarded costs.

Matter of Hon. Carlos Garza, Doña Ana County Magistrate Court, JSC Inquiry No. 2006-042, Supreme Court Docket No. 29,764 (2006). Allegations included that the Respondent used illegal drugs and failed to comply with a Commission's drug testing order (based on affidavits from two court employees and a letter from the Magistrate Advisory Committee detailing the judge's suspicious behavior). Not until the Supreme Court mandated that the Respondent comply with the Commission's drug testing order, over a month after Respondent initially learned of that order, did the judge submit to the requisite drug testing. Despite Respondent's efforts to avoid drug testing, Respondent tested positive for the use of cocaine and cocaine metabolites. After a hearing on the merits, the Commission found that the Respondent's conduct constituted willful misconduct in office and recommended permanent removal from judicial office and costs. Finding that the Respondent's use of illegal drugs simply could not be tolerated, along with his efforts to avoid ordered drug testing, and pattern of using his position in attempts to benefit someone in whom he was personally interested (Inquiry Nos. 2006-021, 2006-070, 2006-071, 2006-072, and 2006-076, reported above), the Supreme Court granted the Commission's *Petition for Permanent Removal from Judicial Office* and awarded costs.

Matter of Hon. Hector Pineda, Roswell Municipal Court, JSC Inquiry No. 2005-095, Supreme Court Docket No. 29,479 (2007). Allegations included requiring all citizens who need to appear before the 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; denying a criminal defendant constitutional due process of law by issuing a bench warrant for the criminal defendant's arrest based upon the judge's determination that he failed to appear the previous day despite the fact that the defendant arrived to the judge's court ten minutes early and was advised by the court staff that he would need photo identification in order to appear for court. After trial (on stipulated factual findings), Commission found willful misconduct. Upon recommendation from the Commission, the Supreme Court ordered that: (1) Respondent shall immediately discontinue the photo

identification policy; (2) a formal reprimand (3); a one-week suspension without pay; (4) a one thousand dollar fine; and lastly, (5) a one-year supervised probation and mentorship.

Matter of Hon. James T. Locatelli, Las Cruces Municipal Court, JSC Inquiry No. 2004-134, Supreme Court Docket No. 29,508, 2007-NMSC-029, 141 N.M. 755, 161 P.3d 152 (2007). Allegations included: (1) improperly issuing criminal contempt complaints to two attorneys for their role in an appeal from his court; and (2) improperly failing to recuse from the contempt proceedings. After a trial, the Commission recommended that the Supreme Court impose the following discipline on Judge Locatelli: (1) expungement of the attorney's contempt cases from the Las Cruces Municipal Court records; (2) formal public reprimand; (3) Ethics for Judges course at the National Judicial College at Respondent's own expense; (4) 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; and lastly, (5) assessment of the Commission's costs and expenses. The Supreme Court denied the petition for discipline because the Commission failed to prove willful misconduct by clear and convincing evidence, holding instead that the judge's actions were merely negligent. The Supreme Court, however, wrote a formal opinion and 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."

Matter of Hon. William A. Vincent, Jr., San Juan County Magistrate Court, JSC Inquiry No. 2006-028, Supreme Court Docket No. 27,266, 2007-NMSC-056 (2007). Allegations included publicly endorsing a candidate for reelection as mayor. Specifically, the judge authorized the use of his name for an endorsement that was published in a local newspaper. While the judge admitted to endorsing a candidate for public office, the judge contested the imposition of any discipline on the grounds that his conduct was constitutionally protected free speech. The New Mexico Supreme Court was asked to decide the constitutionality of the prohibition in the New Mexico Code of Judicial Conduct against the public endorsement of a political candidate by a judge, commonly referred to as an "endorsement clause," in light of the United States Supreme Court's opinion in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002). The New Mexico Supreme Court concluded that New Mexico's endorsement clause is constitutional, adopted the Commission's recommendation of discipline, and issued a formal reprimand. In a formal opinion, the Court concluded that the endorsement clause "is intended to promote what we believe is an undeniable compelling state interest in promoting the reality and appearance of impartiality of our judiciary, which in this case means eliminating the potential for bias or the appearance of bias or against the parties appearing before a judge." The Court stated that the judge's endorsement of the mayor "would certainly create the appearance of bias were the mayor or anyone associated with his administration to appear before respondent in an actual case."

Matter of Hon. George Galanis, McKinley County Magistrate Court, JSC Inquiry No. 2006-130, Supreme Court Docket No. 30,198 (2007). Commission petitioned for temporary suspension without pay, which was a sealed pleading. Judge subsequently tendered his resignation as magistrate judge. The Commission filed a *Notice of Abatement of Action*. 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, Bernalillo County Metropolitan Court, JSC Inquiry No. 2005-051, Supreme Court Docket No. 30,203 (2007). Allegations included improperly delegating judicial duties to judge's secretary while the judge was on a personal vacation by directing secretary to perform judge's judicial duties for his traffic docket and directing secretary to use judge's signature stamp for endorsement. Upon stipulation, judge publicly reprimanded, ordered to pay a \$500 fine and ordered to complete a six month supervised probation and formal mentorship.

Matter of Hon. Theresa Gomez, Bernalillo County Metropolitan Court, JSC Inquiry No. 2006-128, Supreme Court Docket No. 30,549 (2007). Allegations included that: (1) judge lived rent-free for twenty months in a home owned by the Region III State Housing Authority, which she was in the process of buying (to include past rent due) under the Housing Authority's lease-purchase program for individuals whose credit rating prevented them from accessing private mortgage financing; and (2) judge had communications with and dismissed traffic citations and cancelled an arrest warrant for the director of the Housing Authority without the presence or involvement of the prosecuting police officer or prosecutor. Upon stipulation with the Commission, judge consented to accept a formal reprimand and pay \$17,000 restitution to the housing authority. The Supreme Court rejected the stipulated discipline but indicated a two-week suspension without pay would be appropriate. Upon a second stipulation accepted by the Court, the judge received a two week unpaid suspension and agreed to pay \$17,000 restitution in unpaid rent due to the housing authority.

Matter of Hon. Hector Pineda, Roswell Municipal Court, JSC Inquiry No. 2006-105, Supreme Court Docket No. 29,479 (2007). On July 18, 2007, the Commission filed a *Verified Petition for Immediate Temporary Suspension without Pay* concerning Judge Pineda with the Supreme Court. On July 20, 2007, the Judge resigned his judicial office. On July 23, 2007, the Commission filed a *Motion to Accept Stipulation to Permanent Resignation from Judicial Office and to Dismiss without Prejudice Respondent's Pending Disciplinary Matters*. On July 31, 2007, the Court issued an order granting the Commission's motion.

Matter of Hon. J. Wayne Griego, Bernalillo County Metropolitan Court, JSC Inquiry No. 2007-047, Supreme Court Docket No. 30,203 (2008). Allegations included that over a period of about three years, the judge summarily adjudicated twenty-four traffic cases for family members, friends and relatives of staff members ex parte and without a hearing or taking evidence. After a trial, the Commission found that the Respondent's conduct constituted willful misconduct in office and recommended a 90-day suspension, implementation of policies addressing the avoidance of future conflicts of interest and addressing staff supervision and training, a formal reprimand, and costs. While the Supreme Court adopted the Commission's *Findings of Fact and Conclusions of Law*, the Court found that the judge's actions of bypassing evidentiary hearings and adjudicating numerous tickets for family members and friends without state participation warranted his removal from the bench.

Matter of Hon. Horacio Favela, Sunland Park Municipal Court, JSC Inquiry No. 2008-012, Supreme Court Docket No. 30,987. On March 7, 2008, the Commission filed a *Petition for Immediate Temporary Suspension* asking the Supreme Court to suspend Respondent from office on the basis that he had pending felony criminal charges. The Commission also filed a *Petition for Writ of Quo Warranto*, seeking to prevent Respondent from taking office on the basis that he was not a resident of Sunland Park, New Mexico, and thus ineligible to hold the office of Sunland Park Municipal Judge. On March 26, 2008, the Supreme Court granted the Commission's *Petition for Immediate Temporary Suspension*, but denied without prejudice the Commission's *Petition for Writ of Quo Warranto*. On June 24, 2008, the Commission reached agreement with Judge Favela on a *Stipulation to Permanent Resignation from Judicial Office*, which was filed by petition in the Supreme Court. The Supreme Court granted the Commission's petition on July 15, 2008.

Matter Of Hon. Fred Rodarte, Cibola County Probate Court, JSC Inquiry No. 2008-001, Supreme Court Docket No. 31,023 (2008). On March 25, 2008, the Commission filed with the Supreme Court a *Verified Petition for Immediate Temporary Suspension without Pay*. On April 1, 2008, the Supreme Court set oral argument for April 16, 2008, and ordered Judge Rodarte to respond to the petition by April 11. On April 10, 2008, Judge Rodarte resigned from his judicial office. On April 15, 2008, the Supreme Court vacated oral argument and denied the Commission's temporary suspension petition as moot.

Matter of Hon. Thomas Rodella, Rio Arriba County Magistrate Court, JSC Inquiry Nos. 2006-133, 2007-062, 2007-071 & 2007-078, Supreme Court Docket No. 31,806 (2008). Allegations included that the judge

secured the release from custody of the father of a member of a religious brotherhood to which the judge belonged, promised a couple who were having a dispute with their tenants that they would not have a problem winning in court, and telling the victim in a domestic violence case that there would be no legal consequences if she chose not to testify at the trial even though she had been subpoenaed by the district attorney. After a hearing on the merits, the Commission found that the Respondent's conduct constituted willful misconduct in office and recommended permanent removal from office, a formal reprimand and cost reimbursement. While the Supreme Court did not adopt all of the Commission's *Findings of Fact and Conclusions of Law*, the Court found that the judge's actions constituted willful misconduct in office and warranted his removal from the bench.

Matter of Hon. Ira Robinson, Court of Appeals, JSC Inquiry No. 2007-070, Supreme Court Docket No. 31,188 (2008). Upon stipulation, the judge agreed to permanently retire from judicial office in New Mexico, which the Supreme Court accepted. Upon Respondent's *Motion to Unseal*, the Court ordered that the entire case be unsealed.

Matter of Hon. Barbara Aldaz-Mills, Aztec Municipal Court, JSC Inquiry No. 2008-051, Supreme Court Docket No. 31,197 (2009). Allegations included warning a defendant whom the judge knew personally that a bail bondsman may be on the way to try to take him into custody. On June 27, 2008, the Commission filed a *Verified Petition for Immediate Temporary Suspension* with the Supreme Court. On July 2, 2008, the judge filed her response to the Commission's Petition. On July 30, 2008, the Supreme Court issued an order denying the Commission's *Petition for Immediate Temporary Suspension*. On stipulation, judge was publicly reprimanded and ordered to complete twelve months of supervised probation and a formal mentorship.

Matter of Hon. Ben Fallin, Red River Alternate Municipal Judge, JSC Inquiry No. 2008-098, Supreme Court Docket No. 31,663 (2009). Upon stipulation, the judge agreed to permanently resign from judicial office in New Mexico in lieu of disciplinary proceedings, which the Supreme Court accepted.

Matter of Hon. Sabino Ramirez, Hatch Municipal Court, JSC Inquiry No. 2008-115, Supreme Court Docket No. 31,664 (2009). Allegations included that the judge interfered in a personal financial dispute between two parties in a case that was not before him, making a telephone call and writing a letter on his official stationery; failed to recuse when a different but related dispute over the property in question came before him on the Municipal Court; and failed to follow proper Municipal Court procedures in the issuance of a summons in the matter. On April 14, 2009, Judge Ramirez entered into a *Stipulation Agreement and Consent to Discipline* with the Commission and the Commission filed a *Petition for Discipline upon Stipulation* with the Supreme Court. On May 20, 2009, the Supreme Court issued an Order granting the *Petition for Discipline upon Stipulation* and imposing the stipulated discipline, a formal reprimand to be published in the Bar Bulletin and a six-month supervised probation with a formal mentorship. A formal reprimand was published by the Court on June 26, 2009.

Matter of Hon. Kenneth Howard, Magistrate Court, McKinley County, JSC Inquiry Nos. 2007-098 & 2008-108, Supreme Court Docket No. 31,730 (2009). Allegations included referring three traffic defendants as part of their sentences to a traffic safety school that was not certified by the state and conducting part of at least two civil court proceedings in the Navajo language when the plaintiffs in the cases did not speak Navajo and the parties had not requested a court interpreter. After a trial, the Commission found that the Respondent's conduct constituted willful misconduct in office and recommended a formal reprimand and a one year period of supervised probation. The Supreme Court found that Judge Howard's conduct did not rise to the level of willful misconduct and denied the Commission's *Petition for Discipline*.

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.

DISCIPLINARY CASES

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).

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

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

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

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, 141 N.M. 831, 161 P.3d 876 (2007).

Matter of Locatelli, 2007-NMSC-029, 141 N.M. 755, 161 P.3d 252 (2007).

Matter of Vincent, 2007-NMSC-056, 143 N.M. 56, 172 P.3d 605 (2007).

Matter of Griego, 2008-NMSC-020, 143 N.M. 698, 181 P.3d 690 (2008).

Matter of Rodella, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (2008).

OTHER STATE CASES

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).

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

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

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

STATE CASE REGARDING COMMISSION SUBPOENAS

State ex rel. New Mexico Judicial Standards Com'n v. Rivera et al., No. 29,239, slip op. (N.M. 2005).



EXPENDITURES & 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, unencumbered/uncosted funds revert to the State's general fund.

For FY 2009, the State Legislature initially appropriated \$851,600.00 to the Commission from the general fund for operations, investigation, and prosecution of judicial misconduct. The Legislature authorized an additional \$35,000.00 in budget authority for cost reimbursement ordered by the New Mexico Supreme Court. The Legislature subsequently imposed budget cuts of \$12,200.00, resulting in a final approved budget totaling \$839,400.00. In addition to the appropriations received, the Commission collected outstanding debt from former Rio Arriba County Magistrate Judge Thomas R. Rodella in the amount of \$3,573.62, which originated by Supreme Court order in FY 2009.

In FY 2009, the Commission's expenditures totaled \$832,600.37. The Commission did not expend \$10,372.63 of its FY 2009 appropriation and cost recovery, which was reverted to the general fund. All but \$9.05 of the reversion was due to a staff vacancy at the end of FY 2009. A summary categorization of the Commission's expenditures is provided below.

FY 2009 EXPENDITURES

DESCRIPTION	AMOUNT	PERCENTAGE
Employee Salaries	\$496,630.89	59.7%
Employee Benefits & Taxes	171,605.53	20.6%
Employee Training & Licensing	4,827.00	0.6%
Commission Travel	6,574.32	0.8%
Investigation & Prosecution	12,646.21	1.5%
Contractual Services	13,649.15	1.6%
Rent, Telecom, IT & Overhead	118,350.06	14.2%
Supplies & Postage	8,317.21	1.0%
TOTAL	\$832,600.37	100%

FY 2009 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.

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 same fiscal year the cost recovery is received.

In FY 2009, the Supreme Court assessed costs in the amount of \$3,573.62 against one respondent judge who was permanently removed from the bench by Supreme Court Order. These cost reimbursements were recovered in FY 2009.

DESCRIPTION	FINE	COST REIMBURSEMENT
Matter of Thomas R. Rodella Inquiry Nos. 2006-133, 2007-062, 2007-071 & 2007-078	\$ 0.00	\$ 3,573.62
TOTAL	\$ 0.00	\$ 3,573.62

In FY 2007, former San Juan County Magistrate Judge James Atcitty was ordered by the Supreme Court to reimburse the Commission \$7,202.40 in costs. Pursuant to a civil garnishment action by the Commission in FY 2009, the Commission anticipates recovering these costs in FY 2010. In FY 2008, former Bernalillo County Metropolitan Court Judge J. Wayne Griego was ordered by the Supreme Court to reimburse the Commission \$6,704.41 in costs. To date, the debt to the Commission remains outstanding.

FY 2009 BUDGET APPROPRIATION COMPARED TO FY 2009 EXPENDITURES

FY09 Final Approved Budget	\$ 839,400.00	
FY09 Budget Adjustments: <i>Rodella Cost Reimbursement Recovered</i>	3,573.00	
Total Adjusted Budget	842,973.00	
Total FY09 Expenditures		\$ (832,600.37)
FY 2009 Reversion to General Fund		(10,372.63)
Total Expenditures and Reversion		\$ (842,973.00)

Note: Reversion represents 1.2% of the Commission’s total adjusted budget.

AGENCY 10-YEAR FUNDING PROFILE

FISCAL YEAR	FUNDING	EXPENDITURES	REVERSION	REVERSION AS % OF FUNDING
2000	\$278,300.00	\$235,610.00	\$42,690.00	15%
2001	\$302,300.00	\$249,758.00	\$52,542.00	17%
2002	\$362,700.00	\$297,322.00	\$65,378.00	18%
2003	\$376,200.00	\$296,732.00	\$79,468.00	21%
2004	\$385,079.00	\$357,049.00	\$28,030.00	7%
2005	\$529,352.00	\$515,810.65	\$13,541.35	3%
2006	\$650,816.00	\$650,253.11	\$562.89	0%
2007	\$688,853.00	\$688,812.57	\$40.43	0%
2008	\$819,548.00	\$803,295.93	\$16,252.07	2%
2009	\$842,973.00	\$832,600.37	\$10,372.63	1%

