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01/21/2014 13:48

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IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

No. 29,264

FAXED ORIGINAL

IN THE MATTER OF HON. JAVIER LOZANO
Municipal Court Judge, Columbus, New Mexico

INQUIRY CONCERNING HON. JAVIER LOZANO
Inquiry No. 2014-001

SUPREME COURT OF NEW MEXICO
FILED

JAN 21 2014



MOTION TO ACCEPT STIPULATION TO
PERMANENT RESIGNATION FROM JUDICIAL OFFICE
IN LIEU OF FURTHER DISCIPLINARY PROCEEDINGS

JUDICIAL STANDARDS COMMISSION
Post Office Box 27248
Albuquerque, New Mexico 87125-7248
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HON. JAVIER LOZANO
Columbus Municipal Court
224 Lima Ave.
Columbus, New Mexico 88029
(575) 531-2801
Fax: (575) 531-0046

RANDALL D. ROYBAL
Executive Director & General Counsel

Respondent

DEBORAH BORIO
Investigative Trial Counsel

Counsel for Petitioner

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

No. 29,264

IN THE MATTER OF HON. JAVIER LOZANO
Municipal Court Judge, Columbus, New Mexico

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FILED UNDER SEAL
PURSUANT TO 27-104(B) NMRA 2011

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Respondent

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Municipal Court Judge, Columbus, New Mexico

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MOTION TO ACCEPT STIPULATION TO
PERMANENT RESIGNATION FROM JUDICIAL OFFICE
IN LIEU OF FURTHER DISCIPLINARY PROCEEDINGS

The Judicial Standards Commission of the State of New Mexico (“the Commission”), through the undersigned counsel, hereby motions the Supreme Court for an order approving the *Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings* (“*Stipulation*”), attached hereto as Exhibit 1, in which Respondent, Hon. Javier Lozano, agrees to permanently resign effective at 5:00 p.m. on the same day this Honorable Court enters an order approving the *Stipulation* and ordering Respondent’s resignation. The Commission further requests

that the Court unseal the entire file in this matter, pursuant to Rule 27-104(B) NMRA 2011.

The Respondent agrees to never again hold judicial office or exercise any judicial authority in the State of New Mexico. The Commission believes this stipulation agreement best serves the interest of justice and the integrity of the New Mexico Judiciary.

1. The Commission invokes its jurisdiction pursuant to the Commission's power to recommend the discipline of judges, and the Supreme Court's power to discipline judges under N.M. Const. art. VI, §32, and the Court's power of superintending control under N.M. Const. art. VI §3.

2. On January 9, 2014, the Commission issued a *Notice of Preliminary Investigation* to Respondent in Inquiry Number 2014-001, attached hereto as Exhibit A to Exhibit 1.

3. The Commission's inquiry and proceedings concerning Respondent in this matter have been ongoing.

4. The Commission entered into a *Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings* ("Stipulation") with the Respondent on January 21, 2014, which provides in pertinent part the following:

A. Respondent agrees to permanently resign as judge of the Columbus Municipal Court, effective at 5:00 p.m. on the same day that the Supreme Court enters an order approving this *Stipulation* and ordering Respondent's resignation. Upon acceptance of this *Stipulation* by the New Mexico Supreme Court, Respondent shall effect his permanent resignation by submitting duplicate original letters of resignation addressed to the Chief Justice of the New Mexico Supreme Court and the Village of Columbus City Council, with a copy to the Judicial Standards Commission.

B. Upon 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 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. Respondent shall never again hold or exercise any judicial authority in the State of New Mexico, to include officiating at weddings.

C. Respondent does not admit to the preliminary allegations as set forth in the *Notice of Preliminary Investigation* filed January 9, 2014.

D. Respondent denies that he committed willful misconduct or that he violated any rules of the Code of Judicial Conduct.

5. As set forth in the *Stipulation*, Respondent acknowledges that the enumerated facts and conduct, if proven, constitute willful misconduct in office, one or more violations of the New Mexico Code of Judicial Conduct, and provide sufficient bases for the New Mexico Supreme Court to impose discipline against Respondent pursuant to Article VI, §32 of the New Mexico Constitution.

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

7. It is in the best interest of justice and integrity of the New Mexico Judiciary that the Supreme Court grant this Motion.

WHEREFORE, the Commission respectfully requests this Court issue an order granting the Commission's Motion, approving the *Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings*, and ordering Respondent Hon. Javier Lozano's permanent resignation from judicial office effective immediately. The Commission

also requests that this order unseal all documents filed in the Supreme Court in this case pursuant to Rule 27-104(B) NMRA 2011.

Respectfully submitted,

JUDICIAL STANDARDS COMMISSION



RANDALL D. ROYBAL
Executive Director & General Counsel

DEBORAH BORIO
Investigative Trial Counsel

Post Office Box 27248
Albuquerque, NM 87125-7248
Telephone: (505) 222-9353
Fax: (505) 222-9358

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was sent by facsimile and regular mail on this 21st day of January, 2014, to the

Respondent:

*Hon. Javier Lozano
Columbus Municipal Court
224 Lima Ave.
Columbus, New Mexico 88029*



DEBORAH BORIO

BEFORE THE JUDICIAL STANDARDS COMMISSION
STATE OF NEW MEXICO

FILED
JAN 21 2014
KAC

NM JUDICIAL
STANDARDS COMMISSION

INQUIRY CONCERNING HON. JAVIER LOZANO
Village of Columbus Municipal Court

Inquiry No. 2014-001

STIPULATION TO PERMANENT RESIGNATION FROM JUDICIAL OFFICE
IN LIEU OF FURTHER DISCIPLINARY PROCEEDINGS

THIS MATTER is currently pending before the Judicial Standards Commission ("the Commission") pursuant to the *Notice of Preliminary Investigation* issued in Inquiry No. 2014-001 on January 9, 2014 (see attached **Exhibit A**).

This *Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings* ("Stipulation") is entered into by and between the Judicial Standards Commission and Hon. Javier Lozano ("Respondent"). Respondent is proceeding *pro se*. The parties hereby enter into the following *Stipulation*:

1. Respondent does not admit to the preliminary allegations that he:
 - A. Improperly touched, sexually harassed, and/or committed battery upon the Mayor of the Village of Columbus;
 - B. Told the Mayor of the Village of Columbus that if she would not pursue her complaint against you for improperly touching her, you would guarantee her 100 votes if she ran for re-election;
 - C. Shoplifted various items from the Family Dollar Store in Columbus, New Mexico;
 - D. Stole a bell from a residence, was charged with Larceny by the Luna County Sheriff's Department, and denied stealing the bell, but offered to replace or retrieve the bell in exchange for the Sheriff's Department's promise not to prosecute the individual who had the bell;
 - E. Possessed and/or retrieved stolen property—a bell—and turned it over to the Sheriff's Department, who verified that it was the bell you were accused of stealing.

Exhibit 1

F. Was charged with Aggravated Assault with a Deadly Weapon by the Luna County Sheriff's Department after Respondent publicly confronted, intimidated, challenged and/or threatened an individual with a gun fight after the individual complained that Respondent had failed to comply with the process of obtaining a number and waiting outside in line for food supplies, but instead went into the building where food supplies were being distributed ahead of everyone else who was, and had been, waiting in line; and

G. Had an impermissible *ex parte* communication or told the Luna County Sheriff's Department officer in his investigation of the incident in paragraph 1.F. above, that you were not going into the building for food supplies, but were going to talk to the food bank program manager about a traffic citation, which would constitute an impermissible *ex parte* communication.

2. Respondent denies that he committed willful misconduct or that he violated any rules of the Code of Judicial Conduct.

3. Respondent agrees to permanently resign as judge of the Columbus Municipal Court, effective at 5:00 p.m. on the same day that the Supreme Court enters an order approving this *Stipulation* and ordering Respondent's resignation. Upon acceptance of this *Stipulation* by the New Mexico Supreme Court, Respondent shall effect his permanent resignation by submitting duplicate original letters of resignation addressed to the Chief Justice of the New Mexico Supreme Court and the Village of Columbus City Council, with a copy to the Judicial Standards Commission.

4. Upon 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 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. Respondent shall never again hold or exercise any judicial authority in the State of New Mexico, to include officiating at weddings.

5. The Commission will file under seal with the New Mexico Supreme Court, pursuant to Rule 27-104(B) NMRA 2011, a *Motion to Accept Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings* ("*Motion*"), attaching a copy of this *Stipulation* and a copy of the *Notice of Preliminary Investigation* issued in Inquiry No. 2014-001 that was filed on January 9, 2014, which are required by the Supreme Court.

6. Upon granting the *Motion*, pursuant to the Supreme Court Rules, the matter will be unsealed.

7. Upon execution of this *Stipulation* and acceptance by the Supreme Court, the Commission will abate and close this matter pending against the Respondent before the Commission (Inquiry No. 2014-001).

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

9. Respondent acknowledges that upon execution of this *Stipulation*, Respondent gives up any and all motions, defenses, objections, or requests that the Respondent has made or raised, or could assert hereafter in or concerning the Judicial Standards Commission proceedings.

10. This document is not enforceable unless fully executed by all parties.

11. The Commission and Respondent shall take all actions necessary to carry out and fulfill the terms and conditions of this *Stipulation*.

12. Respondent shall not make any misrepresentations to the media concerning this Inquiry, the facts and circumstances of Respondent's *Stipulation*, or the Commission's proceedings.

13. **Non-Compliance and Breach.** If Respondent violates any terms or provisions of this executed *Stipulation*, Respondent agrees that all facts alleged in the *Notice of Preliminary Investigation* issued in Inquiry No. 2014-001 and which were not admitted to in this *Stipulation*, shall be deemed admitted by the Respondent, will be used against Respondent in future proceedings before the Commission and the Supreme Court, and shall constitute obstruction of Commission business and contempt.

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

15. All parties have read and understand this *Stipulation*, have had the opportunity to discuss it with and be advised by legal counsel, and hereby freely and voluntarily enter into this *Stipulation* free of any threats, and free of any promises not contained herein.

16. **Disciplinary History.** Respondent has previously been disciplined twice by the New Mexico Supreme Court, Supreme Court Docket No. 29,264.

A. Judicial Standards Commission Inquiry No. 2004-67. Respondent was involved in a business relationship with an auction service that received commissions or fees to conduct auction sales of impounded vehicles. Respondent received monetary compensation from the sales and had, at least once, ordered the release of an impounded vehicle from which he would have personally profited through his business relationship. Respondent was formally reprimanded; ordered to pay a \$500.00 fine; placed on supervised probation; and prohibited from maintaining employment, having business relationships, or engaging in financial dealings that could be affected by future proceedings before him or having business interests that could be perceived as being in conflict with Respondent's judicial duties.

B. Judicial Standards Commission Inquiry No. 2009-025. Respondent was disciplined for submitting a travel voucher and receiving reimbursement for training that he did not receive, as well as for improper courtroom demeanor during a court hearing in which Respondent improperly touched the female defendant. Respondent was formally reprimanded; suspended for ninety (90) days without pay; and placed in a 12-month formal mentorship with supervised probation; ordered to reimburse the \$260.00 he improperly received; and ordered to complete training in public financial practices and sexual harassment.

RESPONDENT'S REVIEW & APPROVAL

I have read and understand this *Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings (Stipulation)*. I have had the opportunity to discuss this matter and my rights with a lawyer. I understand that by entering into this *Stipulation*, I will be giving up my rights to a formal hearing on the merits and to confront, cross-examine and compel the attendance of witnesses regarding those issues. I acknowledge that the enumerated facts and conduct, if proven, constitute willful misconduct in office, one or more violations of the New Mexico Code of Judicial Conduct, and provide sufficient bases for the New Mexico Supreme Court to impose discipline against me pursuant to Article VI, §32 of the New Mexico Constitution.

I know, understand, and agree that the provisions of this *Stipulation* are material to the Commission's deliberations and ultimate acceptance of it. I also understand and agree that by entering into this *Stipulation*, I am agreeing to never again hold judicial office or exercise judicial authority as defined in this agreement under any circumstances, and that if I do hold any judicial office or exercise judicial authority at any point in the future, I will be in violation of this *Stipulation*, and I could be held in contempt of the Judicial Standards Commission and the New Mexico Supreme Court. I further understand that if I violate any provision of this *Stipulation* in any other manner, I agree, acknowledge, and accept that all allegations lodged against me in the *Notice of Preliminary Investigation* issued to me are admitted by me as fact, and that the Commission shall re-initiate all matters pending before the Supreme Court and/or the Commission at the time this *Stipulation* was executed.

Dated: _____

HON. JAVIER LOZANO
Respondent

INQUIRY CONCERNING HON. JAVIER LOZANO
Stipulation to Permanent Resignation From Judicial Office
In Lieu of Further Disciplinary Proceedings

Inquiry No. 2014-001

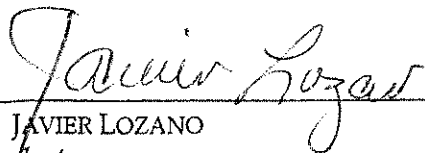
Page 5

B. Judicial Standards Commission Inquiry No. 2009-025. Respondent was disciplined for submitting a travel voucher and receiving reimbursement for training that he did not receive, as well as for improper courtroom demeanor during a court hearing in which Respondent improperly touched the female defendant. Respondent was formally reprimanded; suspended for ninety (90) days without pay; and placed in a 12-month formal mentorship with supervised probation; ordered to reimburse the \$260.00 he improperly received; and ordered to complete training in public financial practices and sexual harassment.

RESPONDENT'S REVIEW & APPROVAL

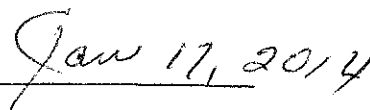
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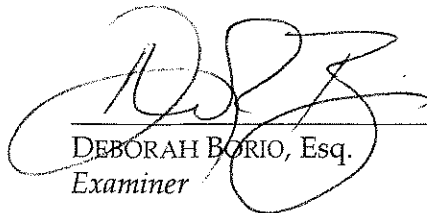
HON. JAVIER LOZANO
Respondent

Dated:



EXAMINER'S REVIEW & APPROVAL

I have reviewed this *Stipulation* and find that it is appropriate and in the best interest of justice. I hereby recommend that the Judicial Standards Commission accept and approve this *Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings*.




DEBORAH BORIO, Esq.
Examiner

Dated: 1/21/2014

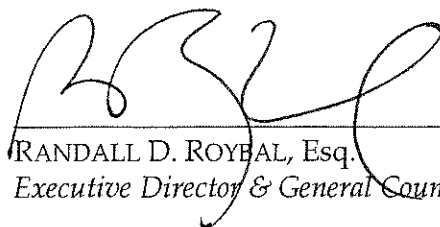
JUDICIAL STANDARDS COMMISSION REVIEW & APPROVAL

The Commission has reviewed this *Stipulation* and finds that it is in the best interest of justice and hereby accepts and approves this *Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings*.



JOYCE BUSTOS
Chair

Dated: 1/21/14



RANDALL D. ROYBAL, Esq.
Executive Director & General Counsel

Dated: 1/21/14



STATE OF NEW MEXICO
JUDICIAL STANDARDS COMMISSION
POST OFFICE BOX 27248
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FILED

JAN - 9 2014

NM JUDICIAL
STANDARDS COMMISSION

January 9, 2014

RANDALL D. ROYBAL
Executive Director & General Counsel

PHYLLIS A. DOMINGUEZ
Investigative Trial Counsel

DEBORAH BORIO
Investigative Trial Counsel

A handwritten signature in black ink, likely belonging to one of the listed officials.

CONFIDENTIAL
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hon. Javier Lozano
Columbus Municipal Court
224 Lima Ave.
Columbus NM 88029

Re: Inquiry No. 2014-001

Dear Judge Lozano:

The above-referenced matter came before the Judicial Standards Commission on either a verified complaint or the Commission's own motion. As part of a preliminary investigation pursuant to Rule 14(F) of the Judicial Standards Commission Rules (NMRA 2010), the Commission requires that you provide a written explanation as to the matter(s) discussed below.

It has been alleged that:

1. On or about August 13, 2013, you improperly touched, sexually harassed, and/or committed battery upon the Mayor of the Village of Columbus.
2. On or about August 14, 2013, you told the Mayor of the Village of Columbus that if she would not pursue her complaint against you for improperly touching her, you would guarantee her 100 votes if she ran for re-election.
3. On or about September 6, 2013, you shoplifted various items from the Family Dollar Store in Columbus, New Mexico.
4. On or about October 11, 2013, you stole a bell from a residence and were subsequently charged with Larceny by the Luna County Sheriff's Department. Although you denied stealing the bell, you offered to replace or retrieve the bell in exchange for the Sheriff's Department's promise not to prosecute the individual who had the bell.
5. On or about October 22, 2013, you possessed and/or retrieved stolen property—a bell—and turned it over to the Sheriff's Department, who verified that it was the bell you were accused of stealing.

Exhibit A


6. On or about December 6, 2012, you publicly confronted, intimidated, challenged and/or threatened an individual with a gun fight after he complained that you had failed to comply with the process of obtaining a number and waiting outside in line for food supplies, but instead went into the building where food supplies were being distributed ahead of everyone else who was, and had been, waiting in line.

7. On or about January 22, 2013, you were charged with Aggravated Assault with a Deadly Weapon by the Luna County Sheriff's Department, for the incident occurring on or about December 6, 2012.

8. In your interview with a Luna County Sheriff's Department officer on January 22, 2013, you claimed that, with regard to the incident on December 6, 2012, you were not going into the building for food supplies, but were going to talk to the food bank program manager about a traffic citation, which is an impermissible *ex parte* communication.

Please provide the Commission with an explanation of this incident and the factual and legal bases for your conduct. Your response to this letter must be submitted in writing and must include an explanation and disclosure of all pertinent facts, including any relevant documents regarding the matters outlined herein. The Commission must receive your response within twenty-one (21) days of your receipt of this letter.

Sincerely yours,



Joyce Bustos
Chair

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing was mailed on the 9th day of January 2014, by regular mail and by certified mail, return receipt requested, to:

Hon. Javier Lozano
Columbus Municipal Court
224 Lima Ave.
Columbus NM 88029



SHARIESSE T. MCCANNON
Clerk of the Commission