

RX Date/Time 09/29/2014 10:55 505 222 9358
From: NM Judicial Standards Comm. 505 222 9358

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IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

No.

IN THE MATTER OF HON. KENNETH H. MARTINEZ
Second Judicial District Court, Albuquerque, New Mexico

INQUIRY CONCERNING HON. KENNETH H. MARTINEZ
JSC Inquiry No. 2014-056

MAILED
ORIGINAL

SUPREME COURT OF NEW MEXICO
FILED

SEP 29 2014

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

PETITION TO ACCEPT STIPULATION TO
PERMANENT RETIREMENT FROM JUDICIAL OFFICE
EFFECTIVE DECEMBER 31, 2014

The Judicial Standards Commission of the State of New Mexico ("Petitioner" or "Commission"), through the undersigned counsel, hereby moves the Supreme Court for an order approving the attached *Stipulation to Permanent Retirement from Judicial Office* in which Hon. Kenneth H. Martinez ("Respondent"), agrees to permanently retire effective on or before the close of business on December 31, 2014. The Respondent agrees to never again hold judicial office in New Mexico in the future. The Commission believes this stipulation agreement best serves the interests of justice and the integrity of the New Mexico Judiciary.

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1. Petitioner invokes its jurisdiction pursuant to Petitioner's power to recommend the discipline of judges, and the Supreme Court's power to discipline judges under N.M. Const. Art. VI, §32; the Court's power of superintending control under N.M. Const. Art. VI §3; and Rule 38 of the Judicial Standards Commission's Rules.

2. On April 11, 2014, the Commission filed a *Notice of Preliminary Investigation* in Inquiry Number 2014-056.

3. Due to the nature of the matter, the Commission appointed a *pro bono* guardian *ad litem* for the Respondent on June 6, 2014.

4. Respondent has been on temporary leave from judicial office since June 9, 2014, pursuant to a confidential *Stipulation Agreement to Temporary Leave from Judicial Office* entered between the Respondent and the Commission on June 9, 2014.

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

6. Upon a unanimous vote the Commission entered into a *Stipulation to Permanent Retirement from Judicial Office* ("Stipulation") with the Respondent on September 26, 2014 (attached hereto as **Exhibit A**). The medical report, upon which

this *Stipulation* is based, will be filed separately under seal as Exhibit B to this *Petition*. The *Stipulation* provides in pertinent part the following:

A. Respondent agrees to permanently retire as Judge of the Second Judicial District Court, Division XXIX, Albuquerque, New Mexico effective 5:00 p.m. on December 31, 2014. 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, the Administrative Office of the Court and to the Governor. Respondent shall concurrently provide a copy of the retirement letter to the Commission. The retirement letters shall be tendered on or before September 15, 2014.

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

- C. The Commission requested and the Respondent withdrew his name from the November 2014 ballot as a candidate for judicial retention on August 28, 2014, and submitted a copy of the withdrawal letter to the Commission on August 28, 2014.
- D. The Commission will file under seal with the New Mexico Supreme Court pursuant to Rule 27-104(B) NMRA 2011 a *Petition to Accept Stipulation to Permanent Retirement from Judicial Office* attaching a copy of the Stipulation.
- E. Upon granting the *Petition to Accept Stipulation to Permanent Retirement from Judicial Office*, the Supreme Court may unseal the entire Supreme Court file in this matter pursuant to Rule 27-104(B).
- F. Upon execution of this *Stipulation* and acceptance by the Supreme Court, the Commission will close this matter (Inquiry No. 2014-056).
7. The parties hereby request that the Court permanently seal **Exhibit B** to this *Petition* because it is a medical record.
8. An *Amendment to the Stipulation Agreement to Temporary Leave from Judicial Office* was entered between the Respondent and the Commission on September 29, 2014 (attached hereto as **Exhibit C**).

9. The language in Paragraph five (5) of the *Stipulation*, incorporated into this *Petition* under Paragraph A, states that the retirement letters shall be submitted by September 15, 2014. In light of the *Amendment to the Stipulation Agreement to Temporary Leave from Judicial Office*, the parties have verbally stipulated that the retirement letters shall be submitted by October 15, 2014.

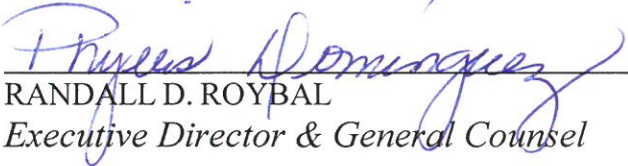
10. The *Stipulation* is enforceable by the Commission before the Supreme Court.

11. It is in the best interest of justice and integrity of the New Mexico Judiciary that the Supreme Court issues an order accepting Respondent Hon. Kenneth H. Martinez's permanent retirement from judicial office.

WHEREFORE, Petitioner respectfully requests this Court issue an order granting the Commission's *Petition*, enters an order approving the *Stipulation to Permanent Retirement from Judicial Office effective December 31, 2014*, and accept Respondent Hon. Kenneth H. Martinez's permanent retirement from judicial office. The Petitioner further requests that this Court enter an order permanently sealing **Exhibit B** to this *Petition*, and unsealing the remainder of the Court's file in this matter.

Respectfully submitted,

JUDICIAL STANDARDS COMMISSION



RANDALL D. ROYBAL
Executive Director & General Counsel

PHYLLIS A. DOMINGUEZ
Investigative Trial Counsel
Post Office Box 27248
Albuquerque, NM 87125-7248
TEL (505) 222-9353

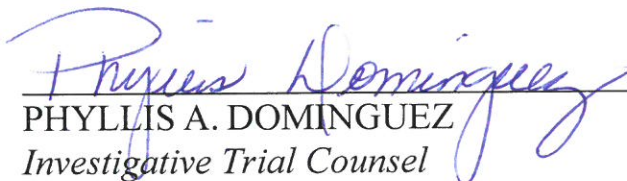
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was sent via email and the U.S. Postal Service on this 29th day of September 2014, to the Respondent:

Briggs F. Cheney, Esq.
Sheehan & Sheehan PA
P.O. Box 271
Albuquerque, New Mexico 87103-0271

AND

William E. Snead, Esq.
wsnead@comcast.net



PHYLLIS A. DOMINGUEZ
Investigative Trial Counsel

BEFORE THE JUDICIAL STANDARDS COMMISSION
STATE OF NEW MEXICO

FILED

SEP 29 2014

NM JUDICIAL
STANDARDS COMMISSION

Inquiry No. 2014-056

INQUIRY CONCERNING HON. KENNETH H. MARTINEZ
Second Judicial Court, Albuquerque, New Mexico

STIPULATION TO PERMANENT RETIREMENT FROM JUDICIAL OFFICE

THIS MATTER is currently pending before the Judicial Standards Commission ("Commission"), pursuant to a *Notice of Preliminary Investigation* issued on April 11, 2014, which is attached hereto as **Exhibit 1** to this *Stipulation to Permanent Retirement from Judicial Office* ("*Stipulation*").

This *Stipulation* is entered into by and between the Commission and Hon. Kenneth H. Martinez ("Respondent").

Due to the nature of the matter, the Commission appointed a *pro bono* guardian *ad litem* on June 7, 2014.

Respondent has been on temporary leave from judicial office since June 9, 2014, pursuant to a confidential *Stipulation Agreement to Temporary Leave from Judicial Office* entered between the Respondent and the Commission on June 9, 2014, attached hereto as **Exhibit 2**.

The parties hereby agree and stipulate as follows:

1. Respondent agrees to permanently retire as Judge of the Second Judicial District Court, Division XXIX, Albuquerque, New Mexico effective 5:00 p.m. on December 31, 2014. 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

Exhibit

A

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.

2. The Commission will file under seal pursuant to Rule 27-104(B) NMRA 2011 with the New Mexico Supreme Court a *Petition to Accept Stipulation to Permanent Retirement from Judicial Office* ("*Petition*"). A copy of this *Stipulation* will be attached as **Exhibit A** to the *Petition*. The medical report upon which this *Stipulation* is based will be filed with the Court separately under seal as **Exhibit B** to the *Petition*.

3. Upon granting the *Petition*, the Supreme Court may unseal this *Stipulation* pursuant to Rule 27-104(B).

4. The parties hereby stipulate that the Supreme Court should keep **Exhibit B** to the *Petition* permanently sealed, and the Commission will so request in the *Petition*.

5. Upon execution of this *Stipulation* and acceptance by the Supreme Court, the Commission will abate its current proceedings and close this matter (Inquiry No. 2014-056) in reliance upon the medical diagnosis of Major Neurocognitive Disorder due to early Alzheimer's disease and other findings contained in **Exhibit B** to the *Petition*, and Respondent's expressly stated intent to permanently retire from judicial office effective December 31, 2014. Respondent shall submit duplicate original letters of retirement to the Chief Justice of the New Mexico Supreme Court, the Administrative Office of the Court and to the Governor. Respondent shall concurrently provide a copy of the retirement letter to the Commission. The retirement letters shall be tendered on or before September 15, 2014.

6. The Commission requested and Respondent has submitted a letter to the New Mexico Secretary of State received by her office on August 28, 2014 withdrawing his name from

the November 2014 ballot as a candidate for judicial retention. A copy of the withdrawal letter was sent via email to the Commission on August 28, 2014.

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

8. 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 in this matter.

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

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

11. If Respondent violates any terms or provisions of this executed *Stipulation*, Respondent agrees that all facts alleged in the *Notice of Preliminary Investigation* filed on April 11, 2014 in Inquiry No. 2014-056 shall be deemed admitted by the Respondent, shall constitute grounds for permanent retirement from judicial office, will be used against Respondent in future proceedings before the Commission and the Supreme Court, that the Commission may proceed directly to the penalty phase of formal proceedings, and that Respondent's violations shall also constitute obstruction of Commission business and contempt.

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

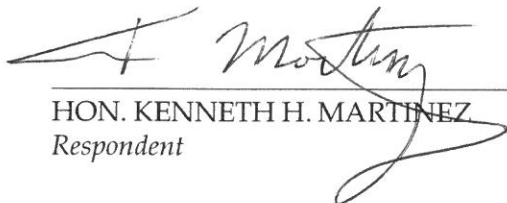
13. All parties have read and understand this *Stipulation*, have had the opportunity to discuss it with, and be advised by, legal counsel, and hereby freely and voluntarily enter into this *Stipulation* free of any threats, and free of any promises not contained herein.

RESPONDENT'S REVIEW & APPROVAL

I have read and understand this *Stipulation*. I acknowledge that 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.

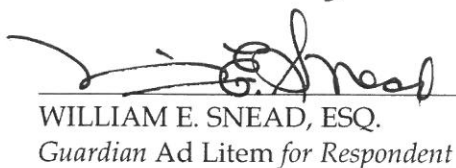
I know, understand, and agree that the provisions of this *Stipulation* are material to the Commission's deliberations and ultimate acceptance of it. I also understand and agree that by entering into this *Stipulation*, I am agreeing to never again hold judicial office or exercise judicial authority as defined in this *Stipulation* 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 detailed against me in the *Notice of Preliminary Investigation* issued to me are admitted by me as fact, and that the Commission shall re-initiate proceedings in the matter of Inquiry No. 2014-056 pending before the Commission at the time this *Stipulation* was executed, and may proceed directly to the penalty phase of formal proceedings as stated in this agreement.

I know, understand, and acknowledge that the Commission is entering into this *Stipulation* based upon its reliance on my stated intent to imminently and permanently retire from judicial office.




HON. KENNETH H. MARTINEZ
Respondent

Dated: 9.25.14



WILLIAM E. SNEAD, ESQ.
Guardian Ad Litem for Respondent

Dated: 9/25/14

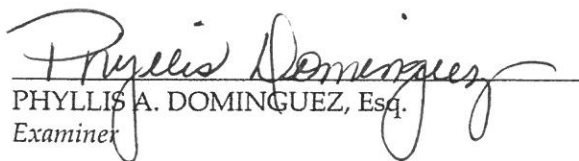


BRIGGS F. CHENEY, ESQ.
Attorney for Respondent

Dated: 9/25/14

EXAMINER'S REVIEW & APPROVAL

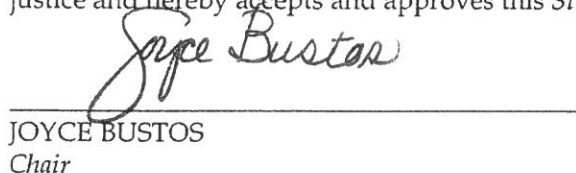
I have reviewed this *Stipulation* and find that it is appropriate and in the best interest of justice. I hereby recommend that the Judicial Standards Commission accept and approve this *Stipulation*.


PHYLLIS A. DOMINGUEZ, Esq.
Examiner

Dated: 9-25-14

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*.


JOYCE BUSTOS
Chair

Dated: 9/26/14


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

Dated: 9/29/14



STATE OF NEW MEXICO
JUDICIAL STANDARDS COMMISSION

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RANDALL D. ROYBAL
Executive Director & General Counsel

PHYLLIS A. DOMINGUEZ
Investigative Trial Counsel

DEBORAH BORIO
Investigative Trial Counsel

April 10, 2014


CONFIDENTIAL
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hon. Kenneth H. Martinez
Second Judicial District Court Judge
P.O. Box 488
Albuquerque, New Mexico 87103

Re: *Inquiry No. 2014-056*

Dear Judge Martinez:

FILED
APR 11 2014
NM JUDICIAL
STANDARDS COMMISSION



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) (NMRA 2010) of the Judicial Standards Commission Rules, the Commission requires that you provide a written explanation as to the matter(s) discussed below.

It has been alleged that on or about or between July 2013 and the present, you have demonstrated persistent confusion and/or absentmindedness and/or appeared inappropriately forgetful; have demonstrated persistent inability, failure and/or reluctance to make decisions; and have demonstrated inability to focus while conducting official court business.

Please provide the Commission with an explanation of these allegations 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



FILED 

JUN 09 2014

NM JUDICIAL
STANDARDS COMMISSION

BEFORE THE JUDICIAL STANDARDS COMMISSION
STATE OF NEW MEXICO

INQUIRY CONCERNING HON. KENNETH H. MARTINEZ
Second Judicial District Court

Inquiry No. 2014-056

STIPULATION AGREEMENT TO TEMPORARY LEAVE FROM JUDICIAL OFFICE

THESE MATTERS are currently pending before the Judicial Standards Commission ("the Commission"). This *Stipulation Agreement to Temporary Leave from Judicial Office* ("*Stipulation*") is entered into by and between the Judicial Standards Commission and Hon. Kenneth H. Martinez ("*Respondent*"). The parties hereby agree and stipulate as follows:

1. Inquiry No. 2014-056 concerning Hon. Kenneth H. Martinez was docketed with the Commission on April 4, 2014.
2. After conducting an initial inquiry into the allegations raised against Respondent the Commission issued a Rule 14(F) *Notice of Preliminary Investigation* to Respondent on April 11, 2014.
3. On April 11, 2014, the Commission issued a Rule 10 *Order for Psychological Examination* to be conducted by Tomas Granados, Psy.D.
4. On June 4, 2014 the Commission received Dr. Granados's *Independent Neuropsychological Evaluation/Fitness for Duty Evaluation*.
5. Dr. Granados found that Respondent is currently unable to fulfill his job responsibilities and duties as a district court judge and recommended that Respondent's caseload be immediately reassigned.
6. Pursuant to Dr. Granados's recommendation the Respondent and Commission agree to the following:

Exhibit
2

- a. Respondent will immediately take leave from the bench and not exercise the duties of judicial office until further order of the Commission. The Commission agrees that leave should be with pay.
- b. The leave from judicial office will continue pending further testing to determine if Respondent's disability is such that it seriously interferes with the performance of his duties that is, or is likely to become, of a permanent character.
- c. Respondent will bear the cost of all further testing and evaluation.
- d. Respondent and the Commission will have 90 (ninety) days from the receipt of the written report of the further testing within which to reach agreement as to whether Respondent is disabled to perform the duties of judicial office.
- e. A guardian *ad litem* for the Respondent will be appointed by the Commission.

7. Pursuant to article VI, Section 32 of the Constitution of New Mexico, these proceedings are confidential.

8. Respondent hereby acknowledges the confidentiality provisions of article VI, Section 32 and affirmatively waives any right to confidentiality Respondent may have thereunder for the following communications: the Commission will provide the *guardian ad litem* with the allegation(s) or charge(s) of this inquiry, Commission pleadings/inquiry material, Judge's pleadings/ responses, and any supporting medical records, court files, statements, documents, tapes, transcripts, or other materials the Commission deems relevant and necessary for the *guardian ad litem* to perform his/her services in this matter. Respondent hereby acknowledges that this waiver is done freely and voluntarily, that it is not the result of force, pressure, coercion or threat or any promise not written in this *Stipulation*. Respondent does not waive any other rights including those of privacy, confidentiality or privilege.

9. The guardian *ad litem* shall serve *pro bono* for the Respondent as needed over the duration of the Commission's proceedings.

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

11. This *Stipulation* is not enforceable unless fully executed by all parties.

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

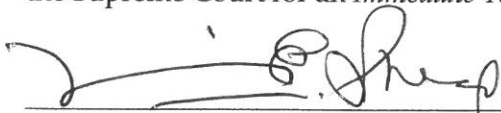
13. If the Respondent violates the terms and conditions contained in this *Stipulation*, the Commission will take necessary action, which may include filing a petition for an *Immediate Temporary Suspension* with the Supreme Court.

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.

RESPONDENT'S REVIEW & APPROVAL

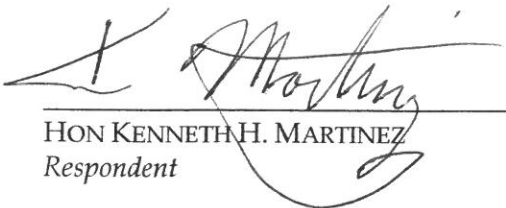
I have read and understand the above and have had the opportunity to discuss this matter with my client. Respondent knows, understands and agrees that the provisions of this *Stipulation* are material to the Commission's deliberations and ultimate acceptance of it. Respondent further understands that if he violates any provision of this *Stipulation*, the Commission will petition the Supreme Court for an *Immediate Temporary Suspension*.



Approved by: WILLIAM E. SNEAD, ESQ.
Guardian *Ad Litem* for Respondent

Dated:

6/7/14




HON KENNETH H. MARTINEZ
Respondent

Dated:

6.7.14

EXAMINER'S REVIEW & APPROVAL

I have reviewed this *Stipulation* and find that it is appropriate and consistent with the best interest of justice. I hereby recommend that the Judicial Standards Commission accept, approve and enter into this *Stipulation Agreement to Temporary Leave from Judicial Office*.

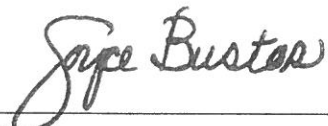


PHYLLIS A. DOMINGUEZ, ESQ.
Examiner

Dated: 6/9/14

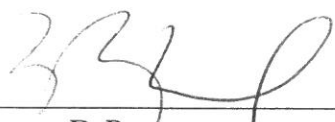
JUDICIAL STANDARDS COMMISSION REVIEW & APPROVAL

The Commission has reviewed this *Stipulation* and finds that it is in the best interest of justice and hereby accepts, approves, and enters into this *Stipulation Agreement to Temporary Leave from Judicial Office*.



JOYCE BUSTOS
Chair

Dated: 6/9/14



RANDALL D. ROYBAL
Executive Director & General Counsel

Dated: 6/9/14

FILED

SEP 29 2014

BEFORE THE JUDICIAL STANDARDS COMMISSION
OF THE STATE OF NEW MEXICO

NM JUDICIAL
STANDARDS COMMISSION

INQUIRY CONCERNING HON. KENNETH H. MARTINEZ
Bernalillo County District Court

Inquiry No. 2014-056

AMENDMENT TO STIPULATION AGREEMENT TO TEMPORARY LEAVE FROM
JUDICIAL OFFICE

1. On June 5, 2014 Judicial Standards Commission Executive Director, Randall D. Roybal, and Examiner, Phyllis A. Dominguez, met with Respondent pursuant to an independent medical report from Tomas R. Granados, Psy.D. At that time, and after lengthy discussion of the circumstances of this case, Respondent was given a packet of materials which included an application for benefits through the Public Employees Retirement Association ("PERA"), in the event Respondent decided to apply for disability retirement.

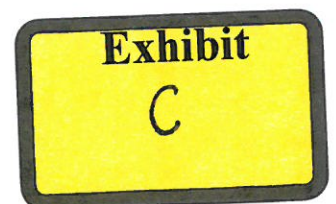
2. On June 9, 2014, Respondent and the Judicial Standards Commission entered into a confidential *Stipulation Agreement to Temporary Leave from Judicial Office* ("*Stipulation*").

Paragraph 6(d) of the *Stipulation* contained the following term:

Respondent and the Commission will have 90 (ninety) days from the receipt of the written report of the further testing within which to reach agreement as to whether Respondent is disabled to perform the duties of judicial office.

3. William E. Snead, Guardian *Ad Litem* for Respondent, requested that ninety days be included in the *Stipulation* to allow Respondent time to file for retirement benefits through PERA, during that time period.

4. The ninety day term ended on August 22, 2014 during which time Respondent received an additional medical report confirming Dr. Granados' diagnosis. Respondent agreed that his



disability is of a permanent character and agreed that he is unable to perform the duties of judicial office. Respondent intends to permanently retire from judicial office effective December 31, 2014.

5. As of September 16, 2014, Respondent had not applied for retirement benefits through PERA.

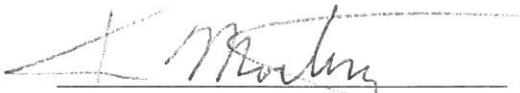
6. Respondent requires additional time in which to apply and be approved for retirement benefits through PERA.

7. Based upon Respondent's requirement for additional time, the Parties stipulate that the *Stipulation Agreement* be amended to include the following:

Respondent will submit his application for retirement benefits to the Public Employees Retirement Association on or before September 30, 2014 and shall provide proof of his application to the Commission on or before September 30, 2014.


8. All other terms and conditions of the *Stipulation* remain unchanged.

RESPONDENT'S REVIEW & APPROVAL



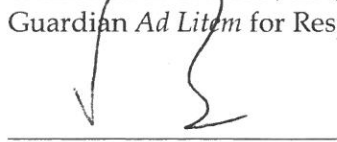
HON. KENNETH H. MARTINEZ
Respondent

Dated: 9-25-14



WILLIAM E. SNEAD, ESQ.
Guardian Ad Litem for Respondent

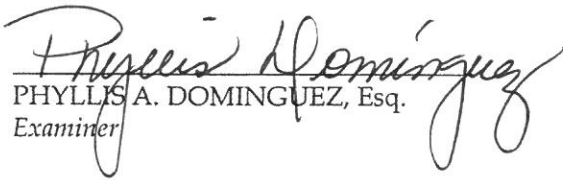
Dated: 9/25/14



BRIGGS F. CHENEY, Esq.
Attorney for Respondent

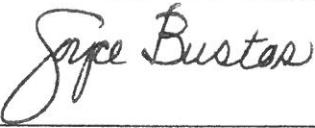
Dated: 9/25/14

EXAMINER'S REVIEW & APPROVAL


PHYLLIS A. DOMINGUEZ, Esq.
Examiner

Dated: 9-25-14

JUDICIAL STANDARDS COMMISSION REVIEW & APPROVAL



JOYCE BUSTOS
Chair

Dated: 9/26/14



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

Dated: 9/29/14