

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

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NM JUDICIAL
STANDARDS COMMISSION

No. 35734

IN THE MATTER OF HON. DELILAH MONTAÑO-BACA
Sandoval County Magistrate Court

INQUIRY CONCERNING HON. DELILAH MONTAÑO-BACA
Inquiry No. 2015-048

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

SUPREME COURT OF NEW MEXICO
FILED

FEB - 4 2016



PETITION TO ACCEPT STIPULATION AGREEMENT
AND CONSENT TO DISCIPLINE

JUDICIAL STANDARDS COMMISSION
Post Office Box 27248
Albuquerque, NM 87125-7248
Telephone: (505) 222-9353
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HON. DELILAH MONTAÑO-BACA
Sandoval County Magistrate Court
1000 Montoya Road
Bernalillo, NM 87004
Telephone: (505) 867-5202
Fax: (505) 867-0970

RANDALL D. ROYBAL
Executive Director & General Counsel

Respondent

PHYLLIS A. DOMINGUEZ
Investigative Trial Counsel

Counsel for Petitioner

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

No.

IN THE MATTER OF HON. DELILAH MONTAÑO-BACA
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PETITION TO ACCEPT STIPULATION AGREEMENT
AND CONSENT TO DISCIPLINE

The Judicial Standards Commission of the State of New Mexico (“Petitioner” or “Commission”), through the undersigned counsel, hereby petitions the Supreme Court for an order approving the attached *Stipulation Agreement and Consent to Discipline* (“*Stipulation*”) in which Respondent, Hon. Delilah Montaña-Baca, consents to discipline from the Supreme Court. The Commission believes this stipulation agreement best serves the interest of justice and the integrity of the New Mexico Judiciary.

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 the New Mexico Constitution Article VI, Section 32; the Court's power of superintending control under the New Mexico Constitution Article VI Section 3; and, Rule 38 of the Judicial Standards Commission's Rules.

2. The Commission entered into a *Stipulation Agreement and Consent to Discipline ("Stipulation")* with the Respondent (See Exhibit 1), which provides in pertinent part the following:

A. Respondent agrees to imposition of the following discipline by the Supreme Court:

1. **Formal mentorship.** The Judicial Standards Commission will recommend a mentor for the Supreme Court's approval and appointment. The mentorship shall be tailored to the issues of *ex parte* communication and avoiding the abuse of the prestige of judicial office. The mentorship shall begin upon the Supreme Court's appointment of the mentor, who shall report on the progress and outcome of the mentorship to the Supreme Court and to the Commission. The mentorship shall be in effect until the mentor advises the Commission that the goals of the mentorship have been achieved and the Commission files the final mentorship report with the Supreme Court. If Respondent violates any provisions of the Code of Judicial Conduct or causes a *Notice of Formal Proceedings* in another inquiry to be issued during the period of mentorship, formal proceedings in Inquiry No. 2015-048 will be initiated and admissions in

Inquiry No. 2015-048 will be used in formal proceedings.

2. **Unsupervised probation for a period of one (1) year.** Following Respondent's anticipated successful completion of a formal mentorship, Respondent will be on unsupervised probation for a period of one (1) year. The one-year probationary period will commence upon conclusion of the mentorship on the day the Commission files the final mentor report with the Supreme Court. If Respondent violates any provisions of the Code of Judicial Conduct or causes a *Notice of Formal Proceedings* in another inquiry to be issued during the period of unsupervised probation, formal proceedings in Inquiry No. 2015-048 will be initiated and admissions in Inquiry No. 2015-048 will be used in probation revocation and formal proceedings.

B. Respondent agrees that she engaged in willful misconduct by committing the following acts:

1. Respondent initiated *ex parte* communications with Thirteenth Judicial District Court Judge Cheryl H. Johnston and abused the prestige of judicial office by asking to see Judge Johnston in chambers in an attempt to seek favored and/or expedited treatment for Respondent's son's case. Respondent told Judge Johnston that her son's paternity case was going to come before her and Respondent asked Judge Johnston if she was going to recuse from it. Respondent further told Judge Johnston that if she was going to recuse, she should do so soon.

C. Respondent admits that this admitted conduct violates the following Rules of the Code of Judicial Conduct:

- (1) 21-101, Compliance with the law;
- (2) 21-102, Promoting confidence in the judiciary;
- (3) 21-103, Avoiding abuse of the prestige of judicial office;
- (4) 21-204(B), External influences on judicial conduct; and,
- (5) 21-209(A), *Ex parte* communication, NMRA 2012.

3. As set forth in the *Stipulation*, Respondent agrees that her 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, Section 32 of the New Mexico Constitution.

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

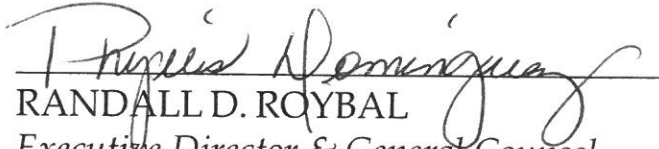
5. It is in the best interest of justice and integrity of the New Mexico Judiciary that the Supreme Court grant this Petition.

WHEREFORE, Petitioner respectfully requests this Court issue an order granting the Commission's Petition, approving the *Stipulation Agreement and Consent to Discipline* and imposing the discipline set forth in the *Stipulation*. Petitioner 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

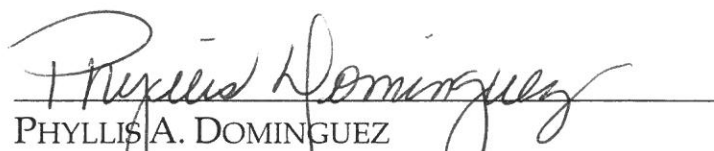
PHYLLIS A. DOMINGUEZ
Investigative Trial Counsel

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 U.S. Post on this 3rd day of February 2016, to Respondent:

HON. DELILAH MONTAÑO-BACA
Sandoval County Magistrate Court
1000 Montoya Road
Bernalillo, NM 87004
Telephone: (505) 867-5202
Fax: (505) 867-0970


PHYLLIS A. DOMINGUEZ
INVESTIGATIVE TRIAL COUNSEL

FILED

FEB 01 2016

BEFORE THE JUDICIAL STANDARDS COMMISSION
OF THE STATE OF NEW MEXICO

NM JUDICIAL
STANDARDS COMMISSION

INQUIRY CONCERNING HON. DELILAH MONTAÑO-BACA
Sandoval County Magistrate Court

Inquiry No. 2015-048

STIPULATION AGREEMENT AND CONSENT TO DISCIPLINE

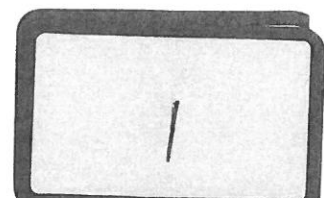
THIS MATTER is currently pending before the Judicial Standards Commission ("the Commission") pursuant to the *Notice of Formal Proceedings* in Inquiry No. 2015-048 (see **Exhibit A**, *Notice of Formal Proceedings*, Inquiry No. 2015-048).

This *Stipulation Agreement and Consent to Discipline* ("Stipulation") is entered into by and between the Judicial Standards Commission and Hon. Delilah Montañño-Baca ("Respondent").

Respondent is proceeding *pro se*. The parties hereby enter into the following *Stipulation*:

1. Respondent admits that she engaged in willful misconduct by committing the following acts:

a. Respondent initiated *ex parte* communications with Thirteenth Judicial District Court Judge Cheryl H. Johnston and abused the prestige of judicial office by asking to see Judge Johnston in chambers in an attempt to seek favored and/or expedited treatment for Respondent's son's case. Respondent told Judge Johnston that her son's paternity case was going to come before her and Respondent asked Judge Johnston if she was going to recuse from it. Respondent further told Judge Johnston that if she was going to recuse, she should do so soon.



2. Respondent admits that she violated the enumerated Code of Judicial Conduct rules listed below:

a. Rules 21-101, 21-102, 21-103, 21-204 (B) and 21-209(A), NMRA 2012.

3. Respondent consents to imposition of the following discipline by the Supreme Court:

a. **Formal mentorship.** The Judicial Standards Commission will recommend a mentor for the Supreme Court's approval and appointment. The mentorship shall be tailored to the issues of *ex parte* communications and abusing the prestige of judicial office. The mentorship shall begin upon the Supreme Court's appointment of the mentor, who shall report on the progress and outcome of the mentorship to the Supreme Court and to the Commission. The mentorship shall be in effect until the mentor advises the Commission that the goals of the mentorship have been achieved and the Commission files the final mentorship report with the Supreme Court. If Respondent violates any provisions of the Code of Judicial Conduct or causes a *Notice of Formal Proceedings* in another inquiry to be issued during the period of mentorship, formal proceedings in Inquiry No. 2015-048 will be initiated and admissions in Inquiry No. 2015-048 will be used in formal proceedings.

b. **Unsupervised probation for a period of one (1) year.** Following Respondent's anticipated successful completion of a formal mentorship, Respondent will be on unsupervised probation for a period of one (1) year. The one-year probationary period will commence upon conclusion of the mentorship on the day the Commission files the final mentor report with the Supreme Court. If Respondent violates any provisions of the Code of Judicial Conduct or causes a *Notice of Formal Proceedings* in another inquiry to be issued during the period of unsupervised probation, formal proceedings in Inquiry No. 2015-048 will be initiated and admissions in Inquiry No. 2015-048 will be used in probation revocation and formal proceedings.

4. Upon successful completion of the terms of the *Stipulation* and the anticipated disciplinary order from the Supreme Court, the Commission will close this matter.

5. The Commission will file under seal with the New Mexico Supreme Court, pursuant to Rule 27-104(B) NMRA 2010, a *Petition to Accept Stipulation Agreement and Consent to Discipline* ("Petition"), attaching a copy of this *Stipulation*.

6. The Commission agrees to abate the current proceedings upon granting of the *Petition* by the Supreme Court.
7. Upon granting the *Petition*, pursuant to Supreme Court Rules, the matter will be unsealed.
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. The provisions of this *Stipulation* are material to the Commission's deliberations and ultimate acceptance of it.
11. This document 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. **Non-Compliance and Breach.** If Respondent violates any terms or provisions of this executed *Stipulation* or Respondent's conduct causes a *Notice of Formal Proceedings* to be issued in any matter while she is in the mentorship program or on unsupervised probation, Respondent agrees that all facts alleged in the *Notice of Formal Proceedings* issued in Inquiry No. 2015-048 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. 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.

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

16. 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 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 stipulate that the Commission has sufficient evidence to prove the facts presented in this *Stipulation* and to conclude that individually and taken together the facts constitute willful misconduct in office, one or more violations of the New Mexico Code of Judicial Conduct, and provide sufficient basis for the New Mexico Supreme Court to impose discipline against me pursuant to Article VI, Section 32 of the New Mexico Constitution.

I know, understand, and agree that the enumerated facts to which I admit, my stipulated conduct, and my stipulated violations of the Code, are pursuant to Article VI, Section 32 of the New Mexico Constitution, as agreed to in the *Stipulation*, are material to the Commission's deliberations and ultimate acceptance of this *Stipulation*.

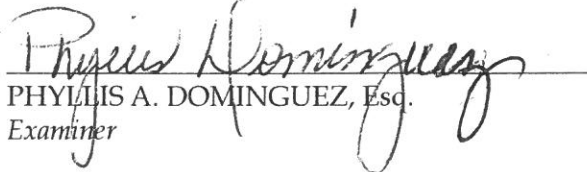


Dated: 12-29-15

HON. DELILAH MONTAÑO-BACA
Respondent

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*.

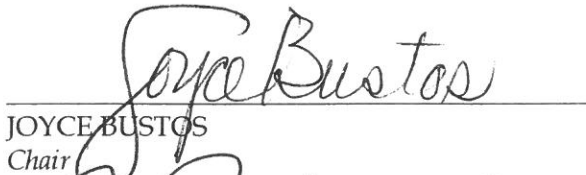


PHYLLIS A. DOMINGUEZ, Esc.
Examiner

Dated: 1/4/16

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 Agreement and Consent to Discipline*.



JOYCE BUSTOS
Chair

Dated: 2/1/16



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


Dated: 2/1/16

BEFORE THE JUDICIAL STANDARDS COMMISSION
OF THE STATE OF NEW MEXICO

INQUIRY CONCERNING HON. DELILAH MONTANO-BACA
Sandoval County Magistrate Court

Inquiry No. 2015-048

FILED
JUL 30 2015
NM JUDICIAL
STANDARDS COMMISSION



NOTICE OF FORMAL PROCEEDINGS

TO: Hon. Delilah Montano-Baca
Sandoval County Magistrate Court
1000 Montoya Road
Bernalillo, New Mexico 87004

YOU ARE HEREBY NOTIFIED that the Judicial Standards Commission, pursuant to Rule 15 NMRA 2010 of the Judicial Standards Commission Rules, has instituted formal proceedings on the allegations set forth below.

COUNT 1

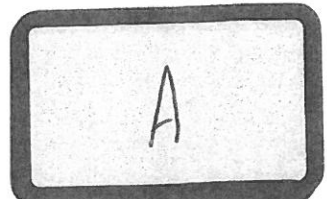
You initiated and engaged in prohibited *ex parte* communication with Thirteenth Judicial District Court Judge Cheryl Johnston in the case of *Stephen J. Baca v. Cassandra E. Kraft*, D-1329-DM-2015-00116, over which Judge Johnston was presiding.

Such conduct violates Rules 21-101, 21-102, 21-204(B), 21-206, and 21-209 NMRA 2012 of the Code of Judicial Conduct and constitutes willful misconduct in office.

COUNT 2

You sought favored, expedited treatment and/or created the appearance that you were seeking favored, expedited treatment for your son in his pending case before Judge Johnston. You asked Judge Johnston if she was going to recuse in your son's case. You told Judge Johnston that you wanted to get your son's case going and if she was going to recuse, could she do so soon.

Such conduct violates Rules 21-101, 21-102 and 21-204(B) NMRA 2012 of the Code of Judicial Conduct and constitutes willful misconduct in office.



PLEASE BE ADVISED that in accordance with Rule 16 of the Judicial Standards Commission Rules, you shall file a written answer to this notice within twenty-one (21) days of its service upon you. Your answer shall be filed with:

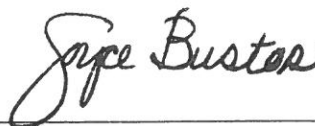
*Clerk of the Commission
Judicial Standards Commission
Post Office Box 27248
Albuquerque, New Mexico 87125-7248*

Your answer should be legible and your signature must be verified.

Article VI, Section 32 of the New Mexico Constitution provides that all papers filed with and proceedings before the Judicial Standards Commission are confidential, except that any record filed by the Commission in the New Mexico Supreme Court continues privileged but, upon its filing, loses its confidential character, and a writing which was privileged prior to filing with the Commission or its masters does not lose its privilege by the filing.

JUDICIAL STANDARDS COMMISSION

BY: _____



Joyce E. Bustos, Chair
Post Office Box 27248
Albuquerque, NM 87125-7248
(505) 222-9353

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was sent certified mail returned receipt requested on this 30th day of July 2015 to the following:

Hon. Delilah Montano-Baca
Sandoval County Magistrate Court
1000 Montoya Road
Bernalillo, New Mexico 87004


SHARIESSE T. MCCANNON
CLERK OF THE COMMISSION