



**IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO**

No. **S-1-SC-39014**

IN THE MATTER OF HON. STEVE GUTHRIE
Otero County Magistrate Court

INQUIRY CONCERNING HON. STEVE GUTHRIE
Inquiry Nos. 2020-017, 2020-028, 2020-042, 2020-046, 2020-071, 2020-100 &
2020-114

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

**PETITION TO ACCEPT STIPULATION AGREEMENT
AND CONSENT TO DISCIPLINE**

JUDICIAL STANDARDS COMMISSION
6200 Uptown Blvd., NE, Suite 320
Albuquerque, NM 87110-4159
Telephone: (505) 222-9353

BARNETT LAW FIRM P.A.
1905 Wyoming Blvd. NE
Albuquerque, NM 87112-2865
Telephone: (505) 275-3200

RANDALL D. ROYBAL
Executive Director & General Counsel

DIEGO R. ESQUIBEL
Counsel for Respondent

PHYLLIS A. DOMINGUEZ
Deputy Director

Counsel for Petitioner

**IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO**

No.

IN THE MATTER OF HON. STEVE GUTHRIE
Otero County Magistrate Court

INQUIRY CONCERNING HON. STEVE GUTHRIE
Inquiry Nos. 2020-017, 2020-028, 2020-042, 2020-046, 2020-071, 2020-100 &
2020-114

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

**PETITION TO ACCEPT STIPULATION AGREEMENT
AND CONSENT TO DISCIPLINE**

The Judicial Standards Commission of the State of New Mexico (“Petitioner”), 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. Steve Guthrie, consents to discipline from the Supreme Court. Respondent is represented by Diego R. Esquibel of the Barnett Law Firm P.A. The Commission believes this stipulation agreement best serves the interests 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 36 of the Judicial Standards Commission Rules.

2. The Commission entered into a *Stipulation* with Respondent on September 23, 2021 (attached as **EXHIBIT 1**), pursuant to issuance of a *Notice of Formal Proceedings* (attached as **EXHIBIT A** to **EXHIBIT 1**) and Respondent's response to the *Notice of Formal Proceedings* (attached as **EXHIBIT 2**). The *Stipulation* was based upon Respondent's acceptance of responsibility, efforts to change the conduct, cooperation with the Commission and Respondent's consent to imposition of discipline by the Supreme Court as follows:

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

A. **Suspension Without Pay**. Respondent shall be suspended from judicial office for thirty (30) days without pay. Suspension is to begin on the first day of the next full pay period falling after the

Supreme Court issues its order accepting this *Stipulation*.

B. **Training**. Respondent shall attend at his own expense and successfully complete the National Judicial College course entitled, "General Jurisdiction" from October 18, 2021 to October 28, 2021 in Reno, Nevada.

C. **Unsupervised Probation and 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 due process, criminal procedure, judicial demeanor and use of technology. 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. Respondent shall remain on unsupervised probation with the Commission until December 31, 2022, the end of Respondent's current judicial term.

4. Respondent admitted he engaged in willful misconduct and committed the acts as set forth in the *Stipulation*.

5. Respondent admitted that his conduct violated Rules 21-101, 21-102, 21-202, 21-203, 21-205, 21-206, and 21-209 of the Code of Judicial Conduct.

6. As set forth in the *Stipulation*, 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, Section 32 of the New Mexico Constitution.


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

8. It is in the best interests 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

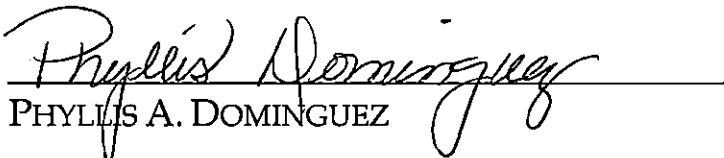

RANDALL D. ROYBAL
Executive Director & General Counsel

PHYLLIS A. DOMINGUEZ
Deputy Director

6200 Uptown Blvd., NE, Suite 320
Albuquerque, NM 87110-4159
Telephone: (505) 222-9353

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via the Supreme Court's Electronic Filing and Service System on this 24th day of September 2021, which caused Respondent's counsel, Diego R. Esquibel, to be served by electronic means at diego@theblf.com.


PHYLLIS A. DOMINGUEZ

BEFORE THE JUDICIAL STANDARDS COMMISSION
STATE OF NEW MEXICO

INQUIRY CONCERNING HON. STEVE GUTHRIE
Otero County Magistrate Court, Alamogordo, New Mexico

Inquiry Nos. 2020-017, 2020-028, 2020-039, 2020-042, 2020-046, 2020-071, 2020-100, & 2020-114

FILED

SEP 24 2021



**NM JUDICIAL
STANDARDS COMMISSION**

STIPULATION AGREEMENT AND CONSENT TO DISCIPLINE

THIS MATTER is currently pending before the Judicial Standards Commission (“Commission”) pursuant to a *Notice of Formal Proceedings* issued to Hon. Steve Guthrie (“Respondent”) on January 25, 2021, in Inquiry Nos. 2020-017, 2020-028, 2020-039, 2020-042, 2020-046, 2020-071, 2020-100 & 2020-114. (See **Exhibit A**).

Pursuant to Commission Rule 19 NMRA 2020 and following the Commission’s receipt and review of Respondent’s written response to the *Notice of Investigation*, the Commission invited Respondent and his counsel, Barnett Law Firm/Colin L. Hunter, Esq. and Jordy L. Stern, Esq., to participate in an informal confidential conference with the Commission on December 6, 2020 by Zoom video conferencing. The conference afforded Respondent an opportunity to discuss and explain his response to the *Notice of Investigation* in person and provided the Commission an opportunity to ask Respondent questions about the pending allegations and Respondent’s response to assist in determining the appropriate course of action.

After full consideration of Respondent’s written response and the information he provided verbally at the informal conference, the Commission issued a *Notice of Formal Proceedings* to Respondent and set the matter for a hearing on the merits.

In consideration of the foregoing, this *Stipulation Agreement and Consent to Discipline* (“*Stipulation*”) is entered into by and between the Commission and Respondent, who is

Investigative Trial
Counsel
Exhibit 1

represented by his counsel, Barnett Law Firm/Diego R. Esquibel, Esq. and Jordy L. Stern, Esq.

The parties hereby enter into the following agreement:

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

- A. Respondent violated the defendant's due process rights and issued an *ex parte* order in cause number M-38-VM-2020-180 when Respondent ordered a no-bond hold contrary to Rule 6-403 NMRA, *Revocation or Modification of Release Orders*; failed to continue the conditions of release hearing until appointed counsel was present contrary to Rule 6-401(A)(2) NMRA; and failed to make written findings of particularized reasons why the defendant should not be released contrary to Rule 6-401(B) NMRA. To wit: At the conditions of release hearing held on November 13, 2020, Respondent issued a three-thousand-dollar (\$3,000.00) cash or surety bond, ordered the defendant to have no contact with the alleged victim, and after the defendant requested an attorney, issued a *Conditional Order of Appointment* for a public defender. After the defendant's hearing but while first appearances were still being held, an assistant district attorney informed Respondent *ex parte* that the defendant had already been in contact with the alleged victim in violation of Respondent's no contact order. Respondent recalled the defendant's case, questioned the defendant without the presence of an attorney, lined through the previous bond amount of \$3,000.00, and ordered the defendant to be held without bond.
- B. Respondent failed to follow the New Mexico Supreme Court's Order on the *Safe and Effective Administration of the New Mexico Judiciary During the COVID-19 Public Health Emergency* issued on July 6, 2020 and put at risk the health and safety of Otero County Magistrate Court staff when Respondent:
 - i. Failed to wear a protective face covering at all times while on court premises, and
 - ii. Placed a court clerk in a difficult position when Respondent asked the clerk if the clerk minded if Respondent did not wear a mask.
- C. Respondent failed to follow the Twelfth Judicial District Court Administrative Order issued on April 29, 2019 prohibiting the *Possession of a Deadly Weapon and Use of Tobacco in the Otero County Magistrate Court* by Respondent's continued use of chewing tobacco while on court premises after the order was issued.
- D. On or about November 9, 2020 Respondent failed to perform due diligence and acted without jurisdiction when Respondent conducted a hearing and issued an order setting conditions of release in Cause No. M-38-VF-2020-00020 knowing, or when Respondent should have known, that the Twelfth Judicial

District Attorney's Office had filed an *Expedited Motion for Pretrial Detention* which divested Respondent of jurisdiction pursuant to Rule 6-409(D) NMRA.

- E. On or about August 18, 2020 Respondent failed to perform due diligence and acted without jurisdiction when Respondent conducted a hearing and issued an order setting conditions of release in cause number M-38-FR-2020-00336 knowing, or when Respondent should have known, the Twelfth Judicial District Attorney's Office had filed an *Expedited Motion for Pretrial Detention* which divested Respondent of jurisdiction pursuant to Rule 6-409(D) NMRA.
- F. On or about February 28, 2020 Respondent failed to perform due diligence and acted without jurisdiction when Respondent conducted a hearing and ordered conditions of release in *State of New Mexico vs. Harland Taylor*, M-38-FR-2020-00090, knowing, or when Respondent should have known, that the Twelfth Judicial District Attorney's Office had filed an *Expedited Motion for Pretrial Detention* which divested Respondent of jurisdiction pursuant to Rule 6-409(D) NMRA.
- G. On or about February 28, 2020 Respondent failed to perform due diligence and acted without jurisdiction when Respondent conducted a hearing and ordered conditions of release in *State of New Mexico vs. Heather Taylor*, M-38-FR-2020-00091, knowing, or when Respondent should have known, that the Twelfth Judicial District Attorney's Office had filed an *Expedited Motion for Pretrial Detention* which divested Respondent of jurisdiction pursuant to Rule 6-409(D) NMRA.
- H. Respondent issued illegal and/or improper sentences, and/or failed to ensure that judgment and sentence orders were accurate in the following *Driving Under the Influence of Intoxicating Liquor or Drugs* related cases. To wit: Respondent,
 - i. Improperly sentenced five (5) defendants charged with *Driving Under the Influence of Intoxicating Liquor or Drugs First Offense* to three hundred sixty-four (364) days incarceration contrary to NMSA 1978, Section 66-8-102(E). [See Cause Nos. M-38-DR-2018-00109, M-38-DR-2018-00045, M-38-DR-2019-00037, M-38-DR-2019-00066, and M-38-DR-2019-00007]
 - ii. Improperly sentenced three (3) defendants charged with *Driving Under the Influence of Intoxicating Liquor or Drugs First Offense* to three hundred sixty-four (364) days contrary to NMSA 1978, Section 66-8-102(E), and failed to properly complete the judgment and sentence forms to indicate if the sentences were deferred or suspended. [See Cause Nos. M-38-DR-2018-00043, M-38-DR-2018-00039, and M-38-DR-2018-00052]

- iii. Failed to order a defendant convicted of *Driving Under the Influence of Intoxicating Liquor or Drugs, Third Offense*, Cause No. M-38-DR-2019-053, to complete a substance abuse treatment program pursuant to NMSA 1978, Section 66-8-102(M).
- iv. Failed to require a defendant convicted of *Aggravated Driving Under the Influence of Intoxicating Liquor or Drugs, Second Offense*, Cause No. M-38-DR-2019-045, to complete a substance abuse treatment program pursuant to NMSA 1978, Section 66-8-102(M).
- v. Failed to impose the mandatory sentence of ninety-six (96) hours incarceration in Cause No. M-38-DR-2018-105 where the defendant was convicted of *Driving Under the Influence of Intoxicating Liquor or Drugs, Second Offense*, instead imposing forty-eight (48) hours of incarceration contrary to NMSA 1978, Section 66-8-102(1).
- vi. Suspended the fine in Cause No. M-38-DR-2019-105 where the defendant was convicted of *Driving While License Revoked - DWI Related*, contrary to NMSA 1978, Section 66-5-39.1(B).
- I. Respondent dismissed Cause No. M-38-FR-2019-365 with prejudice when a preliminary hearing was not held in a timely manner, contrary to Rule 6-202(A)(3) NMRA which states, “[i]f a preliminary examination is not held within the time limits in this rule, the court shall dismiss the case without prejudice and discharge the defendant.”
- J. Respondent failed to afford the litigant in Cause No. M-38-CV-2019-601 fifteen (15) days to respond to a *Notice of Intent to Enter Judgment on the Pleadings* as required by Rule 2-303(D) NMRA when Respondent filed a *Notice of Intent to Enter Judgment on the Pleadings* on February 27, 2020, and then entered an *Order for Judgment on the Pleadings* the same day.
- K. Respondent granted an oral competency motion in Cause No. M-38-FR-2020-043 contrary to Rule 6-507.1(D)(1) NMRA which requires a motion for a competency evaluation to be in writing.
- L. Respondent violated the defendant’s due process rights in Cause No. M-38-FR-2020-056 when Respondent determined the defendant to be a flight risk because the defendant “didn’t live in the U.S.” and ordered the defendant held on an eight-thousand-dollar (\$8,000.00) bond. Additionally, Respondent failed to file written findings of individualized facts justifying the secured bond pursuant to Rule 6-401(F)(2) NMRA.
- M. Respondent failed to perform due diligence when Respondent issued bench warrants and assessed one-hundred-dollar (\$100.00) bench warrant fees

without first determining if defendants had been properly noticed into court. To wit: Due to the Covid-19 pandemic, the Otero County Magistrate Court began conducting telephonic hearings, but Respondent instead issued summonses for defendants to appear in person and/or did not include contact information for the court on the summonses. When defendants failed to call the court on their appearance date, Respondent issued bench warrants and assessed bench warrant fees without determining if the defendants were first properly summonsed in the cause numbers listed below.

M-38-TR-2020-528	M-38-TR-2020-721	M-38-TR-2020-073
M-38-TR-2020-751	M-38-TR-2020-513	M-38-TR-2020-748
M-38-TR-2020-749	M-38-TR-2020-680	M-38-TR-2020-164
M-38-TR-2020-070	M-38-TR-2020-699	

- N. Respondent sentenced the defendant in Cause No. M-38-DR-2019-00064 to ninety (90) days of incarceration and imposed three-hundred sixty-four (364) days of probation without ordering the sentence deferred or suspended, contrary to NMSA 1978, Section 31-20-3, *Aggravated Driving Under the Influence of Intoxicating Liquor or Drugs First Offense*.
- O. Respondent failed to afford the State notice and opportunity to be heard in *State vs. Herrera*, Cause No. M-38-DR-2019-00064, when Respondent granted defense counsel's *Motion to Vacate Illegal Sentence, For Release From Custody, For Placement on Probation and Request for Expedited Setting* without allowing the State fifteen (15) days to respond contrary to Rule 6-304(E) NMRA. To wit: Respondent issued a *Notice of a Hearing* for April 3, 2020 at 1:30 p.m.; however, Respondent entered an order on April 2, 2020 granting defense counsel's motion prior to the State being heard at the hearing held on April 3, 2020.
- P. Respondent misrepresented the facts in Cause No. M-38-CV-2019-601 when Respondent signed an *Order for Judgment on the Pleadings* which stated that Respondent reviewed the defendant's response to plaintiff's *Motion for Judgment on the Pleadings* when a response had not yet been filed.
- Q. On or about April 1, 2019 in Cause No. M-38-TR-2018-2644 Respondent assisted a New Mexico State Police Officer in the prosecution of the officer's case where the officer appeared in person and defense counsel appeared telephonically. To wit: The officer failed to identify the defendant at trial as the same person that the officer had stopped and ticketed. Respondent wrote the letters "ID" on a note pad, tapped on the pad to get the officer's attention and nodded towards what Respondent wrote. The officer read what Respondent wrote and proceeded to testify that he was dressed in his uniform displaying his badge of office at the time of the stop and identified the defendant by his driver's license.

- R. On or about April 24, 2020 in a telephonic hearing in Cause No. M-38-TR-2020-680 Respondent accepted a guilty plea and improperly dismissed two charges (*Failure to Register a Vehicle* and *Improper Use of Evidence of Registration*) without proof of compliance from the defendant. Respondent stated for both counts, "It is adjudged that the charge is dismissed because proof was shown." However, proof was not shown, and instead Respondent ordered the defendant to fax proof to the court within seven (7) days from the hearing.
- S. On or about April 24, 2020 in a telephonic hearing in Cause No. M-38-TR-2019-2986 Respondent accepted a guilty plea and dismissed two charges (*No Driver's License* and *Failure to Register or Title a Vehicle as Required*) without proof of compliance from the defendant. Respondent stated for both counts, "It is adjudged that the charge is dismissed because proof was shown." However, proof was not shown, and instead Respondent ordered the defendant to fax proof to the court within thirty (30) days.
- T. On or about March 27, 2020 in Cause Nos. M-38-TR-2020-678 and M-38-TR-2020-461 Respondent failed to fully advise the defendants of all constitutional rights contrary to Rules 6-501 and 6-502 NMRA. To wit: Before Respondent accepted the defendants' guilty pleas, Respondent only advised the defendants that they had the right to remain silent, that anything they said could be used against them, that they had the right to an attorney and to have an attorney present during the proceedings. Respondent failed to inquire if the defendants' pleas were voluntary and failed to inform the defendants that a plea of guilty or no contest may have an effect upon their immigration or naturalization status.
- U. On or about March 27, 2020 in Cause No. M-38-FR-2020-155 respondent failed to fully advise a defendant charged with *Negligent use of a Deadly Weapon*, *Possession of Drug Paraphernalia* and *Unlawful Carrying of a Deadly Weapon on School Premises* of all his constitutional rights pursuant to Rule 6-501 NMRA. Respondent only advised the defendant that he had the right to remain silent, that anything he said could and would be used against him, and that he had the right to have an attorney present. Respondent omitted the maximum penalty and mandatory minimum penalty, the right to bail, the right to a preliminary hearing, that a plea of guilty or no contest will affect the defendant's constitutional right to bear arms, including shipping, receiving, possessing, or owning any firearm or ammunition.
2. Respondent admits that he violated the following rules of the Code of Judicial Conduct: Rules 21-101, 21-102, 21-202, 21-203, 21-205, 21-206 and 21, 209 NMRA.

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

- A. **Suspension Without Pay.** Respondent shall be suspended from judicial office for thirty (30) days without pay. Suspension is to begin on the first day of the next full pay period falling after the Supreme Court issues its order accepting this *Stipulation*.
- B. **Training.** Respondent shall attend at his own expense and successfully complete the National Judicial College course entitled "General Jurisdiction" from October 18, 2021, to October 28, 2021, in Reno, Nevada.
- C. **Unsupervised Probation and Formal Mentorship.** The Judicial Standards Commission shall recommend a mentor for appointment by the Supreme Court. The mentorship shall be tailored to the issues of due process, criminal procedure, judicial demeanor and use of technology. 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. Respondent shall remain on unsupervised probation with the Commission until December 31, 2022, which is the end of his current judicial term.

4. The Commission has jurisdiction over Respondent and the above-captioned and numbered matters pursuant to Article VI, Section 32 of the Constitution of the State of New Mexico; NMSA 1978, Sections 34-10-1 through 34-10-4; and Judicial Standards Commission Rules.

5. Pursuant to Rule 27-104(B) NMRA, the Commission will file **under seal** with the Supreme Court, a *Petition to Accept Stipulation Agreement and Consent to Discipline* ("Petition"), attaching a copy of the *Stipulation*, a copy of the *Notice of Formal Proceedings* and Respondent's response issued in Inquiry Nos. 2020-017 et al.

6. Upon granting the *Petition* and pursuant to Supreme Court Rule 27-104(B), the Court should unseal the *Petition*.

7. Upon execution of this *Stipulation* and acceptance by the Court, the Commission will close the matters pending against the Respondent before the Commission (Inquiry Nos. 2020-017 *et al.*).

8. This *Stipulation* is specifically enforceable by the Commission before the 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 Commission's proceedings.

10. Respondent shall not make any public misrepresentations concerning this inquiry, the facts and circumstances of Respondent's *Stipulation*, or the Commission's proceedings.

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

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

13. If Respondent violates any terms or provisions of this executed *Stipulation*, Respondent agrees that all facts alleged in the *Notice of Formal Proceedings* issued in Inquiry Nos. 2020-017 *et al.*, 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 Court, and may 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.

RESPONDENT'S REVIEW AND APPROVAL

I have read and understand this *Stipulation*. I have had the opportunity to discuss this matter and my rights with my attorney. I understand that by entering 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 these 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 further understand that if I violate any provision of this *Stipulation* in any other manner, I agree, acknowledge, and accept that all charges lodged against me in the *Notice of Formal Proceedings* issued to me are admitted by me as fact, and that the Commission shall re-initiate the matter pending before the Court and/or the Commission at the time this *Stipulation* was executed.

I understand and agree that my attorney is speaking for me, and on my behalf in this proceeding, and that anything my attorney says or does in this proceeding can and should be attributable to me. In the event my attorney says or does anything during the course of this proceeding that I do not agree with, I know, understand and agree that I have an affirmative duty to make my disagreement with my attorney's words or conduct known. If I do not make my disagreement known, then I know, understand, and agree that I am accepting my attorney's words and conduct in this proceeding as my own.




HON. STEVE GUTHRIE
Respondent

Dated: 09/18/21

RESPONDENT'S COUNSEL'S REVIEW AND APPROVAL

I have reviewed this *Stipulation* with my client. I have advised my client of his constitutional rights and possible defenses, and hereby accept and approve my client's entry into this *Stipulation*.

BARNETT LAW FIRM, P.A.



DIEGO R. ESQUIBEL, ESQ.
Counsel for Respondent

Dated: 9/19/2021

INVESTIGATIVE TRIAL COUNSEL'S REVIEW AND APPROVAL

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

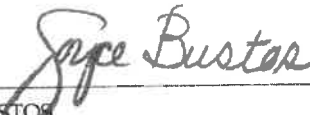


Dated: 09-20-2021

PHYLLIS A DOMINGUEZ
Investigative Trial Counsel

JUDICIAL STANDARDS COMMISSION'S REVIEW & APPROVAL

The Commission has reviewed this *Stipulation* and finds that it is in the best interests of justice and hereby accepts and approves this *Stipulation*.



JOYCE BUSTOS
Chair

Dated: 9/24/2021



RANDALL D. ROYBAL
Executive Director & General Counsel

Dated: 09-24-2021

BEFORE THE JUDICIAL STANDARDS COMMISSION
OF THE STATE OF NEW MEXICO

FILED

JAN 25 2021

NM JUDICIAL
STANDARDS COMMISSION

INQUIRY CONCERNING HON. STEVE GUTHRIE
Otero County Magistrate Court, Alamogordo, New Mexico

Inquiry Nos. 2020-017, 2020-028, 2020-039, 2020-042, 2020-046, 2020-071, 2020-100, and 2020-114

NOTICE OF FORMAL PROCEEDINGS

TO: Hon. Steve Guthrie
c/o Colin Hunter, Esq.
Barnett Law Firm, P.A.
1905 Wyoming Blvd. N.E.
Albuquerque, New Mexico 87112

YOU ARE HEREBY NOTIFIED that the Judicial Standards Commission, in accordance with its jurisdiction under Article VI, Section 32 of the New Mexico Constitution and pursuant to Judicial Standards Commission Rule 15, has instituted formal proceedings on the charges set forth below.

COUNT 1

You violated the defendant's due process rights and issued an *ex parte* order in cause number M-38-VM-2020-180 when you ordered a no-bond hold contrary to Rule 6-403 NMRA, *Revocation or Modification of Release Orders*; failed to continue the conditions of release hearing until appointed counsel was present contrary to Rule 6-401(A)(2) NMRA; and failed to make written findings of particularized reasons why the defendant should not be released contrary to Rule 6-401(B) NMRA. To wit: At the conditions of release hearing held on November 13, 2020, you issued a three thousand dollar (\$3,000.00) cash or surety bond, ordered the defendant to have no contact with the alleged victim, and after the defendant requested an attorney, issued a *Conditional Order of Appointment* for a public defender. After the defendant's hearing but while first appearances were still being held, an assistant district attorney informed you *ex parte* that the defendant had already been in contact with the alleged victim in violation of your no contact order. You recalled the

Investigative Trial
Counsel
Exhibit A

defendant's case, questioned the defendant without the presence of an attorney, lined though the previous bond amount of \$3,000.00, and ordered the defendant to be held without bond.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-205, 21-206 and 21-209 NMRA 2020 and constitutes willful misconduct in office.

COUNT 2

You failed to follow the New Mexico Supreme Court's Order on the *Safe and Effective Administration of the New Mexico Judiciary During the COVID-19 Public Health Emergency* issued on July 6, 2020 and put at risk the health and safety of Otero County Magistrate Court staff when you:

- A. Failed to wear a protective face covering at all times while on court premises, and
- B. Placed a court clerk in a difficult position when you asked the clerk if the clerk minded if you did not wear a mask.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102 and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 3

You failed to follow the Twelfth Judicial District Court Administrative Order issued on April 29, 2019 prohibiting the *Possession of a Deadly Weapon and Use of Tobacco in the Otero County Magistrate Court* by your continued use of chewing tobacco while on court premises after the order was issued.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102 and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 4

On or about November 9, 2020 you failed to perform due diligence and acted without jurisdiction when you conducted a hearing and issued an order setting conditions of release in Cause No. M-38-VF-2020-00020 knowing, or when you should have known, that the Twelfth Judicial District Attorney's Office had filed an *Expedited Motion for Pretrial Detention* which divested you of jurisdiction pursuant to Rule 6-409(D) NMRA.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202 and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 5

On or about August 18, 2020 you failed to perform due diligence and acted without jurisdiction when you conducted a hearing and issued an order setting conditions of release in cause number M-38-FR-2020-00336 knowing, or when you should have known, the Twelfth Judicial District Attorney's Office had filed an *Expedited Motion for Pretrial Detention* which divested you of jurisdiction pursuant to Rule 6-409(D) NMRA.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202 and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 6

On or about February 28, 2020 you failed to perform due diligence and acted without jurisdiction when you conducted a hearing and ordered conditions of release in *State of New Mexico vs. Harland Taylor*, M-38-FR-2020-00090, knowing, or when you should have known, that the Twelfth Judicial District Attorney's Office had filed an *Expedited Motion for Pretrial Detention* which divested you of jurisdiction pursuant to Rule 6-409(D) NMRA.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 7

On or about February 28, 2020 you failed to perform due diligence and acted without jurisdiction when you conducted a hearing and ordered conditions of release in *State of New Mexico vs. Heather Taylor*, M-38-FR-2020-00091, knowing, or when you should have known, that the Twelfth Judicial District Attorney's Office had filed an *Expedited Motion for Pretrial Detention* which divested you of jurisdiction pursuant to Rule 6-409(D) NMRA.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 8

You issued illegal and/or improper sentences, and/or failed to ensure that judgment and sentence orders were accurate in the following *Driving Under the Influence of Intoxicating Liquor or Drugs* related cases. To wit: You,

- A. Improperly sentenced five (5) defendants charged with *Driving Under the Influence of Intoxicating Liquor or Drugs First Offense* to three hundred sixty-four (364) days incarceration contrary to NMSA 1978, Section 66-8-102(E). [See Cause Nos. M-38-DR-2018-00109, M-38-DR-2018-00045, M-38-DR-2019-00037, M-38-DR-2019-00066, and M-38-DR-2019-00007]
- B. Improperly sentenced six (6) defendants charged with *Driving Under the Influence of Intoxicating Liquor or Drugs First Offense* to three hundred sixty-four (364) days contrary to NMSA 1978, Section 66-8-102(E), and failed to properly complete the judgment and

- sentence forms to indicate if the sentences were deferred or suspended. [See Cause Nos. M-38-DR-2018-00043, M-38-DR-2018-00039, M-38-DR-2018-00042, M-38-DR-2018-00052, M-38-DR-2018-00021 and M-38-DR-2018-00069]
- C. Entered a deferred ninety (90) day sentence for a *Driving Under the Influence of Intoxicating Liquor or Drugs First Offense* in three (3) cases and placed the defendants on probation for three hundred sixty-four (364) days knowing, or when you should have known, the cases would be dismissed after ninety (90) days and probation could not extend for three hundred sixty four (364) days. [See Cause Nos. M-38-DR-2018-115, M-38-DR-2019-023 and M-38-DR-2019-040]
- D. Failed to order a defendant convicted of *Driving Under the Influence of Intoxicating Liquor or Drugs, Third Offense*, Cause No. M-38-DR-2019-053, to complete a substance abuse treatment program pursuant to NMSA 1978, Section 66-8-102(M).
- E. Failed to require a defendant convicted of *Aggravated Driving Under the Influence of Intoxicating Liquor or Drugs, Second Offense*, Cause No. M-38-DR-2019-045, to complete a substance abuse treatment program pursuant to NMSA 1978, Section 66-8-102(M).
- F. Failed to impose the mandatory sentence of ninety six (96) hours incarceration in Cause No. M-38-DR-2018-105 where the defendant was convicted of *Driving Under the Influence of Intoxicating Liquor or Drugs, Second Offense*, instead imposing forty eight (48) hours of incarceration contrary to NMSA 1978, Section 66-8-102(1).
- G. Suspended the fine in Cause No. M-38-DR-2019-105 where the defendant was convicted of *Driving While License Revoked – DWI Related*, contrary to NMSA 1978, Section 66-5-39.1(B).

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202 and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 9

You dismissed Cause No. M-38-FR-2019-365 with prejudice when a preliminary hearing was not held in a timely manner, contrary to Rule 6-202(A)(3) NMRA which states, “[i]f a preliminary examination is not held within the time limits in this rule, the court shall dismiss the case without prejudice and discharge the defendant.”

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 10

You failed to afford the litigant in Cause No. M-38-CV-2019-601 fifteen (15) days to respond to a *Notice of Intent to Enter Judgment on the Pleadings* as required by Rule 2-303(D) NMRA when you filed a *Notice of Intent to Enter Judgment on the Pleadings* on February 27, 2020 and then entered an *Order for Judgment on the Pleadings* the same day.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-205 and 21-206 NMRA 2020 and constitutes willful misconduct in office.

COUNT 11

You granted an oral competency motion in Cause No. M-38-FR-2020-043 contrary to Rule 6-507.1(D)(1) NMRA which requires a motion for a competency evaluation to be in writing.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 12

You failed to determine a defendant's probationary end date in Cause No. M-38-VM-2017-153 after receiving differing end dates from both the prosecution and defense attorneys. To wit: A court clerk asked you what probation end date should be used and you told the clerk, "I don't care," and then pointed to the State's attorney and instructed the court clerk to use the date provided by the State's attorney stating words to the effect, "I don't trust the public defender's office."

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-203 and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 13

You violated the defendant's due process rights in Cause No. M-38-FR-2020-056 when you determined the defendant to be a flight risk because the defendant "didn't live in the U.S." and ordered the defendant held on an eight thousand dollar (\$8,000.00) bond. Additionally, you failed to file written findings of individualized facts justifying the secured bond pursuant to Rule 6-401(F)(2) NMRA.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-203 and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 14

You failed to perform due diligence when you issued bench warrants and assessed one hundred dollar (\$100.00) bench warrant fees without first determining if defendants had first been properly noticed into court. To wit: Due to the Covid-19 pandemic, the Otero County Magistrate Court began conducting telephonic hearings, but you instead issued summonses for defendants to

appear in person and/or did not include contact information for the court on the summonses. When defendants failed to call the court on their appearance date, you issued bench warrants and assessed bench warrant fees without determining if the defendants were first properly summonsed in the cause numbers listed below.

M-38-TR-2020-528	M-38-TR-2020-721	M-38-TR-2020-073
M-38-TR-2020-751	M-38-TR-2020-513	M-38-TR-2020-748
M-38-TR-2020-749	M-38-TR-2020-680	M-38-TR-2020-164
M-38-TR-2020-070	M-38-TR-2020-699	

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-205 and 21-206 NMRA 2020 and constitutes willful misconduct in office.

COUNT 15

You sentenced the defendant in Cause No. M-38-DR-2019-00064 to ninety (90) days of incarceration and imposed three hundred sixty-four (364) days of probation without ordering the sentence deferred or suspended, contrary to NMSA 1978, Section 31-20-3, *Aggravated Driving Under the Influence of Intoxicating Liquor or Drugs First Offense*.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 16

You failed to order twelve (12) defendants convicted of *Battery on a Household Member* to complete a mandatory domestic violence offender treatment or intervention program pursuant to NMSA 1978, Section 30-3-15(C). [See Cause Nos. M-38-VM-2019-052, M-38-VM-2019-054, M-38-VM-2019-075, M-38-VM-2019-082, M-38-VM-2019-092, M-38-VM-2019-121, M-38-VM-2019-127, M-38-VM-2019-147, M-38-VM-2019-153, M-38-VM-2019-201, M-38-VM-2019-217, and M-38-VM-2019-

226]

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202 and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 17

You failed to afford the State notice and opportunity to be heard in *State vs. Herrera*, Cause No. M-38-DR-2019-00064, when you granted defense counsel's *Motion to Vacate Illegal Sentence, For Release From Custody, For Placement on Probation and Request for Expedited Setting* without allowing the State fifteen (15) days to respond contrary to Rule 6-304(E) NMRA. To wit: You issued a *Notice of a Hearing* for April 3, 2020 at 1:30 p.m.; however, you entered an order on April 2, 2020 granting defense counsel's motion without affording the State time to respond.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-205 and 21-206 NMRA 2020 and constitutes willful misconduct in office.

COUNT 18

You dismissed the complaint in Cause No. M-38-CV-2019-00506 without giving the plaintiff notice and opportunity to respond to one defendant's answer, or to respond to a second defendant's failure to file an answer to the complaint.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-205 and 21-206 NMRA 2020 and constitutes willful misconduct in office.

COUNT 19

You misrepresented the facts in Cause No. M-38-CV-2019-601 when you signed an *Order for Judgment on the Pleadings* which stated that you reviewed the defendant's response to plaintiff's *Motion for Judgment on the Pleadings* when a response had not yet actually been filed.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 20

On or about March 4, 2019 you were counseled by the Chief Judge of the Twelfth Judicial District about your duty to follow statutes and rules when imposing a deferred and/or suspended sentence. However, you failed to follow those directions and continued to improperly sentence defendants. [See Cause No. M-38-DR-2019-00037, M-38-DR-2019-0066 and M-38-DR-2019-00007]

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202 and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 21

On or about April 1, 2019 in Cause No. M-38-TR-2018-2644 you assisted a New Mexico State Police Officer in the prosecution of the officer's case where the officer appeared in person and defense counsel appeared telephonically. To wit: The officer failed to identify the defendant at trial as the same person that the officer had stopped and ticketed. You wrote the letters "ID" on a note pad, tapped on the pad to get the officer's attention and nodded towards what you wrote. The officer read what you wrote and proceeded to testify that he was dressed in his uniform displaying his badge of office at the time of the stop and identified the defendant by his driver's license.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-205 and 21-206 NMRA 2020 and constitutes willful misconduct in office.

COUNT 22

On or about April 24, 2020 in a telephonic hearing in Cause No. M-38-TR-2020-680 you accepted a guilty plea and improperly dismissed two charges (*Failure to Register a Vehicle* and

Improper Use of Evidence of Registration) without proof of compliance from the defendant. You stated for both counts, "It is adjudged that the charge is dismissed because proof was shown." However, proof was not shown, and instead you ordered the defendant to fax proof to the court within seven (7) days from the hearing.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 23

On or about April 24, 2020 in a telephonic hearing in Cause No. M-38-TR-2019-286 you accepted a guilty plea and dismissed two charges (*No Driver's License and Failure to Register or Title a Vehicle as Required*) without proof of compliance from the defendant. You stated for both counts, "It is adjudged that the charge is dismissed because proof was shown." However, proof was not shown, and instead you ordered the defendant to fax proof to the court within thirty (30) days.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202 and 21-205 NMRA 2020, and constitutes willful misconduct in office.

COUNT 24

On or about March 27, 2020 in Cause Nos. M-38-TR-2020-678 and M-38-TR-2020-461 you failed to fully advise the defendants of all constitutional rights contrary to Rules 6-501 and 6-502 NMRA. To wit: Before you accepted the defendants' guilty pleas, you only advised the defendants that they had the right to remain silent, that anything they said could be used against them, that they had the right to an attorney and to have an attorney present during the proceedings. You failed to inquire if the defendants' pleas were voluntary and failed to inform the defendants that a plea of guilty or no contest may have an effect upon their immigration or naturalization status.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202 and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 25

On or about March 27, 2020 in Cause No. M-38-FR-2020-155 you failed to fully advise a defendant charged with *Negligent use of a Deadly Weapon, Possession of Drug Paraphernalia and Unlawful Carrying of a Deadly Weapon on School Premises* of all his constitutional rights pursuant to Rule 6-501 NMRA. You only advised the defendant that he had the right to remain silent, that anything he said could and would be used against him, and that he had the right to have an attorney present. You omitted the maximum penalty and mandatory minimum penalty, the right to bail, the right to a preliminary hearing, that a plea of guilty or no contest will affect the defendant's constitutional right to bear arms, including shipping, receiving, possessing, or owning any firearm or ammunition.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202 and 21-205 NMRA 2020 and constitutes willful misconduct in office.

COUNT 26

You failed to properly instruct jurors when you misread, mispronounced, omitted and/or mumbled words when reading jury instructions.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102 and 21-205 NMRA 2020 and constitutes willful misconduct in office.

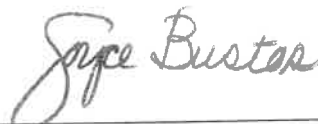
PLEASE BE ADVISED that in accordance with Rule 16 of the Judicial Standards Commission Rules, you shall file a written answer to this notice within twenty-one (21) days of its service upon you. Your answer shall be filed with the Clerk of the Commission electronically or by mail sent to:

*Clerk of the Commission
Judicial Standards Commission
6200 Uptown Blvd. NE, Suite 320
Albuquerque, New Mexico 87110-4159*

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
6200 Uptown Blvd. NE, Suite 320
Albuquerque, NM 87110-4159
(505) 222-9353

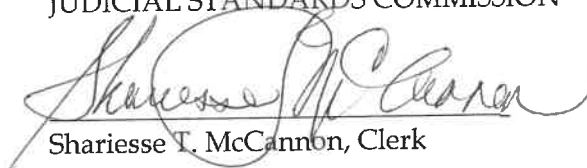
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of January 2021 a true copy of the foregoing was

sent as follows:

RESPONDENT
VIA EMAIL
colin@theblf.com

JUDICIAL STANDARDS COMMISSION


Shariesse T. McCannon, Clerk

FILED

MAR 09 2021

BEFORE THE JUDICIAL STANDARDS COMMISSION OF THE STATE OF NEW MEXICO

NM JUDICIAL STANDARDS COMMISSION

INQUIRY CONCERNING HON. STEVE GUTHRIE, Otero County Magistrate Court, Alamogordo, New Mexico: Nos. 2020-017, 2020-028, 2020-039, 2020-042, 2020-046, 2020-071, 2020-100, and 2020-114

CONSOLIDATED ANSWER TO NOTICE OF FORMAL PROCEEDINGS

The Hon. Steve Guthrie, (hereafter "Judge Guthrie") by and through the Barnett Law Firm, P.A., (Colin L. Hunter and Jordy L. Stern), hereby submits his Consolidated Answer to the Judicial Standards Commission's Notice of Formal Proceedings (hereafter "Notice") and states as follows in support thereof.

INTRODUCTION

Judge Guthrie has presided over thousands of cases during his tenure as an Otero County Magistrate Court Judge since he was first elected in November of 2016. He was reelected in 2018. As of February 19, 2021, Judge Guthrie has been assigned 12,960 cases. *See* Odyssey Judicial Assignment Activity Report. Prior to taking the bench, Judge Guthrie was a 20-year police officer with the Alamogordo Police Department.

The Otero County Magistrate Court hours of operation are Monday through Friday, 8:00 AM to 4:00 PM. Judge Guthrie starts his workday arriving at 7:30 AM each day and leaving around 4:30 PM. He is dedicated and seldom takes any personal time off. During 2017, Judge Guthrie's associate Judge was not coming to work and was absent for weeks at a time until he resigned in late 2017. During this time, Judge Guthrie presided over his docket as well as the docket of his associate judge. He starts all his hearings on time. He is a dedicated elected official who takes his job very seriously. He does not claim to be a perfect judge or a judge who never makes mistakes. He does. When mistakes are brought to his attention, he corrects them and

learns from them. To his knowledge, the mistakes have been made in the past, during his time on the bench, have been corrected and have not been made again. These errors were in no way intentional or meant to harm anyone. Judge Guthrie is a competent and thorough judge. He is dedicated to continuous improvement, impartiality, and providing litigants and criminal defendants with a fair forum to be heard and treated evenly.

The personal conflict between Judge Guthrie and his former Chief Judge Counts needs to be noted because it goes to Judge's Counts bias as an impartial judge of Judge Guthrie's performance as a Judge. The history of the conflict is laid out in Judge Guthrie's response to Judge Counts Petition to the Supreme Court requesting a declaration that Judge Counts wife is entitled to Magistrate Judgeship for the position held by Judge Guthrie.

Judge Guthrie admits to the factual allegations in Counts 9, 10, 13, and 14. He denies that the conduct constitutes violations of the Judicial Code of Conduct. Judge Guthrie denies the factual allegations, in whole or in part, in Counts 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and denies that any constitute violation of the Code of Judicial Conduct. Judge Guthrie is committed to improving as a judicial officer. He is currently being mentored and seeking other avenues, including continuing education opportunities, to improve his performance a judge. If more training is deemed necessary, Judge Guthrie is happy to do so. The facts of this case do not warrant sanction under the Code of Judicial Conduct.

RESPONSE TO COUNT 1

Judge Guthrie denies the allegations in Count 1 of the Notice. Count 1 alleges that Judge Guthrie, “[v]iolated the defendant's due process rights and issued an *ex parte* order in cause. . . when [he] ordered a no-bond hold contrary to Rule 6-403 NMRA, Revocation or Modification of Release Orders; failed to continue the conditions of release hearing until appointed counsel was

present contrary to Rule 6-401(A)(2) NMRA; and failed to make written findings of particularized reasons why the defendant should not be released contrary to Rule 6- 401(B) NMRA.”

The Notice further alleges that “[a]t the conditions of release hearing held on November 13, 2020, [Judge Guthrie] issued a three-thousand-dollar (\$3,000.00) cash or surety bond, ordered the defendant to have no contact with the alleged victim, and after the defendant requested an attorney, issued a Conditional Order of Appointment for a public defender. After the defendant's hearing but while first appearances were still being held, an assistant district attorney informed [Judge Guthrie] *ex parte* that the defendant had already been in contact with the alleged victim in violation of [Judge Guthrie's] no contact order [and] recalled the defendant's case, questioned the defendant without the presence of an attorney, lined though the previous bond amount of \$3,000.00, and ordered the defendant to be held without bond” and that, “such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-205, 21- 206 and 21-209 NMRA 2020 and constitutes willful misconduct in office.”

RESPONSE TO COUNT 2

Judge Guthrie denies the allegations in Count 2 of the Notice. The Notice is misleading because it fails to provide any context for what occurred. The Notice omits key facts that are indispensable for a fair analysis of what transpired.

Count 2 alleges Judge Guthrie failed, “[t]o follow the New Mexico Supreme Court's Order on the Safe and Effective Administration of the New Mexico Judiciary During the COVID-19 Public Health Emergency issued on July 6, 2020 and put at risk the health and safety of Otero County Magistrate Court staff when [he]: Failed to wear a protective face covering at all times while on court premises, and placed a court clerk in a difficult position when you asked the

clerk if the clerk minded if you did not wear a mask” and that. . . “such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102 and 21-205 NMRA 2020 and constitutes willful misconduct in office.”

Judge Guthrie is diligent about wearing a mask, in all situations that allow for him to do so. In this one instance where he temporarily removed his mask was while he was conducting video arraignments. A Defendant being arraigned could not hear Judge Guthrie. In order that he be heard, response Judge Guthrie temporarily removed his mask while addressing this single defendant. Before doing so, he announced his intention to court staff, in an effort to be considerate. He did not intend to pressure court staff into a situation where they were not comfortable.

RESPONSE TO COUNT 3

Judge Guthrie denies the allegations contained in Count 3. Count 3 asserts that, “You failed to follow the Twelfth Judicial District Court Administrative Order issued on April 29, 2019 prohibiting the Possession of a Deadly Weapon and Use of Tobacco in the Otero County Magistrate Court by your continued use of chewing tobacco while on court premises after the order was issued. Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102 and 21-205 NMRA 2020 and constitutes willful misconduct in office.”

Judge Guthrie denies this allegation. After being informed of the Order by Judge Counts Judge Guthrie ceased using tabaco products in the Otero County Magistrate Court, instead using a tobacco cessation product on the bench that is intended to reduce the cravings for tobacco. He did not continue to use chewing tabaco as the Notice asserts.

RESPONSE TO COUNT 4, 5, 6, AND 7

Counts 4, 5, 6, and 7 contain conclusory statements that are inaccurate. These Counts

allege that Judge Guthrie failed to perform due diligence and acted “willfully” when he conducted hearings and issued orders setting conditions of release. . . when [he] should have known, that the Twelfth Judicial District Attorney's Office had filed Expedited Motion for Pretrial Detention divesting him of jurisdiction pursuant to Rule 6-409(D) NMRA.

Judge Guthrie denies that he “failed to perform due diligence” in these cases and that such conduct “constitutes willful misconduct in office.” With respect to Count 4, on 11/9/2019 Judge Guthrie was unaware of any pre-trial detention order having been filed. If he had been aware, he would not have set conditions of release. With respect to Count 5, the Notes from the case reflect that “Pre-trial detention motion was received via fax approximately 11:30 AM on 8/18 and 2020. The fax goes with intake and not dispersed to be processed and filed until approximately 3:15 PM to the clerk who do jail calls with the judge.” He likewise was not made aware of pre-trial detention orders having been filed in the cases cited in Counts 6 and 7 or he would not have set conditions of release.

RESPONSE TO COUNT 8

Count 8 alleges Judge Guthrie, “[i]ssued illegal and/ or improper sentences, and/ or failed to ensure that judgment and sentence orders were accurate in 15 Driving Under the Influence of Intoxicating Liquor or Drugs related cases” in 15 DWI cases, alleging 4 separate defects and that “[s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202 and 21-205 NMRA 2020 and constitutes willful misconduct in office.”

When this matter was brought to Judge Guthrie’s attention, he promptly amended the J & S in each one of these cases, which the Notice omits. This negates the Notice’s assertion that such conduct was willful. Accordingly, Judge Guthrie denies the allegations contained in Count 8.

RESPONSE TO COUNT 9

Judge Guthrie admits to the factual allegations as contained in Count 9 but disputes that the conduct was “willful.” This Count states that Judge Guthrie, “[D]ismissed Cause No. M-38-FR-2019-365 with prejudice when a preliminary hearing was not held in a timely manner, contrary to Rule 6-202(A)(3) NMRA which states, “[i]f a preliminary examination is not held within the time limits in this rule, the court shall dismiss the case without prejudice and discharge the defendant” and that “[s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, and 21-205 NMRA 2020 and constitutes willful misconduct in office.” Judge Guthrie learned from this and such a situation has not reoccurred since.

RESPONSE TO COUNT 10

Judge Guthrie admits to factual allegations as contained in Count 10 but disputes that the conduct was “willful.” Count 10 asserts that Judge Guthrie, “[F]ailed to afford the litigant. . . fifteen (15) days to respond to a Notice of Intent to Enter Judgment on the Pleadings as required by Rule 2-303(D) NMRA when [he] filed a Notice of Intent to Enter Judgment on the Pleadings on February 27, 2020 and then entered an Order for Judgment on the Pleadings the same day and that “[s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-205 and 21-206 NMRA 2020 and constitutes willful misconduct in office.” Such a situation has not reoccurred since.

RESPONSE TO COUNT 11

Count 11 of the Notice makes the following claim, “[Judge Guthrie] granted an oral competency motion in Cause No. M-38-FR-2020-043 contrary to Rule 6- 507.l(D)(I) NMRA which requires a motion for a competency evaluation to be in writing” and that. . .[s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, and 21-205 NMRA 2020

and constitutes willful misconduct in office.”

Judge Guthrie admits he granted an oral motion from the prosecution in this case. But denies he did not put his order in writing. The records proper in this case reflects he used the form of ordered approved by the Supreme Court when he issued his order granting the motion. Considering and ruling on an oral motion, that should have been in writing, does not rise to the level of “willful misconduct” as alleged in the Notice and does not constitute a violation of the Code of Judicial Conduct.

RESPONSE TO COUNT 12

The Notice alleges in Count 12 that Judge Guthrie, “[f]ailed to determine a defendant's probationary end date in Cause No. M-38-VM-2017- 153 after receiving differing end dates from both the prosecution and defense attorneys. To wit: A court clerk asked you what probation end date should be used and Judge Guthrie told the clerk, "I don't care," and then pointed to the State's attorney and instructed the court clerk to use the date provided by the State's attorney stating words to the effect, "I don't trust the public defender's office and that. . . “[s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-203 and 21-205 NMRA 2020 and constitutes willful misconduct in office.”

Judge Guthrie does not recall what’s alleged to have occurred in Count 12, as having occurred and, therefore, denies the allegations in Count 12 and the conclusion that it constitutes “willful misconduct” and a violation of the Code of Judicial Conduct.

RESPONSE TO COUNT 13

Judge Guthrie admits to the factual allegations contained in this Count. It was an oversight on his part and was in no way willful. The Notice in Count 13 states that Judge Guthrie, “[v]iolated [a] defendant's due process rights in Cause No. M-38-FR-2020-056 when [he]

determined the defendant to be a flight risk because the defendant 'didn't live in the U.S.' and ordered the defendant held on an eight-thousand-dollar (\$8,000.00) bond. Additionally, [Judge Guthrie] failed to file written findings of individualized facts justifying the secured bond pursuant to Rule 6- 401(F)(2) NMRA. . . and that, “[s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-203 and 21-205 NMRA 2020 and constitutes willful misconduct in office.”

RESPONSE TO COUNT 14

Judge Guthrie admits to the factual allegations contained in Count 14. The Notice provides that Judge Guthrie, “[f]ailed to perform due diligence when [he] issued bench warrants and assessed one-hundred-dollar (\$100.00) bench warrant fees without first determining if defendants had first been properly noticed into court. To wit: Due to the Covid-19 pandemic, the Otero County Magistrate Court began conducting telephonic hearings, but [Judge Guthrie] instead issued summonses for defendants to appear in person and/ or did not include contact information for the court on the summonses. When defendants failed to call the court on their appearance date, [Judge Guthrie] issued bench warrants and assessed bench warrant fees without determining if the defendants were first properly summonsed in the cause numbers listed below and that, “[s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-205 and 21-206 NMRA 2020 and constitutes willful misconduct in office.” Judge Guthrie performed due diligence in each one of these cases but was doing so from home and did not have the same access to information as he would have had he been in the Courthouse.

RESPONSE TO COUNT 15

In Count 15, the Notice alleges, Judge Guthrie, “[s]entenced the defendant in Cause No. M-38-DR-2019-00064 to ninety (90) days of incarceration and imposed three hundred sixty-four

(364) days of probation without ordering the sentence deferred or suspended, contrary to NMSA 1978, Section 31-20-3, Aggravated Driving Under the Influence of Intoxicating Liquor or Drugs First Offense and that, “[s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, and 21-205 NMRA 2020 and constitutes willful misconduct in office.”

Similar to Count 8, Judge Guthrie amended the J & S in each one of these cases, which the Notice omits. This negates the Notice’s assertion that such conduct was willful. Accordingly, Judge Guthrie denies the allegations contained in Count 15 and denies that a violation of the Judicial Code of Conduct occurred.

RESPONSE TO COUNT 16

The Notice asserts in Count 15 that Judge Guthrie, “[f]ailed to order twelve (12) defendants convicted of Battery on a Household Member to complete a mandatory domestic violence offender treatment or intervention program pursuant to NMSA 1978, Section 30-3-1S(C) and that, [s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202 and 21-205 NMRA 2020 and constitutes willful misconduct in office.”

Judge Guthrie referred each of these Defendants to COPE, the state approved batter intervention program. As part of the programs Defendants undergo 52 weeks of domestic violence counseling. According to Otero County MCP coordinator Maria Garcia-Olayo as of February 17, 2021 this occurred in these cases.

RESPONSE TO COUNT 17

In Count 17, the Notice makes the following claim, Judge Guthrie “[f]ailed to afford the State notice and opportunity to be heard. . . when [he] granted defense counsel’s Motion to Vacate Illegal Sentence, For Release From Custody, For Placement on Probation and Request for Expedited Setting without allowing the State fifteen (15) days to respond contrary to Rule 6-

304(E) NMRA. To wit: [Judge Guthrie] issued a Notice of a Hearing for April 3, 2020 at 1:30 p.m.; however, [he] entered an order on April 2, 2020 granting defense counsel's motion without affording the State time to respond” and that, “[s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-205 and 21-206 NMRA 2020 and constitutes willful misconduct in office.”

RESPONSE TO COUNT 18

Judge Guthrie admits the allegations in the Notice in Count 18 assert that Judge Guthrie, “[d]ismissed the complaint in Cause No. M-38-CV-2019-00506 without giving the plaintiff notice and opportunity to respond to one defendant's answer, or to respond to a second defendant's failure to file an answer to the complaint” . . . and that [s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-205 and 21-206 NMRA 2020 and constitutes willful misconduct in office.”

RESPONSE TO COUNT 19

In Count 19, the Notice alleges Judge Guthrie, “[m]isrepresented the facts in Cause No. M-38-CV-2019-601 when [he] signed an Order for Judgment on the Pleadings which stated that [he] reviewed the defendant's response to plaintiff's Motion for Judgment on the Pleadings when a response had not yet actually been filed” and that, “[s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, and 21-205 NMRA 2020 and constitutes willful misconduct in office.” Judge Guthrie admits the allegations in Count 19. In this case, the Defendant was served on January 17, 2020. The Defendant failed to Answer and Judge Guthrie unfortunately reflexively granted Plaintiff's Motion for Judgment on the Pleadings and signed the form of order prepared by Plaintiff's counsel. While the proper form of Order likely should have been a Default Judgment, Judge Guthrie's form of Order did not substantively change the

relief available to the Plaintiff. Judge Guthrie agrees that this Order was erroneous and should have been a Default Judgment.

RESPONSE TO COUNT 20

In Count 20, the Notice states that “On or about March 4, 2019 [Judge Guthrie] was counseled by the Chief Judge of the Twelfth Judicial District about your duty to follow statutes and rules when imposing a deferred and/ or suspended sentence. However, [Judge Guthrie] failed to follow those directions and continued to improperly sentence defendants,” and that “[s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202 and 21-205 NMRA 2020 and constitutes willful misconduct in office.”

Judge Guthrie discovered the mistake in this case and amended the J & S. Making and then correcting a mistake of this nature does not constitute a violation of the Code of Judicial Conduct.

RESPONSE TO COUNT 21

Count 21 alleges that “On or about April 1, 2019 in Cause No. M-38-TR-2018-2644 you assisted a New Mexico State Police Officer in the prosecution of the officer's case where the officer appeared in person and defense counsel appeared telephonically” and that, “such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-205 and 21-206 NMRA 2020 and constitutes willful misconduct in office.”

Judge Guthrie does not recall helping an Officer in the prosecution of his case. Officers, when testifying, and then attorneys or defendants are on the phone, the officer is less than two feet away from Judge Guthrie, who takes notes during testimony. Judge Guthrie was unaware of the Officer seeing his notes.

RESPONSE TO COUNT 22

In this Count, the Notice alleges that “On or about April 24, 2020 in a telephonic hearing in Cause No. M-38-TR-2020-680 you accepted a guilty plea and improperly dismissed two charges (Failure to Register a Vehicle and Improper Use of Evidence of Registration) without proof of compliance from the defendant. [Judge Guthrie] stated for both counts, ‘It is adjudged that the charge is dismissed because proof was shown.’ However, proof was not shown, and instead you ordered the defendant to fax proof to the court within seven (7) days from the hearing” and that, “[s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, and 21-205 NMRA 2020 and constitutes willful misconduct in office.”

Judge Guthrie admits that he ordered the defendant to fax proof to the court within seven (7) days from the hearing but denies the conclusion that doing so violates a constitute “willful misconduct and a “violation the Code of Judicial Conduct”.

RESPONSE TO COUNT 23

Similarly, Judge Guthrie likewise admits he ordered the defendant to fax compliance to the court within 30 days as alleged in Count 23. Judge Guthrie denies this constitutes a violation of the Code of Judicial Conduct. The Notice alleges in Count 23 that, “[o]n or about April 24, 2020 in a telephonic hearing. . . [Judge Guthrie] accepted a guilty plea and dismissed two charges (No Driver's License and Failure to Register or Title a Vehicle as Required) without proof of compliance from the defendant. [Judge Guthrie] stated for both counts, ‘It is adjudged that the charge is dismissed because proof was shown.’ The Notice continues, “[H]owever, proof was not shown, and instead [Judge Guthrie} ordered the defendant to fax proof to the court within thirty (30) days.” The Notice concludes with respect to this Count that, “[s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202 and 21-205 NMRA 2020,

and constitutes willful misconduct in office.”

RESPONSE TO COUNT 24

Count 24 asserts that “[O]n or about March 27, 2020. . .[Judge Guthrie] failed to fully advise [two] defendants of all constitutional rights contrary to Rules 6-501 and 6-502 NMRA. To wit: Before [Judge Guthrie] accepted the defendants' guilty pleas, [he] only advised the defendants that they had the right to remain silent, that anything they said could be used against them, that they had the right to an attorney and to have an attorney present during the proceedings. [Judge Guthrie] failed to inquire if the defendants' pleas were voluntary and failed to inform the defendants that a plea of guilty or no contest may have an effect upon their immigration or naturalization status. . . and that [s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202 and 21-205 NMRA 2020 and constitutes willful misconduct in office.” Judge Guthrie does not recall this case and therefore neither admits nor denies the allegations in this Count. But he agrees that defendants to be advised of the potential penalties of the offenses, all their constitutional rights and regarding immigration consequences.

RESPONSE TO COUNT 25

In this Count, the Notice alleges that, “[o]n or about March 27, 2020 in Cause No. M-38-FR-2020-155 [Judge Guthrie] failed to fully advise a defendant charged with Negligent use of a Deadly Weapon, Possession of Drug Paraphernalia and Unlawful Carrying of a Deadly Weapon on School Premises of all his constitutional rights pursuant to Rule 6-501 NMRA. [Judge Guthrie] only advised the defendant that he had the right to remain silent, that anything he said could and would be used against him, and that he had the right to have an attorney present. [Judge Guthrie] omitted the maximum penalty and mandatory minimum penalty, the right to bail, the right to a preliminary hearing, that a plea of guilty or no contest will affect the

defendant's constitutional right to bear arms, including shipping, receiving, possessing, or owning any firearm or ammunition and that. . . [s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202 and 21-205 NMRA 2020 and constitutes willful misconduct in office.”

Judge Guthrie does not recall this particular case.

RESPONSE TO COUNT 26

Count 26 makes the claim that Judge Guthrie, “[f]ailed to properly instruct jurors when you misread, mispronounced, omitted and/ or mumbled words when reading jury instructions and that. . . [s]uch conduct violates the Code of Judicial Conduct Rules 21-101, 21-102 and 21-205 NMRA 2020 and constitutes willful misconduct in office.

Judge Guthrie does not recall reading the Jury Instructions in this particular case. But denies that he has ever never intentionally misread, mispronounced or mumbled words in his capacity as a magistrate judge.

CONCLUSION

The Code of Judicial Conduct does not empower the Commission to substitute its judgment for the judgment of the nominating commissions who make initial judicial recommendations, the Governors who make judicial appointments, and ultimately the voters who choose who should continue to hold the position of magistrate court judge in Otero County. Has Judge Guthrie made errors as a Judge? He has. But in a small percentage of the cases, he has presided over and even considered cumulatively, as the Notice does, these mistakes do not rise to the level of being sanctionable under the Code of Judicial Conduct.

Judge Guthrie’s mistakes are not sufficient grounds for punishment under the code of Judicial Conduct. Judges makes mistakes. The get reversed. Or they are held accountable by the

voters and are not retained, or the voters decide they should no longer hold the position as Magistrate Judge. The errors made by Judge Guthrie cited in the Notice are not sufficient grounds under the Code of Judicial Conduct for removing him from the bench.

Respectfully submitted,

BARNETT LAW FIRM, P.A.

By: s/s Colin Hunter
COLIN L. HUNTER
1905 Wyoming Blvd NE
Albuquerque, NM 87112
(505) 275-3200
colin@theblf.com