

Sec. 32. [Judicial standards commission.]

There is created the "judicial standards commission", consisting of two justices or judges, one magistrate, one municipal judge and two lawyers selected as may be provided by law to serve for terms of four years, and seven citizens, none of whom is a justice, judge or magistrate of any court or licensed to practice law in this state, who shall be appointed by the governor for five-year staggered terms as may be provided by law. If a position on the commission becomes vacant for any reason, the successor shall be selected by the original appointing authority in the same manner as the original appointment was made and shall serve for the remainder of the term vacated. No act of the commission is valid unless concurred in by a majority of its members. The commission shall select one of the members appointed by the governor to serve as chair.

In accordance with this section, any justice, judge or magistrate of any court may be disciplined or removed for willful misconduct in office, persistent failure or inability to perform a judge's duties, or habitual intemperance, or may be retired for disability seriously interfering with the performance of the justice's, judge's or magistrate's duties that is, or is likely to become, of a permanent character. The commission may, after investigation it deems necessary, order a hearing to be held before it concerning the discipline, removal or retirement of a justice, judge or magistrate, or the commission may appoint three masters who are justices or judges of courts of record to hear and take evidence in the matter and to report their findings to the commission. After hearing or after considering the record and the findings and report of the masters, if the commission finds good cause, it shall recommend to the supreme court the discipline, removal or retirement of the justice, judge or magistrate.

The supreme court shall review the record of the proceedings on the law and facts and may permit the introduction of additional evidence, and it shall order the discipline, removal or retirement as it finds just and proper or wholly reject the recommendation. Upon an order for retirement, any justice, judge or magistrate participating in a statutory retirement program shall be retired with the same rights as if the justice, judge or magistrate had retired pursuant to the retirement program. Upon an order for removal, the justice, judge or magistrate shall thereby be removed from office, and the justice's, judge's or magistrate's salary shall cease from the date of the order.

All papers filed with the commission or its masters, and proceedings before the commission or its masters, are confidential. The filing of papers and giving of testimony before the commission or its masters is privileged in any action for defamation, except that the record filed by the commission in the supreme court continues privileged but, upon its filing, loses its confidential character, and a writing that was privileged prior to its filing with the commission or its masters does not lose its privilege by the filing. The commission shall promulgate regulations establishing procedures for hearings under this section. No justice, judge or magistrate who is a member of the commission or supreme court shall participate in any proceeding involving the justice's, judge's or magistrate's own discipline, removal or retirement.

This section is alternative to, and cumulative with, the removal of justices, judges and magistrates by impeachment and the original superintending control of the supreme court. (As added November 7, 1967; as amended November 7, 1978, November 3, 1998 and November 6, 2012.)

ANNOTATIONS

The 2012 amendment, which was proposed by H.J.R. No. 18 (Laws 2011) and adopted at a general election held on November 6, 2012 by a vote of 403,149 for and 266,171 against, increased the number of

members of the judicial standards commission by adding a municipal judge and a public member; in the first paragraph, in the first sentence, after "one magistrate", added "one municipal judge" and after "terms of four years, and", deleted "six" and added "seven"; in the second paragraph, in the first sentence, after "interfering with the performance of", deleted "his" and added "the justice's, judge's or magistrate's"; in the third paragraph, in the second sentence, after "retired with the same rights as if", deleted "he" and added "the justice, judge or magistrate", and after "removed from office, and", deleted "his" and added "the justice's, judge's or magistrate's"; and in the last paragraph, in the fourth sentence, after "No justice, judge" added "or magistrate" and after "participate in any proceeding involving", deleted "his" and added "the justice's, judge's or magistrate's".

The 1998 amendment, which was proposed by S.J.R. No. 5, § 2 (Laws 1997) and adopted at the general election held November 3, 1998 by a vote of 213,354 for and 199,143 against, inserted "one magistrate" near the beginning of the first paragraph.

The 1978 amendment, which was proposed by S.J.R. No. 3 (Laws 1977) and adopted at the general election held on November 7, 1978, by a vote of 142,468 for and 53,660 against, substituted the present first sentence of the second paragraph for "In accordance with this section, any justice, judge or magistrate of any court may be disciplined or removed for willful misconduct in office, or willful and persistent failure to perform his duties or habitual intemperance, or he may be retired for disability seriously interfering with the performance of his duties which is, or is likely to become, of a permanent character."

The 1967 amendment, which was proposed by H.J.R. No. 2 § 1 (Laws 1967) and adopted at the special election held on November 7, 1967, with a vote of 39,806 for and 11,646 against, added this section as new to article VI.

Cross references. — For power of impeachment, see N.M. Const., art. IV, §§ 35, 36.

For supreme court's superintending control over inferior courts, see N.M. Const., Art. VI, § 3.

For statutory provisions relating to the judicial standards commission, see 34-10-1 NMSA 1978 et seq.

For the rules of the judicial nominating commission, oath, open meetings resolution, and applicant questionnaire, see the addenda to this article.

Willful misconduct required for discipline. — Where a municipal judge improperly issued criminal contempt complaints to two attorneys for their role in an appeal from his court based on his unfounded suspicion that the attorneys had misrepresented the municipal court proceedings to the district court; the judge researched the issues of indirect contempt and what he could do if his decisions were being nullified by the attorneys; the judge failed to obtain a transcript of the district court proceedings to ascertain the facts before acting on his suspicions; and the judge failed to recuse himself, but dismissed the contempt complaints without hearing the case, the actions of the judge were negligent, but not willful, and were not grounds for discipline. *In the Matter of Locatelli*, 2007-NMSC-029, 141 N.M. 755, 161 P.3d 252.

No conflict with Article V, Section 5. — This section addresses the power to fill a vacancy. N.M. Const., art. V, § 5, addresses the power to remove officers. The two powers are not mutually exclusive, and one does not negate the other. *State ex rel. N.M. Judicial Standards Comm'n v. Espinosa*, 2003-NMSC-017, 134 N.M. 59, 73 P.3d 197.

Staggered terms. — The use of staggered terms is not sufficient to limit the governor's removal power under N.M. Const., art. V, § 5. While policies underlying staggered terms are important, such policies cannot override the governor's express removal authority. *State ex rel. N.M. Judicial Standards Comm'n v. Espinosa*, 2003-NMSC-017, 134 N.M. 59, 73 P.3d 197.

Removal of members. — Neither this section nor its implementing statutes provides a mechanism for the removal of commission members. *State ex rel. N.M. Judicial Standards Comm'n v. Espinosa*, 2003-NMSC-017, 134 N.M. 59, 73 P.3d 197.

Recall of municipal judge. — Since this section creates a judicial standards commission and explicitly provides grounds for and general procedures to be followed in removing judges from office, no legislatively created means of removing judicial officers is contemplated; therefore, 3-14-16 NMSA 1978, providing for recall of elective officers in commission-manager municipalities, is contrary to this section insofar as it pertains to removal of municipal judges. *Cooper v. Albuquerque City Comm'n*, 1974-NMSC-006, 85 N.M. 786, 518 P.2d 275.

Supreme court makes its own independent decision as to the removal of a judge on the merits. *In re Martinez*, 1982-NMSC-115, 99 N.M. 198, 656 P.2d 861.

Removal of judges. — Given the authority with which a judge is entrusted, as a matter of equal protection principles he or she may be distinguished from other county officials and be subjected to removal from office on less than proof beyond a reasonable doubt. *In re Castellano*, 1995-NMSC-007, 119 N.M. 140, 889 P.2d 175.

The canons of judicial ethics do not control the determination of the issue of willful judicial misconduct under the constitution. They only furnish some proof of what constitutes appropriate judicial conduct. *In re Martinez*, 1982-NMSC-115, 99 N.M. 198, 656 P.2d 861.

Standard of proof to be applied in cases of judicial misconduct is clear and convincing evidence. *In re Martinez*, 1982-NMSC-115, 99 N.M. 198, 656 P.2d 861.

Discipline for misconduct during prior, different term of office. — Previous acts of misconduct on the part of a judge or justice, committed in his official capacity as a judge or justice during a prior term of judicial office, follow the judge to any subsequent judicial office. Those acts of misconduct may be the subject of disciplinary proceedings before the judicial standards commission during a present and different term of judicial office held by that judge or justice. *In re Romero*, 1983-NMSC-054, 100 N.M. 180, 668 P.2d 296.

Candidates for judicial office are required to comply with all provisions of the code of judicial conduct and a judge may be disciplined for misconduct committed during an election campaign. *In the Matter of Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338.

Where a judge was asked by a friend to obtain his father's release from jail; the judge called the jail and set bond; when no one was available to set bond, the judge changed his release order to release the defendant to the custody of his wife; the judge hand-delivered the release order to the jail; and the judge presided over the defendant's arraignment, the judge's conduct did not constitute willful misconduct in office. *In the Matter of Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338.

Actions held to constitute willful misconduct. — Where a judge met ex parte with the complaining witness in a domestic violence case who had been subpoenaed by the state to testify in her husband's trial; the judge told the witness that she did not have to respond to the subpoena; the witness failed to appear at trial; the judge signed a document recusing himself when the prosecutor raised the issue of the judge's ex parte conversation with the witness; and later when the witness appeared, the judge recalled the case and dismissed it, the judge's conduct constituted willful misconduct in office. *In the Matter of Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338.

A judge is without authority to direct the juvenile probation office to refrain from referring juvenile cases to the district attorney without the judge's prior written consent, or to relieve the district attorney as children's

court attorney and to appoint private attorneys to act and to be compensated out of the district attorney's budget, and to do so constitutes bad faith, malicious abuse of judicial power and willful misconduct in office. *In re Martinez*, 1982-NMSC-115, 99 N.M. 198, 656 P.2d 861.

It is willful misconduct in office for a judge knowingly to countermand orders of his presiding judge for a prisoner to be immediately transported to the state penitentiary. *In re Martinez*, 1982-NMSC-115, 99 N.M. 198, 656 P.2d 861.

Willful misconduct. — Where a magistrate court judge, who had developed a personal relationship with a defendant in a criminal case, asked the magistrate judge who was assigned to the defendant's case to make special concessions with regard to the defendant's bond, attempted to influence the disposition of the defendant's case, instructed the clerks of the magistrate court to issue a clearance for the defendant's driver's license in the same case, and attempted to influence a police officer who had stopped the car driven by the defendant for speeding; the judge evaded attempts to serve him with an order of the judicial standards commission to submit to a drug test and refused to submit to a drug test; and the judge tested positive for cocaine and cocaine metabolites when the supreme court mandated that he comply with the commission's order, the judge's actions constituted willful judicial misconduct that warranted removal from judicial office. *In the Matter of Garza*, 2007-NMSC-028, 141 N.M. 831, 161 P.3d 876.

Failure to correct attorneys' mistakes not unjudicial conduct. — Mistakes made by attorneys in making applications for temporary restraining orders which are not noticed or corrected by judges do not automatically constitute unjudicial conduct. *In re Martinez*, 1982-NMSC-115, 99 N.M. 198, 656 P.2d 861.

Attorney may act as temporary presiding officer at hearing. — Proceedings before the judicial standards commission are not illegal because an attorney acts as temporary presiding officer of a hearing on specific charges of misconduct where the chairman of the commission is a lay person. *In re Martinez*, 1982-NMSC-115, 99 N.M. 198, 656 P.2d 861.

Municipal judge is not subject to recall election under either state law or the municipal charter; the superintending control of the supreme court over inferior courts affords a present avenue for removal of any municipal judge, should the situation so warrant. 1973 Op. Att'y Gen. No. 73-03.

Legislation expanding judicial standards commission's jurisdiction is likely unconstitutional. — N.M. Const., art. VI, § 32 authorized the judicial standards commission (commission) to investigate and to recommend discipline, removal or retirement of a justice, judge or magistrate; the functions of the commission are judicial functions, and the New Mexico constitution does not provide a grant of authority to the legislature regarding the commission's jurisdiction. Accordingly, the 2019 amendments to 34-10-2.1(A) NMSA 1978, expanding the jurisdiction of the commission beyond justices, judges and magistrates, is an impermissible encroachment upon the independent and co-equal judicial branch, and is therefore likely unconstitutional. *Constitutionality of Certain Provisions in Senate Bill 668, Passed During the 2019 Regular Session (11/30/20)*, Att'y Gen. Adv. Ltr. 2020-10 [↗](#).

Law reviews. — For student symposium, "Constitutional Revision - Judicial Removal and Discipline - The California Commission Plan for New Mexico?" see 9 Nat. Resources J. 446 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 46 Am. Jur. 2d Judges § 17 et seq.

Confidentiality of proceedings or reports of judicial inquiry board or commission, 5 A.L.R.4th 730.

48A C.J.S. Judges §§ 35-52.