
Joey D. Moya

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

No. S-1-SC-35842

IN THE MATTER OF HON. HENRY T. CASTAÑEDA
Eddy County Magistrate Court, Carlsbad, New Mexico

INQUIRY CONCERNING HON. HENRY T. CASTAÑEDA
JSC Inquiry No. 2016-020

PETITION FOR PERMANENT REMOVAL
FROM JUDICIAL OFFICE

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1. Petitioner Judicial Standards Commission, upon a unanimous vote of participating Commissioners, and pursuant to art. VI, § 32 of the New Mexico Constitution and Article 4, §§ 27-401, *et seq.*, of the Supreme Court's Rules Governing Review of Judicial Standards Commission Proceedings, hereby petitions the Supreme Court to sanction Respondent Hon. Henry T. Castañeda, Eddy County Magistrate Court Judge, as follows:

PERMANENT REMOVAL FROM OFFICE: Respondent shall be immediately and permanently removed from the office of Magistrate Judge in Eddy County, New Mexico.

2. Jurisdiction is invoked pursuant to the Petitioner's power to recommend judicial discipline and the Supreme Court's power to

discipline judges under N.M. Const. art. VI, §32, as amended, and the Court's power of superintending control under N.M. Const. art. VI, §3.

3. The grounds for removing Respondent are set forth completely in the *Judicial Standards Commission's Findings of Fact, Conclusions of Law, and Recommendation for Permanent Removal from Judicial Office*, attached hereto as **Exhibit A** and incorporated herein by reference. Following is a summary of the adjudicated bases for the recommended sanction taken from the Commission's findings and conclusions at pages 39-44:

The Commission's recommendation is based upon its consideration of the nature of Respondent's willful misconduct in light of the following specific factors: See Rule JSC-30(B) NMRA (2010).

Respondent violated the Code of Judicial Conduct and the New Mexico Judicial Branch Computer and Internet Use Policy over a period of years to receive and forward e-mails, utilizing state owned equipment and from his court e-mail address, that were offensive, degrading, pornographic, racist and sexist.

Respondent used his court e-mail address to conduct personal business, communicate about political activity, and communicate about religious activities also in violation of the New Mexico Judicial Branch Computer and Internet Use Policy and, therefore, a violation of the Code of Judicial Conduct.

Respondent was aware of the New Mexico Judicial Branch Computer and Internet Use Policy. He read it several times and he was responsible for ensuring that court staff followed the policy.

Respondent's misconduct occurred in his official capacity, in his assigned chambers, and on state owned equipment issued to Respondent to perform his official duties. Respondent's computer screen faced his office door and anyone walking by could have viewed the offensive e-mails.

When Respondent found out that the offensive e-mails had been discovered, he began to attempt to remove the e-mails from his court assigned computer.

Respondent showed little remorse other than he was embarrassed that the matter had been discovered as a result of the Inspection of Public Information Request.

Several incidents of the Respondent not being completely truthful are set out in the Findings of Fact. An example is Respondent's discussion of a case pending before him with a third party and his subsequent denial of that behavior which is egregious. This behavior demonstrates his complete disregard for the Code of Judicial Conduct and for the damage such violations do to the integrity of the judiciary.

Given the behavior of Respondent in reading, forwarding and failing to put an end to his family and friends sending him e-mails of a sexual, racist, derogatory and sexist nature that would basically offend many, if not all, of the people who appear in front of him renders him incapable of performing his judicial duties in a fair and impartial manner. This behavior has a profoundly negative impact upon the integrity and respect for the judiciary.

Respondent's actions were knowingly, intentional and willful.

WHEREFORE, Petitioner prays for an Order from the Court for Respondent's PERMANENT REMOVAL FROM JUDICIAL OFFICE and such other relief as the Court deems right, just and proper.

Respectfully Submitted,

JUDICIAL STANDARDS COMMISSION


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent on this 10th day of October 2017 to the Respondent through counsel as follows:

VIA E-MAIL

C. Barry Crutchfield, Esq.
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PHYLLIS A. DOMINGUEZ

**BEFORE THE JUDICIAL STANDARDS COMMISSION
OF THE STATE OF NEW MEXICO**

FILED

OCT - 5 2017

NM JUDICIAL

STANDARDS COMMISSION

INQUIRY CONCERNING THE HONORABLE HENRY T. CASTANEDA
Eddy County Magistrate Court

Inquiry No. 2016-020

**COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDATION FOR DISCIPLINE**

This inquiry came before the Judicial Standards Commission for a merits hearing on April 3, 2017 through April 5, 2017, pursuant to Article, 32, Section VI of the New Mexico Constitution; NMSA 1978, Section 34-10-2.1; and, the Judicial Standards Commission Rules. Nine (9) Commissioners participated in the hearing, deliberations, decision, and adoption of the findings, conclusions, and recommendation: Hon. John A. Dean, Jr., *Presiding Officer*, Joyce Bustos, *Chair*; Malinda Williams, *Vice-Chair*; Jaime Chavez; Norman L. Gagne, Esq.; Hon. Maurine Laney; Hon. Steven Lee; Hon. Jerry H. Ritter, Jr.; and Ruth M. Schifani, Esq. Four (4) Commissioners were not present and did not participate in the proceedings: John Bode, William Leslie, Kimberli Fannin, and Elizabeth Paiz. Nine Commissioners constitutes the majority of the Commission as required by law.

Examiners, Phyllis A. Dominguez, Esq. and Deborah Borio, Esq., presented evidence before the Commission. Hon. Henry T. Castañeda ("Respondent") appeared personally and through his attorney, C. Barry Crutchfield, Esq.

Having heard the evidence, received exhibits and considered the argument of the parties the Commission, by a unanimous vote of the commissioners participating in the hearing, hereby enters its Findings of Fact, Conclusions of Law and Recommendation for Discipline:

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDATION FOR DISCIPLINE**

PROCEDURAL BACKGROUND

1. The Commission's *Notice of Formal Proceedings* was issued on April 8, 2016.
2. Respondent filed his response to the *Notice of Formal Proceedings* on May 6, 2016.
3. The Commission filed a *Verified Petition for Immediate Temporary Suspension* ("Petition") with the Court on April 11, 2016.
4. Respondent filed his response to the Petition on May 6, 2016.
5. Oral argument was held on May 18, 2016, and the Petition was denied.
6. At the beginning of the hearing on the merits, the parties stipulated to the admission of Examiner's Exhibits 9-11 and 14-38. Inquiry 2015-066 was dismissed as a preliminary matter and Examiner's Exhibits 1-8 and 12-13 were excluded.
7. The Commission heard testimony from the following six (6) witnesses during the hearing: Hon. Henry T. Castañeda, Robert "Bob" Harrell, Miguel De Santiago, Arthur W. Pepin, Greg Saunders, and Dan Barber.
8. Respondent Henry T. Castaneda is a Magistrate Judge in the Eddy County Magistrate Court with his office and courtroom in Carlsbad, New Mexico.
9. Robert "Bob" Harrell is employed by the Ninth Judicial District as an IT specialist and field technician.
10. Miguel De Santiago is an IT tech with the Judicial Information Division of the Administrative Office of the Courts.
11. Arthur W. Pepin is Director of the Administrative Office of the Courts.
12. Greg Saunders is Director of the Judicial Information Division of the Administrative Office of the Courts.

13. Dan Barber is a Senior Network Systems Administrator with the Judicial Information Division of the Administrative Office of the Courts.

FINDINGS OF FACT

14. Respondent has served as an Eddy County Magistrate Court Judge since January 1, 2003.
15. Respondent was presiding judge from 2003 until 2010 and from 2013 to the present.
16. Respondent has read the Code of Judicial Conduct several times. Respondent agreed that the Code of Judicial Conduct applied to his professional and personal conduct.
17. Respondent read and understood the Supreme Court's Order No. 09-8200, *In the Matter of Superintending Control Over Magistrate Courts* Policy Directive No. 5, and understood one of his responsibilities as presiding judge was to implement and monitor compliance with all policies, rules, and regulations established by the Supreme Court. (Ex. 21)
18. Respondent was assigned a state owned computer to use in connection with the performance of his official duties as Magistrate Judge. The computer provided him with internet access and the ability to send and receive e mail.
19. Respondent's computer screen faced the office door and anyone walking by could see what he was viewing on his computer.
20. Respondent had at least one personal e-mail address at all times relevant to this inquiry. A large portion of the relevant time he had two personal e-mail addresses one of which he used to share photos and written content with family. For another portion of time relevant hereto, after the Court changed to a new e-mail server, Respondent had three personal e-mail accounts. The e-mail account that Respondent primarily maintained for personal use he has had since 1997. (lobbie@windstream.net)
21. The New Mexico Supreme Court adopted the New Mexico Judicial Branch Computer and Internet Use Policy in 2006. (Examiner's Exhibit 18)

22. The Policy prohibits uses of the Internet and e-mail as follows:
- “The New Mexico Judiciary’s Internet/e-mail resources may not be used for transmission, retrieval or storage of materials of a discriminatory or harassing nature, or materials that are pornographic, obscene, defamatory or otherwise abusive or inappropriate. No derogatory or inflammatory remarks about an individual’s sex, race, age, disability, religion, national origin, physical attributes or sexual preferences shall be transmitted using New Mexico Judiciary resources. The New Mexico Judiciary’s e-mail/Internet resources may not be used for commercial advertisements, solicitations or promotions, personal gain, or political activities. The Judiciary’s Internet/e-mail resources may not be used for any purpose that is illegal, against policies and procedures, or contrary to the interests of the New Mexico Judiciary.”
23. Respondent had read the computer\internet policy several times and was familiar with it at all times relevant hereto.
24. Respondent stated that his understanding of prohibited use was receiving e-mails that a user stores on a computer or that you transmit improperly to other people which may display discrimination in any form or fashion, and also included not to use the computer in any obscene way that would hurt the judiciary or himself.
25. Respondent agreed that according to the New Mexico Judicial Branch Computer and Internet Use Policy (“Policy”), a judge may not use New Mexico Judiciary equipment for non-judicial business purposes as stated in the introductory paragraph to the Policy.
26. The Judiciary has a division known as the Judicial Information Division, hereinafter JID. JID is responsible for the Court’s computer system, including hardware and software. It provides personnel that assist the Court’s and their employees, including judges, in the use and maintenance of the computer system utilized by the judiciary. JID maintains and monitors the court’s e mail network.
27. The e-mail system used by the judiciary during the relevant times hereto is referred to as Zimbra.
28. JID has in place some system wide protections against unwanted e-mails.
29. Spam is unsolicited e-mail generally for marketing purposes, and will be sent to as many e-mail addresses as the sender can find.

30. Spam filters analyze in-bound and out-bound traffic. The external filter checks for viruses and quarantines spam. The internal filter, Zimbra, then analyzes traffic for spam, not viruses. If an e-mail is labeled as spam, it is forwarded to the user's junk mail folder. Zimbra will also take a copy of that e-mail message and send it to the archive server. The archive server only holds e-mails and no one has access to that server except for systems administrators. E-mails coming in and going out are held in identical accounts. Once an e-mail passes through the external vendor and the Zimbra spam filter, it is split off, a copy going to the archive server and the e-mail to the user's account. Once a user receives the e-mail, the user may set up other internal filters to manage e-mails on the user's own. Users can set up filters to recognize senders or domains. Zimbra does not filter out-going e-mails, but a copy is archived. The external filter analyzes for spam and viruses on out-going e-mails. Zimbra is a live account and the archive account is identical to the Zimbra account.
31. Neither the external vendor filter nor the Zimbra internal filter utilized by JID will block an e-mail based on the content in an attachment. The external filter will block an attachment only if the attachment contains a virus.
32. Greg Saunders is employed as the Chief Information Officer ("CIO") at JID. Mr. Saunders is responsible for the all technology for the judiciary and has over twenty years' experience in the IT field. JID delivers technology to the courts: the Odyssey case management system, e-mail network for all courts to connect to the service, Internet access connectivity and functionality and provides equipment.
33. Mr. Saunders has read and is familiar with the computer/internet policy.
34. As CIO of JID, the term "transmission" that is contained in paragraph five of the Policy, means anything that transmits over a user's data line whether sent or received.
35. The term transmission is not defined in the Policy.
36. The term "retrieval" can mean obtaining documents from Odyssey or retrieving an e-mail by looking at it. "Retrieval" can occur in many ways, each of which is a transmission.

37. "Storage" is the act of holding on to something, such as having information on the JID server, on a thumb drive or keeping information on a user's desktop's hard drive. There are many ways to store information. Storage is an act; the physical act of saving it is storage.
38. If a user has opened an e-mail, they have seen it, they have retrieved it and the user has an obligation to take action.
39. Forwarding an e-mail to a personal e-mail account is considered a transmission.
40. Forwarding an e-mail to friends is considered a transmission.
41. Forwarding e-mails to family members is considered a transmission.
42. E-mails that come into the network are transmitted; they are received and at that point are discoverable.
43. Respondent was assigned an e-mail address on the Court e-mail server to use in connection with his role as a Magistrate Judge. The e-mail address assigned to Respondent was carmhtc@nmcourt.gov.
44. Respondent provided his court e-mail address to numerous family members. These same family members also had his personal e mail address.
45. Respondent provided his court e-mail address to several companies with which he conducted personal business.
46. Respondent started receiving e-mails at his court e-mail address from family members in 2003. Respondent thought these e mails were inappropriate and violated the Computer and Internet use policy.
47. When Respondent began receiving e-mails that he thought were inappropriate he would delete them if he could tell they were inappropriate from the subject line. If he could not tell he would scroll down to determine what their content was. If he determined they were inappropriate he would then delete them and send some of them to his personal e-mail account.

48. When asked why he would send e-mails he deemed inappropriate to his personal account the Respondent testified that he did that to get them off of his court account. This testimony was not found credible by the commission in light of the instructions given to him by employees of JID.
49. Respondent also testified he would forward e-mails then delete them and that he had four different processes he used. He would drop them into an "ill" e-mail folder, into a drop box, a spam box, or put them into a special box created by Bob Harrell where the e-mails would automatically be deleted by JID. Harrell testified that he had not created such a box nor had he so instructed Respondent.
50. Bob Harrell was an IT Specialist employed by JID, and assigned to the Carlsbad Magistrate Court.
51. Respondent contacted Mr. Harrell twice asking how to block spam. Once was by telephone early in Mr. Harrell's career with JID; and once was when he visited the Carlsbad Magistrate Court either in 2006 or 2007.
52. In 2006-2007 Respondent told Mr. Harrell that he was receiving unwanted e-mails. As to the nature of the e-mails and the sender(s) the specialist was only told that some of the e-mails were of a marketing nature.
53. Mr. Harrell testified that Respondent only asked him to block approximately a dozen e-mails during the 2006-2007 visit and all appeared to be solicitations or advertisements.
54. Mr. Harrell told the Respondent how he could get rid of the e-mails by getting them out of his inbox and forwarding them to JID for review. An e-mail to use for JID review was provided to the Respondent. If the problem persisted the Respondent was told he could change his e-mail address. Respondent was also told he could block specific e-mail addresses from being allowed to use his e-mail address. Mr. Harrell worked with the Respondent on his computer to make sure he could perform the steps necessary to remove unwanted e-mails from his inbox and forward them to JID for review.

55. Removing the e-mails and forwarding them to JID was typically effective with what is commonly referred to as SPAM. E-mails from marketers or advertisers that are soliciting information or money from targets are commonly referred to as SPAM. E-mail from known e-mail addresses, such as family or friends is not referred to as SPAM and referring them to JID is not an effective way to stop their communications. Unwanted e-mail from known addresses would most effectively be stopped by changing your e-mail address or blocking those specific e mail addresses.
56. Changing an e-mail address is a simple process which involves changing the user's ID; which is the name before the @ sign in the e-mail address. A user may request that their e-mail address be changed by contacting a field tech. Mr. Barber never received a request to have Respondent's e-mail address changed prior to May 18, 2016. No evidence was presented that Respondent ever requested a new e-mail account prior to the Supreme Court ordering him to do so.
57. Neither Mr. Harrell nor Mr. De Santiago told Respondent to forward inappropriate or spam e-mails to his personal e-mail account in order to remove them from his judicial e-mail account.
58. Respondent began receiving inappropriate e-mails from his cousin, Orlando Castaneda in 2012.
59. Respondent testified he told Orlando Castaneda to stop sending inappropriate e-mails to his judicial e-mail account by telephone after he received the first e-mail from Mr. Castaneda in 2012. Respondent told Orlando Castaneda, "Cuz, you got to stop this." Mr. Castaneda did not stop sending inappropriate e-mails to Respondent.
60. Respondent testified that he told family members over and over again to stop sending e-mails to his judicial e-mail address and they did not stop.
61. Respondent never replied by e-mail to any of Orlando Castaneda's inappropriate e-mails telling him to stop.
62. Mr. Harrell recalled Respondent contacting him once or twice to refresh his memory on how to remove spam e-mails. Respondent's receipt of spam e-mails did not seem to be a continual problem.

63. Mr. Harrell visited each court once a month for a least one-half day. It was not a requirement that he visit each court once a month; it was done as a benefit for the users. Mr. Harrell was available to each court between visits if problems arose. Mr. Harrell worked for JID until 2015 and during that time did not hear from the Respondent about an e-mail problem again.
64. JID assigned Mr. De Santiago, another IT Specialist, to the Carlsbad Magistrate Court in 2015/2016. Mr. De Santiago talked with Respondent in January of 2016 about some issues Respondent was having with SPAM from Match.com.
65. Respondent began receiving e-mails from Match.com in 2012. Respondent received e-mails from Match.com off and on until 2016 when he changed his e-mail address. Respondent did not tell JID IT tech Bob Harrell that he was receiving e-mails from Match.com and that he wanted them to stop. Respondent only told Bob Harrell that he was receiving spam.
66. Respondent testified that he did not sign up for Match.com. Respondent received an e-mail from Match.com addressed to "carlsbad15" at his judicial e-mail account on Monday, July 30, 2012 at 2:06 a.m. and the subject line was entitled, "You have seventeen new matches." Respondent has a lobbie15@gmail.com address. The number "15" was special to Respondent because that was his high school football jersey number. "Carlsbad15" also includes Respondent's high school football jersey number and his address.
67. Respondent claimed that Match.com was phishing and that is how they got his judicial e-mail address.
68. Respondent never sent an e-mail asking Match.com to stop sending him e-mails.
69. There are twenty-eight examples of Matrch.com e-mails set out in Exhibit 28, but only two were shown at trial.
70. Mr. De Santiago informed Respondent that he could move spam to his junk folder, delete e-mails, forward a request to JID help desk for JID to block the sender or set up a spam filter.

71. Mr. De Santiago recommended that Respondent set up a local filter or forward the e-mails to JID. He worked on the problem with Match.com with Respondent and set up a filter to block e-mails from them.
72. Respondent indicated to Mr. De Santiago that he understood how to set up a filter.
73. Mr. Barber performed a search of Respondent's e-mail account to determine if any filters were in place. Two filters were found: one deleted anything coming in from Match.com, and the second one had the same action, but Mr. Barber did not remember the domain name. Mr. Barber could not determine when those filters were put in place. The filters were on the Respondent's account and it could not be determined who placed the filter. Match.com e-mails could have continued to be sent, and may have been seen on a quarantine report.
74. Mr. De Santiago was not aware of any other court e-mail accounts having problems with Match.com.
75. Mr. De Santiago was not asked about or told by Respondent of problems with any other unwanted e-mails.
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76. The court manager of Respondent's court contacted Mr. Harrell in April 2016 after he left JID and asked Mr. Harrell to call Respondent. Respondent told Mr. Harrell that he was again having trouble with spam e-mails and wanted to know Mr. Harrell's suggestions on how to get it corrected. Respondent told Mr. Harrell that he had contacted Mr. Harrell's replacement at JID and also that he was under confidential investigation by the Judicial Standards Commission. It was Mr. Harrell's impression that it was spam that got Respondent in trouble with the Judicial Standards Commission.
77. Judge Duane Castleberry served on the Judicial Information Systems Council ("JIFFY"). On May 15, 2014 at 10:55 pm Respondent, and all the Magistrate Judges in the state, received an e-mail from Judge Castleberry reminding them that all computers owned by the state or the courts were under the supervision of JID and that they should absolutely have no expectation of privacy.

So, be careful how you use your court computer. This e-mail went on to say that you need to stop using your computers to check personal e mails, shop at e bay etc.

78. Respondent admitted that he did not stop using his judicial e-mail account for personal business or for any personal use after he received Judge Castleberry's e-mail.
79. Respondent, on May 15, 2014 at 3:53 pm, forwarded the e-mail from Judge Castleberry to family members and others including the relatives that are the senders of many of the offending e-mails that are the subject of this inquiry.
80. Respondent did not take any other steps to stop the sending of inappropriate e-mails to his court e-mail account. Respondent did not send Judge Castleberry's e-mail to any of the entities that he conducted personal business with using his court e-mail account. He did not tell those entities to cease using his court e-mail address or change his e-mail address on his account with those entities.
81. Respondent told New Mexico Supreme Court Justice Charlie Daniels at oral argument on May 18, 2016 that he put a stop to the inappropriate e-mails being sent from his relatives. Respondent specifically said, "Yes, Sir, I put a stop to them with relatives. Yes sir, I did."
82. Respondent testified at trial that his statement to Justice Daniels referred to his forwarding Judge Castleberry's e-mail to relatives. He further testified that e-mails from relatives that violated the policy did not stop.
83. JID is responsible for responding to Inspection of Public Records Request received by the judiciary, hereinafter IPRA, that ask for information from the court's computer system including the court e mail network.
84. All judicial e-mails are accessible to the public through an IPRA request.
85. JID received an IPRA request for several employees and Respondent was one of them. Dan Barber, JID Senior IT technician, conducted the search of Respondent's e-mail account.
86. An IPRA request was given to Mr. Barber in December 2015 to look for specific types of actions from judicial e-mail accounts, including looking for images and attachments.

87. When an IPRA request is received, the archive server is always searched unless requested otherwise. The archive server does not keep user-specified filters. The folders a user creates are not kept on the archive server. The archive server simply has a folder with all in-coming and out-going e-mails. It is an industry standard to conduct searches on the archive server.
88. Mr. Barber provided the results of his search to the requestor.
89. Respondent received an e-mail from Barbara Gay, Administrative Office of the Courts (“AOC”), on December 17, 2015 at 8:44 a.m. regarding an Inspection of Public Records Act (“IPRA”) request. The IPRA request was for all photos sent and received from Respondent’s official e-mail address over the past eight (8) years. Respondent responded to Ms. Gay’s e-mail on December 17, 2015 at 10:48 a.m. stating, “I would like to get a copy of that request please.” Respondent received a copy of the IPRA request at 11:31 a.m. on December 17, 2015.
90. Even though Respondent denied at trial that he began forwarding saved e-mails from his judicial e-mail account to his lobbie@windstream.net e-mail account after he received the IPRA request he began forwarding e-mails, which are the subject of this inquiry, from this judicial e-mail account to his personal e-mail account on December 17, 2015 after he received the IPRA request from Ms. Gay.
91. Some examples of the Respondent forwarding e-mails from his judicial e-mail account to his personal e-mail account are:
- Respondent received an e-mail at his judicial e-mail address entitled “Hunter Course Registration” on October 9, 2012. Respondent forward that e-mail, along with six attachments to his lobbie@windstream.net e-mail address on December 17, 2015 at 4:00 p.m., after he received a copy of the IPRA request. Ex. 27, pp. 134-138 Respondent signed up for this course from his judicial e-mail account; Respondent completed eight quizzes during work hours, and he successfully completed the course using his judicial e-mail account.
92. Respondent signed up for Geico insurance over the phone, but gave the Geico Insurance Company his judicial e-mail address and his personal e-mail address. Confirmation of Respondent’s policy was sent to his judicial e-mail account on July 24, 2013. Respondent admitted that he had this e-mail on his computer from 2013 until he forwarded the Geico e-mails

along with three attachments to his lobbie@windstream.net e-mail address on December 17, 2015 at 11:01 a.m., after he received a copy of the IPRA request. Other examples of e-mails forwarded from Respondent's judicial e-mail account to his personal e-mail account after he received notice of the IPRA request are found in Ex. 27, pp. 72-78 and 87-99, and Ex. 33, pp. 373-374

93. Respondent stated that he used his judicial e-mail address as back-up for his personal e-mail address to make sure he stayed on top of things, but his personal e-mail address was not on these e-mails, only his judicial e-mail address.
94. Respondent stated he forwarded e-mails after receiving notice of the IPRA because "*there were things on my computer that needed to be deleted; there were things that might look ugly, so I got them off of there*". They were things that were just sitting on my computer."
95. E-mails associated with Respondent's e-mail account were brought to the attention of Arthur Pepin the director of the Administrative Office of the Courts.
96. Arthur Pepin has been employed by the Supreme Court as the Director of the Administrative Office of the Courts for ten years. Mr. Pepin's duties are to oversee the operation of all the courts, most directly the magistrate courts, the budgets of all courts, conduct administrative duties as assigned by the Supreme Court, and all personnel matters. Mr. Pepin oversees all aspects of the courts, except for what judges do on the bench.
97. One of Mr. Pepin's duties is to disseminate the policies, rules and procedures promulgated by the Supreme Court.
98. AOC is required to enforce the policies issued by the Supreme Court. AOC may refer judges to the Magistrate Advisory Council on issues that need counseling or guidance. There are times when Mr. Pepin will ask the Chief Justice to have a discussion with a magistrate judge over issues he or she is having with rules, policies or other conduct. There are times when Mr. Pepin has had to file complaints with the Judicial Standards Commission on conduct that violates the Code of Judicial Conduct.

99. The AOC does not regularly audit judicial computer users' e-mail accounts. The AOC makes sure policies are disseminated and users are trained and are told at trainings that internet and computer use and everything that is on the computer is subject to public disclosure and all equipment is owned by the judiciary. There are very few things that are not subject to an Inspection of Public Records Act ("IPRA") request and employees and judges are expected to abide by the policies and rules. It is discussed at all trainings the appropriate and inappropriate use of the computer.
100. The Policy allows for limited personal use, but employees and judges are trained that all use is subject to an IPRA request.
101. Scans could be run for certain phrases or words, but AOC does not do this. Employees and judges are advised of the rules and policies and they are expected to follow them. Scans cannot be run for photographs.
102. Mr. Pepin believed the e-mails provided to him from Respondent's court e-mail account demonstrated Respondent's inability to be fair and impartial and would undermine the public's confidence in the judiciary.
103. Users cannot stop people from sending e-mails, but users can stop receiving them by telling the person to stop sending e-mails or by blocking the sender. Mr. Pepin would not fault an employee if somebody randomly sends them something inappropriate, but he expects that employee to respond in a way that is consistent with the Policy issued by the Supreme Court and certainly expects a judge to do something to stop that from happening. If there is a consistent source that is supplying users with inappropriate e-mails, tell that source to stop. It would ensure an e-mail trail that shows the judge tried to do something to stop the e-mails. Judges have private e-mails accounts where they can direct the sender to other than their judicial e-mail account so they are not on the judicial server.
104. Mr. Pepin became aware of Respondent's violations of the Policy in November 2015. There was a newspaper report about persons who were using the Ashley Madison website, a site where

people go who want to have a relationship outside of their marriage. There was a report that a number of government e-mail accounts were associated with Ashley Madison. Every government e-mail address listed by the newspaper report was investigated by AOC. The investigation revealed that in some cases, accounts had been set up, but there was no traffic and no e-mails. Two accounts of employees were identified that showed a great deal of traffic; not just from the Ashley Madison site, but other dating sites as well. One employee resigned and one employee was terminated. The employee who was terminated for violating the Policy filed an IPRA request for e-mails of ten individuals and one of them was identified as Respondent. Seventy-five hundred e-mails were provided pursuant to the request.

105. A search of Respondent's e-mails was conducted for requests centered around jokes, sex, and other terms, and e-mails were found that violated the Policy.
106. Mr. Pepin felt he had an obligation to file a complaint with the Judicial Standards Commission as Director of AOC, whose responsibility it is to enforce the Supreme Court's policies, and as an attorney for Respondent's apparent misuse of his computer and e-mails, which violated the Policy.
107. Mr. Pepin only included five examples from the several hundred e-mails that involved Respondent's account in his complaint, because he believed it was the Judicial Standards Commission's duty to investigate to determine if Respondent's actions violated the Code of Judicial Conduct.
108. The examples Mr. Pepin included in his complaint demonstrated clear violations of the Policy. The examples were sexual in nature, demonstrated inappropriate attitudes towards women, jokes that demeaned people and could be considered racist.
109. All exhibits containing e-mails that were admitted at trial were from Respondent's live e-mail account.
110. The live account is the judicial e-mail account the Respondent had access to and worked off of on a daily basis. A user can tell on the live account whether an e-mail was opened or read. An

unopened e-mail will be bolded and an opened e-mail will not be bolded. All e-mails contained in the exhibits from the live account had been opened.

111. Respondent admitted in his deposition that he transmitted, retrieved or stored those items that were contained in the exhibit list. However, in his trial testimony when asked if he transmitted, retrieved or stored items on the exhibit list, Respondent answered, "No, I did not."
112. Respondent admitted in his deposition that he received and transmitted materials on his judicial computer that were discriminatory or harassing in nature.
113. Respondent admitted in his deposition that he received, transmitted, and stored materials on his judicial computer that were obscene or pornographic. Respondent admitted in his deposition that he transmitted, received and stored materials on his judicial computer that were abusive or inappropriate.
114. Respondent admitted in his deposition that he transmitted, received or stored materials on his judicial computer that were derogatory and inflammatory regarding an individual's sex, race, religion, and national origin.
115. Respondent forwarded and responded to one hundred and fifty-six e-mails from his judicial e-mail account that were prohibited by the Policy and which did not involve judicial business.
116. Respondent received and/or forwarded one hundred and thirteen non-work related inappropriate e-mails at his judicial e-mail account.
117. Some of the e-mails were received during times that would be considered normal work hours, and some were received after the court was closed or at noon or the weekend. The actual time that was utilized by Respondent in receiving the e mail, forwarding the e mails, or reading or viewing the e-mails did not interfere with the Respondent performing his judicial duties.
118. The Respondent used the New Mexico Judiciary's Internet/e-mail resource to transmit, retrieve or store materials of a discriminatory or harassing nature, or materials that are pornographic, obscene, defamatory or otherwise abusive or inappropriate. The Respondent transmitted, using

New Mexico Judiciary Resources, derogatory or inflammatory remarks about an individual's sex, race, age, disability, religion, national origin, physical attributes or sexual preferences.

119. Despite having available expert IT employees to assist him Respondent continued to receive, transmit and store inappropriate e-mails using New Mexico Judiciary Resources for approximately twelve years.
120. In Mr. Saunders' opinion, it is a clear violation of the Policy for a person who knowingly and continually receives inappropriate e-mails, but takes no action to have the sender cease and desist.
121. Respondent willfully failed to inform the two IT specialists he consulted with of the pornographic e-mails he was receiving from relatives in order to protect his relatives from feeling like they were the "bad guy".
122. Respondent testified that when he received the IPRA request, it was his understanding that he could get things off his computer, "obviously the pornographic stuff; the disgusting stuff."
123. When the IPRA request was received all of the material produced in response was turned over to a member of the public. That person could further disseminate that information. The Respondent knew this was a possibility during the time he was receiving the e-mails that are the subject of this proceeding.
124. At a hearing on May 18, 2016 in front of the New Mexico Supreme Court the Respondent was ordered to obtain a new judicial e mail account.
125. A user may request that their e-mail address be changed by contacting a field tech. Mr. Barber never received a request to have Respondent's e-mail address changed prior to May 18, 2016.
126. Mr. De Santiago the second IT Specialist turned in a ticket to obtain a new e mail address for Respondent on May 18, 2016. Respondent received a new e mail address within two and a half months after May 18.
127. Respondent has not had any problems with receiving unwanted or unsolicited e mails since he started using his new e-mail address.

E-MAILS AND EXHIBITS

128. These findings discuss specific e-mails in each category that are prohibited by the computer/internet policy. However there were many more examples of these violations introduced into the record during the hearing. These e-mails are incorporated into these findings and are a part of the basis for the Conclusions of Law and Recommendations of the Commission. The Exhibits containing the e-mails are 23-34a. In addition while only a few videos are specifically referenced in these findings more were admitted into the record. These videos are found in exhibits 36 a, b, c, and d.

VIDEOS

129. Respondent received an e-mail which contained a video from Orlando Castaneda at his judicial e-mail account on Saturday, June 28, 2014 at 10:18 a.m. The video was entitled, "Remember the Hula Hoop?" The video showed a naked woman on a porch twirling a hula-hoop around her waist. The caption above the video reads, "Well in case you forgot what it is, & what a fun toy it was. This should help your declining memory. Remember?..... :-)." The caption below the video reads, "Mesmerizing isn't it?"
130. Respondent received an e-mail from Juan Castaneda at his judicial e-mail account on Tuesday, January 17, 2012 at 2:50 p.m. entitled, "Why women don't hunt turkeys." Respondent could not tell the content of the e-mail from the title. The video showed two men and a woman on a talk show using a "turkey caller." The woman was asked to use the turkey caller and she mimicked performing oral sex. Ex. 36(c), p. 3

PERSONAL

131. Respondent conducted personal business utilizing his judicial e-mail account. Exhibits 32 and 33 contain these e-mails.

132. Respondent made a purchase from his judicial e-mail account and received confirmation of that purchase from Xikar, a cigar company, on November 18, 2013 at 3:57 p.m. These e-mails were on Respondent's computer from November 18, 2013 until December 17, 2015 when he forwarded them to his lobbie@windstream.net e-mail address.
133. An e-mail entitled "Ditch" was sent to Respondent's judicial e-mail account on June 14, 2010 regarding a price quote on a concrete ditch that Respondent wanted built on his property. 2:56:25 Respondent admitted that this was another example of him conducting personal business from his judicial e-mail account. 2:57:10 Respondent further admitted that this was also an e-mail that he forwarded to his personal e-mail account on December 17, 2015 after he received the IPRA request.
134. Respondent admitted that an e-mail received on January 9, 2012 entitled "Lippert" had nothing to do with judicial business, but was about paperwork needed regarding a recreational vehicle that Respondent had purchased. Respondent admitted that he communicated back and forth with "Lippert" via e-mail using his judicial computer from January 9, 2012 until December 21, 2015.
135. Geico Insurance Company sent an e-mail on May 15, 2014 at 1:20 p.m. to Respondent's judicial e-mail account regarding a payment reminder. This was non-judicial, non-emergency personal business. Respondent set up automatic payments with Geico using his judicial e-mail account and gave Geico his judicial e-mail address to receive payment reminders.
136. Respondent conducted personal banking from his judicial e-mail account with Wells Fargo Bank. Respondent gave Wells Fargo Bank his judicial e-mail address in order to conduct personal business. On Tuesday, July 10, 2012 at 1:33 p.m. Respondent received an e-mail on his judicial e-mail account from Wells Fargo Bank online bill pay alerting him that his user profile had been changed as requested.
137. Christie Russell e-mailed Respondent on March 10, 2015 at his judicial e-mail account regarding Pier Locations, a company that was pouring a concrete slab for his daughter's trailer. Respondent admitted that he gave Christie Russell his judicial e-mail address.

138. Respondent admitted that he forwarded the e-mail received from Christie Russell to his lobbie@windstream.net address on December 17, 2015 after he received the IPRA request.
139. Respondent agreed that these were just a few examples of the e-mails he forwarded from his judicial e-mail account to his personal e-mail account on December 17, 2015.

PORNOGRAPHIC OR OBSCENE

140. Examiner's Exhibit 23 contains seventeen examples of pornographic or obscene e-mails.
141. All of the e-mails from Orlando Castaneda were received after Respondent's meeting with Mr. Harrel about how to stop unwanted e-mails.
142. Respondent received an e-mail from Orlando Castaneda at his judicial e-mail account entitled "An Old Indian Legend." Respondent admitted he could not tell what this e-mail was about from the title; he would have to scroll through the e-mail to determine the content and anyone walking by his office could have seen this e-mail. The e-mail read, "The Indian legend says: when you wake up in the morning and see a white butterfly, it will bring you good luck for a long time. Today you may have not seen one yet and because you're a friend of mine. I will send you one. Much prosperity and happiness for you." The picture shows a woman's exposed genitalia. The caption under the picture reads, "Stay well my friend." Respondent did not forward this e-mail to either of his personal e-mail addresses in order to remove it from his judicial e-mail account as he claimed.
143. Juan Rios is the husband of Lorena Rios, a former Eddy County Magistrate Court employee.
144. Respondent received an e-mail from Juan Rios at his judicial e-mail account on Monday, September 3, 2012 at 5:29 p.m. The subject line of the e-mail was "Information." Respondent could not tell from the content of the e-mail from the subject line; he had to scroll through the e-mail to determine the subject, and, because his computer screen was facing the door, anyone walking by could have seen what was on his computer. The e-mail contained a picture entitled, "I love Texas," and "Where did the Texas longhorn logo idea come from?" The picture shows

the exposed buttocks of a woman, showing a tan line in the shape of the Texas Longhorn logo. Respondent did not forward this e-mail to either of his personal e-mail addresses in order to remove it from his judicial e-mail account as he claimed.

145. Juan Rios not only sent this e-mail to Respondent, but he sent the e-mail to six other people including Carlsbad Magistrate Court Manager Ollie Fitzgerald.
146. Respondent did not reply to Mr. Rios telling him not to forward e-mails to him. Respondent did not reply to Mr. Rios telling him not to forward e-mails to Mr. Fitzgerald a court employee supervised by Respondent.
147. Respondent received an e-mail from Orlando Castaneda at his judicial e-mail account and the subject line of the e-mail was entitled, "Truly Sad News." Respondent could not tell from the subject line the content of the e-mail. The caption reads, "Just a Reminder" followed by a photograph of ten women standing on a beach who are naked from the waist up, showing their exposed breasts. The caption underneath the photograph reads, "Summer is Over."
148. Respondent stated in his deposition that he opened the e-mail entitled "Truly Sad News" because it might have been sad news. Respondent stated in his deposition, "and that was forwarded because it was truly sad news. The minute I seen that, I threw it over to spam."
149. Respondent testified that he did not forward the e-mail "Truly Sad News" to either of his personal e-mail addresses.
150. Respondent forwarded the e-mail "Truly Sad News" from his judicial e-mail account to his lobbie@windstream.net address on Monday, November 26, 2012 at 3:20 p.m.
151. Three days later, Respondent forwarded the e-mail entitled "Truly Sad News" from his judicial e-mail account to his personal e-mail address at lobbie1@yahoo.com on Thursday, November 29, 2012 at 11:11 a.m. during regular work hours.
152. Respondent testified in his deposition that he forwarded the e-mail twice because he received it twice from Orlando Castaneda.
153. Respondent admitted that the above was not a true statement.

154. Respondent forwarded an e-mail entitled “Doves” from his judicial e-mail account to Kathy Castaneda at Castaneda@carlsbad.k12.nm.us on Tuesday, July 3, 2012 at 2:45 p.m. Respondent did not forward this e-mail to either of his personal e-mail addresses in order to remove it from his judicial e-mail account as he claimed. The original e-mail was sent from Juan Castaneda on Monday, July 2, 2012 at 4:47 p.m. to Respondent’s judicial e-mail account. Respondent could not tell from the title “Doves” what the e-mail was about. The e-mail described a wedding where the bride and groom released doves. The attached picture shows the couple releasing doves; however, the bride’s wedding dress slipped down revealing her exposed breasts.
155. Respondent received an e-mail from Orlando Castaneda at his judicial e-mail account entitled “XXX Do you have the new Google Calendar yet?” This e-mail shows women’s exposed genitalia and breasts with the breasts taking the place of the “OOs” in the word Google.

DEFAMATORY, ABUSIVE OR INFLAMMATORY

156. Exhibit 24 contains fifty-seven examples of e-mails that are classified as defamatory, abusive or inflammatory.
157. Respondent received an e-mail from Juan Rios at his judicial e-mail account on Saturday, June 23, 2012 at 11:50 a.m. entitled, “*Did you know about bats?*” This e-mail was also sent to Court Manager, Ollie Fitzgerald. This e-mail contains a picture of the sucker-footed bat, the red-winged fruit bat, and the third picture is of President Barack Obama. The caption under President Obama’s picture reads, “*Left-Winged Socialist Ding Bat, so 2 out of 3 bats above have a useful purpose! If we could just train the last one to eat mosquitoes...or do anything useful...*” Respondent admitted this was a derogatory statement about the President and that he did not reply to Mr. Rios’ e-mail telling him to stop sending inappropriate, derogatory e-mails.
158. Respondent received an e-mail from Orlando Castaneda at his judicial e-mail account on Tuesday, April 23, 2013 at 5:31 p.m. entitled “Watery eyes after sex.” This e-mail was sent to many other addresses. The caption reads, “SEX WITH A WHITE WOMAN.” The e-mail reads,

“Two black guys are at a bar talking, one says to the other, You ever notice after you have sex with a white woman that your eyes burn, your nose burns and you get all teary-eyed? The second black guy says, Yeah, all the time. The other says; Why is that? The second says, I think it’s the pepper spray.”

159. Respondent did not forward the e-mail “Sex with a white woman” to either of his personal e-mail addresses in order to remove it from his judicial e-mail account as he claimed.
160. Respondent received an e-mail from Orlando Castaneda at his judicial e-mail account on Sunday, May 18, 2014 at 1:35 p.m. entitled “E-Mooning.” The e-mail demonstrated “Assicons” which showed emoticons in the shape of buttocks. This e-mail was received three days after Magistrate Judge Duane Castleberry sent an e-mail to all magistrate judges warning judges about using their judicial e-mail account for personal business, and three days after Respondent forwarded Judge Castleberry’s e-mail to Orlando Castaneda.
161. Respondent testified that he “got the idea” to forward the e-mail from Judge Castleberry to Orlando Castaneda and to others after he received the e-mail “E-Mooning.” Actually Respondent forwarded the e-mail from Judge Castleberry on May 15, 2014 and the e-mail “E-mooning” from Orlando Castaneda was received on May 18, 2014.
162. Exhibit 36 contained forty-eight videos total, but only two were shown at trial. These were found on Respondent’s judicial e-mail account.
163. Respondent received an e-mail which contained a video from Orlando Castaneda at his judicial e-mail account on Saturday, June 28, 2014 at 10:18 a.m. The video was entitled, “Remember the Hula Hoop?” The video showed a naked woman on a porch twirling a hula-hoop around her waist. The caption above the video reads, “Well in case you forgot what it is, & what a fun toy it was. This should help your declining memory. Remember?..... :-).” The caption below the video reads, “Mesmerizing isn’t it?”
164. Respondent did not reply to Orlando Castaneda telling him to stop sending pornographic or obscene videos to his judicial e-mail account.

165. Respondent received an e-mail from Juan Castaneda at his judicial e-mail account on Tuesday, January 17, 2012 at 2:50 p.m. entitled, "Why women don't hunt turkeys." Respondent could not tell the content of the e-mail from the title. The video showed two men and a woman on a talk show using a "turkey caller." The woman was asked to use the turkey caller and she mimicked performing oral sex.
166. Respondent did not reply to Juan Castaneda after he received this video to tell Mr. Castaneda to stop sending obscene or inappropriate videos to his judicial e-mail account.

CARC

167. Ex. 33a contains all of the CARC e-mails. Only a few examples of CARC Inc. e-mails to Respondent and from Respondent were discussed at trial. These e mails generally are discussing CARC business.
168. Respondent worked at CARC, Inc. an organization serving developmentally disabled individuals for seven (7) years. After he became Magistrate Judge Respondent served on CARC's board of directors. Respondent provided his work e-mail address to employees of CARC.
169. The following example shows the existence of the e-mails to CARC from the Respondent's court e mail and that Respondent's relationship with CARC was creating conflicts of interest.
170. An e-mail was sent to Angela Carrejo from Respondent's judicial e-mail account on Wednesday, May 22, 2013 at 8:30 a.m., "I tried to reach you at home after the last meeting...I had board members on your side, please let me know."
171. Respondent spoke to CARC Inc. board members about Ms. Carrejo buying the house. The house was appraised at \$92,000 and Ms. Carrejo offered \$69,500. Ms. Carrejo had rented the house for three years and Respondent felt she had paid enough by renting the house and that \$69,500 was a fair price. Respondent encouraged other board members to sell the house to Ms. Carrejo.
172. Respondent received a follow-up e-mail from Angela Carrejo at his judicial e-mail account on Wednesday, May 22, 2013 at 8:31 a.m. concerning the purchase of a house owed by CARC Inc.

Ms. Carrejo wanted to speak to Respondent about the price of the house, and show him the house.

Ms. Carrejo stated she appreciated Respondent's support.

173. Respondent denied that Ms. Carrejo ever appeared before him as a defendant.

174. Respondent was the judicial officer who adjudicated Ms. Carrejo on August 28, 2014 regarding a speeding violation. On November 26, 2014 Respondent as judicial officer entered an amended adjudication regarding a deferred sentence for Ms. Carrejo. 3:54:23 Respondent did not recuse because Ms. Carrejo was not an "every day" friend, even though he was a CARC board member, Ms. Carrejo was the human resources director for CARC, and he encouraged other board members to sell a CARC owned house to Ms. Carrejo.

DEROGATORY

175. Exhibit 25 is entitled "Derogatory" and the exhibit contains 38 e-mails characterized as derogatory and inflammatory about people in constitutionally protected classes. They were received by Respondent on his court assigned e-mail.

176. Respondent sent an e-mail reply on Monday, January 7, 2013 at 8:45 a.m. from his judicial e-mail account to his uncle, Nuny Castaneda, stating, "lmao. Good ones." Respondent stated "lmao" means "laughing my butt off." The title of the e-mail was "Absolutely True" and Respondent could not tell what the e-mail was about until he scrolled through the e-mail content. [The forwarded e-mail "Absolutely True" contained thirteen attachments with cartoon depictions of elderly persons, some naked, and all of which were sexual in nature.]

177. Respondent did not forward the e-mail "Absolutely True" to either of his personal e-mail addresses in order to remove it from his judicial e-mail account as he claimed. However, Respondent did forward the "Absolutely True" e-mail from his judicial e-mail account to Robert Roybal, Kathy Castaneda, Katie Jo Castaneda, and Rory Castaneda.

178. Respondent received an e-mail entitled "Three Beautiful Children" at his judicial e-mail account from Nuny Castaneda on November 9, 2013 at 11:40 p.m. Respondent could not tell from the

subject line what the e-mail was about. The caption reads, “I saw her standing there and I told her she had three beautiful children. She didn’t have to get all p...d off and threaten me, it was an honest mistake.” The picture shows a Muslim woman dressed in a black burka, a female child dressed in a black burka and two black trash bags. The e-mail made fun of the Muslim woman and compared her child to trash bags.

179. Nuny Castaneda included a disclaimer under the subject line in the above mentioned e-mail which said, “Please remove my name before forwarding this e-mail.”
180. Respondent received an e-mail from his cousin Orlando Castaneda at his judicial e-mail account entitled “German Quality” on Tuesday, June 10, 2014 at 10:14 a.m. Respondent could not tell from the title what the e-mail was about, and the e-mail was sent after Judge Castleberry’s e-mail of May 15, 2014.
181. The picture was of four women wearing thongs, their buttocks exposed with the logos of four German automakers tattooed on their exposed buttocks.
182. The e-mail also contained the French automakers reply to the “German Quality” picture which shows three Muslim women dressed in Muslim attire with French automaker’s logos on their faces. The e-mail contains a derogatory joke about Muslim women. The caption reads, “A Muslim wife complains to her husband that all the romance has gone out of their marriage. Remember when you used to carry me to bed, she asked? Yes, he replied, but be fair, you were only eleven at the time and ninety pounds lighter.”
183. A second caption under the “German Quality” e-mail reads, “Your husband sure seems happier lately.” “I got him a goat.”
184. Respondent did not forward the e-mail “German Quality” to either lobbie@windstream.net or lobbie1@yahoo.com in order to remove it from his judicial e-mail account as he claimed.
185. Respondent forwarded an e-mail from Nuny Castaneda entitled “Wal-Mart – Christmas, So Weird,” containing twenty-two attachments from his judicial e-mail account to Kathy Castaneda

on Friday, December 1, 2011 at 10:10 a.m. The attachments are thumbnail pictures making fun of people who shop at Wal-Mart.

186. The original e-mail sent from Nuny Castaneda to judicial e-mail account on Friday December 16, 2011 at 10:10 shows enlarged pictures attached to the “Wal-Mart” e-mail with a derogatory comment underneath each picture.
187. Respondent stated in his deposition that the “Wal-Mart” e-mail was making fun of people who shopped at Wal-Mart. Examiner asked in the deposition if someone seeing this e-mail would think Respondent was joking and laughing about people who shop at Wal-Mart. Respondent stated, “No, they’re telling me to take action because Wal-Mart – we’re a small town, so people who shop at Wal-Mart need help. So that’s what that’s for, and I have done some work for the homeless people who are in bad shape, and – And I don’t take it offensive and look at it at the worst way. I look at it as a positive way to be dealt with.”
188. Respondent testified in his deposition, “To me, I see people with a disability and those comments are wrong, send it to my wife, and we’ll talk about it later.” Respondent testified that he forwarded the Wal-Mart e-mail to his wife so he could talk to her about people with disabilities.
189. Respondent did not forward the Wal-Mart e-mail to either of his personal e-mail accounts in order to remove it from his judicial e-mail account as he claimed.
190. Respondent received an e-mail from Orlando Castaneda at his judicial e-mail account entitled “Mexican Word of the Day,” on Monday, February 10, 2014 at 5:33 p.m. Respondent could not tell the subject matter of the e-mail and had to scroll through and read the e-mail to find out what it was about. This e-mail contains several pictures of a Mexican gentleman wearing a sombrero, making fun of the way he pronounces English words. Only one example was read at trial; the pronunciation of the word “mushroom.” The caption under the picture reads, “When all the family gets in the car there is not mushroom left.”

NON-WORK RELATED INAPPROPRIATE

191. Exhibit 33 is entitled Non-work Related Inappropriate and the exhibit contains 117 e-mails. They were received by Respondent on his court assigned e-mail.
192. Respondent received a joke e-mail from his wife, Kathy Castaneda, entitled "Arrogance of Authority" at his judicial e-mail account on Wednesday, April 17, 2013 at 10:10 a.m.
193. Respondent received an e-mail from Jessica <Jessica@bnso.org> at his judicial e-mail account on Saturday, April 26, 2014 at 9:20 p.m. entitled "Clothing Optional Party in our Hotel Room." The e-mail details a party in a hotel room where clothing is optional and all guys will wear condoms.
194. Respondent received an e-mail from Juan Rios at his judicial e-mail account entitled "Ain't That" on Friday, December 23, 2011 at 10:32 a.m. The e-mail was forwarded by Respondent to several other e-mail addresses. Respondent could not tell the content of the e-mail from reading the title, "Ain't That." Respondent had to scroll through the e-mail to determine the content. The text read, "Wal-Mart, are you kidding me," and the picture was of a Christmas tree ornament with a picture of President Barack Obama on it. The caption under the ornament read, "Now, ain't that a bitch, suddenly it's okay to hang a black man from a tree again."
195. Respondent did not reply to Juan Rios that it was inappropriate to receive that type of e-mail at his judicial e-mail account and to stop, or that it was inappropriate to send this type of e-mail to his court manager.
196. Juan Rios is the husband of Lorena Rios, a former Eddy County Magistrate Court employee.
197. Respondent did not forward the e-mail "Ain't That" to either of his personal e-mail addresses in order to remove it from his judicial e-mail account as he claimed.
198. Juan Rios also forwarded the e-mail to several people including Ollie Fitzgerald who was the Eddy County Magistrate Court Manager at the time.

199. Respondent was responsible, pursuant to Supreme Court Order 09-8200, In the Matter of Superintending Control Over Magistrate Courts, Policy Directive No. 5, Paragraph three, to “implement and monitor compliance with all policies, rules, and regulations established by the Supreme Court.”
200. Respondent testified he discussed the receipt of inappropriate e-mails with Mr. Fitzgerald after Mr. Fitzgerald called him into his office to show him an inappropriate e-mail. Respondent later called Mr. Fitzgerald in to his office to discuss the e-mail and said, “Hey, you got to get rid of these e-mails. Don’t be doing that anymore.”
201. Respondent received non-judicial business related e-mails from Mr. Fitzgerald.
202. Respondent never told Mr. Fitzgerald that it was a violation of the New Mexico Judicial Branch Computer and Internet use Policy to send non-business related e-mails from nmcourts.gov judiciary e-mail accounts.
203. Respondent never reported Mr. Fitzgerald to the Administrative Office of the Courts for sending and or receiving non-judicial business related e-mails.
204. Respondent thought he reported this to former AOC Magistrate Court Division Director Karen Janes by telephone, but he did not provide any evidence at trial to prove his assertion.
205. Respondent received an e-mail from his cousin, Juan Castaneda, at his judicial e-mail account on Thursday, December 27, 2012 at 2:19 p.m. entitled “Found this Pic,” which was also sent to the lobbie@windstream.net e-mail address. Ex. 33, Bates Stamp 2236 4:52:32
206. Respondent received a non-judicial business related joke e-mail from Kathy Castaneda at his judicial e-mail account on Monday, January 9, 2012 at 8:59 a.m. entitled “Texting for Seniors.” The original e-mail was sent to Kathy Castaneda from Pamela Arnwine who e-mailed Ms. Castaneda, “This is hilarious.”
207. Respondent forwarded an e-mail from his judicial e-mail account to his lobbie@windstream.net e-mail address on Monday, July 28, 2014 at 12:54 p.m., two days after he received that e-mail from Michael Bromka on July 26, 2014 and after Judge Castleberry’s e-mail reminding judges

not to use their judicial e-mail accounts for non-judicial business. The e-mail was a limerick entitled "Quail Eggs Limirick." Respondent said he could not tell from the title what the e-mail was about and he had to scroll through the e-mail to determine the contents. Ex. 33, Bates Stamp 2536

RELIGIOUS

208. Exhibit 29 is entitled Religious e-mails and contains thirty-eight examples of religious e-mails sent to Respondent's judicial e-mail account.
209. Respondent forwarded an e-mail from his judicial e-mail account entitled "God Lives Under the Bed" to Kathy Castaneda and several other people on December 18, 2013 at 10:37 a.m., including Carlsbad Court Manager Lorrie Arguijo and others at nmcourts.gov e-mail addresses.
210. Respondent forwarded an e-mail from his judicial e-mail account from "Daily Hope" to Court Manager Lorrie Arguijo on Tuesday, September 11, 2012 at 1:46 p.m.. The e-mail was entitled, Faith is more than believing, take the next step. Daily Hope sent inspirational e-mails every day to Respondent's judicial e-mail account to, as described by Respondent, "get your day going." Respondent started receiving Daily Hope e-mails in 2012. The e-mails did not concern judicial business.

POLITICAL ACTIVITY

211. Examiner's Exhibit 30 is entitled Political Activity e-mails and contains twenty-one e-mails classified as political activity e-mails found on Respondent's judicial e-mail account.
212. Respondent admitted he conducted political activity regarding his 2014 re-election campaign from his judicial e-mail account during work hours.
213. An e-mail was sent by Respondent on Thursday, August 7, 2014 from Respondent's judicial e-mail account to Michael Bromka. Ex. 30, pp. 4, 31 Michael Bromka could be a "radical Democrat at times." Mr. Bromka was helping Respondent with his 2014 reelection campaign and wrote to

Respondent on Thursday, August 7, 2014 at 12:56 p.m. stating, "You with a horse would be a good snapshot, if not utterly fictional. Worked well on the 2012 Redford trifold." Mr. Bromka further stated, "Some afternoon when it's convenient for you, We (sic) need to shoot pix of you in robes at the empty court. Also, we need a mature obviously Mexican-American woman who's eager to pose with you for one snap. You'd be on the bench, listening intently. She'd be standing, speaking, gesturing. The message would be that you can listen & comprehend testimony in both English & Spanish. 1 picture = 1000 words." Respondent replied to Mr. Bromka from his judicial e-mail account on August 7, 2014 at 10:52 a.m., "We need to get together for the tri-fold hand out," and signed it "Henry."

214. Respondent e-mailed Oscar Gonzales at OMG Printing, Inc. on Friday, October 17, 2014 at 3:14 p.m. from his judicial e-mail account regarding the price of campaign photos. Mr. Gonzales responded on Saturday, October 18, 2014 at 10:43 a.m. to Respondent's judicial e-mail account asking Respondent to proofread and to let him know if it was okay to print. Ex. 30, p. 17. A copy of Respondent's campaign photo and campaign material was attached to Mr. Gonzales's e-mail. This information was to be included in the tri-fold hand-out.
215. Respondent made a public speech on September 16, 2014, two months before the 2014 election. Respondent was the guest speaker and parade "grand honoree" at a celebration honoring Hispanics who fought against government, Catholics and religious people. Ex. 38, Dep. Tr. 9:06:20. Respondent forwarded that speech from his judicial e-mail account on Friday, October 10, 2014 at 1:52 p.m. to Audrie M. Navarrette at cardamn@nmcourts.gov because Respondent mentioned Ms. Navarrette's uncle in that speech.
216. Respondent did not consider this speech to be political, but more of a speech on leadership.
217. Respondent admitted that his speech encouraged people to vote for Hispanics. Respondent stated, "We must stand together make a difference in our community, it's done by voting for your Hispanic leaders to make a difference to continue to lead to improve our lively hood."

Respondent further stated in his speech, "Stand proud as I do and allow me to represent you in this community. I haven't let you down in any way by shameful behavior."

- 218. Respondent admitted he was encouraging people to vote for him by making the above statement.
- 219. Respondent admitted he was talking about things that were said about him during the campaign in his speech and told the listeners, "They are lies."
- 220. Respondent stated in his speech, "With the world of technology we can find out anything about anybody."
- 221. Respondent knew on September 16, 2014 when he made that speech that anyone could find out anything about a person through e-mails.
- 222. Respondent admitted that this speech was a political speech and the statement that he made earlier was not correct.
- 223. Respondent forwarded the text of a speech he had delivered to a court employee, at the employee's request. He utilized his court assigned e-mail to do this. The speech was of a political nature in that it encouraged listeners to vote for Hispanics and to vote for Respondent.

EX PARTE

- 224. Exhibit 26 is entitled Ex Parte e-mails and contains examples of e-mails sent by Respondent concerning pending court cases.
- 225. Respondent discussed, using his court e-mail, a case he was presiding over with Michael Bromka who is described by Respondent as a Democratic Political Activist. The e-mail conversation between Michael Bromka and Respondent follows:

Respondent sent an e-mail from his judicial e-mail account to Michael Bromka on July 18, 2014 at 8:14 a.m. with the subject line, "Artesia Refugees." Respondent's e-mail said, "Good Morning Michael, how did you like the news about John Aragon?" John Aragon was a defendant charged with sexual contact of a minor, and it was reported in the news that, at arraignment, Respondent let the defendant travel out of town to see his daughter's softball tournament. Ex. 26, p. 5, Bates Stamp 836 - 838Mr. Bromka replied to Respondent on July 18, 2014 at 8:28 a.m.: "Never mind, I looked him up. Groping jailbait – and without even getting a green light first. Both naughty and stupid. Don't know him. I guess he never learned to disengage hands from imagination." Respondent

e-mailed Mr. Bromka in response, "Your nut. Yeah krqe put me in the news because I allowed the defendant to travel to his 8 year daughters World Series tournament. I guess the young reporter wanted me to punish the daughter so she wouldn't perform well or even go. I say shame on her for not mentioning that on the news." Ex. 26, p. 6 Mr. Bromka responded to Respondent at his judicial e-mail account on July 18, 2014 at 8:58 a.m. The subject of the e-mail was, "What's the BFD?" Respondent testified that he emidid not know what "BFD" meant. Mr. Bromka stated in the e-mail, "If there's scant flight risk let him live up to his family obligations. Help him focus on what counts most in life. Innocent until proven guilty, is what I say."

226. Respondent denied at trial that, on July 18, 2014 when the e-mails were exchanged between Mr. Bromka and himself, John Aragon's case was pending before him, stating that he had only arraigned him. This was not a true statement.
227. Respondent admitted that he in fact was the judicial officer on the Aragon case after July 18, 2014, and that Mr. Aragon's case was pending before him. Respondent heard Mr. Aragon's Motion to Review Conditions of Release on July 23, 2014.
228. Respondent e-mailed Probation Officer Tim Estrada from his judicial e-mail account on August 14, 2014 at 5:03 p.m. regarding Defendant Rexall Mullins. Respondent stated it was not typical for him to communicate back and forth with a probation officer. The defendant violated his probation and Respondent e-mailed Mr. Estrada saying, "Well, I'm like you, his attitude sucked and we will tell his wife that he said she can live off welfare."

SOLICITATION E- MAILS

229. Exhibit 31 is entitled Solicitation e-mails and contains examples of e-mails sent by Respondent soliciting donations.
230. Respondent denied using his judicial e-mail account to solicit donations.
231. Respondent e-mailed family members and friend, Pamela Arnwine, from his judicial e-mail account on October 14, 2014 at 11:56 a.m. to help promote and raise money for the Anti-Drug Coalition.

232. Respondent e-mailed Angela Carrejo, "Please help Boys & Girls Club," using his judicial e-mail account to solicit a donation for the Boys and Girls Club on June 9, 2014 at 10:30 a.m. by purchasing lunch tickets for \$15 a plate.
233. Respondent sent and received e-mails concerning his personal business, religion, his political campaigns, that had nothing to do with his judicial duties both before and after the date of the e-mail from Judge Castleberry, dated May 15, 2014 concerning the court e mail policy.

FORWARDS AND RESPONSES

234. There are 140 examples of e-mails in Exhibit 27 entitled Forwards and Responses that Respondent forwarded from his judicial e-mail account to either his lobbie@windstream.net address or his lobbie1@yahoo.com address.
235. Respondent forwarded an e-mail with a joke from Nuny Castaneda that he received at his judicial e-mail account on Wednesday May 8, 2013 at 8:22 a.m. to his daughter, Katie Castaneda.
236. Respondent forwarded an e-mail entitled "Bet you play this twice" from his judicial e-mail account to his lobbie@windstream.net address on Wednesday, June 12, 2013 at 8:33 a.m.
237. Respondent forwarded an e-mail entitled "Booze_Tree"(sic) from his judicial e-mail account to his lobbie@windstream.net address on Wednesday, May 8, 2013 at 8:19 a.m.
238. Respondent testified he forwarded the e-mails to his personal accounts to remove them from his judicial e-mail account.
239. Respondent also testified he would forward e-mails then delete them, and that he had four different processes, he would drop them into an "ill" e-mail folder, into a drop box, a spam box, or put them into a special box created by Bob Harrell where the e-mails would automatically be deleted by JID, but there was no such thing.
240. Respondent forwarded an e-mail from Geico entitled "Confirming your recent request" from his judicial e-mail account to his lobbie@windstream.net address on Monday, November 30, 2015 at 10:57 a.m. stating that he had activated his account. Respondent gave Geico his judicial e-mail

address in order to receive e-mails from Geico, and this was done after Judge Castleberry's e-mail of May 15, 2014 warning all magistrate judges not to use their judicial e-mail accounts to conduct personal business.

241. Respondent forwarded an e-mail regarding his personal budget from his lobbie15@gmail.com address to his judicial e-mail account on Wednesday, July 15, 2015 at 1:26 p.m., sent after Judge Castleberry's e-mail.
242. Respondent forwarded an e-mail from his judicial e-mail account entitled "God Lives Under the Bed" to Kathy Castaneda and several other people on December 18, 2013 at 10:37 a.m., including Carlsbad Court Manager Lorrie Arguijo and others at nmcourts.gov e-mail addresses.
243. Respondent forwarded an e-mail from his lobbie@windstream.net address to his judicial e-mail account on July 4, 2010 at 10:04 a.m. entitled, "Reminder, July 1st Filing Day," for his campaign financial report. Respondent said he forwarded it to make sure he got it done.
244. Respondent forwarded an e-mail from his judicial e-mail account to lobbie@windstream.net on Friday, December 11, 2015 at 8:42 a.m., after Judge Castleberry's e-mail, and the subject line is "Free, \$100 Ticket Package and Gift.
245. Respondent e-mailed the St. Edward Church Parish secretary from his judicial e-mail account on Wednesday, October 8, 2014 at 7:59 a.m. regarding the St. Edward Church prayer group. Respondent replied to the e-mail which included not only the parish secretary's address, but also included a (cc) to several other people who now had Respondent's judicial e-mail address. The e-mail did not involve judicial business and was not an emergency that had to be dealt with during day.

CONCLUSIONS OF LAW

1. At all times material to this matter, Respondent was subject to, and his conduct on and off the bench was governed by, the New Mexico Code of Judicial Conduct, Canons 1-4 and Rules 21-101, et seq., NMRA 2012.

2. Commencing with the service of notice of formal proceedings, the Judicial Standards Commission has jurisdiction over these proceedings and over the Respondent. Rule JSC-38 NMRA (1993).
3. At hearings before the Judicial Standards Commission, “[f]ormal charges shall be established by clear and convincing evidence.” Rule JSC-29(A) NMRA (2010).
4. “Clear and convincing evidence is evidence that instantly tilt[s] the scales in the affirmative when weighed against the evidence in opposition and the fact finder’s mind is left with an abiding conviction that the evidence is true.” *In re Locatelli*, 2007-NMSC-029, ¶ 7, 161 P.3d 876.
5. Judges may be disciplined or removed for willful misconduct in office. N.M. Const. art. VI, § 32.
6. The proceedings in this matter were properly convened and conducted in compliance with provisions of the New Mexico Constitution, statutes, and court rules. *See also* Rule JSC-24, *Conduct of hearing*, NMRA (2010).
7. The New Mexico Judicial Branch Computer and Internet Use Policy states:

The New Mexico Judiciary’s Internet/e-mail resources may not be used for transmission, retrieval or storage of materials of a discriminatory or harassing nature, or materials that are pornographic, obscene, defamatory or otherwise abusive or inappropriate. No derogatory or inflammatory remarks about an individual’s sex, race, age, disability, religion, national origin, physical attributes or sexual preferences shall be transmitted using New Mexico Judiciary resources. The New Mexico Judiciary’s e-mail/Internet resources may not be used for commercial advertisements, solicitations or promotions, personal gain, or political activities. The Judiciary’s Internet/e-mail resources may not be used for any purpose that is illegal, against policies and procedures, or contrary to the interests of the New Mexico Judiciary.
8. To a large extent the facts in this case are not in dispute. The fact that e-mails were received by the Respondent on his court issued e-mail is not in dispute. The fact that many of these e-mails were offensive, derogatory, insulting, and crude is not in dispute. The fact that the Respondent

sought help with unwanted e-mails is not in dispute. The fact that the Respondent did not tell the JID employee he sought out for help with unwanted e-mails the extent and content of the unwanted e-mails is not in dispute. The fact that the Respondent knew about the computer/internet policy is not in dispute. The fact that the receipt of offensive/pornographic e-mails from Respondent's relatives went on for some four years is not in dispute. The fact that the Respondent could have stopped the receipt of offensive/pornographic e-mails by simply changing his e-mails is not in dispute. The fact that the Respondent did not stop his relatives from sending him offensive/pornographic e-mails because he didn't want them to feel bad is not in dispute

9. The Respondent, repeatedly and over several years, transmitted, retrieved, and stored internet content and e-mails which violated the court policy on his judicial computer, in his Carlsbad Magistrate Court Chambers, while acting as a Magistrate Judge during normal Court hours and thus was in or has the appearance of being in his official capacity.
10. The Respondent, repeatedly and over several years, transmitted, retrieved and stored internet content and e-mails which violated the computer/internet policy and demonstrated bias and prejudice.
11. The Respondent used his court e-mail to conduct personal business, correspond about religious and political matters. He discussed a case that he was presiding over with a third party.
12. The Respondent as presiding judge was charged with enforcing the computer/internet policy with employees of the court and he failed to fulfill that obligation and, in fact, violated the policy in communications with employees.
13. The Respondent's long term, repeated actions and inactions, despite his awareness of and instruction in the policy and repeated instructions from JID personnel and his actions in trying to get offending e-mails off of his judicial computer after being notified of an IPRA request for his e-mails and further after he had been notified of a Judicial Standards Commission inquiry constitute willful misconduct.

14. The Respondent's use of his judicial e-mail implies to anyone who receives e-mail from that address or sends e-mail to that address that the Respondent is acting or being contacted in his official capacity as Judge. In those instances it is clear that he is using judicial resources for the communications sent from or received at Respondent's judicial e-mail. The computer/internet policy contemplates some incidental personal use of state owned and issued computers. Perhaps most of the time there is a bright line separating official and personal use of a computer. Where the content is judicial, talking about matters in an ex parte way or discussing matters presently in front of him to a non-judicial employee there is no blur, the behavior is in his official capacity. By using court equipment and assigned e-mail for e-mails that clearly violate the computer/internet policy the line between personal and official tilts to official. It is not the content that is the controlling factor but the method used to commit the violations that should determine if Respondent was acting in his official capacity or that he would be perceived as acting in his official capacity. The appearance of the offending e-mails, when being sent to, forwarded from, and stored on Respondent's judicial e-mail account, clearly sends a message that insinuates he is doing so in his official capacity as a judge. Respondent's misconduct was willful and done in a way that implicates he is endorsing the messages of racism, religion, defamation, sexism, bias, and generally offensiveness contained in the e-mails that are the subject of this case.
15. The Examiner established by clear and convincing evidence that Respondent committed willful misconduct as described by Counts 1, 2 and 3.
16. The Respondent Magistrate Court Judge Henry T. Castaneda committed willful misconduct which violated Rules 21-101, 21-102, 21-203, 21-301 NMRA 2012 for conduct occurring on or after January 1, 2012; and Rules 21-100 NMRA 1995, 21-200(A) NMRA 1995, and 21-500(A) NMRA 1995 for conduct occurring prior to January 1, 2012.
17. Respondent violated the following Rules of the Code of Judicial Conduct as follows:
 - A. Rule 21-101 - "A judge shall respect and comply with the law, including the Code of Judicial Conduct."

- B. Rule 21-102 - “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.”
- C. Rule 21-203 – “A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.”
- D. Rule 21-301 – “A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:
- participate in activities that will lead to frequent disqualification of the judge;
 - participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity or impartiality;
 - engage in conduct that would appear to a reasonable person to be coercive; or
 - make use of court premises, staff, stationery, equipment or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice.”

RECOMENDATION

1. The Commission, having made a finding that Respondent committed willful misconduct as detailed above proceeded to the penalty phase of the hearing.
2. The parties were afforded the opportunity to present witnesses, evidence, or argument.
3. The examiner called the following witnesses Arthur Pepin. The Respondent did not call any witnesses.
4. Rule 30 of the Judicial Standards Commission sets out the factors the Commission may consider when determining a recommendation for removal, retirement or discipline. An analysis of the Respondent’s violations of the Code Of Judicial Conduct using the guidelines set out in Rule 30 is as follows:

- (1) The extent of the misconduct, including: a. whether the misconduct is an isolated instance or a pattern of misconduct; and b. whether the judge committed multiple offenses. The misconduct went on for an extended period of time and only ended when the Respondent was informed of an Inspection of Public Records Request received by the Administrative Office of the Courts. As a result of the request a petition for suspension was filed with the Supreme Court and the court ordered that the Respondent change his court e-mail address. Since he was forced to change his court e-mail address no further e mails that violate the computer/internet policy have been received by the Respondent.
- (2) The nature of the misconduct, including:
 - (a) whether the misconduct occurred in the judge's official capacity or the judge's private life;
 - (b) whether the misconduct occurred in or out of the courtroom, the judge's chambers, or on court property;
 - (c) whether the judge exploited the judge's judicial position to satisfy personal desires.
 - (d) whether the misconduct involved criminal or dishonest acts.
- (3) The misconduct was over a protracted period of time and involved subject matter that is offensive, degrading, pornographic, racial and sexist. The misconduct occurred:
 - (a) In the Respondent's official capacity.
 - (b) In his assigned chambers and on state owned equipment issued to the Respondent to perform his official duties.
 - (c) No evidence was presented as to whether or not the Respondent's behavior satisfied personal desires.
 - (d) No criminal or dishonest acts were involved although the Respondent's story was not consistent throughout these proceedings.

- (4) The judge's conduct in response to the Commission's inquiry and disciplinary proceedings, including:
- (a) whether the judge showed remorse and made an effort to change the proscribed conduct; and
 - (b) whether the judge was candid and truthful and cooperated with the Commission.
- (5) When the Respondent found out that the offensive e-mail had been discovered he began to attempt to remove the e-mails from his court assigned computer. He sent a number of the e-mails to his personal e-mail account under the misplaced belief that this would remove them from his court computer. This was an attempt to hide his misconduct and shows the willfulness of Respondent's violations of the Code of Judicial Conduct.
- (a) The Respondent showed little remorse other than that he was embarrassed that this matter was discovered as a result of the Inspection of Public Information Request. While he made some effort, albeit very minimal, to change the proscribed conduct, he did not follow through. After receiving advice on how to stop the problem he did not follow the advice. He continued to receive offensive e-mails and did not make his relatives stop sending them because he didn't want to make them feel bad. He did not take anywhere near adequate or reasonable action to stop the conduct.
 - (b) Several incidents of the Respondent not being completely truthful are set out in the Findings of Fact. The Respondent maintained his innocence throughout the entirety of the inquiry by stating that he only received the e-mails and should not be punished for merely being a recipient. His position is that his relatives sent him completely inappropriate sexual, derogatory, racist, and sexist e-mails to his judicial e-mail, that he provided to them, that he told them to quit and they didn't, so it is their fault even though Respondent could have stopped them by changing his judicial e-mail but he didn't want them to feel like they were the bad guy.

This position belies the evidence introduced in this case and is another display of a complete disregard for the impact of the content of the e-mails on members of the public and the harm it does to the integrity of the Judiciary.

- (6) The judge's record of prior discipline and reputation. The Respondent's received a cautionary letter concerning ex parte communications.
- (7) The effect the misconduct had upon the integrity of and respect for the judiciary. A Judge is the authority people go in front of to be treated fairly and impartially; to resolve important, serious matters. They do this believing that they will be treated that way. To have a judge, as the Respondent did, hold himself out as fair and impartial, while sending and receiving e-mails that dehumanize portions of our society based on sex, religion, race, background and where they shop, denigrates the entire judiciary. On top of that he tried to hide his prejudices and bias by not being completely honest in seeking solutions to the problem, did not take the easy steps available to stop his relatives from sending offensive e-mails, did not enforce the policies of the Court as he was charged to do, and upon finding out that his behavior was about to be discovered attempted to hide offending e-mails. The Respondent's behavior has a profoundly negative impact upon the integrity and respect for the judiciary.

ADDITIONAL CONSIDERATIONS

1. Of particular note to the Commission was that the Respondent was aware of the computer/internet policy. He had read it several times. Employees of JID were consulted by Respondent and he was told how to stop unwanted e-mails. The Judge did not tell the JID IT employees the true nature of the e-mails apparently because he didn't want them to know or he didn't want to hurt his relative's feelings. He and all magistrate judges received an update on the policy, which included a caution about violating it, from a fellow magistrate judge serving on JID. But the Respondent continued to violate the policy for another year and a half. He only stopped violating the policy

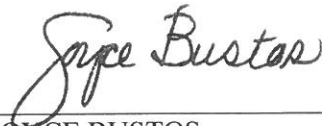
when he became aware that an Inspection of Public Records Request had been received by AOC/JID concerning his e-mail account. This pattern of behavior constitutes willful misconduct.

2. While using his court e-mail address to conduct personal business, communicate about political activity; and communicate about religious activities are a violation of the Judicial Internet Policy, and therefore a violation of the Code of Judicial Conduct, it is important here not for the gravity of the offenses, but to illustrate the Respondent's complete disregard for the policy. This disregard carries over to, and amplifies the egregiousness of, the Respondent's failure to remove completely inappropriate e-mails he received from his relatives or to stop his relatives from sending those types of e-mails to him at his court e-mail address over a period of years. This disregard is made more apparent when one considers that at all times relevant hereto Respondent had at least one personal e-mail account that he could have used to receive personal or inappropriate e-mails from family members. He chose not to avail himself of this simple, obvious, solution.
3. Judges should be unbiased and not judge or look at others in sexual and racial terms. They should not make fun of physical characteristics or where you shop, or have gender bias and religious bias. Respondent's behavior concerning the e-mails in this case casts great uncertainty on the answer to the question of whether he can be unbiased. The length of time that Respondent allowed to be sent to his account can only be read as nothing less than an endorsement of the content of those e-mails.
4. Given the behavior of Respondent in reading, forwarding and failing to put an end to his family and friends sending him e-mails of a sexual, racist, derogatory, and sexist nature that would basically offend many, if not all, of the people who appear in front of him renders him incapable of performing his judicial duties in a fair and impartial manner. This behavior has a profoundly negative impact upon the integrity and respect for the judiciary.
5. It is far beyond negligent, and not the result of mere carelessness or lack of computer skills, that Respondent was unwilling to stop his relatives from sending him offensive e-mails of a sexual,

racist, sexist, derogatory nature over a period of many years. In fact the Respondent's behavior can be read as indifferent to the offensiveness of the e-mails based on the fact that several JID employees told him how to put an end to the e-mails. The Respondent's behavior in not confronting his family members and stopping the e-mails is offensive and shows that the Judge was indifferent to the impact of his actions on his reputation and integrity and the impact on the reputation and integrity of the judiciary as a whole.

6. The Respondent's discussion of a case pending before him with a third party and his subsequent denial of that behavior is egregious. This behavior demonstrates his complete disregard for the Code of Judicial Conduct and for the damage such violations do to the integrity of the judiciary.
7. Respondent's actions were knowingly, intentional and willful.
8. After the penalty phase of the hearing was concluded the Commission by unanimous vote of the nine Commissioners participating in the hearing recommended that Respondent be removed from the office of Magistrate Judge in Eddy County, New Mexico.

JUDICIAL STANDARDS COMMISSION

A handwritten signature in cursive script, reading "Joyce Bustos", written over a horizontal line.

By: JOYCE BUSTOS
CHAIR

CERTIFICATE OF SERVICE

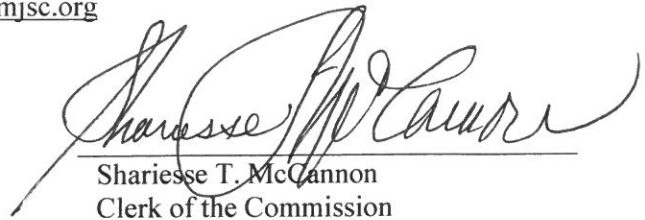
I hereby certify that on this 5th day of October 2017 a true and correct copy of the foregoing was sent as follows:

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