

  
Joey D. Moya

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

2   **December 31, 2018**

3                   **NO. S-1-SC-35735**

4                   **INQUIRY CONCERNING A JUDGE**  
5                   **NO. 2014-182**

6  
7                   **IN THE MATTER OF HON. FRANK M. VAN GUNDY**  
8                   **Deming Municipal Court**

9   **ORDER AND PUBLIC CENSURE**

10                   WHEREAS, this matter came before the Court on a petition to accept the  
11 stipulated agreement and consent to discipline between the Judicial Standards  
12 Commission and Respondent, Honorable Frank M. Van Gundy;

13                   WHEREAS, the Commission and Respondent stipulated to the following  
14 facts:

- 15                   A. Hon. Frank Van Gundy ("Respondent") has been the City of Deming  
16                   Municipal Judge since 2006.  
17  
18                   B. Eric Meraz ("Defendant") has been before Respondent approximately  
19                   twenty-five times from June 2006 through February 2016 on charges  
20                   ranging from unfastened seat belts, shoplifting, trespass, and battery to  
21                   indecent exposure.  
22  
23                   C. Defendant was arrested and found guilty on charges of indecent exposure  
24                   seven times from January 2009 to March 2012, and sentenced by  
25                   Respondent to incarceration at the Luna County Detention Center in lieu  
26                   of payment of fines and fees.  
27  
28                   D. Defendant was arrested on January 17, 2014 on a charge of indecent  
29                   exposure. (Municipal Court Docket No. 14000101)  
30

- 1 E. Respondent arraigned Defendant and transferred Defendant's case to the  
2 Sixth Judicial District Court on January 21, 2014 for a determination of  
3 competency. (District Court File No. D-619-SI-2014-00002)  
4
- 5 F. Pursuant to a confidential forensic evaluation, Sixth Judicial District  
6 Court Judge Daniel Viramontes found Defendant incompetent to stand  
7 trial and remanded Defendant's case to municipal court for dismissal on  
8 June 18, 2014.  
9
- 10 G. Defendant was released from the Luna County Detention Center at  
11 August 21, 2014 in case No. 14000101.  
12
- 13 H. On August 21, 2014 at 5:40 PM, Defendant was arrested on a charge of  
14 indecent exposure that took place in a public park. Two witnesses stated  
15 that defendant pulled his pants and underwear down exposing his  
16 genitals. Defendant then pulled his underwear up, laid down on the  
17 ground, where it appeared that he began to masturbate. This arrest came  
18 approximately five hours after Defendant was released from the Luna  
19 County Detention Center on a charge of indecent exposure after having  
20 been found incompetent to stand trial.  
21
- 22 I. Respondent arraigned Defendant on August 22, 2014, Case No.  
23 14001406; read Defendant his rights and entered a plea of not guilty on  
24 his behalf Respondent noted on the Advice of Rights form: "Defendant  
25 not competent to sign."  
26
- 27 J. Instead of completing Form 9-303, Order Setting Conditions of Release,  
28 at arraignment, Respondent generated a Judgment and Sentence form  
29 issued on August 22, 2014, which committed the defendant to the  
30 Deming Corrections Department, and assessed a fine of \$225.00 and fees  
31 of \$29.00. However, the Judgment and Sentence form noted under  
32 "OTHER SENTENCING," "NOT GUILTY PLEA ENTERED BY THE  
33 COURT. BOND OVER FOR TRIAL \$500."  
34
- 35 K. Respondent's signature on the Judgment and Sentence form was  
36 computer generated.  
37
- 38 L. On August 22, 2014 Respondent wrote a note on the Criminal Complaint  
39 which stated, "Rights given, # Indecent Exposure, Plea of Not Guilty  
40 entered by the Court. Bond for Trial - \$500.00."

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- M. Respondent did not transfer Defendant's case to district court after the issue of competency was raised in violation of Rule 8-507 of the Rules of Criminal Procedure for the Municipal Courts.
- N. On August 25, 2014, Respondent wrote on the Judgment and Sentence form issued on August 22, 2014, "Danny (Lt. LCDC) working on committing Eric M. - Once complete, if complete charges pending can be Dismissed. If not committed, will stand trial -"
- O. Respondent was in contact with Corrections Officer Danny Cordova at the Luna County Detention Center on a regular basis during Defendant's incarceration to determine if a treatment facility for Defendant had been found.
- P. Matthew Elwell, Director of the Luna County Detention Center, and Lt. Carl Sanner met with Respondent on September 23, 2014 to ask him why Defendant was being held so long on a petty misdemeanor. Respondent stated, "Eric was not going to be released because he was a threat to society." Respondent further stated that his hands were tied and he could not do anything about it because he believed district court was working on it.
- Q. Defendant called Respondent on December 9, 2014 and asked Respondent if he [Defendant] was going to be released that day.
- R. Respondent told Defendant that it was up to district court.
- S. Defendant then asked Respondent to check on his paperwork to which Respondent replied, "Sure, I'll check on it."
- T. Respondent did not follow-up or check on the Defendant's paperwork, which would have alerted Respondent to the fact that a transfer order had not been filed.
- U. Lt. Carl Sanner called the district court on December 10, 2014 to determine if the case had been transferred from municipal court. Lt. Sanner was told that the case had not been transferred.
- V. Judicial Standards Commission paralegal Evonne Sanchez contacted

1 Deming Municipal Court Clerk Mirna Tafoya on December 30, 2014 to  
2 request a copy of Defendant's court file in Case No. 14001406. Ms.  
3 Tafoya informed Ms. Sanchez that Defendant had severe mental health  
4 problems and was currently being held at the Luna County Detention  
5 Center to await transport to a mental health facility.  
6

7 W.Lt. Sanner called the Deming Municipal Court on December 31, 2014 to  
8 speak to Respondent. Lt. Sanner was informed by Ms. Tafoya that  
9 Respondent was out of town. Lt. Sanner told Ms. Tafoya that detention  
10 center staff was going to chip in and get Defendant an attorney.  
11

12 X. Ms. Tafoya called Respondent on December 31, 2014 to inform  
13 Respondent of Lt. Sanner's call and of the Judicial Standards  
14 Commission's request for Defendant's court file. Respondent told Ms.  
15 Tafoya to prepare a release order and he would deal with the situation  
16 when he returned to court on January 5, 2015.  
17

18 Y. The detention center received a release form thirty to forty-five minutes  
19 after Lt. Sanner's call to the Deming Municipal Court.  
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21 Z. Respondent spoke with Judicial Standards Commission's Executive  
22 Director Randall Roybal on January 5, 2015 to explain to Mr. Roybal  
23 that Mr. Meraz's case was difficult, and that Respondent had Mr. Meraz  
24 held until a treatment facility could be found.  
25

26 AA. Respondent's failure to complete an order transferring Defendant's  
27 case to district court after the issue of competency was raised, or his  
28 failure to adjudicate Defendant on the charge of indecent exposure,  
29 resulted in Defendant's incarceration at the Luna County Detention  
30 Center from August 21, 2014 to December 31, 2014 without due process  
31 of law.  
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33 BB. The Judicial Standards Commission issued an Amended Notice of  
34 Formal Proceedings to Respondent on December 9, 2015.  
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36 WHEREAS, Respondent admitted that he violated Rules 21-101, 21-102,  
37 21-202, 21-203 and 21-205 NMRA of the Code of Judicial Conduct;

38 WHEREAS, Rule 21-101 provides that "[a] judge shall respect and comply

1 with the law, including the Code of Judicial Conduct." Respondent failed to  
2 comply with Rule 8-507 of the Rules of Criminal Procedure for Municipal Courts  
3 when he failed to transfer the defendant's case to district court. Rule 8-507 states:  
4 If the defendant pleads "not guilty by reason of insanity" or if an issue is raised as  
5 to the mental competency of the defendant to stand trial, the action shall be  
6 transferred to the district court for further proceedings pursuant to the Rules of  
7 Criminal Procedure for the District Courts. The municipal court shall retain  
8 jurisdiction over the defendant and conditions of release until the action is filed in  
9 the district court;

10 WHEREAS, Respondent knew in August 2014, when the defendant's case  
11 was remanded for dismissal by the district court, that the defendant was  
12 incompetent and knew that the case should be transferred to district court pursuant  
13 to defendant's subsequent arrest;

14 WHEREAS, Rule 21-102 provides that "[a] judge shall act at all times in a  
15 manner that promotes confidence in the independence, integrity and impartiality of  
16 the judiciary and shall avoid impropriety and the appearance of impropriety." The  
17 committee commentary cautions against actions that "reflect adversely on the  
18 judge's honesty, impartiality, temperament, or fitness to serve as a judge.  
19 Confidence in the integrity of the judiciary is eroded when a judge fails to follow  
20 the law and instead, uses his own moral compass to fashion a remedy that does not

1 comply with the law;

2 WHEREAS, the defendant was known to be incompetent to Respondent and  
3 all courts in Luna County. Instead of following the law which required Respondent  
4 to transfer defendant's case to district court, Respondent made the erroneous  
5 decision to hold the defendant indefinitely until a treatment center could be found.  
6 When incarcerated, the defendant received treatment and medication, but when  
7 released, he would not receive treatment or medication and would then engage in  
8 behavior which would result in arrest;

9 WHEREAS, Respondent believed that, because the defendant needed  
10 treatment and that the Defendant was a threat to society, it was in the defendant's  
11 and the public's best interest to incarcerate the defendant until a treatment facility  
12 could be found. Even though it is clear that the defendant was in need of mental  
13 health treatment, it is Respondent's duty to follow the letter of the law and not to  
14 adjudicate based on his personal beliefs;

15 WHEREAS, Rule 21-203 provides that "[a] judge shall perform the duties of  
16 judicial office, including administrative duties, without bias or prejudice.  
17 Respondent's indefinite incarceration of the Defendant demonstrated his prejudice  
18 against the Defendant and his frustration with the Defendant, having dealt with  
19 him twenty-five (25) times in the past;

20 WHEREAS, Rule 21-205 provides that "[a] judge shall perform judicial and

1 administrative duties competently and diligently. Respondent knew Defendant was  
2 incompetent, as he had just months earlier transferred the Defendant's case to  
3 district court. Respondent chose to circumvent the law and take matters into his  
4 own hands by incarcerating the Defendant until a treatment facility could be found.  
5 The public must trust, whether or not they agree, that a judge's decision was made  
6 according to the law, not according to the judge's personal feelings. As this Court  
7 stated in *In re Sanchez*, 2011-NMSC-031, 150 N.M. 268 at 42, 258 P.3d 1060,  
8 "Judges above all others in our society must honor the fundamental principle that a  
9 desirable end cannot justify means that violate the law.";

10 WHEREAS, Respondent made the conscious decision to ignore the law and  
11 to proceed in what he erroneously believed was the only way to protect the public,  
12 or to ensure the Defendant received medical treatment. However well intended,  
13 Respondent acted beyond his jurisdiction, his judicial power and abused his  
14 authority by failing to transfer the defendant's case to district court. "A citizen who  
15 is entrusted with the increased authority inherent in a judicial position also takes  
16 on special ethical obligations designed to ensure litigants and the public that  
17 judicial authority will not be abused." *In re Naranjo*, 2013-NMSC-026, 303 P.3d  
18 849;

19 WHEREAS, Respondent has taken responsibility for his conduct and  
20 admitted that his conduct violated the Code of Judicial Conduct and constituted

1 willful misconduct in office; and

2 WHEREAS, in light of the foregoing, and the Court accepting the  
3 stipulation of the parties and being sufficiently advised, Chief Justice Judith K.  
4 Nakamura, Justice Petra Jimenez Maes, Justice Charles W. Daniels, and Justice  
5 Barbara J. Vigil concurring;

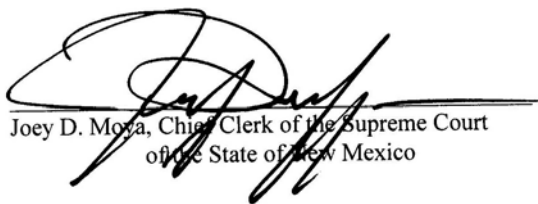
6 NOW, THEREFORE, IT IS ORDERED that this PUBLIC CENSURE is  
7 issued to Respondent, Hon. Frank M. Van Gundy;

8 IT IS FURTHER ORDER that this matter is UNSEALED under Rule 27-  
9 104(B) NMRA.

10 IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 31st day of December, 2018.

  
Joey D. Moya, Chief Clerk of the Supreme Court  
of the State of New Mexico

11 I CERTIFY AND ATTEST:  
A true copy was served on all parties  
or their counsel of record on date filed.  
Joey D. Moya  
Chief Clerk of the Supreme Court  
of the State of New Mexico