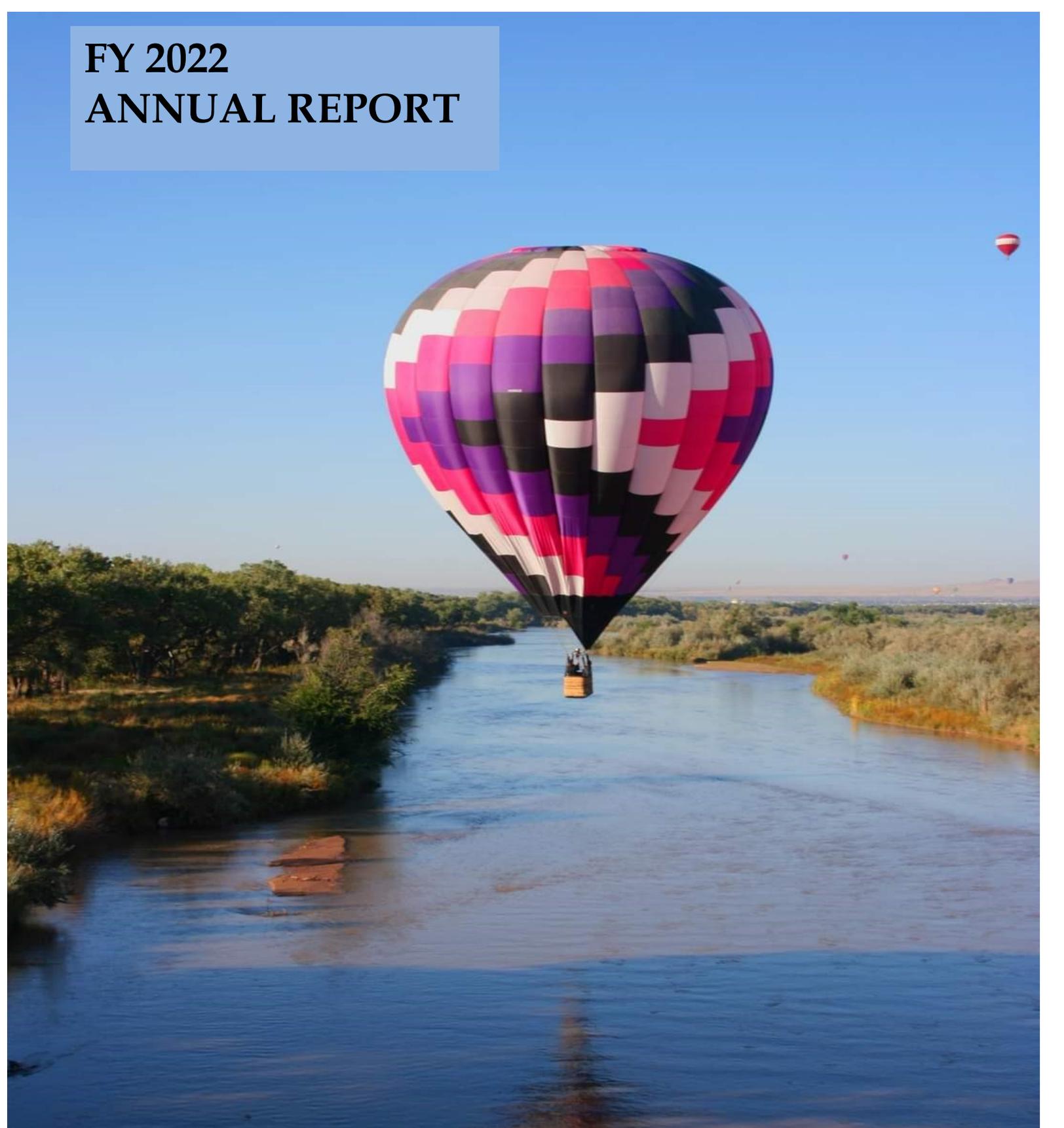


**FY 2022  
ANNUAL REPORT**



**STATE OF NEW MEXICO  
JUDICIAL STANDARDS  
COMMISSION**



State of New Mexico  
**Judicial Standards Commission**

6200 Uptown Blvd., NE, Suite 340  
Albuquerque, NM 87110-4159 (505)  
222-9353  
[www.nmjsc.org](http://www.nmjsc.org)

William E. Foote, Ph.D.  
*CHAIR*

Joyce Bustos  
*VICE-CHAIR*

KEVIN R. DIXON, PH.D.  
MARK A. FILOSA, ESQ.  
HON. CHERYL H. JOHNSTON  
ROBERTA JEAN KAMM  
HON. MAURINE LANEY  
HON. MELISSA A. KENNELLY  
NANCY R. LONG, ESQ.  
KRISTIN D. MUNIZ  
ROBERT J. RADOSEVICH  
TWILLA C. THOMASON

PHYLLIS A. DOMINGUEZ, ESQ.  
*EXECUTIVE DIRECTOR & GENERAL COUNSEL*

CHANCE A. GAUTHIER, ESQ.  
*INVESTIGATIVE TRIAL COUNSEL*

KARA J. JOHNSON, ESQ.  
*ASSISTANT INVESTIGATIVE TRIAL COUNSEL*

October 24, 2022

Honorable Governor Michelle Lujan Grisham  
Honorable Members of the State Legislature  
Honorable Chief Justice and Justices of the Supreme Court  
Citizens of the State of New Mexico

Ladies and Gentlemen:

It is my pleasure to present you with the Judicial Standards Commission's FY 2022 Annual Report, which contains information about our substantive work overseeing state judicial misconduct and discipline, financials and describes our structure and performance as an independent, constitutionally created state agency.

FY 2022 witnessed many changes for the Judicial Standards Commission. One important change was in the position of Commission Chair. Joyce Bustos, who was appointed to the Commission in 2011, ably served as Judicial Standards Commission Chair since 2012. She resigned her position as Chair in June 2022, although she will continue to serve on the Commission for another year as Vice-Chair. During her 10-year tenure in this position she was widely recognized as the public face of the Commission and conducted Commission meetings with efficient grace.

In addition to Ms. Bustos's resignation as Chair, the Commission has experienced a number of important changes among both the staff and commissioner membership in the last year. Governor Lujan-Grisham appointed me (William [(Bill)] Foote) to the Commission in 2019. I had recently retired from a career of more than 40 years as a forensic psychologist in which I consulted with state and federal security and law enforcement agencies and served as an evaluator and expert witness in both civil and criminal cases in state, federal and Canadian courts. I served as Vice-Chair for the Commission beginning in 2020 and was elected Commission Chair June 2022 and conducted my first meeting in August 2022. I am looking forward to working with the excellent Judicial Standards Commission Staff and my fellow commissioners.

Randy Roybal retired from his role as Executive Director effective December 31, 2021. Mr. Roybal began his career at the Commission in 1998, when he was hired as a staff attorney. He served as Deputy Director from then until his appointment as Executive Director in 2009. During his tenure, the Commission moved three times, Mr. Roybal adjusted the staffing to meet the Commission's needs within budgetary constraints, case-handling procedures were reorganized, and the Commission rules were revised.

Mr. Roybal's retirement triggered a search for a new Executive Director, in which the Commission convened a hiring sub-committee Chaired by Commissioner Bustos. This sub-committee interviewed applicants and the Commission ultimately appointed Phyllis Dominguez. Ms. Dominguez worked as a prosecutor for many years and began her career with the Commission as Investigative Trial Counsel in 2012. Over the last 6 years, she was promoted to Senior Investigative Trial Counsel, Deputy Director and served one month as co-Executive Director (November 27-December 31, 2021). On January 1, 2022, she became Executive Director, bringing both expertise and experience to the role. We are very happy to have her fill this critical position.

In addition to the changes mentioned above the Commission hired two new staff members in FY22. Kara Johnson was hired as Assistant Investigative Trial Counsel in January 2022, and Andrea Torrez took a position as a Paralegal in April 2022.

We also have had some changes among the Judicial Standards Commissioners this year. Omar Pereya resigned in February 2022. Governor Lujan-Grisham appointed Kristin Muniz to the Commission in August 2021, and Robert Radosevich in March 2022. The Board of Bar Commissioners re-appointed Attorney Nancy Long in May 2022. In April 2022 the New Mexico Supreme Court appointed Hon. Melissa Kennelly to the Commission. The Commission currently has one municipal court judge commissioner vacancy to be appointed by the New Mexico Supreme Court.

In addition to these changes in personnel, in May 2022 the Commission completed an on-going RFP process and moved into a new leased office located in Albuquerque uptown. The moves were necessitated when, in 2020, the Commission had to break their lease due to reduced appropriations stemming from the pandemic. The Commission moved into a small temporary office that could not house all staff or Commissioners until an RFP could be issued to obtain a more permanent space. The result of the RFP and current leased location reduced the Commissions space by approximately 1,000 square feet and required JSC to move twice within two years. The JSC staff and Commission are excited about the new location and look forward to working in the new building for many years.

We are looking forward to another year of our work on behalf of the citizens of the state of New Mexico.

Sincerely,

A handwritten signature in black ink, appearing to read "William E. Foote". The signature is written in a cursive, flowing style.

William E. Foote, Ph.D.  
Chair, Judicial Standards Commission



# F Y 2022 ANNUAL REPORT

## CURRENT COMMISSIONERS

William E. Foote, Ph.D.  
*Chair*

Joyce Bustos  
*Vice Chair*

Kevin R. Dixon, Ph.D.  
Mark A. Filosa, Esq.  
Hon. Cheryl H. Johnston  
Roberta Jean Kamm  
Hon. Melissa Kennelly  
Hon. Maurine Laney  
Nancy R. Long, Esq.  
Kristin D. Muniz  
Robert Radosevich  
Twillia C. Thomason

## CURRENT STAFF

Phyllis A. Dominguez, Esq.  
*Executive Director & General Counsel*

Chance A. Gauthier, Esq.  
*Investigative Trial Counsel*

Kara Johnson, Esq.  
*Assistant Investigative Trial Counsel*

Evonne Sanchez  
*Paralegal*

Andrea Torrez  
*Paralegal*

Krista M. Ganes-Chavez  
*Chief Financial Officer*

Luella L. Gonzales  
*Administrative Assistant*

## OFFICE

6200 Uptown Blvd. NE, Suite 340  
Albuquerque, NM 87110-4159

## TELEPHONE

(505) 222-9353

## WEBSITE

[www.nmjsc.org](http://www.nmjsc.org)

Photograph courtesy of Krista Ganes-Chavez

Judicial Standards Commission

## FORWARD

It is my privilege and honor to be presenting the FY 2022 annual report in my first year serving as Executive Director. I am in my eleventh year with the Commission having served as Investigative Trial Counsel, Senior Trial Counsel, Deputy Director and now as Executive Director. I began my tenure on January 1, 2022 following the retirement of long-time director, Randall D. Roybal. Mr. Roybal served the Commission for twenty-three years, twelve of those years as the executive director. I will continue his legacy of dedication and exemplary service to the State of New Mexico to ensure the public's confidence in the integrity, impartiality and independence of the judiciary.

The Judicial Standards Commission is the ethics agency for the Judicial Branch of government created by constitutional amendment in 1967 and which began its independent review of judicial conduct in 1968. The 1967 Report of the Constitution Revision Committee when recommending the establishment of a Commission wrote: "Not only is the independence of the judiciary protected...the existence of such a body, functioning and able to be useful and, when necessary, is an effective element in the strengthening of the judicial system and is leading to a higher standard of judicial conduct." Prior to the formation of the Commission, the only way to address judicial misconduct or disability was to seek a judge's removal from office either through impeachment by the state legislature or through regular or recall elections. A Code of Judicial Conduct was created which established guidelines for the ethical conduct of judges, instructs judges on appropriate judicial behavior and applies to all judges and judicial candidates throughout the State of New Mexico.

The Commission's mission is to protect the public from improper conduct of judges, preserve the integrity of the judicial process, maintain public confidence in the judiciary, and create a greater awareness of proper judicial behavior among judges and the public. Matters that come before the Commission are given a thorough, fair, and expeditious review. Pursuant to the New Mexico Constitution, confidentiality is maintained by the Commission on all pending matters if/until such time as the matters are filed with the Supreme Court and unsealed.

The Commission is comprised of thirteen members: two district court judges, one magistrate judge, one municipal judge, appointed by the New Mexico Supreme Court; two attorneys, appointed by the New Mexico State Bar; and seven public members appointed by the governor. As a body, the Commissioners review all complaints and may docket complaints on their own motion. The Commission may either dismiss a complaint as appellate in nature or unsubstantiated, recommend an informal disposition, take evidence at a formal hearing on the merits, and may recommend formal discipline to the Supreme Court which may include a judge's removal. The Supreme Court has *de novo* review of all matters the Commission files with the Court and is the only body that can order the discipline, removal, or retirement of a judge.

Many changes happened over the last year; two Commissioners resigned after lengthy service, Mr. Roybal and a long-tenured paralegal retired, a new executive director was selected, two new staff members were hired, and we had yet another move. Even though the Commission and Staff have gone through some big changes over the past year, the one thing that has not changed is our continued dedication and service to the State of New Mexico.

I am grateful and honored to serve the State of New Mexico and thankful for the support of the Commissioners and Staff.

Phyllis A. Dominguez  
Executive Director  
General Counsel

## COMMISSIONER TERMS & POSITIONS

As set forth in Article VI, Section 32 of the New Mexico Constitution and New Mexico Statutes Annotated Sections 34-10-1 through -4, the Judicial Standards Commission is composed of thirteen (13) members: seven (7) public members appointed by the Governor; two (2) attorneys appointed by the Board of State Bar Commissioners; two (2) justices or judges of the Supreme Court, Court of Appeals, or District Courts appointed by the Supreme Court; one (1) magistrate judge appointed by the Supreme Court; and one (1) municipal judge appointed by the Supreme Court.

Public members of the Commission are appointed to staggered five-year terms, while the attorney and judicial members are only appointed to staggered four-year terms. Commissioners are not paid a salary but may receive *per diem* and reimbursement for expenses as provided by law.

Pursuant to NMSA §34-10-1(A), no more than three of the seven member positions appointed by the Governor may be occupied by persons of the same political party. For transparency, party affiliations of these members are noted below.

### STATUTORY TERMS OF COMMISSIONERS AS OF JUNE 30, 2022

*See NMSA 1978, §34-10-1 (amended 1999)*

<u>Position No.</u>	<u>Filled By</u>	<u>Appointed By</u>	<u>Statutory Term</u>
1	Kevin R. Dixon, Ph.D. (R)	Governor	07/01/19-06/30/24
2	William E. Foote, Ph.D. (D)	Governor	07/01/20-06/30/25
3	Robert J. Radosevich (R)	Governor	07/01/21-06/30/26
4	Twillia C. Thomason (I)	Governor	07/01/17-06/30/22
5	Joyce Bustos (D)	Governor	07/01/18-06/30/23
6	Nancy R. Long, Esq.	State Bar	07/01/22-06/30/26
7	Mark Filosa, Esq.	State Bar	07/01/20-06/30/24
8	Hon. Cheryl H. Johnston	Supreme Court	07/01/19-06/30/23
9	Hon. Melissa A. Kennelly	Supreme Court	07/01/22-06/30/25
10	Roberta Jean Kamm (I)	Governor	07/01/19-06/30/24
11	Hon. Maurine Laney	Supreme Court	07/01/19-06/30/23
12	Kristin D. Muniz (D)	Governor	07/01/18-06/30/23
13	VACANT	Supreme Court	07/01/17-06/30/21

**Commission Members**

## COMMISSION MEMBERS AS OF JULY 1, 2022



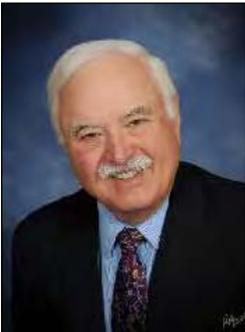
**JOYCE BUSTOS** was appointed to the Commission by the Governor in April 2011, and subsequently reappointed twice. Having been elected by her fellow Commissioners each year since 2012 to serve as Chair of the Commission. Mrs. Bustos grew up in Chimayo, New Mexico and graduated from McCurdy High School. Mrs. Bustos received a Bachelor of Science degree in secondary education in 1977, and a Masters degree in Public Administration (Criminal Justice concentration) in 1988 from the University of New Mexico. She retired from New Mexico state government after 25 years of service, primarily in the criminal justice system. She was employed by the New Mexico Department of Corrections for 11 years, the Department of Public Safety for 3 years, and as the Director of the Administrative Office of the District Attorneys for 10 years. She is currently an independent criminal justice consultant.



**KEVIN R. DIXON, Ph.D.** was appointed to the Commission in January 2019 by the Governor. Dr. Dixon served previously on the Commission from July 2010 to March 2011, also by gubernatorial appointment. He is a Senior Manager at Sandia National Laboratories in Albuquerque, and received his doctorate degree in Electrical & Computer Engineering from the Carnegie Mellon University.



**MARK A. FILOSA, ESQ.** was appointed to a second term on the Commission by the State Bar in July 2020, and previously served on the Commission from July 1, 2002 to June 30, 2006. Mr. Filosa has been practicing law since 1983. He was raised and educated in Chicago, and came to New Mexico thereafter. He has great pride that he has practiced his entire career as a general practitioner in the small town of Truth or Consequences, New Mexico. Mr. Filosa has been heavily involved in State Bar activities, having served as Board of Bar Commissioner, a member of the Judicial Performance Evaluation Commission, and as president of his local bar association. Mr. Filosa received his bachelors degree in Journalism from Southern Illinois University, and while going to law school at night, he worked for a group of trade publications in Chicago. Mr. Filosa is married to Ann, and has four children and six grandchildren.



**WILLIAM E. FOOTE, Ph.D.** was appointed to the Commission in August 2019 by the Governor. Dr. Foote has been a forensic psychologist in private practice in Albuquerque, New Mexico since 1979. He has taught in the University of New Mexico Department of Psychology, Department of Psychiatry and the UNM School of Law. He has held a number of professional offices including the President of the New Mexico Psychological Association, Representative on APA Council, member and chair of the APA Committee on Legal Issues, member and chair of the APA Committee on Professional Practice and Standards, President of Division 31, President of the American Psychology-Law Society (Division 41), and President of the American Board of Forensic Psychology. He is the author of many peer reviewed professional articles and book chapters, and is the co-author, with Jane Goodman-Delahunty of two books on psychological evaluation in sexual

harassment and employment discrimination cases. His third book with Dr. Goodman-Delahunty, *Understanding Sexual Harassment: Evidence-Based Forensic Practice* (in press), is a second edition of the award winning 2005 APA Press sexual harassment volume. Dr. Foote enjoys singing first tenor in the acapella men's group DeProfundis, playing guitar and mandolin, traveling, hiking and fly fishing.



**HON. CHERYL H. JOHNSTON** was appointed to the Commission by the New Mexico Supreme Court in July 2019. Judge Johnston is a family court Judge in the Thirteenth Judicial District Court, Division VIII in Sandoval, Cibola and Valencia Counties. She received her Bachelor of Arts from Rice University in 1977 and graduated with her Juris Doctor from University of New Mexico School of Law in 1981. Judge Johnston is a member of the National Council of Juvenile and Family Court Judges. Most of her professional legal career was serving as a Deputy District Attorney in the Second Judicial District, as well as at the Thirteenth Judicial District prosecuting Violent Crimes, Sex Crimes and Juvenile Crimes. She was an Assistant Attorney General in the Special Prosecutions Unit with the New Mexico Attorney General's Office. She was a long time member and past Chairman of the Prosecutors Section for the New Mexico State Bar and was appointed as a member of the New Mexico Supreme Court Disciplinary Board. Judge Johnston was also a Senior Attorney Instructor with the Center for International Legal Studies in St. Petersburg, Russia in 2012 and has been a mentor with the Bridge the Gap Program. She currently resides in Corrales with her husband Stanley Johnston Jr., a retired Colonel (NMARNG).



**ROBERTA JEAN KAMM** was appointed to the Commission by the Governor in July 2019. She is a native of Raton, New Mexico. She has been married for 20 years to Terry Kamm, Esq., who practices locally and will retire on December 31, 2021. The Kamms have five grown children. Ms. Kamm has worked in the insurance industry since 1978, and holds a Certified Insurance Counselor (CIC) designation. She currently manages both Arthur Insurance Agency offices located in Raton and AngelFire.



**HON. MELISSA A. KENNELLY** was appointed to the Commission by the New Mexico Supreme Court in June, 2022. Judge Kennelly was appointed district judge in April 2019. Judge Kennelly handles all cases filed in the Colfax and Union County district courts. She presides over the Raton Adult Drug Court and Behavioral Health Court programs and chairs the Supreme Court's Commission on Mental Health & Competency. Prior to her judicial appointment, Judge Kennelly was an attorney for the Eighth Judicial District Court; practiced law in civil matters, including litigation and transactional work in real estate, business, insurance, foreclosure, water rights, estate planning, and probate; and was an appellate law clerk for Judge Tim Garcia in New Mexico and Judge Steve Bernard in Colorado. Judge Kennelly graduated with honors from the University of New Mexico School of Law, where she was co-editor-in-chief of the *Natural Resources Journal*. Prior to moving to New Mexico in 2004, Judge Kennelly served for six years as a police officer in a suburb of Cleveland, Ohio.



**HON. MAURINE LANEY** was appointed to the Commission by the New Mexico Supreme Court in July 2015. Judge Laney has served as Magistrate Judge in the Grant County Division I Magistrate Court in Silver City, New Mexico since 2011. Judge Laney began her career in the magistrate courts, fresh out of high school in 1992 as a court clerk, and over the last 24 years has held the positions of judicial specialist, DWI clerk, Warrant Enforcement Specialist, and was Court Manager from 2004 to 2010. She is a member of the Judicial Education Center's training faculty, where she has taught workshops on Civil Case Processing, Advanced Civil Procedures, Landlord Tenant, and Domestic Violence cases at the New Mexico Judicial Education Center's Magistrate Clerks' Conference, Magistrate Judges' Conference, and New Judge Training. She is a board member of the New Mexico Magistrate Judges' Association, and currently serves on the Judicial Personnel Rules Committee, and Odyssey Judges' User Group Committee. In her local community, Judge Laney also serves on the Grant County Community Health Council, Juvenile Justice Strategic Planning Council, and the Kiwanis Club of Silver City.



**NANCY R. LONG, ESQ.** was appointed to the Commission by the New Mexico Board of Bar Commissioners in 2018. A graduate of the University of New Mexico School of Law, she is a shareholder with Long, Komer & Associates in Santa Fe. Nancy's practice is comprised of general counsel representation for public and private clients and representation of clients in complex commercial cases including multi-jurisdictional class action and anti-trust litigation, and representation of clients in state courts throughout New Mexico and in federal court. A significant portion of Nancy's practice is also transactional and includes real estate related matters. Nancy's litigation practice has resulted in significant and often cited precedent in the areas of civil rights and land use law, among others. For many years, Nancy has been AV rated by Martindale Hubbell, the highest rating given for legal ability and ethics. She is also a board member for Century Bank in Santa Fe, serves as a volunteer with Santa Fe County's Teen Court program and has previously served many civic and non-profit organizations as a volunteer or board member.



**KRISTIN MUNIZ** was born in Albuquerque and raised in Rio Rancho, NM. She went to Menaul School but transferred to Rio Rancho High School and graduated class of 2000. Mrs. Muniz earned an Associates in Criminal Justice in 2010 from Central New Mexico Community College, a Bachelor's of Science in Criminal justice in 2013 from National American University and continued her education by receiving a Masters in Public Administration in 2015 from University of Phoenix. Ms. Muniz also earned a Masters in Social Work in 2018 from New Mexico Highlands University. Ms. Muniz works as a full-time therapist specializing in addictions and trauma in both Espanola and Rio

Rancho, NM. She has been married to her husband Jonathan, also a Social Worker, for 6 years. Together they have 6 children ages 12-22.



**ROBERT J. RADOSEVICH** was appointed to the Commission by the Governor in March 2022. He is a lifelong resident of New Mexico graduating from Del Norte High School in Albuquerque. He enlisted in the US Army and served overseas for three years receiving an honorable discharge. He served the citizens of Bernalillo County for 20 years retiring as a Sergeant overseeing the District Court Security Division. He was elected to the Rio Rancho City Council serving from 2002-2006. He returned to serve the citizens of Albuquerque for an additional 18 years in the Auto Theft Division. He has been married to his wife Roberta for 22 years, living in Rio Rancho.



**TWILLA C. THOMASON** was appointed to the Commission by the Governor in August 2019. Ms. Thomason grew up in Hobbs, New Mexico and graduated from Hobbs High School. She received a Bachelor of Science degree in Agricultural Economics/Agricultural Business from New Mexico State University in 2000, and a Master of Science degree in Agricultural, Environmental and Regional Economics, specializing in Consumer Behavior from the Pennsylvania State University in 2002. She has worked for Western Commerce Bank in the Trust Division for 16 years, and as Trust Officer/Vice President overseeing the department for 9 years.

## CHAIRS OF THE COMMISSION

WILLIAM E. FOOTE, Ph.D., August 2022-Present

JOYCE BUSTOS, February 2012–August 2022

LARRY TACKMAN, April 2011–February 2012

DAVID S. SMOAK, August 2004–March 2011

HON. DAN SOSA, JR. , October 2003–August 2004

DOUGLAS W. TURNER, July 2001–March 2003

BARBARA A. GANDY, August 1999–June 2001

DOUGLAS W. TURNER, April 1997–August 1999

ELEANOR SELIGMAN, February 1996–April 1997

DONALD PERKINS, August 1994–February 1996

FRED HARRIS, July 1992–August 1994

PEGGY C. TRAVER, September 1991–June 1992

HUBERT QUINTANA, July 1989–September 1991

HARRY THOMAS, June 1985–July 1989

JUNE O. KELLER, December 1984–June 1985

ALBERT N. JOHNSON, August 1983–December 1984

ELOY A. DURAN, September 1982–August 1983

SUSAN S. DIXON, July 1981–September 1982

LUCY M. SALAZAR, August 1980–July 1981

LOIS CHAPMAN, July 1979–August 1980

LUCY M. SALAZAR, August 1977–July 1979

DORIS WAKELAND, July 1975–August 1977

RICHARD VANN, June 1974–June 1975

LUCY M. SALAZAR, October 1972–June 1974

MORRIS E. H. BINGHAM, June 1970–October 1972

BOYD WEST, November 1969–June 1970

LUTHER A. SIZEMORE, July 1968–November 1969

## EXECUTIVE DIRECTORS

PHYLLIS A. DOMINGUEZ, ESQ.  
January 1, 2022–Present

RANDALL D. ROYBAL, ESQ.  
August 2009–December 2021

JAMES A. NOEL, ESQ.  
January 2004–June 2009

PEG A. HOLGUIN, ESQ.  
July 1993–October 2003

SAMUEL W. JONES, ESQ.  
September 1984–June 1993

DAVID R. GARDNER, ESQ.  
October 1974–September 1984

# ORGANIZATIONAL OVERVIEW

## JURISDICTION & AUTHORITY

Article VI, Section 32 of the New Mexico Constitution and New Mexico Statutes Annotated §§34-10-1, et seq., authorize the Judicial Standards Commission to investigate complaints involving allegations of willful misconduct in office; persistent failure or inability to perform judicial duties; habitual intemperance; and disability seriously interfering with the performance of judicial duties which is, or is likely to become, of a permanent character.

The Commission's jurisdiction extends over complaints made against currently serving Justices of the Supreme Court and all other Judges within the Judicial Branch of New Mexico State Government, including the Court of Appeals, district courts, metropolitan court, magistrate courts, probate courts, and municipal courts.

By law the Commission has no jurisdiction over special commissioners, hearing officers, or other non-elected employees who are not justices or judges, as required by Article VI, Section 32 of the constitution. Furthermore, no jurisdiction exists for the Commission to review complaints against federal judges or magistrates; or New Mexico Executive Branch hearing officers and judges.



*The Commission's constitutional and statutory provisions, the Code of Judicial Conduct, and the procedural rules applicable to our cases are available on the Commission's website at [www.nmjsc.org](http://www.nmjsc.org)>Resources>Governing Provisions of Law.*

During its FY 2019 General Session, the state legislature passed an amendment to the Commission's enabling statutes (effective January 1, 2020) that broadened the Commission's jurisdiction to include "court-appointed commissioners, hearing officers, and administrative law judges while acting in a judicial capacity." However, no accom-

panying resolution putting the question of whether to amend the Commission's constitutional provision was introduced or passed, which is required to place an amendment on the ballot for a vote of the electorate.

Because the Commission's jurisdiction is created and defined by the state constitution and not statute, the Commission requested a formal written opinion from the Attorney General concerning the constitutionality of the statutory amendment. The Attorney General found the statutory amendment to be unconstitutional without the accompanying passage of a constitutional amendment to the Commission's constitutional provision.

The Commission asked the interim legislative Courts, Corrections and Justice Committee to resolve the issue by either repealing the statutory amendment or by getting a proposed constitutional amendment passed. When the Legislature acts on the issue, the Commission will report the outcome here. Until that time, however, the Commission will continue to only review complaints filed against justices and judges as authorized by its constitutional provision.

## CONFIDENTIALITY

Article VI, Section 32 of the New Mexico Constitution mandates that “[a]ll papers filed with the commission or its masters, and proceedings before the commission or its masters, are confidential. The filing of papers and giving of testimony before the commission or its masters is privileged in any action for defamation, except that the record filed by the commission in the supreme court continues privileged but, upon its filing, loses its confidential character, and a writing that was privileged prior to its filing with the commission or its masters does not lose its privilege by the filing.” Confidentiality requirements do not apply to third-party complainants (i.e., persons other than the subject judge or the Commission).

The New Mexico Supreme Court’s files and hearings are accessible to the public unless sealed by the Court pursuant to the rules and orders of the Court. *See*, NMRA 27-104. A complainant’s name and complaint may eventually be disclosed to the judge who is the subject of the complaint, as outlined in the Commission’s procedural rules. A complainant may be called to participate and/or testify in Commission proceedings.

Commission staff cannot respond to requests for information regarding a complaint or any other proceeding before the Commission. However, a complainant will receive written notice of the ultimate outcome of the complaint subject to the limits of confidentiality.

## ACTIONS THE COMMISSION CANNOT TAKE

The Commission is not an appellate court. The Commission cannot change any judge assigned to a case, cannot change a judge’s decision or order on any matter, cannot intervene in a case on behalf of a party, and cannot otherwise affect an ongoing court case or appeal. The filing of a disciplinary complaint with the Commission does not by itself require a judge to recuse or be disqualified from an underlying court case. The Commission and its staff do not provide legal advice.

## FILING, REVIEW AND INVESTIGATION OF COMPLAINTS

Anyone may file a complaint against a judge using the Commission’s complaint form. The Commission may also docket allegations on its own motion, as may the Commission’s Executive Director/General Counsel. The Judicial Standards Commission Rules require that complaints be verified (i.e., substantiated by oath and notarized). The Commission may undertake an investigation on its own motion when it has credible knowledge of misconduct by, or disability of, a judge.

Inquiries about complaint procedures may be made in writing or by telephone. When a complaint is received, the Commission and/or its staff reviews the complaint to determine if it falls within the Commission’s jurisdiction. After determining that jurisdiction exists, the Commission may conduct an initial investigation. The Commission may direct staff to conduct further investigation, if necessary.

Judges are **not** notified of frivolous or unsubstantiated complaints, or complaints that are beyond the Commission’s jurisdiction or are appellate in nature. Staff investigates and gathers documents for the Commission, which typically dismisses unsubstantiated allegations and/or entire complaints after review.

## ACTIONS THE COMMISSION CAN TAKE ON COMPLAINTS

If it is determined that a complaint, report or other information about the judge's conduct could reasonably constitute good cause for the Commission to review or act, the Executive Director and/or Commission staff may conduct a confidential investigation. If, after initial investigation, documentation, and review, the Commission finds insufficient grounds to proceed then it will close the case without further action. The complainant will be informed of the general disposition subject to confidentiality restrictions. A closure of the matter at this stage of the Commission's proceedings remains confidential.

***Investigation.*** If the complaint appears to allege facts not obviously frivolous or unfounded, and to indicate a disability or violation of the New Mexico Code of Judicial Conduct, the Commission may complete an investigation to determine whether the allegations can be substantiated by credible evidence, whether the Code of Judicial Conduct was violated, and whether Commission action is necessary. The judge will be notified with a Notice of Investigation that sets forth the nature of the complaint. The judge must respond in writing to the Notice of Investigation. If after review of the response the Commission does **not** determine that the matter should be closed, the Commission will invite the judge to participate in a voluntary, informal, and confidential conference with the Commission. The Commission's investigative trial counsel assigned to the inquiry is required to provide the judge with initial disclosures when the invitation is sent. At the conference the judge may present the written response in person and offer additional information or explanation to the Commission. The Commission may ask questions or request further explanation from the judge to complete review and determine whether to dismiss, to propose an informal disposition, or to proceed to issue formal charges against the judge. A judge's decision not to participate in the informal conference will **not** be deemed a failure to cooperate by the judge.

***Formal Proceedings.*** If at least seven (7) of the thirteen (13) members of the Commission vote to begin formal proceedings, a Notice of Formal Proceedings will be issued and served upon the judge. The Notice of Formal Proceedings will contain the charges alleged, the facts upon which the charges are based, the laws, canons and rules allegedly violated, and the constitutional provisions under which the Commission invokes its jurisdiction in the proceedings. The judge's answer to the Notice of Formal Proceedings shall be in writing.

Upon filing and issuance of the Notice of Formal Proceedings, the Commission will set the matter for a hearing on the merits. The Commission may hear the case itself or appoint three judges as special masters to hear the matter, take evidence, and report their findings to the Commission. The formal hearing is a closed hearing. The judge has a right to and is given a reasonable opportunity to defend with evidence, to be represented by counsel, and to examine and cross-examine witnesses. The standard of proof is clear and convincing evidence. At least seven Commissioners must agree on a determination of misconduct and in recommending discipline, removal, or retirement of a judge to the New Mexico Supreme Court.

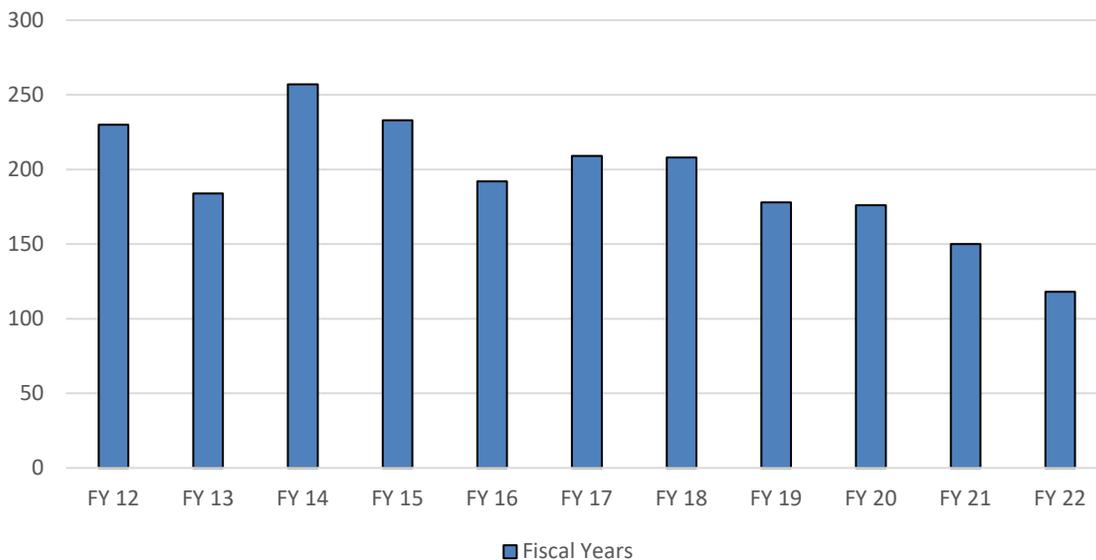
If the Commission determines at any time prior to the conclusion of the formal proceedings that there is insufficient evidence to support allegations against the judge, those allegations will be dismissed. In some cases, the Commission has found evidence of wrongdoing, but has determined that the judge's actions were the result of misunderstanding, rather than willful misconduct. In those situations, the judge may be referred for counseling to the New Mexico Supreme Court or to a judge having supervisory authority.

**Dispositions.** The Commission may dispose of a case by dismissing it, privately informing the judge that the conduct may violate the standards of judicial conduct, and/or proposing mentorship, professional counseling, assistance, or other remedial measures for the judge.

**Sanctions.** If the Commission votes to recommend to the New Mexico Supreme Court that a judge should be sanctioned, the following sanctions are available: removal, involuntary retirement, discipline (suspension, limitations or conditions on judicial duties, counseling, mentoring, training, censure, fine or other discipline appropriate to the conduct), or any combination of the above. The Supreme Court may set a hearing on the Commission's recommendations, and render a decision adopting, rejecting, or modifying the recommendations of the Commission or requiring some other action.

**COMPLAINTS,  
DISPOSITIONS & PERFORMANCE**  
July 1, 2021–June 30, 2022

**10 YEAR HISTORY OF WRITTEN COMPLAINTS**



**STATISTICS**

**COMPLAINTS RECEIVED**

In FY 2022 the Commission received 118 written complaints, which are comprised of the following: 96 verified complaints (includes Commission and General Counsel complaints, and reopened inquiries) and 22 unverified complaints.

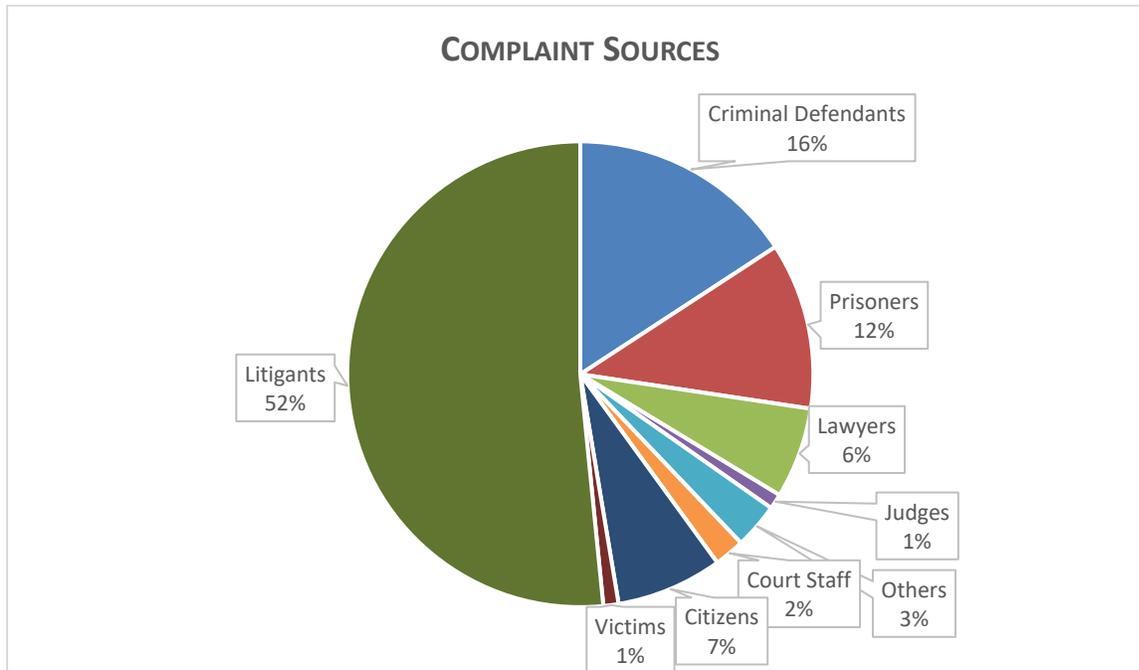
**10-YEAR HISTORY OF WRITTEN COMPLAINTS**

The Commission staff assist the public with telephonic and in-person communications. Staff members make every effort to discuss callers’ situations in detail as appropriate and inform callers about the limited scope of the Commission’s jurisdiction under state law. Complaint forms are mailed to all callers who request them. Complaint forms and detailed filing instructions are available to download from the Commission’s website, both in English and Spanish. The complaint may be filled out online, but all forms are still required to be filed with an original, notarized signature.

**SOURCES OF VERIFIED COMPLAINTS**

Of the 96 verified complaints filed with the Commission, the distribution of the sources of written, verified complaints was the following: 49 by litigants or their family/friends, 15 by criminal defendants or their family/friends, 7 by citizens, 1 by victim(s), 6 by lawyers, 11 by prisoners, 2 by court staff, 1 by judges, 0 by public officials, and 3 by others. Additionally, 1 complaint was initiated by the Commission on its own motion, and 0 were initiated by the Commission’s General Counsel. The chart on the following page illustrates these figures.

## COMPLAINT SOURCES



## SUBJECT JUDGES OF COMPLAINTS

JUDICIAL BRANCH	VERIFIED COMPLAINTS	PERCENTAGE OF CASELOAD
Supreme Court	0	0.00%
Court of Appeals	2	2%
District Court	67	70%
Metropolitan Court	4	4%
Magistrate Court	16	17%
Municipal Court	5	5%
Probate Court	1	1%
Not a Judge	1	1%

## CASE DISPOSITIONS

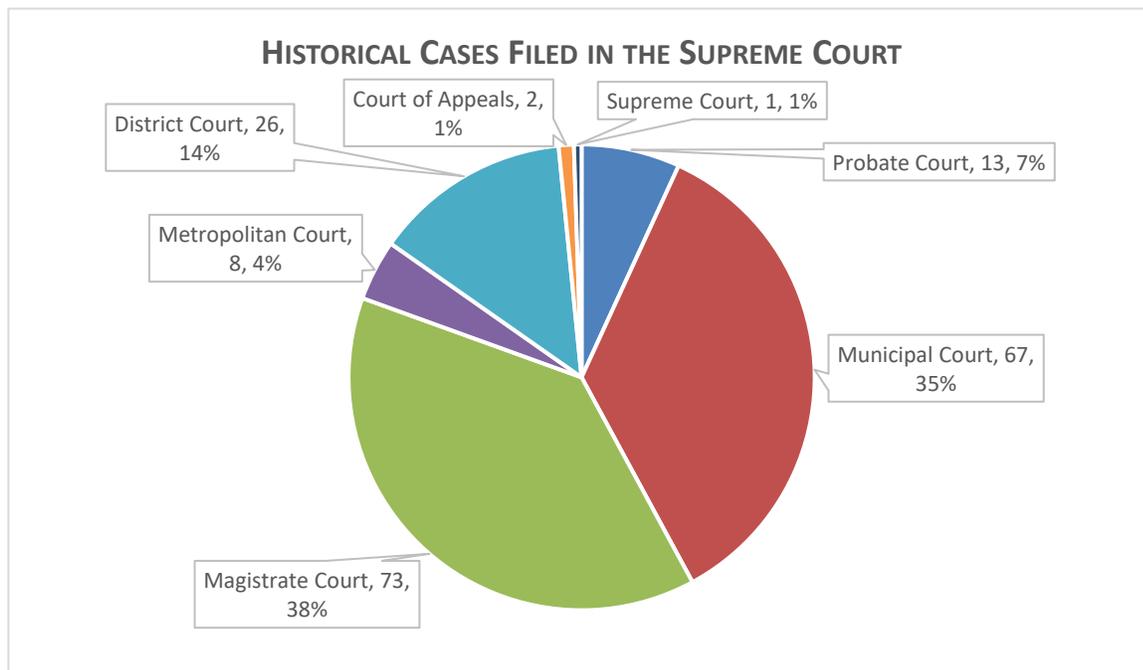
Inquiries Pending at Beginning of FY 2023 (July 1, 2022)	35
New Written/Verified Complaints and Inquiries in FY 2022	96
Inquiries Concluded in FY 2022	(115)
<b>Inquiries Pending at End of FY 2022 (June 30, 2022)</b>	<b>16</b>

Of the 115 cases disposed in FY 2022, the Commission concluded 14 cases (involving 5 judges) through formal proceedings (after charges filed, stipulations, trials and/or Supreme Court proceedings). In FY 2022 the case dismissals were as follows: 54 cases dismissed as appellate, 6 cases dismissed because they concerned individuals beyond the Commission’s jurisdiction, and 34 cases dismissed as unsubstantiated. In 3 cases, 3 judges were referred for informal remedial measures, which may have included mentorship, education, counseling, and/or other assistance. Finally, 14 cases were disposed because the judge had resigned, died, or was not reelected; 3 complaints were dismissed after investigation and 1 informal advisory letter was issued.

## HISTORICAL CASES FILED IN THE SUPREME COURT

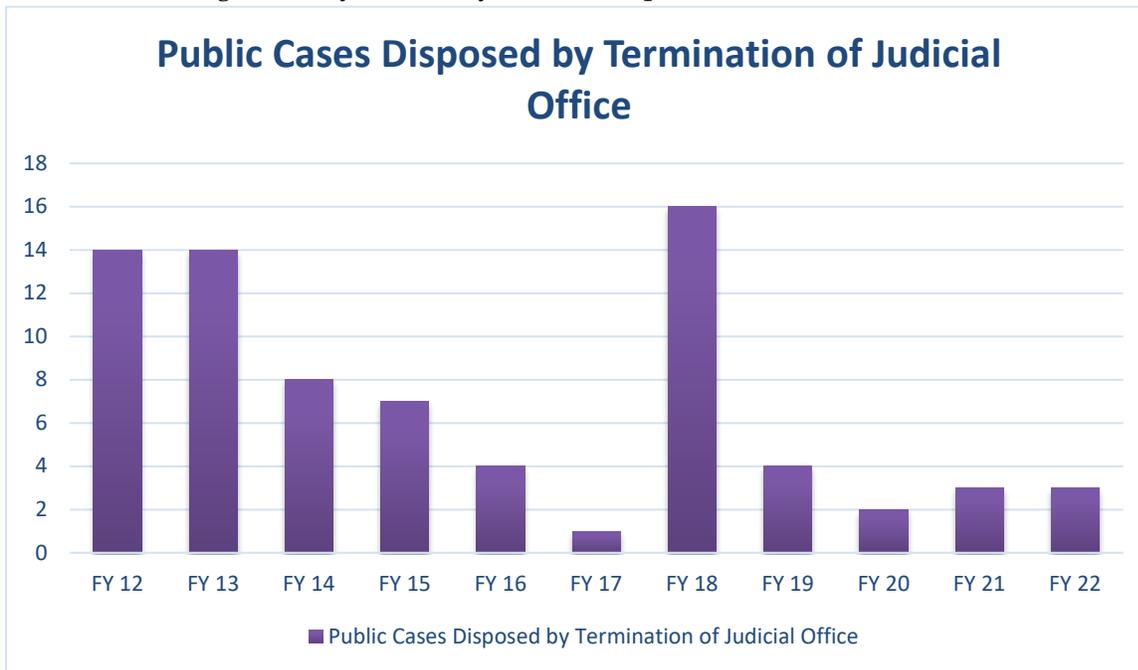
Since July 1, 1968, the Commission filed 190 petitions for discipline and/or temporary suspension in the New Mexico Supreme Court involving 133 judges. By their nature, these cases involve the most serious questions of judicial misconduct or disability, thereby requiring the Commission to recommend sanctions, discipline, and/or immediate temporary suspension to the State’s highest court. Of the judicial branches concerned, the Commission’s petitions to the Supreme Court involved the following levels of the State Judiciary in order of the most filings: municipal courts, magistrate courts, district courts, probate courts, metropolitan court, Court of Appeals and New Mexico Supreme Court.

The following chart illustrates the historical distribution of cases filed in the Supreme Court since 1968.



## PUBLIC CASES DISPOSED BY TERMINATION OF JUDICIAL OFFICE

In FY 2022, 12 cases involving 4 judges were disposed after termination of judicial office in public proceedings before the Supreme Court. Since its inception, the Commission has disposed of 234 cases concerning 109 judges after the respondent judges terminated their judicial offices. These cases include involuntary or stipulated permanent removal, retirement, or resignation from office after the Commission issued formal charges and then filed and requested action by the Supreme Court. Following is a ten-year history of cases disposed:



## HISTORICAL INFORMAL CASE DISPOSITIONS

Short of proceeding formally on a case not warranting dismissal, the Commission may dispose of a matter informally. Informal dispositions are not filed with the Supreme Court and remain confidential pursuant to Article VI, Section 32 of the New Mexico Constitution. Allegations disposed of informally were found to merit notice to the judge, but due to their nature, the judge's experience and disciplinary history, or a number of other factors, the Commission determined that an informal disposition was appropriate to address the issues in question. The Commission generally makes no findings of misconduct in matters receiving informal dispositions.

Informal dispositions include issuing confidential advisory letters, referring the judge for mentorship, counseling or assistance, or entering into a confidential stipulation agreement concerning the conduct in question. Since its formation in 1968, the Commission has informally disposed of 485 cases. The following tables illustrate the distribution of the informal cautionary or advisory letters, as well as mentorships. A brief discussion concerning confidential stipulation agreements follows thereafter.

**CAUTIONARY OR ADVISORY LETTERS (339 CASES)**

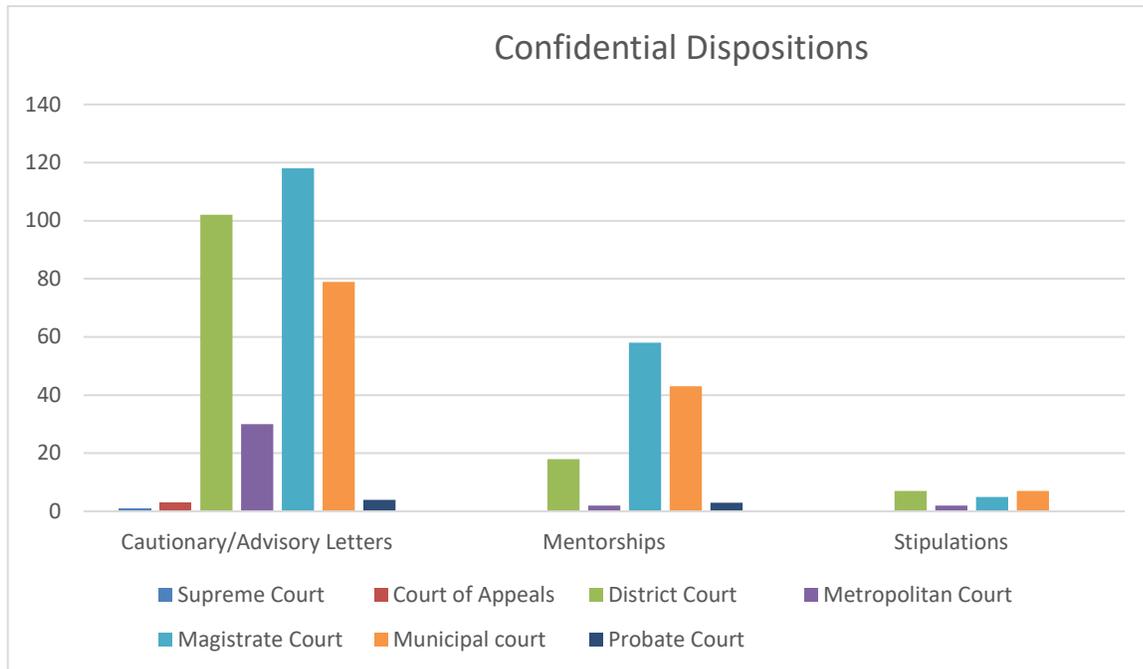
<b>Judicial Branch Involved</b>	<b>Number of Cases Filed</b>	<b>Percent of all Cases Filed</b>
Supreme Court	1	< 1%
Court of Appeals	3	<1%
District Court	103	30%
Metropolitan Court	30	9%
Magistrate Court	119	35%
Municipal Court	79	23%
Probate Court	4	1%

**MENTORSHIPS (125 CASES)**

<b>Judicial Branch Involved</b>	<b>Number of Cases Filed</b>	<b>Percent of all Cases Filed</b>
Supreme Court	0	0%
Court of Appeals	0	0%
District Court	18	15%
Metropolitan Court	2	2%
Magistrate Court	58	47%
Municipal Court	44	34%
Probate Court	3	2%

## CONFIDENTIAL STIPULATIONS (21 CASES)

In addition to confidential cautionary or advisory letters, and referrals to the mentorship program, the Commission may informally dispose of cases through confidential stipulations. These stipulations typically require judges to retire, resign, or cease improper conduct. In FY 2022, 0 cases were disposed through confidential stipulation. Historically, the Commission has disposed of 21 cases through such stipulations.



## PROCEEDINGS BEFORE THE COMMISSION JULY 2021-JUNE 30, 2022

All of the Commission's proceedings that resulted in either formal or informal dispositions during FY 2022 are summarized in this section. Formal cases are matters the Commission found to involve the most serious ethical issues under the New Mexico Code of Judicial Conduct, thereby warranting formal review and proceedings before the Commission and/or the New Mexico Supreme Court. Informal cases, although less serious in nature and scope, involve significant issues that the Commission addresses confidentially through advisory letters to the subject judges or by asking judges to complete the Commission's mentorship



*The referenced rules are available on our website under: Resources > Governing Provisions of Law.*

program. Judicial Standards Commission petitions filed with the Supreme Court after conducting full evidentiary hearings (trials) are public record, but temporary suspension and other matters are required to be filed under seal in the Supreme Court. All Supreme Court hearings, docket sheets, and orders were available to the public, unless it was otherwise ordered by the

Court. The Supreme Court requires in Rule 27-104(B) NMRA that "[t]he contents, the fact of filing, and any other information about any request for temporary suspension, stipulated discipline, or interim relief shall remain confidential until the Court determines that confidentiality is no longer required and enters an unsealing order on its own initiative or grants a motion to unseal pursuant to Paragraph I of Rule 12-314 NMRA." The Court's docket sheets in sealed matters accordingly only include the case number and reference to sealed pleadings without specific title information. The Court also has codified that "[a]ny person or entity who knowingly discloses any material obtained from a court record sealed pursuant to this rule may be held in contempt or subject to other sanctions as the Court deems appropriate." In January 2012 the Supreme Court adopted the most recent comprehensive amendments to the Code of Judicial Conduct that apply to all judges within the Commission's jurisdiction. Violation of the rules set forth in the Code of Judicial Conduct is an important, but not exclusive consideration for the Supreme Court when exercising its constitutional power for *de novo* review of judicial disciplinary matters.

### FORMAL PROCEEDINGS

In FY 2022, the Commission conducted or initiated formal proceedings concerning 14 case(s) involving 4 judge(s) either before the Commission or the New Mexico Supreme Court. Below are summaries of all formal, non-confidential proceedings filed and on public record with the Supreme Court with events occurring in and/or completed in FY 2022, including new matters.

**IN THE MATTER OF HON. HEATH E. WHITE**  
**Torrance County Magistrate Court**  
**JSC Inquiry No. 2019-043**  
**Supreme Court Docket No. S-1-SC-37654**

The Commission filed a *Notice of Preliminary Investigation* concurrent with a *Petition for Immediate Temporary Suspension Without Pay* (“*Petition*”) with the Supreme Court on April 19, 2019. The *Petition* stated in part:

**Respondent is under investigation by the New Mexico State Police and is pending likely prosecution by the Attorney General for criminal embezzlement and/or related acts of dishonesty while acting in his recently former position as Torrance County Sheriff.**

The Supreme Court ordered Respondent to file a written response to the *Petition* on or before May 13, 2019. Respondent stipulated to immediate temporary suspension without pay and a motion to accept the stipulation was filed with the Supreme Court on May 7, 2019. The Supreme Court granted the *Motion to Accept the Stipulation to Immediate Temporary Suspension without Pay* effective May 10, 2019, quashed the order requiring a written response and unsealed all documents filed in the Supreme Court.

A Second Judicial District Court judge dismissed the criminal case against Judge White following a preliminary hearing ruling that the affidavit used in support of a search warrant was invalid and finding that even if the search warrant had been supported by a valid affidavit, it could not find probable cause to bind the defendant over for trial based on the evidence presented. The State appealed the district court’s decision and the Court of Appeals issued a memorandum opinion on July 28, 2021, affirming the dismissal, due to lack of probable cause, but reversed the judge’s determination that the search warrant was invalid. The Court of Appeals held:

We conclude that the State failed to meet its burden to provide sufficient evidence for the district court to find probable cause to bind Defendant over on the enumerated charges; thus, the district did not err by dismissing the charges against Defendant. Accordingly, we affirm the dismissal.

Following the court of Appeals opinion affirming the dismissal. The Commission moved the Supreme Court to lift Judge White’s temporary suspension and reinstate him to his position of Torrance County Magistrate Judge with back pay. The Supreme Court issued the following order on January 26, 2022:

NOW, THEREFORE, IT IS ORDERED that the temporary suspension is LIFTED and respondent is REINSTATED to his elected judicial office; IT IS FURTHER ORDERED that respondent shall receive back pay from the Torrance County Magistrate Court for the time respondent has been temporarily suspended.

**IN THE MATTER OF HON. STEVE GUTHRIE**  
**Otero County Magistrate Court**  
**JSC Inq. Nos. 2020-017, 2020-028, 2020-039,**  
**2020-042, 2020-046, 2020-071, 2020-100, 2020-114**  
**Supreme Court Docket No. S-1-SC-39014**

On June 30, 2020, the Commission issued a Notice of Investigation (“NOI”) to Judge Guthrie. Pursuant to Commission Rule 19 NMRA 2020 and, following the Commission’s receipt and review of Judge Guthrie’s written response to the NOI, the Commission invited him to participate in an informal confidential conference with the Commission which was held on December 7, 2020. The conference afforded Judge Guthrie an opportunity to discuss and explain his response to the NOI in person and provided the Commission an opportunity to ask him questions about the pending allegations and his response to assist in determining an appropriate course of action.

After full consideration of Judge Guthrie’s written response and the information he provided verbally at the informal conference, the Commission issued a Notice of Formal Proceedings (“NFP”) to him and set the matter for a hearing on the merits. The NFP contained the following counts:

**Count 1.** You violated the defendant’s due process rights and issued an *ex parte* order in cause number M-38-VM-2020-180 when you ordered a no-bond hold contrary to Rule 6-403 NMRA, *Revocation or Modification of Release Orders*; failed to continue the conditions of release hearing until appointed counsel was present contrary to Rule 6-401(A)(2) NMRA; and failed to make written findings of particularized reasons why the defendant should not be released contrary to Rule 6-401(B) NMRA. To wit: At the conditions of release hearing held on November 13, 2020, you issued a three-thousand-dollar (\$3,000.00) cash or surety bond, ordered the defendant to have no contact with the alleged victim, and after the defendant requested an attorney, issued a *Conditional Order of Appointment* for a public defender. After the defendant’s hearing but while first appearances were still being held, an assistant district attorney informed you *ex parte* that the defendant had already been in contact with the alleged victim in violation of your no contact order. You recalled the defendant’s case, questioned the defendant without the presence of an attorney, lined through the previous bond amount of \$3,000.00, and ordered the defendant to be held without bond.

**Count 2.** You failed to follow the New Mexico Supreme Court’s Order on the *Safe and Effective Administration of the New Mexico Judiciary During the COVID-19 Public Health Emergency* issued on July 6, 2020, and put at risk the health and safety of Otero County Magistrate Court staff when you:

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

**Count 3.** You failed to follow the Twelfth Judicial District Court Administrative

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

**Count 4.** On or about November 9, 2020 you failed to perform due diligence and acted without jurisdiction when you conducted a hearing and issued an order setting conditions of release in Cause No. M-38-VF-2020-00020 knowing, or when you should have known, that the Twelfth Judicial District Attorney's Office had filed an *Expedited Motion for Pretrial Detention* which divested you of jurisdiction pursuant to Rule 6-409(D) NMRA.

**Count 5.** On or about August 18, 2020 you failed to perform due diligence and acted without jurisdiction when you conducted a hearing and issued an order setting conditions of release in cause number M-38-FR-2020-00336 knowing, or when you should have known, the Twelfth Judicial District Attorney's Office had filed an *Expedited Motion for Pretrial Detention* which divested you of jurisdiction pursuant to Rule 6-409(D) NMRA.

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

**Count 7.** On or about February 28, 2020 you failed to perform due diligence and acted without jurisdiction when you conducted a hearing and ordered conditions of release in *State of New Mexico vs. Heather Taylor*, M-38-FR-2020-00091, knowing, or when you should have known, that the Twelfth Judicial District Attorney's Office had filed an *Expedited Motion for Pretrial Detention* which divested you of jurisdiction pursuant to Rule 6-409(D) NMRA.

**Count 8.** You issued illegal and/ or improper sentences, and/ or failed to ensure that judgment and sentence orders were accurate in the following *Driving Under the Influence of Intoxicating Liquor or Drugs* related cases. To wit: You,

- A. Improperly sentenced five (5) defendants charged with *Driving Under the Influence of Intoxicating Liquor or Drugs First Offense* to three hundred sixty-four (364) days incarceration contrary to NMSA 1978, Section 66-8-102(E). [See Cause Nos. M-38-DR-2018- 00109, M-38-DR-2018-00045, M-38-DR-2019-00037, M-38-DR-2019-00066, and M-38-DR- 2019-00007];
- B. Improperly sentenced six (6) defendants charged with *Driving Under the Influence of Intoxicating Liquor or Drugs First Offense* to three hundred sixty-four (364) days contrary to NMSA 1978, Section 66-8-202(E), and failed to properly complete the judgment and sentence forms to indicate if the sentences were deferred or suspended. [See Cause Nos. M- 38-DR-2018-00043, M-38-DR-2018-00039, M-38-DR-2018-00042, M-38-DR-2018-00052, M-38- DR-2018-00021 and M-38-DR-2018-00069];

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

**Count 9.** You dismissed Cause No. M-38-DR-2019-365 with prejudice when a preliminary hearing was not held in a timely manner, contrary to Rule 6-202(A)(3) NMRA which states, "[i]f a preliminary examination is not held within the time limits in this rule, the court shall dismiss the case without prejudice and discharge the defendant."

**Count 10.** You failed to afford the litigant in Cause No. M-38-CV-2019-601 fifteen (15) days to respond to a *Notice of Intent to Enter Judgment on the Pleadings* as required by Rule 2-303(D) NMRA when you filed a *Notice of Intent to Enter Judgment on the Pleadings* on February 27, 2020 and then entered an *Order for Judgment on the Pleadings* the same day.

**Count 11.** You granted an oral competency motion in Cause No. M-38-DR-2020-043 contrary to Rule 6-507.1(D)(1) NMRA which requires a motion for a competency evaluation to be in writing.

**Count 12.** You failed to determine a defendant's probationary end date in Cause No. M-38-VM-2017-153 after receiving differing end dates from both the prosecution and defense attorneys. To wit: A court clerk asked you what probation end date should be used and you told the clerk, "I don't care," and then pointed to the State's attorney and instructed the court clerk to use the date provided by the State's attorney stating words to the effect, "I don't trust the public defender's office."

**Count 13.** You violated the defendant's due process rights in Cause No. M-38-DR-2020-056 when you determined the defendant to be a flight risk because the defendant "didn't live in the U.S." and ordered the defendant held on an eight-thousand-dollar (\$8,000.00) bond. Additionally, you failed to file written findings of individualized facts justifying the secured bond pursuant to Rule 6-401(F)(2) NMRA.

**Count 14.** You failed to perform due diligence when you issued bench warrants and assessed one-hundred-dollar (\$100.00) bench warrant fees without first determining if defendants had first been properly noticed into court. To wit: Due to the Covid-19 pandemic, the Otero County Magistrate Court began conducting telephonic hearings, but you instead issued summonses for defendants to appear in person and/ or did not include contact information for the court on the summonses. When defendants failed to call the court on their appearance date, you issued bench warrants and assessed bench warrant fees without determining if the defendants were first properly summonsed in the cause numbers listed below.

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

**Count 15.** You sentenced the defendant in Cause No. M-38-DR-2019-00064 to ninety (90) days of incarceration and imposed three hundred sixty-four (364) days of probation without ordering the sentence deferred or suspended, contrary to NMSA 1978, *Section 31-20-3, Aggravated Driving Under the Influence of Intoxicating Liquor or Drugs First Offense*.

**Count 16.** You failed to order twelve (12) defendants convicted of *Battery on a Household Member* to complete a mandatory domestic violence offender treatment or intervention program pursuant to NMSA 1978, *Section 30-3-15(C)*. [See Cause Nos. M-38-VM-2019-052, M-38-VM-2019-054, M-38-VM-2019-075, M-38-VM-2019-082, M-38-VM-2019-092, M-38-VM-2019-121, M-38-VM-2019-127, M-38-VM-2019-147, M-38-VM-2019-153, M-38-VM-2019-201, M-38-VM-2019-217, and M-38-VM-2019-226.

**Count 17.** You failed to afford the State notice and opportunity to be heard in *State vs. Herrera*, Cause No. M-38-DR-2019-00064, when you granted defense counsel's *Motion to Vacate Illegal Sentence, For Release From Custody, For Placement on Probation and Request for Expedited Setting* without allowing the State fifteen (15) days to respond contrary to Rule 6-304(E) NMRA. To wit: You issued a *Notice of a Hearing* for April 3, 2020 at 1:30 p.m.; however, you entered an order on April 2, 2020 granting defense counsel's motion without affording the State time to respond.

**Count 18.** You dismissed the complaint in Cause No. M-38-CV-2019-0056 giving the plaintiff notice and opportunity to respond to one defendant's answer, or to respond to a second defendant's failure to file an answer to the complaint.

**Count 19.** You misrepresented the facts in Cause No. M-38-CV-2019-601 when you signed an *Order for Judgment on the Pleadings* which stated that you reviewed the defendant's response to plaintiff's *Motion for Judgment on the Pleadings* when a response had not yet actually been filed.

**Count 20.** On or about March 4, 2019 you were counseled by the Chief Judge of the Twelfth Judicial District about your duty to follow statutes and rules when imposing a deferred and/ or suspended sentence. However, you failed to follow those

directions and continued to improperly sentence defendants. [See Cause No. M-38-DR-2019-00037, M-38-DR-2019-0066 and M-38-DR-2019-00007]

**Count 21.** On or about April 1, 2019 in Cause No. M-38-TR-2018-2644 you assisted a New Mexico State Police Officer in the prosecution of the officer's case where the officer appeared in person and defense counsel appeared telephonically. To wit: The officer failed to identify the defendant at trial as the same person that the officer had stopped and ticketed. You wrote the letters "ID" on a note pad, tapped on the pad to get the officer's attention and nodded towards what you wrote. The officer read what you wrote and proceeded to testify that he was dressed in his uniform displaying his badge of office at the time of the stop and identified the defendant by his driver's license.

**Count 22.** On or about April 24, 2020 in a telephonic hearing in Cause No. M-38-TR-2020-680 you accepted a guilty plea and improperly dismissed two charges (*Failure to Register a Vehicle* and *Improper Use of Evidence of Registration*) without proof of compliance from the defendant. You stated for both counts, "It is adjudged that the charge is dismissed because proof was shown." However, proof was not shown, and instead you ordered the defendant to fax proof to the court within seven (7) days from the hearing.

**Count 23.** On or about April 24, 2020 in a telephonic hearing in Cause No. M-38-TR-2019-286 you accepted a guilty plea and dismissed two charges (*No Driver's License* and *Failure to Register or Title a Vehicle as Required*) without proof of compliance from the defendant. You stated for both counts, "It is adjudged that the charge is dismissed because proof was shown." However, proof was not shown, and instead you ordered the defendant to fax proof to the court within thirty (30) days.

**Count 24.** On or about March 27, 2020 in Cause Nos. M-38-TR-2020-678 and M-38-TR-2020-461 you failed to fully advise the defendants of all constitutional rights contrary to Rules 6-501 and 6-502 NMRA. To wit: Before you accepted the defendants' guilty pleas, you only advised the defendants that they had the right to remain silent, that anything they said could be used against them, that they had the right to an attorney and to have an attorney present during the proceedings. You failed to inquire if the defendants' pleas were voluntary and failed to inform the defendants that a plea of guilty or no contest may have an effect upon their immigration or naturalization status.

**Count 25.** On or about March 27, 2020 in Cause No. M-38-FR-2020-155 you failed to fully advise a defendant charged with *Negligent use of a Deadly Weapon*, *Possession of Drug Paraphernalia* and *Unlawful Carrying of a Deadly Weapon on School Premises* of all his constitutional rights pursuant to Rule 6-501 NMRA. You only advised the defendant that he had the right to remain silent, that anything he said could and would be used against him, and that he had the right to have an attorney present. You omitted the maximum penalty and mandatory minimum penalty, the right to bail, the right to a preliminary hearing, that a plea of guilty or no contest will affect the defendant's constitutional right to bear arms, including shipping, receiving, possessing, or owning any firearm or ammunition.

**Count 26.** You failed to properly instruct jurors when you misread, mispronounced, omitted and/ or mumbled words when reading jury instructions.

Judge Guthrie entered into a Stipulation Agreement and Consent to Discipline on September 24, 2021 and agreed to:

1. Suspension without pay. Respondent shall be suspended from judicial office for thirty (30) days without pay. Suspension is to begin on the first day of the next full pay period falling after the Supreme Court issues its order accepting this Stipulation;
2. Training. Respondent shall attend at this own expense and successfully complete the National Judicial College course entitled "General Jurisdiction: from October 18, 2021 to October 28, 2021, in Reno, Nevada.
3. Unsupervised Probation and Formal Mentorship...until December 31, 2022, the end of his current term.

The Supreme Court granted the Commission's petition, accepted the Stipulation and issued its order on October 29, 2021. Judge Guthrie's thirty day suspension without pay began on Monday, November 1, 2021, the first full pay period following issuance of the Supreme Court's order.

On November 10, 2021, the Commission filed a *Motion for Order to Show Cause* with the Supreme Court which stated in part that Judge Guthrie had acted in a judicial capacity on November 3rd, 7th and 8th, 2021 while suspended by order of the Court. Oral argument was heard regarding the Commission's motion on February 14, 2022. The Court held Judge Guthrie in contempt pursuant to the Court's inherent contempt power for violations of the Court's order and issued the following sanctions:

1. Respondent is suspended without pay for a period of four (4) months, beginning Thursday, March 3, 2022, and ending Sunday, July 3, 2022;
2. This Court shall issue a public censure of Respondent;
3. The Judicial Standards Commission shall submit a draft public censure to the Court by April 4, 2022, for the Court's consideration and approval, so that this Court may publish the public censure by May 2, 2022;
4. Upon completion of the four (4)-month period of suspension, Respondent shall be subject to supervised probation and mentorship by a retired judge appointed by this Court for a period of one (1) year beginning July 4, 2022;
5. Respondent shall pay the expense of the appointed judge's time spent supervising and mentoring Respondent and Respondent's docket;
6. The Judicial Standards Commission shall submit a recommendation by April 4, 2022, regarding the retired judge that should be appointed to supervise and mentor Respondent;
7. Respondent shall attend at his own expense and successfully complete the judicial training identified in the *Stipulation Agreement and Consent to Discipline* accepted by this Court on October 29, 2021, or similar training approved by the Judicial Standards Commission; and
8. The Court's February 4, 2022, appointment of Chief Judge James M. Hudson of the Fifth Judicial District Court to serve as Respondent's mentor is hereby withdrawn.

The Commission accepted and entered into a *Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings* (Stipulation) with Judge Guthrie on March 24, 2022. A petition to accept the *Stipulation* was filed with the New Mexico Supreme Court on March 24, 2022. The Court accepted the petition and ordered the resignation of Judge Guthrie effective April 25, 2022.

**IN THE MATTER OF HON. KAREN E. GATES**  
**CIMARRON MUNICIPAL COURT**  
**JSC INQUIRY NO. 2020-094**  
**SUPREME COURT DOCKET NO. S-1-SC-38722**

The Commission issued a Notice of Investigation to Judge Gates in Inquiry No. 2020-094 on December 29, 2020. After receiving and reviewing Judge Gates' answer to the Notice of Investigation, the Commission invited her to an Informal Confidential Conference with the Commission on April 12, 2021. The Conference afforded Judge Gates an opportunity to discuss her response to the NOI and provided the Commission an opportunity to ask questions about the pending allegations.

Following the conference, and after full consideration of Judge Gates' written and oral responses, the Commission issued a Notice of Formal Proceedings to her on April 23, 2021 and set the matter for a hearing on the merits. The following allegations were contained in the Notice of Formal Proceedings:

1. On or between December 2016 and October 2020, you failed to recuse from cases filed in the Cimarron Municipal Court by the Cimarron Police Department where your ex-husband and co-habitant, Ryan Gates, is chief of Police, and where Cimarron police officers, over whom he exercises supervisory duties appear before you in court.
2. On or between October 2020 and April 2021, you have failed to avoid or minimize conflicts of interest and situations requiring frequent recusal or disqualification. Additionally, you have violated the duty to hear and decide cases filed by the Cimarron Police Department which constitutes a substantial portion of the cases you were elected to adjudicate and have instead delegated that substantial portion of your docket to an alternate judge. You have continued to receive and have accepted payment of your full, regular salary as Municipal Judge from the Village of Cimarron while the alternate judge has received a substantially disproportionate salary relative to the workload the alternate is required to handle because of your ongoing conflicts with Cimarron Police Department cases.

On June 4, 2021 the Commission accepted and entered into a *Stipulation to Resignation From Judicial Office in Lieu of Further Disciplinary Proceedings* (Stipulation) with Judge Gates. The Commission petitioned the New Mexico Supreme Court to accept the petition and accept Judge Gates' resignation. On July 2, 2021, the Court accepted the petition and granted the *Stipulation*.

**IN THE MATTER OF MARLO MARTINEZ**  
**Rio Arriba County Probate Court**  
**JSC Inquiry Nos. 2019-038, 2021-011 & 2021-012**  
**Supreme Court Docket No. S-1-SC-38694**

The Commission issued a Notice of Investigation (“NOI”) on June 13, 2019 to Judge Martinez. Pursuant to Commission Rule 19 NMRA and following the Commission’s receipt and review of Judge Martinez’ written response to the NOI, the Commission invited Judge Martinez to participate in an informal confidential conference on October 7, 2019. The Conference afforded Judge Martinez an opportunity to discuss his response to the NOI and provided the Commission an opportunity to ask questions about the pending allegations.

After full consideration of Judge Martinez’ written and oral responses, the Commission entered into a Consent Decree whereby Judge Martinez stipulated to an informal mentorship. The Hon. Cristy Carbon-Gaul agreed to mentor Judge Martinez. On August 10, 2020, after the Commission received Judge Carbon-Gaul’s mentorship report, the Commission issued an *Order to Show Cause* why the Commission should not declare the mentorship unsuccessful. Judge Martinez filed his response to the *Order to Show Cause* on September 30, 2020, and requested he be allowed a second mentorship with a new mentor. The Commission granted Judge Martinez’ request and Hon. Mary Marlowe Sommer agreed to serve as Judge Martinez’ second mentor.

While under mentorship Judge Martinez was criminally charged with aggravated battery. The Commission moved for immediate temporary suspension and issued a Notice of Investigation on February 22, 2021, with the following allegations:

You have been charged with the criminal offense of *Aggravated Battery*, a misdemeanor, resulting from an incident that occurred on or about December 28, 2020.

A criminal complaint was filed on or about December 30, 2020, and is pending against you. The criminal complaint alleges that you approached Victor Layman in an angry manner, yelled at him, and used profanity towards him. It has further been alleged that you kicked a cane away from Mr. Layman during the incident, which caused him to lose his balance and fall resulting in injury to him. Mr. Layman is reportedly a tenant in a rental property that you own.

While criminally investigated and charged, Judge Martinez was undergoing his mentorship and met with Judge Sommer on January 12, 2021. Judge Sommer advised Judge Martinez not to conduct probate court business at the New Mexico Office products store located in Española, New Mexico. On January 15, 2020, three days after being advised by his mentor to stop conducting court business out of his private business, New Mexico Office Products, Judge Martinez was video recorded conducting probate court matters from the New Mexico Office Products store. The Commission after learning of Judge Martinez’ refusal to follow his second mentor’s advice, issued a second *Show Cause Order*. On April 12, 2021, the Commission conducted a hearing, found the mentorship unsuccessful and issued a Notice of Formal Proceedings on April 29, 2021. The Notice of Formal

Proceedings contained the following charges:

1. While holding the elected position of Rio Arriba County Probate Judge, you have failed to consistently conduct probate court matters in the county seat of Tierra Amarilla, New Mexico contrary to Section 34-7-4 NMSA (1978) which requires all probate judges to hold court in the county seat of their counties.
2. You instructed Victoria Montoya to meet with you regarding the filing of a probate matter at the New Mexico Office Products store in Española, New Mexico on January 15, 2021, and met with her there to conduct probate matters, instead of meeting with her at your probate court at the Rio Arriba County Seat in Tierra Amarilla, New Mexico contrary to Section 34-7-4 NMSA (1978).
3. You failed to participate in an informal mentorship in good faith when you failed to follow the advice and direction of your two successive mentors Hon. Cristy Carbon-Gaul and Hon. Mary Marlowe Sommer, and continued conducting Rio Arriba County Probate Court matters at the New Mexico Office Products store in Española, New Mexico during the course of your mentorship and failed to obtain and use a probate court cell phone to avoid ex parte communications on your personal or private business cell phone.
4. You demonstrated a lack of honesty and candor before the Judicial Standards Commission on April 12, 2021 when you falsely told the Commission at a show cause hearing that you did not conduct Rio Arriba County Probate Court matters at the New Mexico Office Products store in Española, New Mexico which you and/or your family owns.
5. On or between March 1, 2019 and March 31, 2019, you engaged in an ex parte communication and created an appearance of impropriety and/or committed actual impropriety when you accepted and engaged in an ex parte call about a discretionary probate case matter from Gloria Barela, girlfriend and caretaker of decedent Bernie A. Archuleta III, PB-2019-0003, whose probate case was pending before your court.
6. You initiated an ex parte communication after speaking with Gloria Barela by sending a text message to Kayla Lawson, daughter and personal representative of decedent Bernie A Archuleta III's estate, asking Ms. Lawson to call you in response to, and in furtherance of, the substance of the ex parte conversation with Gloria Barela.
7. On or about March 28, 2019 you allowed and participated in an ex parte communication and interfered in a probate case pending before you when you accepted a call from personal representative Kayla Lawson, recounted

your conversation with Gloria Barela to Kayla Lawson, and demanded that Ms. Lawson prove she had contacted Gloria Barela about a disabled truck Ms. Lawson had removed from her father's property. Subsequently, Ms. Lawson sent you by text message and e-mail, screen shots of text messages she sent to Gloria Barela.

8. You failed to be patient, dignified and courteous to Kayla Lawson during your ex parte telephone conversation with her on March 28, 2019 when you repeatedly interrupted her, spoke to her in a raised voice, called her a liar, told Ms. Lawson that she talked too much, and demanded proof that Ms. Lawson had contacted Gloria Barela about the disabled truck left on her father's property.

The pending criminal charges that initiated the Commission's petition for immediate temporary suspension were dismissed by the Española Police Department. The Commission notified the Supreme Court of the dismissal but supplemented its petition for immediate temporary suspension on May 12, 2021 with the issues addressed in the *Show Cause Order* and Notice of Formal proceedings issued on April 29, 2021. The Supreme Court temporarily suspended Judge Martinez on July 2, 2021. On February 28, 2022 Judge Martinez and the Commission entered into a stipulation whereby Judge Martinez agreed to permanently resign and never seek judicial office in the State of New Mexico again. The Commission petitioned the Supreme Court to accept the stipulation and on April 14, 2022 the Supreme Court entered an Order granting the stipulated discipline and ordered the matter be unsealed.

**IN THE MATTER OF GEORGE ANAYA JR.**  
**Santa Fe County Magistrate Court**  
**JSC Inquiry No. 2020-038**  
**Supreme Court Docket No. S-1-SC-38714**

The Commission issued a Notice of Investigation ("NOI") on August 6, 2020, to Judge Anaya. Pursuant to Commission Rule 19 NMRA and following the Commission's receipt and review of Judge Anaya's written response to the NOI, the Commission invited Judge Anaya to participate in an informal confidential conference on February 1, 2021. The Conference afforded Judge Anaya an opportunity to discuss his response to the NOI and provided the Commission an opportunity to ask questions about the pending allegations.

After full consideration of Judge Anaya's written and oral responses, the Commission issued a Notice of Formal Proceedings on February 11, 2021. Judge Anaya, prior to filing a response to the Notice of Formal Proceedings, entered into a stipulation agreement and consent to discipline with the Commission on March 5, 2021. Judge Anaya admitted that he engaged in willful misconduct by committing the following acts:

- A. On or about Friday, April 3, 2020, Respondent engaged in an improper *ex parte* communication and released Danielle Gallegos, an alleged violent offender, from jail after Respondent received, engaged in, and acted upon a call on his personal cell phone

from Fernando Gallegos, the father of Danielle Gallegos, who was arrested and charged with the following felony offenses on April 03, 2020:

1. NMSA 1978 Section 30-6-1(D), Abuse of a Child;
2. NMSA 1978 Section 30-9-11(F), Criminal Sexual Penetration;
3. NMSA 1978 Section 30-3-5(C), Aggravated Battery with a deadly weapon;
4. NMSA 1978 Section 30-28-2 and 30-3-5(C), Conspiracy to Commit Aggravated Battery;
5. NMSA 1978 Section 30-3-2(A), Aggravated Assault; and
6. NMSA 1978 Section 30-28-02 and 30-3-2(A) Conspiracy to Commit Aggravated Assault.

- B. On or about Saturday, April 4, 2020, Respondent engaged in an improper *ex parte* communication when Respondent received and engaged in a second conversation on his personal cell phone with Fernando Gallegos regarding the arrest and detention of Mr. Gallegos' daughter, Danielle Gallegos. Following the second *ex parte* phone call from Fernando Gallegos, Respondent issued an Order of Release for Danielle Gallegos, an alleged violent offender who was charged with multiple misdemeanor and felony offenses. Danielle Gallegos' release over the weekend violated well-established Santa Fe Magistrate Court protocol.
- C. On or between April 3-5, 2020, Respondent disregarded a well-established Santa Fe County Magistrate Court protocol, and released Danielle Gallegos over the weekend before allowing the District Attorney's Office an opportunity to review the charges and be heard on the matter. The Santa Fe County Magistrate Court enacted a protocol which instructs the judge "on call" over the weekend not to release alleged violent offenders until the next business day to allow the District Attorney's Office an opportunity to review the charges and determine if a motion for pre-trial detention is appropriate in accordance with NMRA Rule 6-409. Respondent had never violated this well-established protocol before the weekend of April 3-5, 2020. However, after receiving two separate *ex parte* phone calls from the father of Danielle Gallegos, Respondent violated the Santa Fe County Magistrate Court protocol and improperly released this alleged violent offender over the weekend without allowing the District Attorney's Office an opportunity to be heard on the matter.

As part of the stipulation Respondent admitted to violating the following rules of the Code of Judicial Conduct: Rules 21-101, 21-102, 21-204(B), 21-205, 21-206(A), 21-209(A) and 21-209(B) NMRA. As a result of these admissions, Respondent consented to taking two separate Judicial Education Courses at his own expense and to receiving a Public Censure to be issued by the Supreme Court. On March 5, 2021 the Commission petitioned the New Mexico Supreme Court to accept the stipulated discipline and to issue a Public Censure. On January 26, 2022, the Supreme Court accepted the stipulation agreement and consent to discipline and issued the following Public Censure:

#### **PUBLIC CENSURE**

This matter came before this Court on a petition to accept the stipulated agreement and consent to discipline between the Judicial Standards Commission (the Commission) and Respondent, Honorable George Anaya, Jr., a Santa Fe County Magistrate Court Judge. In the stipulation agreement, Respondent acknowledged that the Commission had sufficient evidence to establish willful misconduct in office.

We granted the Petition and accepted the terms of the *Stipulation Agreement and Consent to Discipline* (Stipulation). We now publish this Public Censure in the *New Mexico Bar Bulletin* in accordance with our Order, the Stipulation and JSC Rule 36(C)(5) NMRA 2020.

## BACKGROUND

The facts leading to discipline in this case, as set out in the Stipulation, are as follows. On Friday, April 3, 2020, Judge Anaya received an ex parte phone call on his personal cell phone from Fernando Gallegos, the father of an alleged violent offender, Danielle Gallegos, who was charged with multiple violent felony offenses and arrested on Friday, April 3, 2020. On Saturday, April 4, 2020, Judge Anaya received and engaged in a second ex parte phone call on his personal cell phone, again from the father of Danielle Gallegos, the alleged violent offender. After receiving the second ex parte phone call, Judge Anaya signed an Order of Release, which resulted in Danielle Gallegos' release on Saturday, April 4, 2020.

Judge Anaya's weekend release of Danielle Gallegos disregarded a well-established Santa Fe County Magistrate Court protocol regarding the weekend release of alleged violent offenders. The Santa Fe County Magistrate Court enacted a protocol which instructs the judge on call over the weekend not to release alleged violent offenders until the next business day to allow the District Attorney's office an opportunity to review the charges and determine if a motion for pre-trial detention is appropriate in accordance with Rule 6-409 NMRA. Judge Anaya had never violated the Santa Fe County Magistrate Court protocol before receiving the two ex parte phone calls from Fernando Gallegos. After the Commission completed its investigation into this matter, which included an informal conference with the Respondent to discuss the allegations prior to the issuance of charges, Respondent stipulated that the evidence was sufficient to prove he had violated the following Rules of the Code of Judicial Conduct and committed willful misconduct in office:

- Rule 21-101 (requiring compliance with the law);
- Rule 21-102 (promoting confidence in the judiciary);
- Rules 21-204(B)-(C) (avoiding external influences on judicial Conduct);
- Rule 21-205; (Cooperation with others in administration of court business);
- Rule 21-206(A) (ensuring the right to be heard);
- Rules 21-209(A)-(B) (avoiding ex parte communications).

## DISCUSSION

Article VI, Section 32 of the New Mexico Constitution provides that "any justice, judge or magistrate of any court may be disciplined or removed for willful misconduct in office." We have defined willful misconduct in office as "improper and wrong conduct of a judge acting in his official capacity done intentionally, knowingly, and, generally in bad faith. It is more than a mere error of judgment or an act of negligence." *In re Locatelli*, 2007-NMSC-029, ¶ 8, 141 N.M. 755. In imposing discipline, we must be satisfied that willful misconduct is proven by clear and convincing evidence. *Id.* ¶ 7. "There need not be clear and convincing evidence to support each and every [allegation or fact]. Rather, we must be satisfied by clear and convincing evidence that there is willful judicial misconduct which merits

discipline.” *In re Castellano*, 1995-NMSC-007, ¶ 37, 119 N.M. 140; *see also In the Matter of Robert Merle Schwartz*, 2011-NMSC-019, ¶ 13, 149 N.M. 721. In this case, Judge Anaya acknowledged and stipulated the Commission would have been able to establish by clear and convincing evidence that he had committed willful misconduct in office. While violations of the Code of Judicial Conduct do not control the imposition of discipline, they do provide evidence of misconduct. *Id.* ¶ 8.

Judge Anaya conceded that the Commission had sufficient clear and convincing evidence to establish that he violated Rules 21-101, 21-102, 21-204(B)-(C), 21-205, 21-206(A) and 21-209(A)-(B) NMRA. Rules 21-101 and 21-102 of the Code of Judicial Conduct codify the overarching principles that govern a Judges conduct. Rule 21-101 requires a judge to “respect and comply with the law, including the Code of Judicial Conduct.” Rule 21-102 states, “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.” The Committee Commentary on these rules explains that public confidence is eroded in the judiciary when a judge engages in improper conduct and conduct that has the appearance of impropriety. Rule 21-102 NMRA, cmt. (1). “The Test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated [the Code of Judicial Conduct] or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.” *Id.* at (5).

We agree that the stipulated factual findings support the conclusion that Respondent violated Rules 21-101 and 21-102 of the Code of Judicial Conduct. It is understandable that Respondent might receive an ex parte phone call from a litigant or the representative of a litigant from time to time. New Mexico is a sparsely populated state with many close-knit communities within its counties and judicial districts. New Mexico judges face additional challenges when working in these close-knit communities, including in avoiding individuals who attempt ex parte communications.

It is especially important for judges in these close-knit communities to maintain the independence and integrity of the judiciary to preserve the prestige of the office and the public’s confidence in the judiciary *See In re Rael*, No. 33,633 (N.M. Sup. Ct. October 3, 2012) (non-precedential). If a judge receives an attempted ex parte communication, it is the judge’s responsibility to not allow or engage in such communications. The judge should interrupt to advise the person that such communications are prohibited and redirect the person to pursue their matter through proper channels, such as through the filing of motions. The judge must also promptly notify all parties of the communication. By adhering to this requirement, the judge may effectively avoid any appearances of impropriety, as well as actual instances of impropriety.

In this matter, Respondent received the first ex parte phone call on his personal cell phone on Friday, April 3, 2020. Respondent should have interrupted the caller, should have told the caller it was improper to call the judge about this matter, and then should have redirected the caller to consult with an attorney and/or to have the defendant file a motion. Essentially, once it was apparent the call concerned Respondent’s upcoming review of Danielle Gallegos’ conditions of release, after being charged and arrested on serious felony charges, Respondent should have ended the call, and then promptly notified the District Attorney’s Office and the defendant of the ex parte phone call and what was discussed.

The next day, Saturday, April 4, 2020, Respondent received and engaged in a second ex parte phone call on his personal cell phone from the defendant's father, Fernando Gallegos--the same individual that called him the night before. Upon recognizing the telephone number, Respondent should have ignored the second phone call. When Respondent answered the call, however, he should have advised Mr. Gallegos that he could not speak about the case without the prosecutor present, and then should have ended the phone call and notified the prosecutor of it. Respondent should not have taken any judicial action in Danielle Gallegos' pending matter without notifying the prosecutor of the two separate ex parte phone calls and affording the prosecutor the right to be heard.

After the second ex parte phone conversation with the defendant's father, Respondent entered an order setting conditions of release for Danielle Gallegos, pending her trial for violent offenses. Respondent's issuance of the release order following the ex parte communications from defendant's father violated an established Santa Fe County Magistrate Court protocol requiring the judge on call for weekend arrest determinations to not set conditions of release for alleged violent offenders until the next business day. The specific stated purpose of the protocol is to afford the District Attorney's Office an opportunity to review the charges and determine if a motion for pretrial detention is needed in the case.

Respondent had never before violated his court's release protocol. Respondent's action of releasing an alleged violent offender against a well-established Santa Fe County Magistrate Court protocol after receiving two separate ex parte phone calls on his personal cell phone from the alleged violent offender's father was improper for a number of reasons. The Respondent's actions deprived the prosecutor of his right to notice and to be heard. He violated his own court's established protocol concerning weekend arrests based upon these two ex parte calls. Respondent's actions also created the improper appearance that Respondent abandoned his role as a neutral and detached, independent, fair, and impartial fact finder. Respondent's conduct furthermore undermined the public's confidence in our state judiciary by compromising the fundamental integrity, impartiality and independence upon which our judicial system is based. *See generally In Re Griego*, 2008-NMSC-020, ¶ 19, 143 N.M. 698.

The Rule of Law in our society depends critically upon the public's confidence in our courts, especially concerning the independence and integrity of the judges elected to serve in such high positions of responsibility and authority. Actual impropriety by a judge, or even the appearance of such, not only undermines the public's trust and confidence in that judge but also in the very institutions upon which society is based. To maintain that confidence and in consideration of the broad authority of judicial power, the "conduct prescribed for judges and justices is more stringent than conduct generally imposed on other public officials." *In the Matter of Robert Merle Schwartz*, 2011-NMSC-019, ¶ 18 (Citing to *In Re Romero*, 100 N.M. 180, 183, 668 P.2d 296, 299 (1983)).

Rule 21-204(B) provides that "[a] judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment." Rule 21-204(C) provides that "a judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge." Committee commentary to Rule 21-204 emphasizes that its provisions are aimed not only at actual improper influences on judicial conduct but also at the creation of appearances of impropriety: "Confidence in the

judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.” See *In Re Naranjo*, 2013-NMSC-026, ¶ 11 (Citing to Arthur Garwin et al., *Annotated Model Code of Judicial Conduct*, 122 (2d ed. 2011)). Violating a well-established court protocol by releasing an alleged violent offender over the weekend after receiving two separate ex parte phone calls from the alleged violent offender’s father violated Rules 21-204(B) and (C).

Rule 21-209(A) prohibits a judge from initiating, permitting, or engaging in ex parte communications. “Ex parte communications are prohibited generally because they undermine the adversary system, threaten the fairness of a proceeding, and create an appearance of bias and impartiality.” Id. 15 see *In Re Naranjo*, 2013-NMSC-026, ¶ 15; see also Rule 21-206 NMRA cmt. (1) (“[T]he right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.”). Engaging in ex parte communications and acting on those conversations robs the other parties to a case of their rights to be heard, and ultimately erodes the public confidence that the judge will afford them a fair hearing. Respondent prevented the District Attorney’s Office from reviewing the matter and addressing issues relating to pretrial detention by releasing the alleged violent offender after communicating ex parte twice with the defendant’s father, thereby depriving the state from being heard.

Rule 21-206(A) requires a judge to “accord to every person who has a legal interest in a proceeding . . . the right to be heard according to law.” The Santa Fe County Magistrate Court protocol regarding the release of alleged violent offenders arrested over the weekend is not a law, but it was purportedly designed, in part, to ensure the very thing that Judge Anaya deprived: depriving the state’s attorney of the opportunity to review the case before releasing an alleged violent offender into the community. Respondent has an affirmative duty under Rule 21-205 to comply with all court rules and procedures. See *In re Barnhart*, No. 29,379 (N.M. Sup. Ct. October 19, 2005) (where Respondent photographed interior of Court in violation of courthouse rules and policies) (non-precedential). Court protocols are set in each court and are specific to each court to help ensure the proper administration of justice. Failing to abide by protocols, policies and/or rules set by a judge’s court threatens to undermine the effective administration of justice in that court and could place the alleged victim(s), witness(es), or the community at risk of harm. Respondent’s conduct violated the Code of Judicial Conduct and constitutes willful misconduct in office.

Rule 21-209(B) outlines the procedure a judge should follow when presented with an ex parte communication, stating “[i]f a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.” Respondent failed to make any of the parties—neither the defendant nor the District Attorney--aware of his multiple ex parte communications prior to taking the action those communications sought to achieve: the release of the alleged violent offender from jail pending trial. Respondent violation of Rules 21-209(A) and (B) of the Code of Judicial Conduct is clear. He permitted and engaged in two separate ex parte phone calls with a criminal defendant’s father, released the defendant following those ex parte calls, and, then failed to make the other party (the prosecution) aware of the ex parte phone calls. The result of Respondent’s misconduct was the

deprivation of the rights to notice and an opportunity to be heard on this important matter.

Under the terms of the stipulation offered by the Commission and Respondent, and considering our own caselaw, Respondent's conduct and violations of the Code of Judicial Conduct constituted willful misconduct in office. *Naranjo*, 2013-NMSC-026 (holding a judge who engaged in ex parte communications committed willful misconduct); *see also Rael*, No. 33,633, dec. (holding a judge engaging in ex parte proceedings and taking action in the case based off the ex parte proceeding committed willful misconduct). Respondent knowingly permitted, engaged, and acted upon two separate ex parte communications with the father of an alleged violent offender arrested over a weekend, and in so doing, violated the established protocol of his own court, and then failed to notify the other party in the case (the District Attorney) of the ex parte communications and their substance. In so doing, we agree that Respondent's actions constitute willful misconduct in office.

We therefore accept the stipulation agreement presented by the Commission and Respondent and issue this public censure to Respondent as an assurance to the public we serve and as a clear reminder to all judges under our supervisory authority that improper judicial behavior will not be tolerated. Furthermore, this censure affirms the steadfast commitments of our judiciary to all persons lawfully coming before our courts that they shall receive fair and impartial justice under the law.

For the foregoing reasons, Respondent Hon. George A. Anaya, Jr. is hereby censured for his willful misconduct as set forth fully above and our previous order accepting the stipulation and consent to discipline is accepted, adopted, and confirmed.

IT IS SO ORDERED.

## **INFORMAL DISPOSITIONS.**

**ADVISORY LETTERS.** The Commission may dispose of a matter by privately advising a judge (without making any finding of wrongdoing) that the judge's alleged conduct may violate the Code of Judicial Conduct. Such dispositions are not discipline; instead they notify the judge of a possible issue and suggestions for change and prevention. In FY 2022, the Commission issued Advisory Letters concerning 1 case(s) to 1 judge(s) who was alleged to have done the following:

A judge allegedly made inappropriate comments to and engaged in inappropriate and personal conversations with court staff. The judge was advised to refrain from engaging court staff in conversations of a personal nature regarding court staff and refrain from informing court staff about the judge's personal life. The judge was advised to abide by the Code of Judicial Conduct, specifically Rule 21-208(B), to be dignified and courteous when interacting with court staff.

**MENTORSHIPS.** The Commission may dispose of a matter by privately asking a judge (without making any finding of wrongdoing) to participate in a confidential mentorship to address and remedy the judge's alleged conduct which may violate the Code of Judicial Conduct. Such dispositions are not discipline; instead they notify and provide the judge with the opportunity to make changes and prevent repetition. In FY 2022 there were 3 cases concerning 3 judges who were alleged to have done the following:

1. A judge allegedly permitted, considered, and acted upon an ex parte communication in a matter that was not currently before the court and failed to follow the Rules of Criminal Procedure and local rules and procedures of the court. The judge successfully completed an informal mentorship.
2. A judge allegedly publicly endorsed political candidates and made public political statements on a social media website. The judge successfully completed an informal mentorship focused on the judge's responsibility under the Code of Judicial Conduct in relation to political activity and use of social media. The judge also completed a course with the National Judicial College on judicial ethics and social media.
3. A judge excessively delayed in entering a judgment in accordance with the Rules of Civil Procedure and failed to maintain a proper electronic or paper court file to follow up on the judge's cases and ensure the judge's cases were being disposed of properly. The judge successfully completed an informal mentorship to assist the judge in understanding the Rules of Civil Procedure, how to maintain proper records and how to ensure staff timely and efficiently set cases on the judge's docket.

## PUBLISHED DISCIPLINARY CASES

- Matter of Martinez*, 99 N.M. 198, 656 P.2d 861 (1982)
- In re Romero*, 100 N.M. 180, 668 P.2d 296 (1983)
- Matter of Terry*, 101 N.M. 360, 683 P.2d 42 (1984)
- In re Lucero*, 102 N.M. 745, 700 P.2d 648 (1985)
- Inquiry Concerning Perea*, 103 N.M. 617, 711 P.2d 894 (1986)
- Matter of Rainaldi*, 104 N.M. 762, 727 P.2d 70 (1986)
- Matter of Atencio*, 106 N.M. 334, 742 P.2d 1039 (1987)
- Matter of Garcia*, 108 N.M. 411, 773 P.2d 356 (1989)
- Matter of Castellano*, 119 N.M. 140, 889 P.2d 175 (1995)
- Matter of Ramirez*, 2006-NMSC-021, 139 N.M. 529, 135 P.3d 230
- Matter of McBee*, 2006-NMSC-024, 139 N.M. 482, 134 P.3d 769
- State v. Maestas*, 2007-NMSC-001, 140 N.M. 836, 149 P.3d 933
- Matter of Garza*, 2007-NMSC-028, 141 N.M. 831, 161 P.3d 876
- Matter of Locatelli*, 2007-NMSC-029, 141 N.M. 755, 161 P.3d 252
- Matter of Vincent*, 2007-NMSC-056, 143 N.M. 56, 172 P.3d 605
- Matter of Griego*, 2008-NMSC-020, 143 N.M. 698, 181 P.3d 690
- Matter of Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338
- Matter of Schwartz*, 2011-NMSC-019, 149 N.M. 721, 255 P.3d 299
- Matter of Salazar*, 2013-NMSC-007, 299 P.3d 409
- Matter of Naranjo*, 2013-NMSC-026, 303 P.3d 849

## OTHER STATE CASES REGARDING COMMISSION MATTERS

*State ex rel. New Mexico Judicial Standards Com'n v. Espinosa*, 2003-NMSC-017 (holding Governor's power to appoint members of Commission includes power to remove members).

*State ex rel. New Mexico Judicial Standards Com'n v. Rivera et al.*, No. 29,239, slip op. (N.M. November 14, 2005) (holding that the district court lacked jurisdiction to conduct evidentiary hearing on a motion to quash a Commission subpoena).

*State of New Mexico ex rel. New Mexico Judicial Standards Com'n v. Hon. Trudy Reed-Chase, et al.*, No. S-1-SC-36879 (May 14, 2018) (order granting writ of prohibition, and finding district courts lack jurisdiction over actions pertaining to judicial disciplinary proceedings and that all proceedings before the Commission are confidential except for the record filed by the Commission in the Supreme Court).

## OTHER STATE CASES REFERENCING THE COMMISSION

*Sangre de Cristo Development Corp., Inc. v. City of Santa Fe*, 84 N.M. 343, 503 P.2d 323 (1972)

*Cooper v. Albuquerque City Commission*, 85 N.M. 786, 518 P.2d 275 (1974)

*State ex rel. Rivera v. Conway*, 106 N.M. 260, 741 P.2d 1381 (1987)

*Southwest Community Health Services v. Smith*, 107 N.M. 196, 755 P.2d 40 (1988)

*Concha v. Sanchez*, 2011-NMSC-031, 150 N.M. 268, 258 P.3d 106

## EXPENDITURES & COST REIMBURSEMENT

As an independent agency of the State of New Mexico, the Judicial Standards Commission is funded by general fund appropriations each year by the Legislature. **The Commission is not included in the Judiciary's Unified Budget.** At the end of each fiscal year, unencumbered/unspent funds revert to the State's general fund.

For FY 2022, the State Legislature appropriated \$895,600.00 to the Commission from the general fund for salary and benefits, operations, investigation, and prosecution of judicial misconduct. The FY 2022 Commission expenditures totaled \$877,740.30 from the General Fund. A summary (by category) of the expenditures is provided below.

### FY 2022 EXPENDITURES FROM THE GENERAL FUND

DESCRIPTION	AMOUNT	PERCENTAGE
Employee Compensation	\$530,204.72	
Annual Leave Paid at Separation	13,972.52	60.16%
Employee Benefits & Taxes	191,265.59	20.80%
Employee/Board Training & Licensing	6,471.60	2.30%
Commission Travel	90.00	0.59%
Investigation & Prosecution Expenses	327.47	0.11%
Contractual Services	27,153.17	4.12%
Rent, Telecom, IT & Overhead	63,139.40	10.37%
Equipment, Supplies & Postage	45,115.83	1.55%
<b>TOTAL</b>	<b>877,740.30</b>	<b>100.0%</b>

### FINES AND COST REIMBURSEMENT DISTINGUISHED

The Supreme Court may impose fines against judges *sua sponte* or upon recommendation by the Commission. Fines are paid to the State of New Mexico and deposited with the Supreme Court. Fines typically are deposited in the general fund, unless otherwise ordered by the Supreme Court. Costs may be assessed by Supreme Court order (JSC stopped requesting reimbursement per FY 2019 rule change), or may be reimbursed on stipulation agreement with the respondent judge. Costs are paid to the State of New Mexico and deposited into the Commission's funds.

## OUTSTANDING DEBTS OWED TO THE COMMISSION

In FY 2008 removed Bernalillo County Metropolitan Court Judge J. Wayne Griego was ordered by the Supreme Court to reimburse the Commission \$6,704.41 in costs. *Matter of Griego*, 2008- NMSC-020, 143 N.M. 698, 181 P.3d 690. With annual interest (\$536.35) accrued, the total amount still due from Mr. Griego is \$14,212.27. He has failed to make any payments to the Commission, and his debt to the State of New Mexico remains outstanding.

The Commission recorded judgment liens with county clerks, and by law cannot write off debt, even if it is determined not to be collectable.

## FY 2022 GENERAL FUND APPROPRIATION COMPARED TO GENERAL FUND EXPENDITURES

FY 2022 Final Approved Budget	\$ 895,600.00	
Total FY 2022 General Fund Expenditures		\$ (877,740.30)
FY 2022 General Fund Appropriations Reverted		\$ (17,859.70)
Total Expenditures and Reversion		\$ (895,600.00)

## AGENCY 10-YEAR GENERAL FUND FUNDING PROFILE

FISCAL YEAR	FINAL APPROVED BUDGET	Expenditures	Reversion from General Fund	Reversion from Cost Reimbursements	General Fund Reversion as % of Funding
2012	706,900.00	705,230.69	1,669.31	0.00	0.236%
2013	742,900.00	742,838.03	61.97	0.00	0.008%
2014	839,987.00	836,659.33	3,327.67	0.00	0.396%
2015	858,300.00	855,534.63	2,845.50	0.00	0.332%
2016	853,745.38	847,909.21	5,836.17	0.00	0.684%
2017	818,300.00	817,472.41	827.59	0.00	0.101%
2018	818,300.00	817,270.00	1,030.00	1,899.00	0.126%
2019	849,500.00	838,028.21	11,471.79	994.83	1.350%
2020	897,700.00	889,941.48	7,758.52	0.00	0.871%
2021	879,200.00	874,046.53	5,153.47	0.00	0.586%
2022	895,600.00	877,740.30	17,859.70	0.00	1.99%