


Joey D. Moya

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

No.

S-1-SC-37984

IN THE MATTER OF HON. BENJAMIN HARRISON
Municipal Court, Hobbs, New Mexico

INQUIRY CONCERNING HON. BENJAMIN HARRISON
Inquiry Nos. 2018-143 & 2018-146

FILED UNDER SEAL

PURSUANT TO 27-104(B) NMRA

**PETITION TO ACCEPT STIPULATION TO PERMANENT
RESIGNATION IN LIEU OF FURTHER DISCIPLINARY
PROCEEDINGS**

JUDICIAL STANDARDS COMMISSION
Post Office Box 27248
Albuquerque, New Mexico 87125-7248
(505) 222-9353
Fax: (505) 222-9358

RANDALL D. ROYBAL
Executive Director & General Counsel

PHYLLIS A. DOMINGUEZ
Deputy Director

Counsel for Petitioner

NEWELL LAW FIRM
Michael T. Newell, Esq.
10 W. Adams Ave. #E
Lovington, New Mexico 88260-4052
(575) 739-6395
Fax: (855) 494-0059

Counsel for Respondent

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

No.

IN THE MATTER OF HON. BENJAMIN HARRISON
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**PETITION TO ACCEPT STIPULATION TO PERMANENT
RESIGNATION IN LIEU OF FURTHER DISCIPLINARY
PROCEEDINGS**

The Judicial Standards Commission of the State of New Mexico (“Commission”), through the undersigned counsel, hereby petitions the Supreme Court for an order approving the *Stipulation to Permanent Resignation in Lieu of Further Disciplinary Proceedings* (“*Stipulation*”), attached hereto as **Exhibit 1**. The Commission further requests that the Supreme Court unseal the entire file in this matter, pursuant to Rule 27-104(B) NMRA.

1. The Commission invokes its jurisdiction pursuant to its power to recommend the discipline, retirement or removal of judges, and the Supreme Court's power to order the discipline, retirement or removal of judges under Article VI, Section 32 of the New Mexico Constitution; the Court's power of superintending control under Article VI, Section 3 of the New Mexico Constitution; and, Rule 38 of the Judicial Standards Commission's Rules.

2. Grounds for this *Petition* include Hon. Benjamin Harrison's ("Respondent") voluntary resignation as judge of the Hobbs Municipal Court effective 5:00 p.m. on August 30, 2019, and Inquiry Nos. 2018-143 & 2019-146 which are still pending trial on the merits before the Commission.

3. Respondent and the Commission desire final resolution of this pending disciplinary matter and agree that effecting Respondent's permanent resignation acceptably brings finality to this matter.

4. Respondent therefore agrees that his resignation is permanent and that he shall never again hold, become a candidate for, run for, or stand for election to any New Mexico judicial office in the future. Respondent shall never seek, accept appointment to, or serve *pro tempore*

for any New Mexico judicial office in the future. New Mexico judicial office includes the posts of judge in municipal court, probate court, magistrate court, metropolitan court, district court, Court of Appeals, and justice of the Supreme Court. Respondent shall never again hold or exercise any judicial authority in the State of New Mexico, to include officiating at weddings.

WHEREFORE, Petitioner respectfully requests this Court issue an order granting the Commission's *Petition*, approving the *Stipulation*, and unsealing the file in this matter pursuant to Rule 27-104(B) NMRA.

Respectfully submitted,

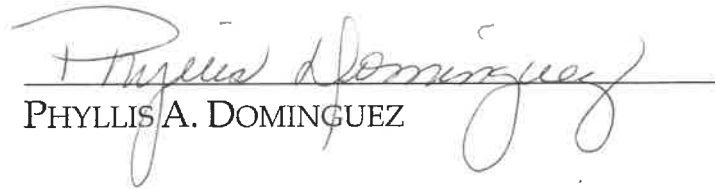
JUDICIAL STANDARDS COMMISSION


RANDALL D. ROYBAL
Executive Director & General Counsel

PHYLLIS A. DOMINGUEZ
Deputy Director
P.O. Box 27248
Albuquerque, NM 87125-7248
Telephone: (505) 222-9353
Fax: (505) 222-9358

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was filed and served via the Court's Electronic Filing and Service System addressed to Michael T. Newell, Esq. on this 29th day of October 2019.


PHYLLIS A. DOMINGUEZ

BEFORE THE JUDICIAL STANDARDS COMMISSION
STATE OF NEW MEXICO

INQUIRY CONCERNING HON. BENJAMIN HARRISON
Municipal Court, Hobbs, New Mexico

Inquiry Nos. 2018-143 & 2018-146

FILED

OCT 29 2019

NM JUDICIAL
STANDARDS COMMISSION

STIPULATION TO PERMANENT RESIGNATION IN LIEU OF
FURTHER DISCIPLINARY PROCEEDINGS

THIS MATTER is currently pending before the Judicial Standards Commission ("Commission") pursuant to the *Notice of Formal Proceedings* issued to Hon. Benjamin Harrison ("Respondent") on June 6, 2019, in Inquiry Nos. 2018-143 & 2018-146 (*See Exhibit A*).

This *Stipulation to Permanent Resignation in Lieu of Further Disciplinary Proceedings* ("Stipulation") is entered into by and between the Commission and Respondent, who is represented by Michael T. Newell, Esq. The parties hereby enter into the following agreement:

1. The Commission has jurisdiction over Respondent and the above-captioned and numbered matters pursuant to Article VI, Section 32 of the Constitution of the State of New Mexico; NMSA 1978, Sections 34-10-1 through 34-10-4; and, Judicial Standards Commission Rule 38.
2. Pursuant to Judicial Standards Commission Rule 38, the Commission's jurisdiction is invoked when a notice of formal proceedings is served upon the judge and continues irrespective of the judge's subsequent resignation and/or termination from office.
3. Respondent has voluntarily submitted his letter of resignation as judge of the Hobbs Municipal Court effective at 5:00 p.m. on August 30, 2019, (*See Exhibit B*). Grounds for this *Stipulation* are listed in the *Notice of Formal Proceedings*, (*See Exhibit A*), and include, *inter*

Exhibit
1

alia, alleged violations of due process; failure to follow the law; *ex parte* communications; and failure to follow court procedures, which Respondent had contested.

4. Respondent and the Commission desire final resolution of this pending disciplinary matter and agree that effecting Respondent's permanent resignation acceptably brings finality to this matter.

5. Upon August 30, 2019, the effective date of resignation, Respondent shall never again hold, become a candidate for, run for, or stand for election to any New Mexico judicial office in the future. Respondent shall never seek, accept appointment to, or serve *pro tempore* for any New Mexico judicial office in the future. New Mexico judicial office includes the posts of judge in municipal court, probate court, magistrate court, metropolitan court, district court, Court of Appeals, and justice of the Supreme Court. Respondent shall never again hold or exercise any judicial authority in the State of New Mexico, to include officiating at weddings.

6. Pursuant to Rule 27-104(B) NMRA, the Commission will file under seal with the Supreme Court, a *Petition to Accept Stipulation to Permanent Resignation in Lieu of Further Disciplinary Proceedings* ("*Petition*"), attaching a copy of this *Stipulation*, a copy of the *Notice of Formal Proceedings* and Respondent's response issued in Inquiry Nos. 2018-143 & 2018-146.

7. Upon granting the *Petition* and pursuant to Supreme Court Rule 27-104(B), the Court should unseal the *Petition*. Respondent requests the *Petition* remain sealed.

8. Upon execution of this *Stipulation* and acceptance by the Court, the Commission will close the matters pending against Respondent before the Commission (Inquiry Nos. 2018-143 & 2018-146).

9. This *Stipulation* is specifically enforceable by the Commission before the Court.

10. Respondent acknowledges that upon execution of this *Stipulation*, Respondent gives up any and all motions, defenses, objections, or requests that the Respondent has made or raised, or could assert hereafter in or concerning the Commission's proceedings.

11. Respondent shall not make any public misrepresentations concerning this inquiry, the facts and circumstances of Respondent's permanent resignation, or the Commission's proceedings.

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

13. This *Stipulation* is not enforceable unless fully executed by all parties.

14. If Respondent violates any terms or provisions of this executed *Stipulation*, Respondent agrees that all facts alleged in the *Notice of Formal Proceedings* issued in Inquiry Nos. 2018-143 & 2018-146, which were not admitted to in this *Stipulation*, shall be deemed admitted by Respondent, will be used against Respondent in future proceedings before the Commission and the Court, and may constitute obstruction of Commission business and contempt.

15. The terms and conditions contained in this *Stipulation* are mutually acceptable to and agreed upon by all parties.

16. All parties have read and understand this *Stipulation*, have had the opportunity to discuss it with and be advised by legal counsel, and hereby freely and voluntarily enter into this *Stipulation* free of any threats, and free of any promises not contained herein.

RESPONDENT'S REVIEW & APPROVAL

I have read and understand this *Stipulation*. I have had the opportunity to discuss this matter and my rights with an attorney. I understand that by entering into this *Stipulation*, I will be giving up my rights to a formal hearing on the merits and to confront, cross-examine and compel the attendance of witnesses regarding these issues.

I know, understand, and agree that the provisions of this *Stipulation* are material to the Commission's deliberations and ultimate acceptance of it. I also understand and agree that by entering into this *Stipulation*, I am agreeing to never again hold judicial office or exercise judicial authority as defined in this *Stipulation* under any circumstances, and that if I do hold any judicial office or exercise judicial authority at any point in the future, I will be in violation of this *Stipulation* and I could be held in contempt of the Commission and the Court. I further understand that if I violate any provision of this *Stipulation* in any other manner, I agree, acknowledge, and accept that all allegations lodged against me in the *Notice of Formal Proceedings* issued to me are admitted by me as fact, and that the Commission shall re-initiate the matter pending before the Court and/or the Commission at the time this *Stipulation* was executed.




HON. BENJAMIN HARRISON
Respondent

Dated: 10.20.19

DEFENSE COUNSEL REVIEW

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

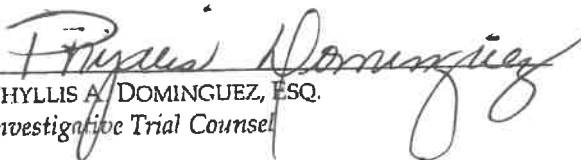


MICHAEL T. NEWELL, ESQ.
Counsel for Respondent

Dated: 10/28/19

INVESTIGATIVE TRIAL COUNSEL'S REVIEW AND APPROVAL

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



PHYLLIS A. DOMINGUEZ, ESQ.
Investigative Trial Counsel

Dated: 10/28/19

JUDICIAL STANDARDS COMMISSION REVIEW & APPROVAL

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



JOYCE BUSTOS
Chair

Dated: _____

10/29/19



RANDALL D. ROYBAL, ESQ.
Executive Director & General Counsel

Dated: _____

10/29/19

BEFORE THE JUDICIAL STANDARDS COMMISSION

OF THE STATE OF NEW MEXICO

INQUIRY CONCERNING HON. BENJAMIN HARRISON
Hobbs Municipal Court

Inquiry Nos. 2018-143 and 2018-146

FILED

JUN - 6 2019

**NM JUDICIAL
STANDARDS COMMISSION**



NOTICE OF FORMAL PROCEEDINGS

Hon. Benjamin Harrison
2727 N. Rojo
Hobbs, NM 88240

YOU ARE HEREBY NOTIFIED that the Judicial Standards Commission, in accordance with its jurisdiction under Article VI, Section 32 of the New Mexico Constitution and pursuant to Rule 15 NMRA 2010 of the Judicial Standards Commission Rules, has instituted formal proceedings on the allegations set forth below.

COUNT 1

On or about October 2, 2018, in the case of *City of Hobbs v. Tonya J. Lynch*, Case 18004306-2, you arraigned the Defendant, who was brought before you on a bench warrant that had not been served and which you knew had not been served and—based upon the request of the police officer, Mike Stone—you directed that the warrant be recalled, even though it had already been executed. Later that same day, you issued instructions to “unrecall” the warrant.

Such conduct violates Rules 21-101, 21-102, 21-202, and 21-205(A) NMRA 2012, and constitutes willful misconduct in office.

COUNT 2

On or about October 2, 2018, you allowed your judicial conduct or judgment to be influenced by your friendship with Officer Mike Stone, when you improperly directed that a warrant

A

be recalled at the request of Officer Stone in the case of *City of Hobbs v. Tonya J. Lynch*, Case 18004306-2.

Such conduct violates Rules 21-101, 21-102, 21-202, and 21-204(B) NMRA 2012, and constitutes willful misconduct in office.

COUNT 3

On or about October 9, 2018, in the case of *City of Hobbs v. Amaya Lewis*, Case 18004999-1,2,3 – a case from which you recused – you called the Defendant’s grandmother to inform her that the Defendant failed to appear and advised the grandmother to have the Defendant return to the court so she would not get a bench warrant.

Such conduct violates Rules 21-101, 21-102, 21-103, 21-202, 21-205(A), 21-209(A), and 21-211 NMRA 2012, and constitutes willful misconduct in office.

COUNT 4

On or about October 9, 2018, you allowed your judicial conduct or judgment to be influenced by your friendship with the Defendant’s family in the case of *City of Hobbs v. Amaya Lewis*, Case 18004999-1,2,3.

Such conduct violates Rules 21-101, 21-102, 21-202, and 21-204(B) NMRA 2012, and constitutes willful misconduct in office.

COUNT 5

On or about October 4, 2018, in the case of *City of Hobbs v. Tonya J. Lynch*, Case 18005693, you initiated a case with an *Order for Indirect Contempt of Court* rather than with a criminal complaint containing a signed, sworn written statement of the facts, common name of the offense charged, and specific section number of the municipal ordinance or statute violated, as required by Rule 8-201(A) NMRA.

Such conduct violates Rules 21-101, 21-102, 21-205(A), and 21-206(A) NMRA 2012, and constitutes willful misconduct in office.

COUNT 6

On or about October 4, 2018, in the case of *City of Hobbs v. Tonya J. Lynch*, Case 18005693, in conjunction with your *Order for Indirect Contempt of Court*, you issued a bench warrant without personal knowledge of the Defendant's failure to appear and without a sworn, written statement of probable cause, as required by Rule 8-206(A) NMRA.

Such conduct violates Rules 21-101, 21-102, 21-205(A), and 21-206(A) NMRA 2012, and constitutes willful misconduct in office.

COUNT 7

On or about October 5, 2018, in the case of *City of Hobbs v. Tonya J. Lynch*, Case 18005693, you violated the Defendant's due process rights when you accepted a Waiver of Counsel and Guilty plea from the Defendant for "Contempt of Court - Failure to Comply" and sentenced her to jail, despite your failure to legitimately initiate a case of contempt and, further, proceeded in the matter without providing the Defendant notice and the opportunity to present a defense.

Such conduct violates Rules 21-101, 21-102, 21-205(A), and 21-206(A) NMRA 2012, and constitutes willful misconduct in office.

COUNT 8

On or about October 22, 2018, you disregarded the law and Rules of Procedure for the Municipal Courts in the cases of *City of Hobbs v. Alberto Bejar*, Cases 18002615-1,2, 18003239, 18004338-1,2, and 18006004-1,2, when you set a cash-only bond of \$2000 at a pretrial release hearing without fulfilling any requirements of Rule 8-401(B) NMRA. You subsequently changed the bond to \$2000 cash/surety, but still failed to make written findings justifying the secured bond as required by Rule 8-401(E) NMRA.

Such conduct violates Rules 21-101, 21-102, 21-205(A), and 21-206(A) NMRA 2012, and constitutes willful misconduct in office.

COUNT 9

On or between about October 22 and 24, 2018, you disregarded the law and Rules of Procedure for the Municipal Courts in the cases of *City of Hobbs v. Alberto Bejar*, Cases 18002615-1,2, 18003239, 18004338-1,2, and 18006004-1,2, when, after setting a secured bond at a pretrial release hearing, you failed to make the required written findings within two days of the hearing as dictated by Rule 8-401(F)(2) NMRA.

Such conduct violates Rules 21-101, 21-102, 21-205(A), and 21-206(A) NMRA 2012, and constitutes willful misconduct in office.

COUNT 10

On or about October 22, 2018, you disregarded the law and Rules of Procedure for the Municipal Courts in the cases of *City of Hobbs v. Alberto Bejar*, Cases 18002615-1,2, 18003239, 18004338-1,2, and 18006004-1,2 when you failed to comply with Rule 8-401(E)(2), which dictates the order of the options when imposing one of the three types of secured bond.

Such conduct violates Rules 21-101, 21-102, 21-202, and 21-205(A) NMRA 2012, and constitutes willful misconduct in office.

COUNT 11

On or about October 22, 2018, you disregarded the law and Rules of Procedure for the Municipal Courts in the cases of *City of Hobbs v. Alberto Bejar*, Cases 18002615-1,2, 18003239, 18004338-1,2, and 18006004-1,2 when you failed to sign the Defendant's conditions of release following the pretrial hearing, and did not do so until the following afternoon, which prevented him from being released from jail even if he posted bond.

Such conduct violates Rules 21-101, 21-102, 21-205(A), and 21-206(A) NMRA 2012, and constitutes willful misconduct in office.

COUNT 12

On or between about November 5 and 10, 2018, you disregarded the law and Rules of Procedure for the Municipal Courts in the cases of *City of Hobbs v. Alberto Bejar*, Cases 18002615-1,2, 18003239, 18004338-1,2, and 18006004-1,2 when you summarily denied the Defendant's motion requesting a review of his conditions of release concerning the secured bond you set and, also, consequently failed to set a hearing on the Defendant's motion and deprived the Defendant of his right to counsel at a hearing, in violation of Rules 8-401(G)(1) and (2) NMRA.

Such conduct violates Rules 21-101, 21-102, 21-202, 21-205(A), and 21-206(A), NMRA 2012, and constitutes willful misconduct in office.

COUNT 13

On or about November 5, 2018, you disregarded the law and Rules of Procedure for the Municipal Courts in the cases of *City of Hobbs v. Alberto Bejar*, Cases 18002615-1,2, 18003239, 18004338-1,2, and 18006004-1,2 when you failed to file a written order setting forth the reasons for declining to amend your order setting conditions of release and/or failed to make findings of the reasons why the amount of secured bond you set was reasonably necessary to ensure the appearance of the Defendant.

Such conduct violates Rules 21-101, 21-102, 21-205(A), and 21-206(A), NMRA 2012, and constitutes willful misconduct in office.

COUNT 14

On or about July 23, 2018, in the cases of *City of Hobbs v. Alberto Bejar*, Cases 18004338-1, 18004338-2, 18002615-1, 18002615-2, and 18003239, you pre-determined that the Defendant would

not be released on his own recognizance (OR) in the future when you made an entry on the Register of Action in Case that stated: "NO FUTURE OR'S."

Such conduct violates Rules 21-101, 21-102, 21-202, 21-205(A), and 21-206(A) NMRA 2012, and constitutes willful misconduct in office.

COUNT 15

On or about August 8, 2018, you disregarded the law and Rules of Procedure for the Municipal Courts at an arraignment in the cases of *City of Hobbs v. Tony Vasquez*, Cases 18002851-2 and 18004659, when you set a cash-only bond of \$1000, but failed to make any written findings of particularized reasons why release or unsecured appearance and any non-monetary conditions of release would not reasonably ensure the Defendant's appearance as required in Rule 8-401(B) and (E).

Such conduct violates Rules 21-101, 21-102, 21-205(A), and 21-206(A) NMRA 2012, and constitutes willful misconduct in office.

COUNT 16

On or about August 8, 2018, you disregarded the law and Rules of Procedure for the Municipal Courts in the cases of *City of Hobbs v. Tony Vasquez*, Cases 18002851-2 and 18004659, when you failed to comply with Rule 8-401(E)(2), which dictates the order of the options when imposing one of the three types of secured bond.

Such conduct violates Rules 21-101, 21-102, 21-202, and 21-205(A) NMRA 2012, and constitutes willful misconduct in office.

COUNT 17

On or after about August 8, 2018, you disregarded the law and Rules of Procedure for the Municipal Courts in the cases of *City of Hobbs v. Tony Vasquez*, Cases 18002851-2 and 18004659, when

after arraigning the Defendant, you failed to issue an *Order Setting Conditions of Release* until August 30, 2018.

Such conduct violates Rules 21-101, 21-102, 21-201, and 21-205(A) NMRA 2012, and constitutes willful misconduct in office.

COUNT 18

On or about August 8, 2018, after you summarily found Defendant Tony Vasquez in Direct Contempt of Court, fined him \$129 and sentenced him to 30 days in jail, you failed to docket a separate criminal case with a new case number, as required by Rule 8-110(E) NMRA.

Such conduct violates Rules 21-101, 21-102, and 21-205(A) NMRA 2012, and constitutes willful misconduct in office.

COUNT 19

On or about August 8, 2018, after you summarily found Defendant Tony Vasquez in Direct Contempt of Court, fined him \$129 and sentenced him to 30 days in jail, you failed to sign and file a written order containing the certifying information required by Rule 8-110(C) NMRA.

Such conduct violates Rules 21-101, 21-102, and 21-205(A) NMRA 2012, and constitutes willful misconduct in office.

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

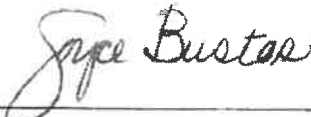
Judicial Standards Commission
P.O. Box 27248
Albuquerque, New Mexico 87125-7248

Your answer should be legible and **your signature must be verified.**

Article VI, Section 32 of the New Mexico Constitution provides that all papers filed with and proceedings before the Judicial Standards Commission are confidential, except that any record filed by the Commission in the New Mexico Supreme Court continues privileged but, upon its filing, loses its confidential character, and a writing which was privileged prior to filing with the Commission or its masters does not lose its privilege by the filing.

JUDICIAL STANDARDS COMMISSION

By: _____

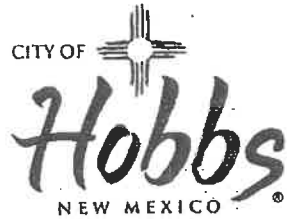

Joyce Bustos, Chair
Post Office Box 27248
Albuquerque, NM 87125-7248

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed via certified U.S. mail, return receipt requested, on this 6th day of June, 2019, to the following:

Hon. Benjamin Harrison
2727 N. Rojo
Hobbs, NM 88240


SHARIESSE T. MCCANNON
Clerk of the Commission



CITY OF
Hobbs
NEW MEXICO
HOBBS MUNICIPAL COURT
CITY OF HOBBS

BEN HARRISON
Municipal Judge
SHANNON CARTER
Court Clerk

301 N Turner
Hobbs, New Mexico 88240
Phone (575) 397-9272
FAX (575) 397-9365

08-06-2019

TO: Manny Gomez
City Manager

FR: Benjamin Harrison
Municipal Judge

Sir;

This will serve to notify you and the Hobbs City Commission that, after much discussion with my wife and much prayer, I have decided to retire from the position of Municipal Judge.

Paula and I both miss our families, more than we realized. We have decided to move to Tyler, TX, where we can be closer to our grandson, and our children.

It has been one of the greatest honors of my life to have been elected by the citizens of Hobbs for three consecutive terms as Municipal Judge. I have lived in Hobbs for about 38 years. I have found Hobbs to be an outstanding place to live. I truly love Hobbs and have no doubt we will miss our church family at Temple Baptist Church but we will also miss all the friends we have been blessed with outside our church.

This will be effective Friday, August 30th. I do have 32 hours of vacation, which I will take August 27 through August 30th. I have spoken with Judge Arther who will cover the court on those dates.

Respectfully,

Ben Harrison

RECEIVED
AUG 06 2019

BY: AB.....

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