


Joey D. Moya

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

2 **December 31, 2018**

3 **NO. S-1-SC-36763**

4 **INQUIRY CONCERNING A JUDGE**
5 **NOS. 2016-101, 2016-139, 2017-018,**
6 **2017-041 and 2017-053**

7
8 **IN THE MATTER OF HON. WARREN G. WALTON**
9 **Magistrate Jude,**
10 **County of Colfax, New Mexico**

11
12 **PUBLIC CENSURE**

13 WHEREAS, this matter came on for consideration by the Court upon the
14 Judicial Standard's Commission's petition to accept the stipulated agreement and
15 consent to discipline between the Judicial Standards Commission and Respondent,
16 Honorable Warren G. Walton;

17 WHEREAS, this Court previously issued an order granting the petition for a
18 deferred suspension without pay upon certain conditions, with a public censure to
19 follow;

20 WHEREAS, regarding Inquiry Numbers 2016-101, 2016-139, 2017-018 and
21 2017-041, Respondent admits that he committed the following acts:

22 (1) On or about October 14, 2016, Respondent caused the Defendant in
23 the case of *State v. Michael Malcom*, M9-MR-2015-00081, to call Respondent
24 following Respondent's *ex parte* communication with Defendant's mother.
25 Respondent told the Defendant that he (Respondent) was making a report
26 concerning Defendant's case, that Defendant's case had not been handled properly
27 and that an investigator may or may not be calling him. At the time of the *ex parte*

1 communication, Respondent knew that Defendant's case was still pending before
2 Respondent and that Defendant was represented by counsel;

3
4 (2) On or about October 14, 2016, Respondent initiated an *ex parte*
5 communication with the Defendant's mother in the case of *State v. Michael*
6 *Malcom*, M9-MR-2015-00081, while the case was still pending before Respondent
7 and the Defendant was represented by counsel, requesting the Defendant's phone
8 number, and stating that he (Respondent) was making a report to a State agency
9 about the improper handling of her son's case, that an investigator may or may not
10 be calling her, and that it would be favorable to her son's case:

11
12 (3) On or after about October 14, 2016, after Respondent had *ex parte*
13 communications with Defendant and Defendant's mother in the case of *State v.*
14 *Michael Malcom*, M9-MR-2015-00081, Respondent failed to notify Defendant's
15 counsel and the prosecutor of the substance of the *ex parte* communication, failed
16 to give the parties an opportunity to respond, and failed to recuse from the case
17 until June 30, 2017;

18
19 (4) On or about August 22, 2016, Respondent quashed a bench
20 warrant in the matter of *State v. Christina Irvin*, M9-MR-2016-00176, after
21 engaging in an *ex parte* communication with the Defendant's father, who requested
22 the bench warrant be quashed. Respondent failed to make provision promptly
23 to notify the parties of the substance of the *ex parte* communication and failed to
24 give the parties an opportunity to respond;

25
26 (5) On or about May 26, 2016, Respondent misused the contempt power
27 when he issued *Order[s] to Show Cause* to attorneys Rav Floersheim and Sarah
28 Montoya for "Failure to appear for Court Scheduled hearings," when no dates of
29 hearings that the attorneys allegedly failed to appear for were indicated in the show
30 cause orders because Respondent's purpose for the show cause hearing was to
31 discuss scheduling issues and not because of any contemptuous behavior by the
32 attorneys;

33
34 (6) On or about July 11, 2014, in the case of *State v. Russell Laughlin*,
35 M9-MR-2014-00111, Respondent granted the prosecuting officer's *Motion to*
36 *Continue* a trial when opposing counsel had not been contacted for his position on
37 the matter, Respondent failed to provide notice or an opportunity for opposing
38 counsel to be heard on the matter, and opposing counsel was not informed of the
39 continuance until the morning of trial when he appeared with his subpoenaed
40 witnesses;

1
2 (7) On or about July 31, 2015, Respondent violated the due process of
3 defendants when he granted blanket continuances for a number of hearings based
4 upon an *ex parte* communication via e-mail from a New Mexico State Police
5 officer, when the cases were not identified by name or case numbers, opposing
6 parties had not been contacted for their respective positions on the
7 continuances, and opposing parties were not provided notice or the opportunity to
8 be heard on the continuances;

9
10 (8) On or about November 3, 2016, the morning of trial in the case of
11 *State v. Ricky Lynn Decker*, M9-VM-2016-00017, case from which Respondent
12 had recused, Respondent inserted himself in the area where members of the jury
13 panel were circulating to set up chairs for the prospective jurors; and

14
15 (9) On various occasions between about April 2015 and November 2016
16 Respondent called staff members working for attorneys Sarah Montoya and Ray
17 Floersheim, provided them with his (Respondent's) personal cell phone number,
18 told them to call if they needed anything and/or told them to provide Respondent's
19 cell number to the attorneys, and subsequently engaged in *ex parte*
20 communications with staff members and attorneys, which, even if for scheduling,
21 administrative or emergency purposes, Respondent failed to make provision
22 promptly to notify all other parties of the substance of the *ex parte*
23 communications and failed to give the other parties an opportunity to respond;

24
25 WHEREAS, Respondent does not contest that the Commission has
26 sufficient facts and evidence to prove by clear and convincing evidence that he
27 engaged in willful misconduct by committing the acts in paragraphs (1)-(9) above,
28 and that he violated the Code of Judicial Conduct Rules 21-101, 21-102, 21-103,
29 21.-202, 21-205(A), 21-206(A), 21- 209(A), 21-210(A), and 21-211(A) and (C)
30 NMRA 2012;

31 WHEREAS, with regard to the allegations in Inquiry No. 2017-053,
32 Respondent does not contest that the Commission can prove by clear and

1 convincing evidence that he engaged in willful misconduct by committing the acts
2 detailed in Paragraphs (1)-(4) below, and that he violated the Code of Judicial
3 Conduct Rules 21-101, 21-102, 21-204(A) and (B), 21-205(B),, 21-209(A) and
4 21-212(A) NMRA. 2012:

5 (1) In about 2013 and 2014, Respondent had *ex parte*
6 communications with Xanadu Vigil and Joey Rornero, both of whom had pending
7 criminal cases before Respondent at the time, as well as had *ex parte*
8 communications with Xanadu Vigil's boyfriend, Tommy Acevedo, and with Joey
9 Romero's father during the pendency of the cases;

10
11 (2) In about 2013 and 2014, despite warnings and admonitions
12 from Administrative Office of the Courts (AOC) supervisory personnel,
13 Respondent commonly had *ex parte* communications with attorneys who called
14 Respondent at the court, as well as at home, and/or contacted Respondent in person
15 at the court seeking calendaring changes or other requests in their cases and, even
16 if for the purpose of scheduling, Respondent failed to make provision to promptly
17 notify ail other parties of the substance of the *ex parte* communications, and give
18 the other parties an opportunity to respond;

19
20 (3) In or about 2013 and 2014, Respondent failed to cooperate with AOC
21 supervisory personnel and clerks, who were at Respondent's court for the purpose
22 of establishing and enforcing processes to resolve backlogs and to correct case
23 management and other operational problems. By example, Respondent: countered
24 the directives of the AOC statewide operations managers (SOMs) by instructing
25 court clerks to put phone calls from defendants or attorneys through to him. after
26 the clerks had been directed by the SOMs not to put these calls through; was
27 obstructive with AOC's attempts to standardize judicial practices; disregarded and
28 failed to abide by the calendaring process; disrupted operations by having clerks
29 drop what they were doing to change settings for walk-ins and/ or attorneys and
30 officers; and, created inconsistencies and further inefficiencies by unilaterally
31 changing processes if a clerk complained about them;

32
33 (4) In or about 2013 and 2014, Respondent allowed his judicial decisions
34 and conduct to be influenced by public opinion, fear of criticism and/or political
35 interests. For example, Respondent often commented that he needed to win the
36 election and made statements to the effect that he would continue to take calls

1 from attorneys and officers because he needed to win the election, or that he
2 needed to accommodate the public in order to win the election. Further, it is
3 alleged that, because of Respondent's fear of losing votes, he failed to correct
4 attorneys and officers who were disrespectful to the court and/or were substantially
5 late to court settings; and
6

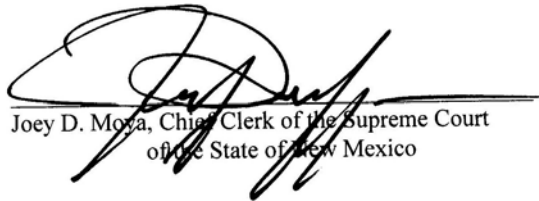
7 WHEREAS, in light of the foregoing, the Court having granted the Judicial
8 Standard's Commission's petition to accept the stipulated agreement and consent
9 to discipline and being sufficiently advised, Chief Justice Judith K. Nakamura,
10 Justice Petra Jimenez Maes, Justice Charles W. Daniels, and Justice Barbara J.
11 Vigil concurring;

12 NOW, THEREFORE, IT IS ORDERED that this PUBLIC CENSURE is
13 issued to Respondent, Hon. Warren G. Walton.

14 IT IS SO ORDERED.



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


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

I CERTIFY AND ATTEST:

15 A true copy was served on all parties
or their counsel of record on date filed.

Joey D. Moya

Chief Clerk of the Supreme Court
of the State of New Mexico