


Joey D. Moya

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

No.

IN THE MATTER OF HON. LAWRENCE D. MCCLAIN
Probate Judge, Sandoval County, New Mexico

S-1-SC-36777

IN THE MATTER OF HON. LAWRENCE D. MCCLAIN
Inquiry No. 2017-142

FILED UNDER SEAL

PURSUANT TO 27-104(B) NMRA 2011

PETITION TO ACCEPT STIPULATION TO
PERMANENT RESIGNATION FROM JUDICIAL OFFICE
IN LIEU OF FURTHER DISCIPLINARY PROCEEDINGS

JUDICIAL STANDARDS COMMISSION
Post Office Box 27248
Albuquerque, New Mexico 87125-7248
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Executive Director & General Counsel

PHYLLIS A. DOMINGUEZ,
Senior Investigative Trial Counsel

Counsel for Petitioner

HON. LAWRENCE D. MCCLAIN
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Sheehan & Sheehan
P.O. Box 271
Albuquerque, New Mexico 87103
(505) 247-0411
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Counsel for Respondent

IN THE SUPREME COURT
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**PETITION TO ACCEPT STIPULATION TO
PERMANENT RESIGNATION FROM JUDICIAL OFFICE
IN LIEU OF FURTHER DISCIPLINARY PROCEEDINGS**

The Judicial Standards Commission of the State of New Mexico (“the Commission”), through the undersigned counsel, hereby petitions the Supreme Court for an order approving the *Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings* (“*Stipulation*”), attached hereto as Exhibit 1, in which Respondent, Hon. Lawrence D. McClain, agrees to permanently resign effective at 5:00 p.m. on the same day this Honorable Court enters an order approving the

Stipulation and ordering Respondent's resignation. The Commission further requests that the Court unseal the entire file in this matter, pursuant to Rule 27-104(B) NMRA 2011.

The Respondent agrees to never again hold judicial office or exercise any judicial authority in the State of New Mexico. The Commission believes this stipulation agreement best serves the interest of justice and the integrity of the New Mexico judiciary.

1. The Commission invokes its jurisdiction pursuant to the Commission's power to recommend the discipline of judges, and the Supreme Court's power to discipline judges under Article VI, Section 32 of the New Mexico Constitution, and the Court's power of superintending control under Article VI, Section 3 of the New Mexico Constitution.

2. On October 13, 2017, the Commission issued a *Notice of Preliminary Investigation* to Respondent in Inquiry No. 2017-142, attached hereto as **Exhibit 2**.

3. Upon majority vote of the Commissioners, the Commission entered into a *Stipulation* with the Respondent on November 30, 2017 which provides in pertinent part the following:

Respondent agrees to permanently resign as judge of the Sandoval County Probate Court, effective at 5:00 p.m. on the same day that the Supreme Court enters an order approving this *Stipulation* and ordering Respondent's resignation. Upon acceptance of this *Stipulation* by the New Mexico Supreme Court, Respondent shall effect his permanent resignation by submitting duplicate original letters of resignation addressed to the Chief Justice of the New Mexico Supreme Court and to the Board of County Commissioners for Sandoval County, with a copy to the Judicial Standards Commission. Upon 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.

4. Upon Order from this Court, the attached *Stipulation* is enforceable by the Commission before the Supreme Court.


5. It is in the best interest of justice and integrity of the New Mexico judiciary that the Supreme Court grants this petition.

WHEREFORE, the Commission respectfully requests this Court issue an order granting the Commission's *Petition to Accept Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings*, approving the *Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings*, and order Respondent Hon.

Lawrence D. McClain's permanent resignation from judicial office effective immediately. The Commission also requests that this order unseal all documents filed in the Supreme Court in this case pursuant to Rule 27-104(B) NMRA 2011.

Respectfully submitted,

JUDICIAL STANDARDS COMMISSION


RANDALL D. ROYBAL
Executive Director & General Counsel

PHYLLIS A. DOMINGUEZ
Senior Investigative Trial Counsel
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 Briggs F. Cheney, Esq., on this 4th day December 2017.

HON. LAWRENCE D. MCCLAIN
c/o BRIGGS F. CHENEY, ESQ.
P.O. Box 271
Albuquerque, New Mexico 87103
(505) 247-0411


PHYLLIS A. DOMINGUEZ

BEFORE THE JUDICIAL STANDARDS COMMISSION
STATE OF NEW MEXICO

FILED

NOV 30 2017

**NM JUDICIAL
STANDARDS COMMISSION**

INQUIRY CONCERNING HON. LAWRENCE D. MCCLAIN
Sandoval County Probate Court

Inquiry No. 2017-142

**STIPULATION TO PERMANENT RESIGNATION FROM JUDICIAL OFFICE
IN LIEU OF FURTHER DISCIPLINARY PROCEEDINGS**

THIS MATTER is currently pending before the Judicial Standards Commission ("Commission") pursuant to a *Notice of Preliminary Investigation* issued on October 13, 2017 in Inquiry No. 2017-142.

This *Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings* ("Stipulation") is entered into by and between the Commission and Hon. Lawrence D. McClain ("Respondent").

1. Respondent agrees to permanently resign as judge of the Sandoval County Probate Court, effective at 5:00 p.m. on the same day that the Supreme Court enters an order approving this *Stipulation* and ordering Respondent's resignation. Grounds for this *Stipulation* include Respondent's compromised cognitive and physical abilities which have precluded Respondent's ability to perform his judicial duties. Respondent, who is eighty-three (83) years old, has not been able to report to court or perform his judicial duties since April 2017. Upon acceptance of this *Stipulation* by the New Mexico Supreme Court, Respondent shall effect his permanent resignation by submitting duplicate original letters of resignation addressed to the Chief Justice of the New Mexico Supreme Court, and to the Board of County Commissioners for Sandoval County, with a copy to the Judicial Standards Commission.

2. Upon 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

Exhibit 1

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.

3. The Commission will file under seal with the New Mexico Supreme Court, pursuant to Rule 27-104(B) NMRA 2011, a *Petition to Accept Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings* ("*Petition*"). A copy of this *Stipulation* will be attached as **Exhibit 1** to the *Petition*.

4. Upon granting the *Petition*, pursuant to the Supreme Court Rules, the Court may unseal this *Stipulation* pursuant to Rule 27-104(B).

5. Upon execution of this *Stipulation* and acceptance by the Supreme Court, the Commission will abate and close the matter pending against the Respondent before the Commission (Inquiry No. 2017-142).

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

7. 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 Judicial Standards Commission proceedings.

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

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

10. This document is not enforceable unless fully executed by all parties.

11. If Respondent violates any terms or provisions of this executed *Stipulation*, Respondent agrees that all facts alleged in the *Notice of Preliminary Investigation* issued in Inquiry No. 2017-142, shall be deemed admitted by the Respondent, will be used against Respondent in future proceedings before the Commission and the Supreme Court, and shall constitute obstruction of Commission business and contempt.

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

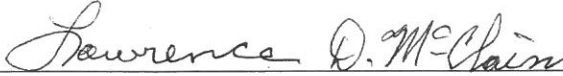
13. All parties have read and understand this *Stipulation*, have had the opportunity to discuss it with and be advised by legal counsel, and hereby freely and voluntarily enter into this *Stipulation* free of any threats, and free of any promises not contained herein.

RESPONDENT'S REVIEW & APPROVAL

I have read and understand this *Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings (Stipulation)*. I have had the opportunity to discuss this matter and my rights with a lawyer. 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 those 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 agreement 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 Judicial Standards Commission and the New Mexico Supreme 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 Preliminary Investigation* issued to me are admitted by me as fact, and that the

Commission shall re-initiate the matter pending before the Supreme Court and/or the Commission at the time this *Stipulation* was executed.



Dated: 11-29-17

HON. LAWRENCE D. MCCLAIN
Respondent

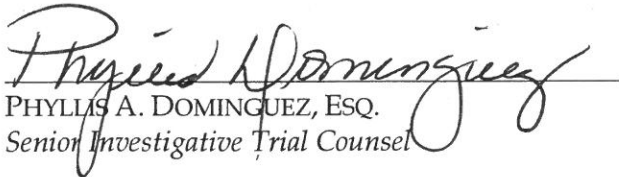


Dated: November 29, 2017

APPROVED BY: BRIGGS F. CHENEY, ESQ.
Guardian Ad Litem for Respondent

INVESTIGATIVE TRIAL COUNSEL'S REVIEW & APPROVAL

I have reviewed this *Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings* 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*

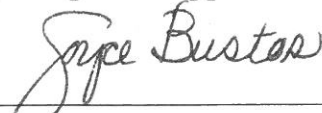


Dated: 11/30/17

PHYLLIS A. DOMINGUEZ, ESQ.
Senior Investigative Trial Counsel

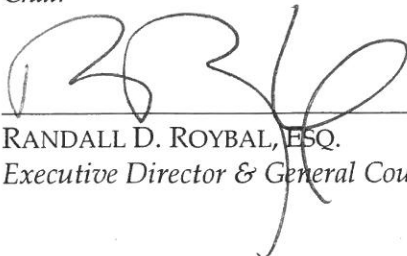
JUDICIAL STANDARDS COMMISSION REVIEW & APPROVAL

The Commission has reviewed this *Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Disciplinary Proceedings* and finds that it is in the best interest of justice and hereby accepts and approves this *Stipulation*.



Dated: 11/30/17

JOYCE BUSTOS
Chair



Dated: 11/30/17

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



STATE OF NEW MEXICO
JUDICIAL STANDARDS COMMISSION

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PHYLLIS A. DOMINGUEZ
Investigative Trial Counsel

DEBORAH BORIO
Investigative Trial Counsel

October 12, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
CONFIDENTIAL

FILED

OCT 13 2017

NM JUDICIAL

STANDARDS COMMISSION

A handwritten signature in black ink, appearing to be "D. Roybal", written over the stamp area.

Hon. Lawrence D. McLain
Sandoval County Probate Court
2884 Panorama Heights Dr. SE
Rio Rancho, New Mexico 87124

Re: Inquiry No. 2017-142, Notice of Preliminary Investigation

Dear Judge McLain:

The above-referenced matter came before the Judicial Standards Commission on either a verified complaint or the Commission's own motion. As part of a preliminary investigation pursuant to Rule 14(F) of the Judicial Standards Commission Rules (NMRA 2010), the Commission requires that you provide a written explanation as to the matters discussed below.

It has been alleged that:

You have failed, or are unable, to perform your judicial duties since April 17, 2017. You have continued to receive and have accepted payment of your regular wages since April 17, 2017, although you have not performed your judicial duties.

Such conduct violates Rules 21-101 and 21-102 of the Code of Judicial Conduct and constitutes persistent failure or inability to perform your judicial duties and fitness to serve as a judge.

Please provide the Commission with an explanation of this incident and the factual and legal bases for your conduct. Your response to this letter must be submitted in writing and must include an explanation and disclosure of all pertinent facts, including any relevant documents regarding the matters outlined herein. The Commission must receive your response within twenty-one (21) days of your receipt of this letter.

Exhibit 2


Sincerely yours,


Joyce E. Bustos
Chair

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing was mailed on the 13th day of October 2017, by certified mail, return receipt requested to:

Hon. Lawrence D. McLain
Sandoval County Probate Court
2884 Panorama Heights Dr. SE
Rio Rancho, New Mexico 87124


SHARIESSE T. MCCANNON
CLERK OF THE COMMISSION