



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

No. S-1-SC-38694

IN THE MATTER OF HON. MARLO R. MARTINEZ
Rio Arriba County Probate Court

INQUIRY CONCERNING HON. MARLO R. MARTINEZ
Inquiry Nos. 2019-038, 2021-011 & 2021-012

FILED UNDER SEAL
PURSUANT TO 27-104(B) NMRA 2011

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

JUDICIAL STANDARDS COMMISSION
6200 Uptown Blvd., NE, Suite 320
Albuquerque, NM 87110-4159
Telephone: (505) 222-9353

HON. MARLO R. MARTINEZ
Rio Arriba County Probate Court
1122 Industrial Park Rd.
Española, NM 87575
(505) 927-1234

PHYLLIS A. DOMINGUEZ
Executive Director & General Counsel

RESPONDENT

CHANCE A. GAUTHIER
Investigative Trial Counsel

Counsel for Petitioner

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

No. S-1-SC-38694

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PROCEEDINGS

The Judicial Standards Commission of the State of New Mexico (“Petitioner”), through the undersigned counsel, hereby petitions the Supreme Court for an order approving the attached *Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Proceedings* (“*Stipulation*”), attached hereto as **Exhibit 1**, in which Respondent, Hon. Marlo R. Martinez, stipulates to permanently resign from judicial office effective March 8, 2022. The Commission believes this stipulation agreement best serves the interests of justice and the integrity of the New Mexico judiciary.

1. Petitioner invokes its jurisdiction pursuant to Petitioner's power to recommend the discipline of judges, and the Supreme Court's power to discipline judges under the New Mexico Constitution Article VI, Section 32; the Court's power of superintending control under the New Mexico Constitution Article VI Section 3; and Rule 36 of the Judicial Standards Commission Rules.

2. This matter is currently pending before the Commission pursuant to a *Notice of Formal Proceedings* filed on April 29, 2021 (Attached as **EXHIBIT A1** to **EXHIBIT 1**) and a *Notice of Investigation* filed on February 22, 2021 (Attached as **EXHIBIT A2** to **EXHIBIT 1**).

3. The Commission entered into the Stipulation with Respondent on February 28, 2022 whereby Respondent agrees to permanently resign from judicial office.

4. The Commission agreed that the stipulation to permanent resignation in lieu of further proceedings is in the best interests of justice and should be granted and whereby the Commission shall close Inquiry Nos. 2019-038, 2021-011 & 2021-012 upon approval and order of Respondent's permanent resignation by the Supreme Court.

5. Respondent understands and acknowledges that, based upon the *Stipulation*, his resignation is permanent, and if he seeks judicial office in the future, the Commission will act to enforce the agreement, to find contempt, and/or to pursue other proper remedy. Respondent understands and acknowledges the *Stipulation* is an equitable remedy that best serves the interests of justice and has voluntarily agreed to permanent resignation. Respondent understands and acknowledges that violation of the terms of the *Stipulation* such as by running for or holding judicial office in New Mexico in the future after agreeing to permanently resign, prejudices the Commission's ability to effectively adjudicate a case that is stale, where witnesses may have disappeared, whose memories may have faded, or who may not wish to proceed in the matter after several years have passed. The resolution of this matter through Respondent's voluntary consent to resign permanently ensures finality for the Commission, Respondent and witnesses and allows all parties to rely upon the finality of the binding *Stipulation* and Court order(s).

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

7. The *Stipulation* is an equitable remedy that complies with Respondent's request to resign to pursue other non-judicial political aspirations, ensures the public's continued confidence and trust in the judiciary and provides for judicial economy and bests serves the interests of justice and the judiciary.

8. It is in the best interests of justice and integrity of the New Mexico Judiciary that the Supreme Court grant this Petition.

WHEREFORE, Petitioner respectfully requests this Court issue an order granting the Commission's *Petition to accept the Stipulation to Permanent Resignation from Judicial Office in Lieu of Further Proceedings* and order the permanent resignation of Respondent, Hon. Marlo R. Martinez effective by 5:00 p.m. on March 8, 2022. Upon granting the *Petition* and pursuant to the plain language of Supreme Court's Rule 27-104(B), the Court should unseal the *Petition* and its file in this matter.

Respectfully submitted,

JUDICIAL STANDARDS COMMISSION



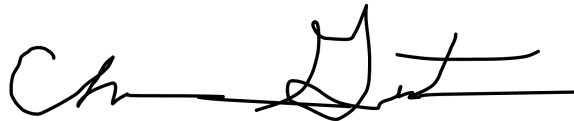
PHYLLIS A. DOMINGUEZ
Executive Director & General Counsel

CHANCE A. GAUTHIER
Investigative Trial Counsel

6200 Uptown Blvd., NE, Suite 320
Albuquerque, NM 87110-4159
Telephone: (505) 222-9353

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via the Supreme Court's Electronic Filing and Service System on this 28th day of February, 2022, which caused Respondent, to be served by electronic means at Marlo@newmexicoofficeproducts.com.



CHANCE A. GAUTHIER

BEFORE THE JUDICIAL STANDARDS COMMISSION
STATE OF NEW MEXICO

INQUIRY CONCERNING HON. MARLO R. MARTINEZ
Rio Arriba County Probate Court

Inquiry Nos. 2019-038, 2021-011 & 2021-012

FILED

FEB 28 2022

**NM JUDICIAL
STANDARDS COMMISSION**

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

THIS MATTER is currently pending before the Judicial Standards Commission ("Commission") pursuant to the Charging documents issued to Hon. Marlo R. Martinez ("Respondent") in Inquiry Nos. 2019-038, 2021-011 (*See Exhibit A1*) and consolidated Inquiry No. 2021-012 (*See Exhibit A2*).

This *Stipulation to Permanent Resignation from Judicial Office in lieu of Further Proceedings* ("*Stipulation*") is entered into by and between the Commission and the Respondent.

It is Respondent's choice and intention to dispose of the charges alleged in the pending *charging* documents for inquiries 2019-038, 2021-011 and 2021-012 (**Exhibits A1 & A2**) by entering into this *Stipulation* with the Commission where Respondent agrees to resign from judicial office and never again seek judicial office in New Mexico.

The Commission agrees that a stipulation for the permanent resignation of Respondent is in the best interests of justice and enters this *Stipulation* whereby the Commission shall close Inquiry Nos. 2019-038, 2021-011 and 2021-012 upon the New Mexico Supreme Court issuing an order accepting this *Stipulation* and Respondent's permanent resignation.

Respondent understands and acknowledges that, based upon this *Stipulation*, his resignation is permanent, and if he seeks judicial office in the future, the Commission will take action to enforce the agreement, to find contempt, and/or to pursue other proper remedy(ies).

EXHIBIT 1

Respondent understands and acknowledges this *Stipulation* is an equitable remedy that best serves the interests of justice and has voluntarily agreed to permanently resign. Respondent understands and acknowledges that a violation of the terms of this *Stipulation* such as by running for or holding judicial office in New Mexico in the future after agreeing to permanently resign, prejudices the Commission's ability to effectively adjudicate a case that is stale, where witnesses may have disappeared, whose memories may have faded, or who may not wish to proceed in the matter after several years have passed.

In consideration of the foregoing, 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 the Judicial Standards Commission Rules.

2. Respondent agrees to permanently resign as Rio Arriba County Probate Judge effective by 5:00 p.m. on March 8, 2022, or the same day Respondent declares his candidacy for an elected position as a New Mexico State Representative. Grounds for this *Stipulation* include Respondent's voluntary decision to permanently resign to focus on non-judicial political aspirations, the charges stated in the Charging documents for Inquiry Nos. 2019-038, 2021-011 and 2021-012 attached hereto as **Exhibit A1 and A2** and to avoid further proceedings before the Commission. Through this agreement to permanent resignation, the Respondent does not make any admissions regarding any of the factual or legal allegations contained in the Commission's charging documents attached hereto as **Exhibit A1 and A2**.

3. Respondent shall resign effective March 8, 2022 by submitting duplicate original letters of resignation addressed to the Chief Justice of the New Mexico Supreme Court, and the Rio Arriba County Manager, with a copy to the Judicial Standards Commission.

4. 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 probate court, municipal 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, including the judicial authority to officiate at weddings.

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

6. Upon granting the *Petition* and pursuant to the plain language of Supreme Court's Rule 27-104(B), the Court should unseal the *Petition* and its file in this matter.

7. Respondent requests that the *Petition* and the Supreme Court's file in this matter remain sealed.

8. Upon execution of this *Stipulation* and acceptance by the Court, the Commission will abate and close the matters pending against Respondent before the Commission (Inquiry Nos. 2019-038, 2021-011 and 2021-012).

9. This *Stipulation* is specifically enforceable by the Commission before the Supreme 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, the Commission's proceedings, or the disposition.

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

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

14. Respondent does not make any admissions regarding any of the factual or legal allegations contained in the Commission's charging documents attached hereto as **Exhibit A1** and **A2**. Respondent understands and acknowledges that a violation of the terms of this *Stipulation* such as by running for or holding judicial office in New Mexico in the future after agreeing to resign prejudices the Commission's ability to effectively adjudicate a case that is stale, where witnesses may have disappeared, whose memories may have faded, or who may not wish to proceed in the matter after several years have passed. Respondent understands and acknowledges that if he violates any terms or provisions of this executed *Stipulation*, Respondent agrees that all charges in the charging documents issued in Inquiry Nos. 2019-038, 2021-011 and 2021-012, shall be deemed admitted by the 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 seek legal counsel, discuss it 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 AND APPROVAL

I have read and understand this *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 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 under any circumstances as defined in this agreement, 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. Although I do not make any admissions to any legal or factual allegations contained in the charging documents (attached as Exhibit A1 and A2) by entering into this stipulation, I understand, acknowledge, accept and agree that all charges lodged against me in the charging documents issued to me will be admitted by me as fact if I violate any provision of this *Stipulation* in any other manner, 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. MARLO R. MARTINEZ
Respondent

Dated: 2/23/22

INVESTIGATIVE TRIAL COUNSEL'S REVIEW AND APPROVAL

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



CHANCE A. GAUTHIER
Investigative Trial Counsel

Dated: 2/23/22

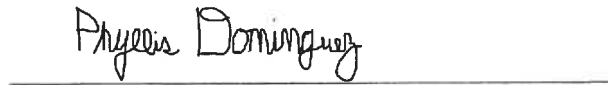
JUDICIAL STANDARDS COMMISSION'S REVIEW & APPROVAL

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: 2/28/22



PHYLLIS A. DOMINGUEZ
Executive Director & General Counsel

Dated: 2-28-22

BEFORE THE JUDICIAL STANDARDS COMMISSION
OF THE STATE OF NEW MEXICO

INQUIRY CONCERNING HON. MARLO R. MARTINEZ
Rio Arriba County Probate Court

Inquiry Nos. 2019-038 & 2021-011

FILED

APR 29 2021 *lg*

**NM JUDICIAL
STANDARDS COMMISSION**

NOTICE OF FORMAL PROCEEDINGS

TO: Hon. Marlo R. Martinez
Rio Arriba County Probate Court
209 N. Riverside Dr.
Española, New Mexico 87532

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 of the Judicial Standards Commission Rules, has instituted formal proceedings on the charges set forth below.

COUNT 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.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-201 and 21-205 NMRA and constitutes willful misconduct in office.

COUNT 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).

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-201 and 21-205 NMRA and constitutes willful misconduct in office.

COUNT 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.

Such conduct violates the Code of Judicial Conduct Rules 21-101 and 21-102 NMRA and constitutes willful misconduct in office.

COUNT 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.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102 and 21-216 NMRA and constitutes willful misconduct in office.

COUNT 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.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-202, 21-205, 21-206 and 21-209 NMRA and constitutes willful misconduct in office.

COUNT 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 an in furtherance of the substance of the *ex parte* conversation with Gloria Barela.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-103, 21-202, 21-205, 21-206 and 21-209 NMRA and constitutes willful misconduct in office.

COUNT 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.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-103, 21-205, 21-206 and 21-209 NMRA and constitutes willful misconduct in office.

COUNT 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.

Such conduct violates the Code of Judicial Conduct Rules 21-101, 21-102, 21-208 NMRA 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:

*Clerk of the Commission
Judicial Standards Commission
6200 Uptown Blvd. NE, Suite 320
Albuquerque, NM 87110-4159*

Your answer should be legible. 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

Joyce E. Bustos, Chair
6200 Uptown Blvd. NE, Suite 320
Albuquerque, NM 87110-4159
(505) 222-9353

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was sent on this 29th day of
April 2021 to the following:

VIA E-MAIL

marlo@newmexicoofficeproducts.com



SHARIESSE T. MCCANNON
CLERK OF THE COMMISSION



STATE OF NEW MEXICO
JUDICIAL STANDARDS COMMISSION

6200 UPTOWN BOULEVARD NE, SUITE 320
ALBUQUERQUE, NEW MEXICO 87110-4159
(505) 222-9353 • WWW.NMJSC.ORG

EXHIBIT A2

RANDALL D. ROYBAL
Executive Director & General Counsel

PHYLLIS A. DOMINGUEZ
Deputy Director

CHANCE A. GAUTHIER
Investigative Trial Counsel

February 22, 2021

CONFIDENTIAL
BY FIRST CLASS MAIL AND EMAIL

Hon. Marlo R. Martinez
Rio Arriba County Probate Court
209 Riverside Drive.
Española, New Mexico 87532

marlo@newmexicoofficeproducts.com

FILED

FEB 22 2021

**NM JUDICIAL
STANDARDS COMMISSION**

Re: Inquiry No. 2021-012; Notice of Investigation

Dear Judge Martinez:

You are hereby notified that the above-referenced matter came before the Judicial Standards Commission on a verified, third party complaint; a complaint docketed by the Commission's General Counsel; or upon the Commission's own motion. As part of an investigation pursuant to Rules 15(B) and (C) of the Judicial Standards Commission Rules (NMRA 2019), the Commission requires that you provide a written explanation as to the matter discussed below.

It has been alleged that:

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.

Please provide the Commission with an explanation of this incident and the factual and legal bases for your conduct. Your response to this notice must be submitted in writing and must include an explanation and disclosure of all pertinent facts, along with any relevant documents or materials you wish the Commission to consider regarding the matter outlined herein.

Hon. Marlo R. Martinez
February 22, 2021
Page 2

Pursuant to Rule 16(B) of the Judicial Standards Commission Rules (NMRA 2020), the Commission must receive your response within twenty-one (21) days of your receipt of this notice.

Sincerely yours,


Joyce E. Bustos
Chair


CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing was sent on the 22nd day of February, 2021 via Email and First Class Mail to:

Hon. Marlo R. Martinez
209 Riverside Drive,
Española, NM 87532

AND

marlo@newmexicoofficeproducts.com


SHARIESSE T. MCCANNON
Clerk of the Commission