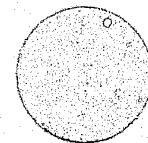


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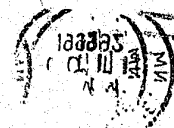
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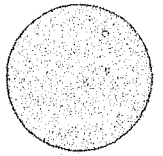
ACQUISITIONS

of the

NEW MEXICO

JUDICIAL STANDARDS COMMISSION





Samuel W. Jones
Executive Director

Carole C. Sauer
Secretary

Judicial Standards Commission

2539 Wyoming N.E. -- Suite A
Albuquerque, New Mexico 87112
505-841-9438

September 16, 1992

The Honorable Bruce King, Governor
State of New Mexico

The Honorable Members of the
New Mexico State Legislature

The New Mexico State Bar

The Honorable Justices of the
New Mexico Supreme Court

Dear Governor, Members of the Legislature, New Mexico State
Bar and Justices of the Supreme Court:

I am submitting herewith the annual report of the New
Mexico Judicial Standards Commission for the 80th Fiscal
Year.

Respectfully,

A handwritten signature in dark ink, appearing to read "Fred R. Harris", written over a horizontal line.

Fred R. Harris
Chairman
Judicial Standards Commission

1992
ANNUAL REPORT
of the
NEW MEXICO
JUDICIAL STANDARDS COMMISSION
July 1, 1991 - June 30, 1992

Commission Staff

Samuel W. Jones
Executive Director

Carole C. Sauer
Secretary/Bookkeeper

Commission Offices

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Albuquerque, NM 87112

(505) 841-9438
Hours: 8 AM-12 Noon

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**U.S. Department of Justice
National Institute of Justice**

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Commission

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Authority and Duties of the Judicial Standards Commission

Article VI, Section 32 of the Constitution of the State of New Mexico and Chapter 34, Article 10 of the New Mexico Statutes, authorize the Commission to investigate complaints that a judge has been guilty of willful misconduct in office, has persistently failed to perform or is unable to perform the duties of a judge, is habitually under the influence of intoxicating substances, or is suffering from a physical or mental disability which is of a permanent nature and which renders him incapable of performing his judicial duties.

Filing Complaints

The Commission has a complaint form which it will supply to any person wishing to file a complaint against a judge. Instructions accompany the form. It is important that the person filing the complaint have his signature verified in swearing to the truthfulness of the statements made in the complaint. Inquiries may be made in writing or over the telephone, or a complainant may visit the office of the Commission to get information about filing a complaint. In all cases, the complainant will be asked to complete a complaint form.

The Commission may undertake an investigation on its own motion when it has information of seeming problems on the part of a judge.

After determining that a complaint comes within its jurisdiction, the Commission will direct that the complaint be investigated by the executive director, a private attorney, or it may obtain the assistance of the office of the Attorney General in the investigation. A notice of investigation will be sent to the judge, informing him of the allegations and requesting his response.

If the investigation produces evidence that the allegations have some foundation, the Commission will set the matter for a formal hearing at which the evidence will be presented and the judge will have the opportunity to also present evidence and to cross-examine the witnesses. At the conclusion of the hearing the Commission will retire to arrive at findings of fact, conclusions of law, and, if the allegations are not at this point dismissed, the Commission will make recommendations to the Supreme Court as to the discipline, removal, or retirement of the judge.

Up to and including the formal hearing, the existence of an investigation is kept confidential by the Commission, as required by the state constitution. Once the Commission recommendation is filed with the Supreme Court, its report is of public record. The Supreme Court usually sets a hearing on the Commission's recommendation within a short time, and renders a decision adopting, denying, or modifying the recommendation of the Commission.

At any time, up to the conclusion of a formal hearing, if the investigation shows there is no evidence to support the allegations against the judge, the investigation may be closed. If a judge resigns or fails to be reelected while an investigation is under way, the investigation will be closed since the Commission has no authority to recommend that a person who is no longer a judge be disciplined. In some cases the Commission has found evidence of wrong-doing by a judge but that the judge's actions were the result of misunderstanding rather than willful misconduct. In those situations the matter may be referred to the Supreme Court, or to a judge having supervisory authority, for counseling.

Complaints Received

During the 80th fiscal year, the Commission received 63 complaints. The following chart shows the sources of the complaints and each type of judge against whom the complaints were made:

<u>Source of Complaints</u> <u>No. of Cases</u>		<u>Judges</u> <u>No. of Cases</u>	
Commission	4	Supreme Court	1
Citizens	4	Court of Appeals	1
Litigants	26	District	25
Criminal Defendants	9	Metropolitan	5
Public Officials	2	Magistrate	19
Lawyers	14	Municipal	12
Judges	0	Probate	0
Police	2	Pro-Tem	0
News Media	0	Candidate	0
Prisoners	0		
Anonymous	1		
Others	1		

During the 80th fiscal year, disposition was made of 56 cases. Of those, 11 were pending from the prior year and 18 remained pending at the close of the year on June 30, 1992. The following chart shows the dispositions made:

Out of jurisdiction	15
Insubstantial	6
Dismissed after investigation	22
Formal hearings	4
Letter of caution	8
Remedial Disposition (Referred for Counseling)	1

Cases Heard by Commission

1. A hearing was held near the end of the prior fiscal year but the matter was not finalized before the Supreme Court until the early part of this fiscal year. Therefore, this matter is being reported. The hearing combined two separate inquiries.

Allegations of misconduct against Judge Herbert S. Blakely, Magistrate, Clayton, New Mexico, were investigated. Judge Blakely was charged with counts of engaging in ex parte communications with criminal defendants who had been cited into his court. In one particular case the judge had also communicated with potential witnesses to the case. Further, the judge conducted his own independent investigation of the case, and, as a result, reached an erroneous conclusion with regards to the cause of an accident which was pertinent to the matter. Consequently the judge dismissed the case without justification or concurrence of the citing officer. Additionally, Judge Blakely transported a prisoner (who was a personal friend) from one jurisdiction to another, a function generally handled by the sheriff's office. A formal hearing was held in this inquiry. The Commission made a report to the Supreme Court of its findings of misconduct involving the above mentioned incidents, and others, and recommended suspension and public reprimand as discipline for Judge Blakely. The Commission's findings and recommendations were the unanimous consensus of the Commission members. At the hearing before the Supreme Court regarding the Commission's recommendation, the Court declared that although the judge had engaged in serious indiscretions, his actions did not rise to the level of misconduct. The Court said it would not follow the Commission's recommendation for discipline, but did order that Judge Blakely pay hearing costs.

2. Judge Anthony Martinez, probate judge for Taos County, New Mexico had his driver's license revoked twice, once for driving while intoxicated, and a second time for refusing to submit to a chemical test. Subsequently, Judge Martinez was cited for operating a motor vehicle on a highway of the State of New Mexico at a time when his driver's license had been revoked. He was also cited for causing an accident. Alcohol was involved in the accident. The judge was subsequently found guilty of some charges and fined. The New Mexico Judicial Standards Commission held a hearing concerning the judge's conduct. At the hearing, Judge Martinez admitted he is an alcoholic and was receiving some treatment for his problem. Judge Martinez asked the Commission for mercy. After the hearing, in which the Commission found the judge's acts constituted willful misconduct in office, a recommendation was made to the New Mexico Supreme Court that Judge Martinez be publicly reprimanded. A hearing before the Supreme Court was held regarding the Commission's recommendation on August 14, 1991. The Court did publicly censure Judge Martinez and ordered him to pay the costs of the Commission's hearing. The judge failed to pay those costs in the amount of \$198.52. The Commission filed a Motion to Show Cause why the judge should not be held in contempt for failure to obey the Court's order. On January 22, 1992, at a hearing on the motion, the Court ordered that Judge Martinez be suspended without pay until he made payment of the hearing costs to the Commission. The costs were subsequently paid by Judge Martinez' mother.

3. Judge Anthony Martinez, probate judge of Taos County, New Mexico, was the subject of a New Mexico Judicial Standards Commission proceeding in which he was charged with persistent failure to perform the duties of a judge. At a hearing, held December 6, 1991, the Commission found that Judge Martinez had failed to keep the office hours he had posted on a regular basis. The Commission also found that Judge Martinez failed to keep numerous appointments with court patrons, nor did he contact them to tell them he would

not keep the appointment or explain his absence. Some of these patrons had traveled long distances to meet with the judge when he failed to be in his office at the appointed time. The Commission found that Judge Martinez was guilty of persistent failure to perform his duties and of willful misconduct in office. It made a recommendation to the New Mexico Supreme Court that Judge Martinez be publicly reprimanded and referred for training and counseling. On January 22, 1992, the Court heard the Commission's recommendation. The Court publicly censured Judge Martinez and ordered that he receive counseling and training from the district judge where he resides for a period of 90 days. The Court said it would hold in abeyance, for this period, the matter of hearing costs. The district judge did perform the education of Judge Martinez and submitted a report which was accepted by the Supreme Court. The Court ordered that the payment of the hearing costs be discharged.

4. On April 10, 1991, a criminal complaint was filed against Cora Montoya in Magistrate Court of San Miguel County, Las Vegas, New Mexico, Judge Luis Martinez, presiding, charging Cora Montoya with two felonies. On the same date, Judge Martinez entered his Order Setting Conditions of her Release, which order contained the following condition: "That you are to refrain from all alcoholic beverages".

On May 1, 1991, Judge Martinez gave Cora Montoya a ride home from a package liquor store. He entered her home and while there he accepted a beer from her and drank it with her while she was also drinking a beer. Judge Martinez then had sexual intercourse with Cora Montoya. Cora Montoya subsequently alleged that the judge had raped her. This allegation was investigated by police and the district attorney's agents. The district attorney later decided not to prosecute Judge Martinez because of a lack of evidence. The New Mexico Judicial Standards Commission held a hearing on September 27, 1991. At the hearing the Commission found the facts as set forth above with regards to the beer drinking and the act of sexual intercourse. The Commission found that Judge Martinez' acts amounted to willful misconduct in office and was a violation of canons of the Code of Judicial Conduct. The Commission recommended that the New Mexico Supreme Court censure Judge Martinez and suspend him for a period of 120 days without pay. At a hearing, held November 6, 1991, on the recommendation the Supreme Court publicly reprimanded Judge Martinez and suspended him, without pay, for a period of 120 days.

Hearings were not held in regards to the following matters, however their significance warranted Commission action in the nature of private letters of caution directed to the judges involved:

(1) A magistrate judge was admonished to not take criminal cases under advisement, an option available in civil matters, but to rule immediately on the case. Of course, the judge has the option, after entering a conviction, of deferring sentence. The difference between the two judicial actions was explained to the judge and all other magistrates and municipal court judges in the state by memorandum distributed by the AOC.

(2) A magistrate judge was cautioned not to deliver messages from a defendant's father to a law enforcement officer because such an act is unseemly and not in the best interests of the judiciary.

(3) A pro-tem judge was cautioned not to use the stationery of his law office to correspond with parties about official court business.

(4) A magistrate judge was admonished not to perform the services of a law enforcement officer after he accompanied a citizen to the home of his estranged wife in order that the citizen could collect some personal effects.

(5) A municipal court judge who participated in a protest against the local school board and against whom allegations were made that the judge used vulgar and obscene language, was cautioned to carefully avoid using language which could bring the judiciary into disrepute and to avoid even the appearance of impropriety.

(6) After a magistrate judge had been criticized in letters to the editor by a defendant in the court, the judge responded by writing a letter to the newspaper answering the criticism. The Commission admonished the judge not to repeat such conduct and to exercise judicial patience in dealing with the public even in the face of comments and criticism which the judge might consider to be unfair.

(7) The Commission reminded a Metropolitan Court judge to exercise judicial wisdom in the utterance of instructions and statements to litigants so they do not come away with a misunderstanding or a feeling that the judge is being harsh, rude or biased.

Commission Operations

The Commission has been in existence since June of 1968, and consists of two judges, two lawyers, and five lay members. The members serve without compensation other than reimbursement for mileage and per diem. Lay members serve five year terms while the lawyer and judge members are appointed to four year terms. The terms are staggered. The current members, appointing authorities, and expiration dates of terms are set out below:

Member	Appointed by	Terms Expire
Linda L. Atkinson Public Member Albuquerque	Governor	June 30, 1994
Annadelle Sanchez Public Member Espanola	Governor	June 30, 1995
Fred R. Harris Public Member Albuquerque	Governor	June 30, 1996
Peggy C. Traver Public Member Albuquerque	Governor	June 30, 1992
Position Vacant Public Member	Governor	
W. Booker Kelly, Esq. Attorney Santa Fe	Board of Bar Commissioners	June 30, 1994

Betty Read, Esq.
Attorney
Albuquerque

Board of Bar
Commissioners

June 30, 1992

Judge Robert M. Doughty, II
District Judge
Alamogordo

Supreme Court

June 30, 1995

Judge Rozier E. Sanchez
District Judge
Albuquerque

Supreme Court

June 30, 1993

Financial Report

The expenditures for the 80th (1991-1992) fiscal year were:

Personal Services	49,385.25
Employee Benefits	12,102.39
Travel	3,982.31
Maintenance & Repairs	1,121.14
Supplies	823.08
Contractual Services	1,934.63
Operating Costs	10,808.61
Capital Outlay	1,002.00
Out of State Travel	0.00
	<hr/>
Total	81,159.41