

BEFORE THE JUDICIAL STANDARDS COMMISSION
OF THE STATE OF NEW MEXICO

FILED
OCT 13 2006
NM JUDICIAL
STANDARDS COMMISSION

INQUIRY CONCERNING A JUDGE

Inquiry Nos. 2006-042, 2006-071, 2006-076

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
RECOMMENDATION FOR PERMANENT REMOVAL**

This matter came before the Judicial Standards Commission ("Commission") for hearing on October 10-11, 2006, pursuant to N.M. Const., art. VI, §32 (as amended); NMSA 1978, §34-10-2.1 (as amended); and the Judicial Standards Commission Rules. The hearing was held in the Commission's hearing room located at 111 Lomas Blvd. NW, Suite 220, Albuquerque, New Mexico. The following eight (8) Commissioners participated in the hearing, deliberation, decision, and adoption of these findings, conclusions, and recommendation in this matter:

Hon. James A. Hall, *Presiding Officer*
Hon. Buddy J. Hall
Albert J. Lama, Esq.
David S. Smoak, *Chairman*
Gloria Taradash, Ph.D., *Vice-Chair*
Bob F. Turner, Esq.
William R. Valentine, D.M.D.
Hon. Frank K. Wilson

Commissioner Hon. Dan Sosa, Jr. (Retired) was recused from and did not participate in this matter. Commissioner Larry Garcia participated in a portion of the hearing, but did not participate in Commission deliberation or the decision in this matter. Commissioner Paul F. Sena was absent and did not participate in this proceeding. The Commission's Deputy Director and Chief Staff Attorney, Randall D. Rowbal, Esq., served as Counsel to the Commission for this proceeding.

Exhibit
1

Examiners James A. Noel, Esq. and Elizabeth A. Garcia, Esq. gathered and presented evidence before the Commission. Respondent Hon. Carlos Garza appeared *pro se* in this matter.

The hearing was conducted from October 10-11, 2006. Pretrial motions were resolved prior to trial by the Presiding Officer. The Commission heard testimony from and accordingly judged the credibility of the following witnesses during the hearing:

1. David Engelhart, Ph.D;
2. Eleanor Gilbert, MD;
3. Hon. Caleb Chandler;
4. Melinda Gamboa
5. Hon. Karen Mitchell;
6. Capt. Richard Williams;
7. Lourdes Sanchez;
8. Lorraine Quintero
9. Deputy Jeremy Hash;
10. Sophia Lopez,
11. Sharnesse McCannon
12. Monica Duran
13. Patsy Quiroga
14. Hon. Olivia Garcia
15. Hon. Richard Silva
16. Tina Ross
17. Renee Padilla
18. Hon. Carlos Garza

The Commission also considered and reviewed all exhibits admitted into evidence.

Having considered the pleadings, testimony of the witnesses, exhibits admitted into evidence, arguments by the Examiners and Respondent, and applicable law, the Commission makes the findings of fact and conclusions of law enumerated below.

FINDING OF FACTS

1. Respondent, Hon. Carlos E. Garza, was at all times relevant to the above referenced inquiries, a Magistrate Judge on the Doña Ana County Magistrate Court

2. The Judicial Standards Commission has jurisdiction over the Respondent and the subject matter thereof.

3. As a Magistrate Court Judge in the State of New Mexico, Respondent is subject to, and his conduct on and off the bench is governed by, the New Mexico Code of Judicial Conduct, §21-001 NMRA, *et seq.*

Inquiry 2006-042 (Drug Testing, Failure to Comply, Obstruction, Contempt)

4. The Commission's *Rule 3 Order* in Inquiry 2006-042 was issued and filed on August 17, 2006. The Commission filed its *Verified Petition for Immediate Suspension Without Pay; For an Immediate Order Mandating Compliance with the Commission Rule 3 Order, and for an Order to Show Cause Why Respondent Should Not Be Held in Contempt* in the Supreme Court on August 23, 2006 in Inquiry 2006-042. The *Notice of Formal Proceedings* in Inquiry 2006-042 was issued and filed on August 25, 2006. The *First Amended Notice of Trial and Pretrial Scheduling Order* in Inquiry 2006-042 was issued and filed on September 7, 2006, and set forth all pretrial deadlines in that matter, and Inquiry Nos. 2006-071 and 2006-076. The *First Amended Discovery Order* in Inquiry 2006-042 was issued and filed on September 7, 2006. Respondent failed to invoke a ruling from the Commission on any challenge to the *Rule 3 Order*.

5. Respondent did not file an answer to the Commission's *Notice of Formal Proceedings* in Inquiry 2006-042. Respondent failed to meet all deadlines contained in the *First Amended Notice of Trial and Pretrial Scheduling Order*.

6. Respondent was placed on 30-days unpaid suspension effective September 20, 2006, for failure to comply with the *Rule 3 Order* issued by the Judicial Standards Commission in Inquiry 2006-042.

7. The Commission's *Rule 8 Order* was filed on August 17, 2006, and was hand-delivered to Captain Richard Williams of the New Mexico State Police Department. Captain Williams agreed to effectuate service of process on Respondent, and to complete and return an affidavit of service.

8. Captain Williams appeared at Respondent's home on or about 9:29 a.m., Friday, August 18, 2006, to serve Respondent with the Commission's *Rule 8 Order*. Captain Williams knocked on the front door, and former judge Reuben Galvan answered the door, indicating that he lived there, and that the Respondent lived there but was presently not at home.

9. Mr. Galvan then called Respondent, and handed the telephone to Captain Williams.

10. Captain Williams informed Respondent that he had papers to serve on him. Respondent wanted to know what the papers were, and who they were from. Captain Williams indicated they were papers from the Judicial Standards Commission. Respondent then arranged and agreed to meet Captain Williams at the Bank of the Rio Grande, 421 N. Water Street, Las Cruces, New Mexico, to accept service of the papers.

11. After this phone conversation, but before meeting Captain Williams at the Bank of the Rio Grande, at or about 9:37 a.m. on Friday, August 18, 2006, Respondent called the Commission office and spoke with the Commission general counsel.

12. Respondent indicated he was aware that the Commission had papers to serve on him, and he wanted to know what those papers were.

13. The general counsel responded that the best thing would be to effectuate service of process and then Respondent would know what the documents were.

14. Respondent indicated that he was on his way to accept service, but wanted to know what he was being served with. Again, the Commission general counsel noted that upon acceptance of service, Respondent would know what the documents were.

15. Respondent specifically stated he was on his way to accept service of process, and would not evade service of process. Based on Respondent's representation that he was on his way to accept service of process, and that he would not evade service, Commission general counsel informed Respondent that he was being served with a *Rule 8 Order* requiring that he submit to drug screening through hair and urine samples.

16. Respondent then failed to meet Captain Williams in an attempt to avoid service of the Commission's *Rule 8 Order*.

17. Respondent's explanation under oath for his failure to abide by his agreement to appear to receive service of the *Rule 8 Order* from Captain Williams on the morning of August 18, 2006, is not credible.

18. After waiting for Respondent for approximately 45 minutes, Captain Williams returned to Respondent's home. Captain Williams knocked on the door and rang the door bell, but no one answered the door, even though Respondent's car was at that point parked in front of Respondent's home.

19. Captain Williams then effectuated service of process by posting the Commission *Rule 8 Order* on Respondent's door at or about 10:55 a.m. on August 18, 2006.

20. At or about 2:00 p.m. on August 18, 2006, Captain Williams, while on another call in the same area, drove by Respondent's home, and confirmed that the document was no longer posted on Respondent's door, and that it was not lying on the ground in the vicinity of Respondent's home.

21. Respondent failed to comply with any of the provisions of the Commission's *Rule 8 Order*.

22. Once he had learned that the Commission was serving him with an order requiring that he submit to drug testing, Respondent intentionally avoided service of the Commission's *Rule 8 Order*.

23. Respondent appeared at S.E.D. Laboratory in Las Cruces, New Mexico just as they were closing for business, at approximately 4:00 p.m. on Monday, August 21, 2006.

24. Respondent told Lourdes Sanchez, the S.E.D. Laboratory Office Coordinator and Laboratory Technician, that he was not going to allow her to collect either hair or urine samples pursuant to the Commission's *Rule(8) Order*, and that he was not going to sign the authorization form to release the results of drug screening to the Commission.

25. Lourdes Sanchez informed Respondent that if he did not sign the authorization form, and that if he did not provide the requested hair and urine samples, S.E.D. Laboratory would have to report that as a refusal to take the test.

26. Upon further questioning by Lourdes Sanchez, Respondent confirmed to her that he was refusing the Commission's *Rule 8 Order*. Respondent also instructed Ms. Sanchez to inform Jim Noel that he refused to sign the authorization to allow hair and urine to be taken for the Commission's drug screening.

27. Respondent ordered and paid for a S.E.D. "People Public Laboratory Access Network" (P.L.A.N.) urine rapid drug screen. After learning the results of that test, which results were available within 10 minutes, Respondent then ordered an "Adult Tox Screen" urine test for his own drug screening, which would provide detailed drug screening analysis.

28. A person accompanying Respondent asked Ms. Sanchez whether the length of Respondent's hair was long enough for collection of a hair sample for drug screening, which according to Ms. Sanchez, was of adequate length for drug screening at that time.

29. Respondent did not sign an authorization to release the results of the two drug screening tests he ordered for himself.

30. Respondent wanted to have urine testing done for himself for a period of over 72 hours after learning of the Commission's *Rule 8 Order*.

31. Respondent failed and refused to comply with the Commission's *Rule 8 Order* until the New Mexico Supreme Court ordered that he comply with the Commission order on September 20, 2006.

32. Between August 23 and September 20, 2006, Respondent cut the hair on his head to a very short length.

33. Lorraine Quintero, a laboratory technician for S.E.D. Laboratory in Albuquerque, New Mexico, collected a sample of Respondent's hair on September 20, 2006, using standard procedures for the proper collection of hair samples.

34. Ms. Quintero adhered to standard chain of custody protocols, and forwarded the hair sample to Omega Laboratories in Ohio for analytical testing for the presence of drugs.

35. Omega Laboratories is certified to process and analyze hair samples for the presence of certain drugs, including cocaine.

36. Omega Laboratories accepted, processed and analyzed the sample of Respondent's hair in accordance with its standard operating procedures, and obtained correct and certified analytical results of Respondent's hair sample.

37. The sample of Respondent's hair tested positive for cocaine/metabolite in the amount of 7,166 picograms per milligram. Cocaine is a drug considered unlawful under the provisions of the Controlled Substances Act.

38. The results of this test were forwarded to a licensed and certified medical review officer, Dr. Eleanor Gilbert, who concluded after questioning Respondent that there was no medical explanation for the presence of cocaine/metabolite in Respondent's hair.

Inquiry 2006-071 (Improper Use of Judicial Office)

39. On or about February 9, 2006, Respondent attempted to influence and/or intimidate Deputy Jeremy Hash of the Mesilla Marshall's Office in an effort to gain preferential treatment for Lauren Spilsbury, with whom Respondent had a personal relationship.

40. At around 8:35 p.m., Mesilla Deputy Marshall Jeremy Hash clocked a dark sedan traveling at 44 mph in a 25 mph zone. Respondent occupied the passenger seat of this vehicle.

41. Deputy Hash pulled the vehicle over and approached the driver, whom he recognized as Lauren Spilsbury from an identification photograph for an arrest warrant for Ms. Spilsbury, previously given to him by the U.S. Marshall's Office.

42. Deputy Hash overheard Respondent tell the driver, Ms. Spilsbury, "Don't worry, I'll take care of the tickets." During this traffic stop of Ms. Spilsbury Respondent leaned over, looked at Deputy Hash and stated, "Do you know who I am?"

43. Respondent's comments to Deputy Hash appeared to be an attempt to intimidate and/or influence the officer in order to gain preferential treatment for Ms. Spilsbury, and were interpreted as such by Deputy Hash.

44. The above actions took place while Commission Inquiry 2005-003 was pending with the Commission (specifically pertaining to Respondent's involvement and use of prestige

of judicial office for Lauren Spilsbury in *State of New Mexico vs. Lauren Spilsbury*, Doña Ana County Magistrate Court Cause No. M-14-DR-200400146). Respondent had been notified in Inquiry 2005-003 that he was being investigated for willful misconduct in office with respect to his actions in the Spilsbury case.

45. Respondent's conduct demonstrates a pattern of continued use of prestige of judicial office to gain preferential treatment for Lauren Spilsbury, with whom he had a personal relationship.

Inquiry 2006-076 (Clearance on Spilsbury License)

46. On or about December 20, 2005, Respondent instructed clerks for the Doña Ana County Magistrate Court to issue a clearance on Lauren Spilsbury's drivers' license in *State of New Mexico vs. Lauren Spilsbury*, Dona Ana County Magistrate Court Cause No. M-14-DR-200400146, to gain preferential treatment for Lauren Spilsbury, with whom he had a personal relationship.

47. *State of New Mexico v. Spilsbury* was a DWI case that was initially assigned to Respondent, but from which he recused himself on June 8, 2004. The matter was reassigned and was still pending in December of 2005 before the Doña Ana Magistrate Court.

48. Despite Respondent's recusal from the case, Respondent ordered Sophia Lopez, a clerk, to issue a clearance for Lauren Spilsbury's driver's license even though the case was still pending before the Magistrate Court.

49. Melinda Gamboa, as supervisor, advised Ms. Lopez to make sure Judge Garza was aware that if the case was still pending, the clerk's office would not issue a clearance until all obligations were met.

50. After meeting with Ms. Gamboa, Ms. Lopez went to see Judge Garza in his chambers on December 20, 2005. Lauren Spilsbury was present in his office. Ms. Lopez told Judge Garza that the case was still pending and that the clerk's office would not issue a clearance until all obligations were met.

51. Judge Garza ordered Ms. Lopez to clear the license anyway. Ms. Lopez asked Respondent to sign the clearance himself and for Respondent to make a note in the file that he ordered the clearance to be issued.

52. Judge Garza told Ms. Lopez that he was not going to sign or make any notes on anything, but "the defendant [Ms. Spilsbury] needed the clearance NOW."

53. Melinda Gamboa instructed Sophia Lopez to make a note in the file regarding giving the clearances in the pending Spilsbury case.

54. The notation in the court file reads "Per Judge Garza, okay to issue the clearance."

55. The above actions took place while Commission Inquiry 2005-003 was pending with the Commission (specifically pertaining to Respondent's involvement and use of prestige of judicial office for Lauren Spilsbury in this same case, *State of New Mexico vs. Lauren Spilsbury*, Doña Ana County Magistrate Court Cause No. M-14-DR-200400146). Respondent had been notified in Inquiry 2005-003 that he was being investigated for willful misconduct in office with respect to his actions in the Spilsbury case.

56. Respondent is unable to understand and appreciate the gravity of his actions and how his conduct impacts those who are directly or indirectly subject to his authority.

57. Respondent is unable to self-monitor the use of his authority as a judge and is unable to recognize when his conduct violates the Code of Judicial Conduct.

58. Taking into account the Respondent's demeanor, memory, manner while testifying, any interest, bias, and prejudice he has, and the reasonableness of his testimony in the light of all the other evidence in the case, Respondent's testimony as to the material elements of the allegations against him is not credible. Respondent's testimony that he has not used illegal drugs is specifically found not to be credible in light of all the evidence in this matter.

59. While some of Respondent's conduct from November 2005, until the date of his suspension may have been consistent with that of a person under the influence of drugs, the Commission does not find by clear and convincing evidence that the Respondent was incapacitated by reasons of mental or physical disability brought on by the illegal use of drugs.

CONCLUSIONS OF LAW

60. Respondent is subject to, and his conduct on and off the bench is governed by, the New Mexico Code of Judicial Conduct, §21-001 NMRA, *et seq*. The Commission has jurisdiction over Respondent's conduct on and off the bench.

61. As alleged in COUNT 1 of Inquiry 2006-042, by willfully and knowingly using drugs considered unlawful under the Controlled Substances Act, both on and off the bench, Respondent failed to establish, maintain and enforce high standards of conduct, and failed to personally observe those standards so that the integrity and independence of the judiciary will be preserved in violation of §21-100 of the New Mexico Code of Judicial Conduct, and constitutes willful misconduct in office.

62. As alleged in COUNT 1 of Inquiry 2006-042, by willfully and knowingly using drugs considered unlawful under the Controlled Substances Act, both on and off the bench, Respondent failed to be faithful to, and failed to respect and comply with the law, thereby

undermining the public's confidence in the integrity and impartiality of the judiciary, in violation of §21-200(A) and §21-300(B)(2) of the New Mexico Code of Judicial Conduct, and constitutes willful misconduct in office

63. As alleged in COUNT I of Inquiry 2006-042, by willfully and knowingly using drugs considered unlawful under the Controlled Substances Act, Respondent failed to conduct his extra-judicial activities so that they did not cast doubt on Respondent's capacity to act impartially as a judge in violation of §21-500(A)(1) of the New Mexico Code of Judicial Conduct. Moreover, by willfully and knowingly using drugs considered unlawful under the Controlled Substances Act, Respondent demeaned his judicial office, interferred with the proper performance of his judicial duties, and violated his oath and obligation to uphold the laws and constitutions of the United States and the State of New Mexico, in violation of §21-500(A)(2), §21-500(A)(3), and §21-500(A)(4) of the New Mexico Code of Judicial Conduct, and constitutes willful misconduct in office

64. Respondent waived any challenge to the validity of the *Rule 8 Order* by failing to successfully challenge the order when the New Mexico Supreme Court heard and granted the petition for temporary suspension. The validity of the *Rule 8 Order* is now the law of the case.

65. As alleged in COUNT III of Inquiry 2006-042, by willfully and knowingly refusing to comply with a lawful order of the Judicial Standards Commission, Respondent failed to establish, maintain and enforce high standards of conduct and failed to personally observe those standards so that the integrity and independence of the judiciary will be preserved in violation of §21-100 of the New Mexico Code of Judicial Conduct, and constitutes willful misconduct in office.

66. As alleged in COUNT III of Inquiry 2006-042, by willfully and knowingly refusing to comply with a lawful order of the Judicial Standards Commission, Respondent failed to be faithful to, and failed to respect and comply with the law, thereby undermining the public's confidence in the integrity and impartiality of the judiciary, in violation of §21-200(A) and §21-300(B)(2) of the New Mexico Code of Judicial Conduct, and constitutes willful misconduct in office.

67. As alleged in COUNT III of Inquiry 2006-042, by willfully and knowingly refusing to comply with a lawful order of the Judicial Standards Commission, Respondent failed to conduct his extra-judicial activities so that they did not cast doubt on Respondent's capacity to act impartially as a judge in violation of §21-500(A)(1) of the New Mexico Code of Judicial Conduct. Moreover, by willfully and knowingly refusing to comply with a lawful order of the Judicial Standards Commission, Respondent demeaned his judicial office, interfered with the proper performance of his judicial duties, and violated his oath and obligation to uphold the laws and constitutions of the United States and the State of New Mexico, in violation of §21-500(A)(2), §21-500(A)(3), and §21-500(A)(4) of the New Mexico Code of Judicial Conduct, and constitutes willful misconduct in office.

68. As alleged in COUNT III of Inquiry 2006-042, Respondent's willful and knowing refusal to comply with the lawful *Rule 8 Order* of the Judicial Standards Commission was a refusal of a reasonable request or directive of the Commission in violation of Rule 4(D) of the Commission's rules. Such conduct demonstrated Respondent's willful and knowing resistance to and obstruction of the lawful processes available to the Commission in violation of Rule 4(E) of the Commission's rules. Such conduct was a willful failure to cooperate with, obstruction of, and interference with a lawful Commission investigation, constitutes contempt of the

Commission, and is subject to sanctions pursuant to Supreme Court Rule 27-305(A), and constitutes willful misconduct in office.

69. As alleged in COUNT IV of Inquiry 2006-042, Respondent's willful and knowing evasion of service of the Commission's *Rule 8 Order* demonstrated Respondent's willful and knowing resistance to and obstruction of the lawful processes available to the Commission in violation of Rule 4(E) of the Commission's rules. Such conduct was a willful failure to cooperate with, obstruction of, and interference with a lawful Commission investigation, constitutes contempt of the Commission, and is subject to sanctions pursuant to Supreme Court Rule 27-305(A), and constitutes willful misconduct in office.

70. As to COUNT II of Inquiry 2006-042, while some of the Respondent's conduct may have been consistent with that of a person under the influence of illegal drugs, the Commission does not find by clear and convincing evidence that the Respondent was incapacitated by reason of physical or mental disability brought on by the illegal use of drugs.

71. As alleged in COUNT I of Inquiry 2006-071, Respondent attempted to influence/intimidate Deputy Jeremy Hash of the Mesilla Marshall's Office in an effort to gain preferential treatment for Lauren Spilsbury, with whom he had a personal relationship. Respondent used the prestige of judicial office to gain preferential treatment for Lauren Spilsbury, in violation of §21-100; §21-200(A) and (B); §21-300(B)(2) and (B)(4); and §21-500(A) of the New Mexico Code of Judicial Conduct, and constitutes willful misconduct in office.

72. As alleged in COUNT I of 2006-076, Respondent instructed clerks for the Doña Ana County Magistrate Court to issue a clearance on Lauren Spilsbury's drivers' license in *State of New Mexico vs. Lauren Spilsbury*, Dona Ana County Magistrate Court Cause No. M-14-DR-200400146, to gain preferential treatment for Lauren Spilsbury, with whom he had a personal

relationship. Respondent again used the **prestige of judicial office to gain preferential treatment for Lauren Spilsbury, in violation of §21-100; §21-200(A) and (B); §21-300(B)(2) and (B)(4); and §21-500(A) of the New Mexico Code of Judicial Conduct, and constitutes willful misconduct in office**

73. Respondent's conduct was established by **clear and convincing evidence and constituted willful misconduct in office**

74. Any tendered findings of fact or conclusions of law not expressly adopted herein are hereby rejected.

RECOMMENDATION FOR PERMANENT REMOVAL

75. In addition to the findings of misconduct in Inquiries 2006-042, 2006-071 and 2006-076, the Commission has before it the prior disciplinary history of the Respondent concerning similar misconduct involving the same individual (Lauren Spilsbury). The Commission has before it evidence of the failure or refusal of the Respondent to engage in meaningful discussions with the Magistrate Advisory Committee who sought to help him. The Respondent has demonstrated an inability to understand and appreciate the gravity of his actions and how his conduct impacts those who are directly or indirectly subject to his authority. Respondent has demonstrated an inability to self-monitor the use of his authority and an inability to recognize when his conduct violates the Code of Judicial Conduct. The Respondent has demonstrated his failure to take responsibility for his illegal drug use and demonstrated an inability to understand how his extra-judicial conduct detracts from the integrity and impartiality of the judiciary.

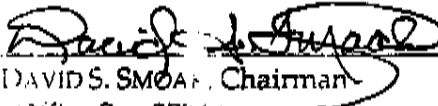
76. Consequently, pursuant to Rules 31 and 35 of the Judicial Standards Commission Rules, the Commission recommends that the Supreme Court impose the following sanctions against the Respondent:

- A. **PERMANENT REMOVAL.** Respondent shall be permanently removed from judicial office pursuant to Article VI, Section 32 of the New Mexico Constitution.
- B. **ASSESSMENT OF THE COMMISSION'S COSTS AND EXPENSES.** Respondent shall pay the Commission's costs and expenses in the amount to be requested by separate pleading pursuant to a certified memorandum of costs.

CERTIFICATION

Pursuant to Rule 36 of the Judicial Standards Commission Rules, I hereby certify that the above constitute the Judicial Standards Commission's findings of fact, conclusions of law and recommendation for permanent removal.

JUDICIAL STANDARDS COMMISSION

By 
DAVID S. SMOAK, Chairman
Post Office Box 27248
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(505) 222-9353

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed or hand-delivered on this 13th day of October 2006, to the following:

Via First Class Mail and
Certified Mail, Return Receipt Requested
Hon. Carlos Garza
2031 Via Tesoro
Las Cruces, NM 88005

Via Hand-Delivery
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