

IN THE SUPREME COURT
OF
THE STATE OF NEW MEXICO

FAXED ORIGINAL

No.29,764

IN THE MATTER OF CARLOS E. GARZA
Magistrate Court Judge, Dona Ana County, New Mexico

SUPREME COURT OF NEW MEXICO
FILED

AUG 30 2006

INQUIRY CONCERNING A JUDGE
JSC Inquiry No. 2006-042

Kathleen Jo Hickson

RESPONSE AND REQUEST FOR RELIEF
REFERENCE: VERIFIED PETITION FOR IMMEDIATE SUSPENSION WITHOUT
PAY; ORDER FROM THIS COURT MANDATING COMPLIANCE WITH ORDER;
AND FOR AN ORDER TO SHOW CAUSE WHY RESPONDENT SHOULD NOT BE
HELD IN CONTEMPT

Honorable Carlos E. Garza
2031 Via Tesoro
Las Cruces, New Mexico 88005
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Judicial Standard Commission
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Albuquerque, New Mexico 87125-7248
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Hon. Carlos Garza,
Respondent, pro-se

James A. Noel, Esq
Executive Director & General Counsel

Respondent, Hon. Carlos E. Garza, *pro se*, is on paid suspension and has been informed by Mr. Jim Noel, Executive Director and General Counsel that he is not currently on probation, (Conversation by phone first or second week into suspension) and that his probation has been continued, at this time, until the suspension ending Nov. 3rd 2006 concludes. This is in accordance with the temporary termination of meetings between District Judge James Counts of Alamogordo, NM. This prior suspension with pay was based on a previously "confidential" number of allegations that Mr. Noel has disclosed via petition.

The Supreme Court of New Mexico is in receipt of the Respondent's answer to these allegations. (Re. Original petition to Suspend without pay) Respondent is asserting that, "based on the following facts relating to this matter and staying consistent with the Supreme Courts prior Order allowing the Respondent to be paid, is in correlation with the presumption of innocence " That "the Judicial Standard Commission Executive Director and General Counsel's overly aggressive and misleading behavior should be examined and dealt with appropriately."

"Respondent is seeking relief from Judge Chandler's overbearing and unwarranted and inappropriate behavior in our Las Cruces Magistrate Court that far exceeds the order that was given to him allowing appropriate oversight of said court. "He has gone in with the pretense of training new Judges and has spent much of his time trying to find errors, particularly involving Respondent regarding cases. Matters which remain confidential, pertaining to unreasonable demands and complaints by him, (Hon. Judge Chandler) have contributed to the creation of this petition originally, and further attempts to limit the discretion given to Judges in the Las Cruces Magistrate Court have created additional conflict regarding whether or not the Order by the Supreme Court of New Mexico for his participation in the Las Cruces Court allows him to create enforceable memo's in the spirit of direction that defy Criminal Rules of the Magistrate Court and Rules specifying the proper creation of Local Court Rule of the District Court, 3rd Judicial District. "

Respondent recognizes the forum(s) in addressing the matters of Mr. Jim Noel, and Hon. Caleb Chandler, are Central District regarding matters of conduct, and Judicial Standard Commission respectively, however the conduct of said individuals has exacerbated and interfered with the proper adjudication of this proceeding, the court, and Respondent's good faith efforts to maintain the integrity of the Judiciary."

Respondent denies he willfully violated the Rule 8 order and denies he evaded service of it.

Respondent is convinced after a full examination of the facts thru the necessary channels, and with Respondent and witnesses being able to appear personally, all pertinent facts allowable through rule (Rules of Evidence) will reveal the truth regarding all matters before the Supreme Court. The facts will include evidence contrary to the affidavits of the clerks cooperating with Judge Chandler.

Respondent acknowledges all applicable Jurisdiction of the New Mexico Supreme Court over Respondent.

Respondent acknowledges the 4th and 14th Amendment protections of the United States Constitution regarding rights of the Respondent regarding Reasonable Searches, Due Process and Equal Protection of the Law.

Respondent is concerned over the orchestration of cause that was created in an attempt to justify this order. Most or all of which was charged by Hon. Caleb Chandler who can be linked directly to almost every stage of this matter. Respondent does not believe it is a coincidence." "Politics is a contributing factor as this is an election time of year."

HON JUDGE CHANDLER HAS REASON AND IS INVOLVED IN ATTEMPT TO DISCREDIT RESPONDENT

Respondent has disclosed (2) two matters that extremely prejudiced defendant's rights in our court where Judge Chandler has inappropriately interfered with matters involving State V Singh "The bond was reverted to 50,000 cash, from \$5,000 surety, after a proper hearing with Respondent Judge and full agreement of the default bond amount of \$5,000 surety. After properly bonding out, the defendant, Mr. Singh, went to the State Police office in Las Cruces to obtain his 18 wheel vehicle. It was then that the State Police allegedly spoke to Judge Chandler, who reverted the bond by order through Hon Richard Silva contrary to reason and right. (Facts can be obtained by Hon. Judge Silva that can and will confirm this calamity) It is further alleged that the defendant, who was re-arrested without any new charges was incarcerated 7 full additional days until Respondent Judge reestablished his bond at \$5,000 surety at a proper hearing with his attorney Mr. Jose Coronado, and with ADA James Dickens present and concurring. The jail allegedly was in a quandary as to how they could re-incarcerate a defendant without new charges. This matter, and file, were given to Karen Janes whom Respondent has asked how to deal appropriately with the problematic perception that Hon. Judge Chandler was "Appointed by the Supreme Court and could do whatever he wanted, which became more and more universally accepted." Karen Janes, Director of the Magistrate Division, advised me that there was no apparent link to Hon. Judge Chandler in the file. And, State V Cecelia Hernandez where he had ex-parte communications with ADA Heather Chavez and where Tina Ross our retired Chief Clerk was present and will testify accordingly. He forced Respondent, and Judge Chaparro off the case, without a

hearing, and then sentenced her to 30 days in jail. He told the ADA that he was going to be the Judge the day before he had Respondent and Hon. Judge Chaparro removed by forced recusal. Due to Respondents hesitency to turn in Hon. Judge Chandler it is very likely these matters have been brought to his attention.

I. RESPONDENT DENIES VIOLATING RULE 8 ORDER

Judicial Standard Commission's Exhibit(s) A, B involve matters alleged against Respondent that occurred 5-6 months ago and even though far removed have no merit whatsoever. Nicole Gonzalez borrowed \$500.00 cash from Respondent and has avoided repayment per phone conversation, "her truck was being re-possessed, and she had a civil judgment involving Collectrite that was inhibiting her ability to re-pay Respondent. In conversation Melinda Gamboa told Respondent that she thought nothing of the matter of the white powder until a friend (Nicole Gonzalez) told her what to look for based on her personal experience." Respondent strongly opposes Nicole Gonzalez's assessment that Respondent "acted like a person addicted to Cocaine " Respondent is not aware of any expert opinion she is educated or experienced to provide. In reference to Sofia Lopez, (One of the criminal clerks who allegedly was not allowed to work with Respondent) falsely alleged sexual harassment against Respondent and Nicole Gonzalez disclosed that the Judicial Standard Commission was inquiring as to whether Sofia was given a fair shake as to the thorough (3) three day investigation that was done two months ago and revealed that there was no findings as to wrongdoing by the Respondent. This result apparently upset some clerks. The other criminal clerk Jennifer Ortiz (first cousin to Melinda Gamboa) received an oral reprimand by the head of the Magistrate Division of

the Administrative Office of the Court, Karen Janes, while visiting the Las Cruces Magistrate Court. The reprimand involved being insubordinate toward Respondent Judge concerning not respecting the Judges repeated request to discontinue behavior involving a court file. These matters are more recent and further explanation, and testimony will support these positions.

Regarding the Rule 8 order Respondent did file "on time a request for extension of time to completely comply with the order of the Commission. The motion included the following requests and assertions:

"The Respondent planned to fully comply with the Order (if the Commission had jurisdiction and the right to make such an invasive request,) the Respondent wanted reasonable time to inquire with counsel, as Respondent is not a trained Attorney, that Respondent requested to know more about the complaint that resulted in the apparent cause to test him, specifically how recent the alleged occurrences took place."

Respondent went to the S.E D. lab in an attempt to comply, after waiting 2 hours for counsel to arrive, they were in District Court. After phoning the lab at approximately 3:30 on Monday, August 21st 2006 Respondent was informed that the lab closed at 4:00 PM. Frantic the Respondent went to the lab where he spoke with counsel, and was advised due to the limited time to act not to take any test, and to ask for an extension of time pursuant to rules and based on the concerns listed above Respondent against advice of counsel took two tests, first, a rapid test at Respondents own cost \$35.00. It was revealed that the test was not admissible in court so Respondent then paid \$50.00 for a second test to be taken, a panel 5 as requested by the order.

RESPONDENT DENIES EVADING SERVICE

Regarding evading service, Respondent did not evade service as the Commission alleges. Respondent admits talking to Captain Williams of the State Police. Respondent was in the middle of various banking transactions that were pressing at the time, Respondent conveyed this to Captain Williams. Respondent was delayed in arriving at the Bank Of the Rio Grande and his phone battery died.

Respondent went to his home at 2031 Via Tesoro between 3:00pm and 4:00 pm charged his phone and called Jim Noel. The facts of the 4:39 disclosure of Sherrisse Mccannon are conveniently left out of her affidavit. Respondent expressly and repeatedly asked Jim Noel to record the conversation and he replied, "I would have to go find a tape, and a recorder, and then talk to you, you know we close at 4:00 pm and I need to go home." (affidavit of Sherrisse Mccannon did not mention these important adverse details and call) It is very clear now why he did not record the conversation as requested, there may have been some witnesses present. Respondent asked Jim Noel to send someone to Respondent's home, where he was, and further to apologize to Captain Williams as to the unforeseen delay. Jim Noel made absolutely no assertion at that time that the order was already served on the front door. (No specific testimony by Sherrisse Mccannon per affidavit) (Also left out was fact that James Noel is in possession of a recorded conversation the following day that Respondent requested. The recording should conlate that Respondent agreed to go to Albuquerque in good faith to possibly resolve all matters in which Noel agreed to recommend Respondent would be paid through suspension period until Nov. 3rd, 2006)

A friend, Monica Duran, came by and saw the Order and became startled, she went in my home, which is often unlocked, and placed it on my dining room table. It was surrounded by my massive piles of paperwork involving responses to the recent 5 inquiries that Respondent had to respond to. This Order was placed on Respondent's door, not in an envelope as would be reasonable, but taped in plain sight. This failure to be reasonable by Officer Williams contributed to Respondent's inability to comply with the order as Respondent did not know where to go, or anything else other than a test was to be done.

Further, the test did not allow a reasonable amount of time to respond due to the fact that the lab was closed six hours after the alleged time of service of 9:40 AM. (If they were open for the lunch hour, and Jim Noel could properly serve Respondent by telephone)

Respondent had objected to Caleb Chandler's request and motive based on facts disclosed prior and Hon. Caleb Chandler and many others knew, and had clearly been told of said position on more than one occasion, Respondent would not want to act contrary to counsels advice or without advice of counsel. Respondent provided a government issued identification card to the lab.

Respondent regularly responded to the Judicial Standard Commission by facsimile, and after further review of requirements recognize, by technicality, that Respondent should have also mailed the request for extension of time.

Respondent suspects, but does not conclude that this technicality, coupled with the matter of the timeliness of the motion due to the incorrect application of computing

the proper time of service regarding the Rule 8 order, intentionally or not, denied the Respondent of due-process regarding this motion involving the Rule 8 order.

Further, Respondent drove to Albuquerque to meet Jim Noel, at his request, at 11:00 AM, (can be corroborated by recording possessed by James Noel)(Respondent arrived at 10:30 AM) to find that Noel's sole purpose was to compel Respondent to sign a confidential agreement **Exhibit 1**, stating that Respondent waives his rights, has had time for counsel to review multi- page agreement and various other disclaimers. Respondent is not aware that James Noel can lawfully serve a matter that he has such intense vested interest in. Jim Noel, after agreeing to fax the agreement for Respondent and counsel to review the prior day, which James Noel did not do and James Noel knew he did not do, asked Respondent to sign the agreement on the spot. This occurred in front of Liz Garcia, Esq. and at which time he tried to pull the document out of Respondent's hand. Later Noel told Respondent he (Jim Noel)needed to stamp it confidential and he would return with it momentarily, which he did. It is clear to Respondent now why he did not want Respondent to have the copy. The text, and the back page clearly states the matters asserted, which were not possible.

Respondent adamantly suggests that this is a pattern of behavior by James Noel, Executive Director and General Counsel, where he has omitted or ignored pertinent facts regarding proceedings, especially when the are adverse to his position or goal.

Respondent did submit (2) two other motions, by fax with receipt also, extremely relevant to Respondents defense. They have been set aside, ignored, or conveniently deemed technically inadequate for reasons unknown. They were requesting for Hon. Buddy Hall to recuse or be excused based on a relationship with Hon. Caleb Chandler per

Rule 5 JSC. The other motion was to vote to appoint a Special Master involving matters before the Commission, by vote, as allowed. Rule 20 JSC.

Respondent declares according to Rules of Professional Conduct Mr. James (Jim) Noel has allegedly violated multiple rules and Respondent is seeking relief from the Supreme Court of New Mexico. Noel has a duty regarding candor toward the tribunal 16-303 D, during allowed ex-parte proceedings attorneys have a duty to inform the tribunal of material fact (Motion to extend time) As an officer of the court (Woodson V Phillips Petroleum), according to 16-308 attorneys are not allowed to seek to obtain waivers ... Duty as a minister of justice. Mr. Noel cannot take advantage of technical or procedural errors, and there is a mandate for fair play in the administration of justice.... neither trial court nor appellate court will condone this behavior. 16-804 Cites abuse of prosecutorial discretion. Noel is entrusted with powers of self-governing and charged with honest dealings. 16-304 requires fairness to opposing party & counsel Further states, no obligation to create evidence, however, cannot conceal a document having potential evidentiary value. 16-804 A,C,D,H attorneys cannot be indifferent to legal obligations (In Re Martinez) 16-803 D " A lawyer shall give full cooperation and assistance to the highest court of the state and with respect to discipline and disciplinary procedures 16-403 In dealing with un-represented person an attorney should know when a person misunderstands the opposing counsels role Other rules involve not notifying Respondent of technical errors that exist especially as they relate to aggravating factors that may have led the Supreme Court to not seal these alleged matters involving substance abuse, or the physical or mental condition of a Respondent, as they are

sensitive to the public scrutiny, particularly until facts contrary to the request could have been disclosed.

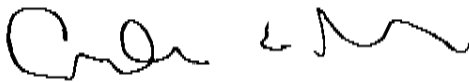
This behavior by James Noel, Executive Director & General Counsel of the Judicial Standard Commission was frightening and perplexing as to reason, nonetheless Respondent would not assert any medical condition exists, in his defense, as Respondent is not trained in medicine either.

With regard to prior acts, 2005-003 Spilsbury matter, Respondent prays that the Supreme Court may have reason to suspect some tactics of the commission were no different at that time, as Respondent can provide a copy of a letter from Liz Garcia Esq. informing the Respondent that if Respondent did not stipulate to facts and have an admission of guilt, that there were costs estimated at \$5,000 dollars if the Commission found any wrongdoing. Ms. Garcia did act as a fair attorney throughout all other matters, and she is an excellent example of what I expected in dealing with Mr James (Jim) Noel. This letter in my opinion should have been accompanied by an explanation that the Supreme Court made the decision of costs and they could be bifurcated as was later explained by Mr. Randy Roybal whom I hold in very high regard. The first of the two allegations centered on alleged ex-parte communications between Hon. Maria Rodriguez and myself where I know Hon. Judge Frieze was allegedly a witness, he would have testified that he heard no such conversation. The second involved Hon. Judge Chaparro where she alleged the same. The truth is that Hon. Judge Caleb Chandler requested her's and Judge Rodriguez's affidavit similar to the pattern in the matter at hand. This was as a result of the Hon. Caleb Chandler misinforming Hon. Chaparro that I had turned her in for being at a bar during an extended absence from work. I did not report her to Judicial Standards

as he stated, Further, I was merely discouraged by her overall lack of attendance at work due to the burden I was given as a result of her excessive absences. Respondent recognizes the duty to turn in other judges however it should be done in proper fashion, consistent with honest dealings.

WHEREFORE, Respondent prays for appropriate relief and re-assessment of the allegations and motivations in the pursuit for the truth and the true interest of justice.

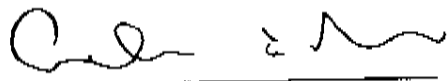
Sincerely and with the utmost respect,



Carlos E. Garza
Magistrate Judge, Division V

C.C. James Noel
Judicial Standard Commission

The document was sent to the
Supreme Court Clerk of the
State of New Mexico this 29th
of August, 2006 via fax.



Carlos E. Garza