

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CIV - 05 - 1356 JH LCS
CASE NO.

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

05 DEC 30 PM 3:03

CLERK-ALBUQUERQUE

STUART L. STEIN,

Plaintiff,

vs.

NEW MEXICO JUDICIAL
STANDARDS COMMISSION,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT
AND PRELIMINARY RELIEF

COMES NOW the Plaintiff, Stuart L. Stein, by and through the undersigned law firm and sues Defendant New Mexico Judicial Standards Commission and in support thereof states as follows:

JURISDICTION

1. The cause of action arises under the First Amendment to the United States Constitution, thus this Court has jurisdiction under 28 U.S.C. § 1331 and for Declaratory Judgment under 28 U.S.C. § 2201.

VENUE

2. That Plaintiff is a resident of the State of New Mexico and Defendant is a creation of the New Mexico Constitution, Art. 6, § 32 with its powers and rules being

applicable within this Judicial District and, therefore, venue in the United States District Court for the District of New Mexico is proper.

PARTIES

3. That Plaintiff Stuart L. Stein is an attorney licensed to practice law in the State of New Mexico.

4. That Defendant Judicial Standards Commission, hereinafter Defendant Commission, is body politic created under Article 6, Section 32 of the New Mexico Constitution.

FACTS OF THE CASE

5. That Plaintiff Stuart L. Stein represented clients in a guardianship and conservatorship case, hereinafter "state case", in the State of New Mexico Second Judicial District Court in Albuquerque, New Mexico.

6. That the ultimately assigned judge, while presiding over the state case, continually violated state law and the rules of procedure to the ultimate harm of Plaintiffs' clients.

7. That Plaintiff will lodge a formal complaint against the judge presiding on the state case with Defendant Commission by mail at the time this cause is being delivered to the clerk of the court.

8. That Article 6, Section 32 of the New Mexico Constitution states, in part, as follows:

All papers filed with the commission or its masters, and proceedings before the commission or its masters, are

confidential

9. That the Judicial Standards Commission Rules, **Rule 7, Confidentiality, privilege and oath**, states, in part as follows:

A. Proceedings confidential. All papers and pleadings filed with and proceedings before the commission or its masters shall be confidential. Only when a record is filed by the commission with the Supreme Court do the proceedings lose their confidential character.

* * *

C. Oath of witnesses. Every witness in every proceeding under these rules shall be sworn to tell the truth and **not to disclose the existence of the proceeding or the identity of the judge** until the proceeding is no longer confidential under these rules. Violation of the oath shall be an act of contempt of the commission.

Emphasis supplied.

10. That the cover page of the complaint form of Defendant Commission concerning confidentiality states as follows:

Confidentiality: The New Mexico Constitution requires that matters before the Commission be kept confidential. That means all inquiries, investigations, formal proceedings, complaints, exhibits, documents, and other items **filed with, received from or being handled by the Commission** are confidential. You are expected to keep the filing of your complaint and this matter confidential. The Commission and its staff cannot respond to requests for information regarding your complaint or any other proceeding before it.

Emphasis supplied. See, Exhibit A, attached hereto.

11. That Plaintiff Stein wants to discuss, publish and disclose the complaint to be filed with Defendant Commission with others after the complaint is filed and to discuss his testimony concerning the judge, should his testimony be taken, and information, if any

be disclosed, on the disposition and handling of the of the complaint by Defendant Commission.

12. That the aforementioned New Mexico constitutional provision, the Rule 7 of Defendant Commission and the implication of the Complaint Instructions act as an unconstitutional restriction of Plaintiff Stein to prohibit his free discussion of a member of the judicial branch of New Mexico state government.

13. That the prohibition on publication by Plaintiff Stein of the alleged misconduct of the judge, as a government officer, eviscerates his core First Amendment rights.

14. That any restriction on speech imposed on the basis of content of the speech itself is subject to the most exacting scrutiny by this court.

CAUSES OF ACTION

15. That Plaintiff requests that the Court, on a preliminary and permanent basis issue declaratory relief that the confidentiality provision of Article 6, Section 32 of the New Mexico Constitution is violative of the First Amendment of the United States Constitution on its face and as applied to Plaintiff concerning the complaint papers filed by Plaintiff Stein with Defendant Commission and issue appropriate temporary and permanent injunction to prohibit Defendant Commission from enforcing same.

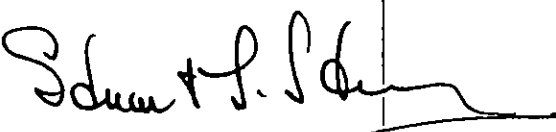
16. That Plaintiff requests that the Court, on a preliminary and permanent basis issue declaratory relief that the confidentiality provisions outlined above concerning Judicial Standards Commission Rules, Rule 7 are violative of the First Amendment of the United

States Constitution on its face and as applied to Plaintiff concerning the complaint papers filed by Plaintiff Stein with Defendant Commission and issue appropriate temporary and permanent injunction to prohibit Defendant Commission from enforcing same.

WHEREFORE Plaintiff prays for the relief outlined above and any further relief this court deems appropriate under the circumstances.

THE STEIN LAW FIRM

Attorney for Plaintiff
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2155 Louisiana Blvd., N.E.
Albuquerque, NM 87110
Telephone: 505-889-0100
Facsimile: 505-889-0953

by 
Stuart L. Stein



JUDICIAL STANDARDS COMMISSION

Post Office Box 27248
Albuquerque, New Mexico 87125-7248
(505) 222-9353

COMPLAINT INSTRUCTIONS

FILL OUT THE FORM: To file a complaint with the Commission, fill out, sign, notarize and return the attached complaint form. **Please type or print clearly on this form and only in the spaces provided. Do not change, modify, electronically scan, fax, retype or word process the form. Do not submit statements, letters, narratives, and personal stories as a substitute for filling out this form as directed.** The Commission's form is specifically designed and formatted to provide the essential information in a clear and concise manner.

EXHIBITS: Evidence/exhibits supporting your allegations should be organized, labeled, and referenced to a specific allegation in your complaint. Please only submit one-sided copies. Your exhibits will not be returned to you.

VERIFICATION: Your complaint must be verified (*i.e.*, notarized). Verification means you sign the complaint and swear before a notary public that the information in your complaint and the attachments are true and accurate. If your complaint is not verified, the Commission will return it to you.

CONFIDENTIALITY: The New Mexico Constitution requires that matters before the Commission be kept confidential. That means all inquiries, investigations, formal proceedings, complaints, exhibits, documents, and other items filed with, received from, or being handled by the Commission are confidential. You are expected to keep the filing of your complaint and this matter confidential. The Commission and its staff cannot respond to requests for information regarding your complaint or any other proceeding before it.

WHAT THE COMMISSION CANNOT DO FOR YOU: New Mexico law limits the Commission's jurisdiction. The Commission has no authority and cannot do any of the following for you:

- Intervene in your court case;
- Change the judgment, decision or outcome of your court case;
- Remove or change the Judge assigned to your case;
- Give you an opinion about specific judicial actions or conduct; or
- Give you legal advice.

While it may seem that the complaint form is rigid and the complaint instructions are somewhat strict, we hope you will understand that this structured procedure is necessary due to the limited resources appropriated to the Commission. You can help the Commission understand and evaluate your complaint in a timely and thorough manner by following the complaint instructions carefully.

HELP: If you have questions or need help with the complaint process or instructions, the Commission's staff will be happy to assist you. Help is available Monday through Friday between 8:00 a.m. and 4:00 p.m. by calling (505) 222-9353. You may also visit our website at <http://fscjll.org/JSC/Main.htm>.

MAIL COMPLETED FORM TO: JUDICIAL STANDARDS COMMISSION
P.O. BOX 27248
ALBUQUERQUE, NM 87125-7248