

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	
<p>On Certiorari to the Colorado Court of Appeals, 2016CA564</p> <p>Opinion by Judge Fox; Judge Vogt, Jr., concurring; Judge Booras, dissenting</p> <p>District Court, Denver County, 2014CV32637 The Honorable J. Eric Elliff</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Petitioner: Colorado Oil and Gas Conservation Commission, and</p> <p>Intervenors-Petitioners: American Petroleum Institute and the Colorado Petroleum Association</p> <p>v.</p> <p>Respondents: Xiutezcatl Martinez; Itzcuahtli Roske-Martinez; Sonora Binkley; Aerielle Deering; Trinity Carter; Jamirah DuHamel; and Emma Bray, minors appearing by and through their legal guardians Tamara Roske, Bindi Brinkley, Eleni Deering, Jasmine Jones, Robin Ruston, and Diana Bray.</p>	<p>Supreme Court Case No.: 2017SC297</p>

Attorneys for Respondents:

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DECLARATION OF JULIA A. OLSON IN SUPPORT OF RESPONDENTS' MOTION TO VACATE THE DISSENTING OPINION OF JUDGE LAURIE BOORAS AND VACATE THIS COURT'S ORDERS IN *MARTINEZ*, OR AT A MINIMUM, RECONSIDER AND MODIFY THIS COURT'S OPINION IN LIGHT OF THE VACATED DISSENT

I, Julia A. Olson, hereby declare and if called upon would testify as follows:

1. I am lead attorney for Respondents in the above-captioned matter and I have personal knowledge of the statements made herein.

2. On February 21, 2017, I argued on behalf of these youth Plaintiffs in the Colorado Court of Appeals in front of Judges Fox, Vogt, and Booras, with Judge Booras presiding over the hearing. Among the youth Plaintiffs with me in the courtroom that day were the lead youth Plaintiffs, Xiuhtezcatl Martinez and Itzcuahtli Roske-Martinez, who are U.S. citizens of indigenous Aztec heritage, with familial roots in Mexico. During my opening remarks, I indicated to the court that Plaintiffs Xiuhtezcatl and Itzcuahtli were among the plaintiffs with me in the court that day.
3. On February 22, 2017, the day following our oral argument in this matter, Judge Laurie Booras sent an email referring to her colleague on the panel, Judge Terry Fox, who is Latina, as “the little Mexican” in the context of this case when it was pending before Judges Fox, Vogt, and Booras. In that email, Judge Booras wrote: “We had an oral argument yesterday re: fracking ban where there was standing room only and a hundred people in our overflow video room. The little Mexican is going to write in favor of the Plaintiffs and It looks like I am dissenting in favor of the Oil and Gas commission. You and Sid will be so disappointed. (followed by a frowning emoji).”

4. On March 20, 2018, pursuant to my ethical responsibilities as an officer of the court, I made a request for evaluation of judicial conduct to the Colorado Commission on Judicial Discipline (“Commission”) based upon email correspondence I had been given by a third party regarding the judicial conduct of Laurie Booras in this case.
5. In response to my request and a separate request made by John Sakowicz, on March 29, 2018, the Commission made a Motion for Temporary Suspension Under Colo. RJD 34 (attached hereto as **Exhibit 1**), which this Court granted on March 30, 2018 (attached hereto as **Exhibit 2**). *In the Matter of Laurie A. Booras*, No. 2018SA83 (Colo. Mar. 30, 2018).
6. Thereafter, I was interviewed by telephone once by the Commission and have since been given no further information about the proceedings.
7. On May 18, 2017, the Colorado Oil and Gas Conservation Commission (“COGCC”) and the Intervenors filed petitions for writ of certiorari to this Court, over the objection of Governor Hickenlooper. Both petitions for certiorari cited to Judge Booras’ dissenting opinion. The COGCC cited to Judge Booras’ dissenting opinion ten times in its Opening Brief to this Court. The Intervenors cited to Judge Booras’ dissent seven times in its Opening Brief. Neither in their Opening Briefs nor in their Reply Briefs did

the COGCC or Intervenors acknowledge that Judge Booras had been suspended from the Court of Appeals and that her conduct was being investigated.

8. In Plaintiffs' May 25, 2018 Answer Brief to this Court on review of the Court of Appeals' March 23, 2017 opinion in this matter, Plaintiffs' informed this Court that:

Youth Respondents are informed and feel obligated to note that the Colorado Supreme Court suspended Judge Booras on March 30, 2018 from the Court of Appeals pending investigation by the Colorado Commission on Judicial Discipline, due to allegations that, among other things, she should have recused herself from an oil and gas case because her son is a consultant for the fracking industry. Kirk Mitchell, *Colorado Supreme Court suspends appellate judge following sexual harassment complaint*, Denv. Post, Mar. 30, 2018, <https://www.denverpost.com/2018/03/30/colorado-appeals-court-judge-laurie-a-booras-suspended/>.

9. On December 17, 2018, after an 8 ½-month investigation into Laurie Booras' conduct as a judge, and her conduct in our case specifically, the Commission filed with this Court its recommendations pursuant to Colo. RJD 37 and unanimously recommended removing Laurie Booras from the Colorado Court of Appeals and assessed costs incurred by the Commission (attached hereto as **Exhibit 3**).
10. I first learned that the Commission had made a recommendation to the Colorado Supreme Court from a Denver Post article I read on January 14,

2019 which stated, “The judges unanimously determined that Booras violated three canons of the Code of Judicial Conduct and asked the Colorado Supreme Court to assess Booras \$5,442 to cover the costs of a lengthy investigation and a hearing carried out in secret.”

11. I, my co-counsel, and our Plaintiffs learned for the first time on January 14, 2019 that the Commission has found unanimously that Judge Booras engaged in judicial misconduct that undermined her integrity, independence, and impartiality directly in relationship to this matter, and that as a result they have recommended her removal from office.

12. In response to learning that this Court had received recommendations regarding Judge Booras’ conduct in our case, I immediately contacted first the Commission and then this Court to obtain copies of the relevant documents that were not confidential. The public information officer for this Court sent me the relevant documents attached hereto as exhibits on January 16, 2019.

13. In reviewing the Commission’s Recommendation to this Court, I, my co-counsel, and our Plaintiffs learned, for the first time, that Judge Booras admitted sending the racist email regarding Judge Fox the day after our oral argument in the context of our case, in which she also disclosed to a third

party outside of the Court of Appeals how our case would be decided only one day after oral argument and more than a month before the decision was rendered by the Court of Appeals. We learned that the day after oral argument Judge Booras sent, by email, an article about Plaintiff Martinez, that described him as an “indigenous hip hop artist” to Mr. Sakowicz. We also learned for the first time that Judge Booras also admitted to sending an email that made a racist comment about a Native American person.

14. I also learned for the first time on January 14, 2019 that Judge Booras had sent a letter of resignation to Chief Justice Coats on January 2, effective close of business on January 31.

15. As an officer of the court who represents youth of indigenous and Latino heritage, I am deeply concerned, as was the Commission and the Special Masters, that Judge Booras’ conduct, which reflects racism, bias, and lack of impartiality, skewed her dissenting opinion in our case involving youth of indigenous and Mexican ancestry, where a fellow judge was also Latina. I am also concerned that Judge Booras’ email about the case less than a day after the oral argument, pre-judged the merits of the appeal and locked in her position prior to further deliberations by the panel and the drafting of the opinions. Until the opinion is written, a potentially dissenting judge can

always change her opinion. I am concerned that Judge Booras' email indicated that she foreclosed that possibility and that these Plaintiffs did not have a fair opportunity to obtain a unanimous decision from the Court of Appeals in their case of great public importance.

16. As an officer of the court representing youth, and a mother of children myself, I am deeply concerned for what this Court's opinion, which cites to and relies upon Judge Booras' dissenting opinion (and thereby sanctions as a valid dissent), means to the youth of Colorado and their faith in the judiciary. This Court's ignoring of the clear and convincing misconduct of Judge Laurie Booras in this case in its January 14, 2019 opinion, as detailed in the March 29, 2018 motion this Court decided and the December 17, 2018 Recommendation to the Supreme Court from the Commission, threatens the public's trust in the integrity, independence, and fairness of the Court. In particular, it does significant damage to the Court's reputation in the eyes of the youth of Colorado and of communities of color.

17. To illustrate the how the investigation into Judge Booras' conduct overlapped with and impacted the proceedings in this case, I had prepared the attached timeline, **Exhibit 4**.

18. I have conferred with counsel for the Colorado Oil and Gas Conservation Commission and counsel for Intervenors on January 23, 2019 by telephone and email to inquire whether they would join Respondents in moving this Court to vacate Judge Booras' dissenting opinion and vacate, reconsider, and modify this Court's own unanimous decision in the light of a vacated dissenting opinion by Judge Laurie Booras. I followed up with counsel for the Colorado Oil and Gas Conservation Commission by email and voicemail on January 24, 2019. At the time of this filing respondents have not received a response by the Colorado Oil and Gas Conservation Commission. Counsel for Intervenor-Petitioners indicated that they have reviewed the Colorado Commission on Judicial Discipline's Motion for Temporary Suspension Under Colo. RJD 34 and the Report of the Special Masters and oppose this motion.

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

DATED this 24th day of January, 2019 at Eugene, Oregon,

Respectfully submitted,

/s/ *Julia A. Olson*

Julia A. Olson

Exhibit 1

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN JUDICIAL DISCIPLINE</p> <p>2 East 14th Avenue Denver, Colorado 80203</p> <hr/> <p>Movant: COLORADO COMMISSION ON JUDICIAL DISCIPLINE</p> <p>Respondent: LAURIE A. BOORAS</p> <hr/> <p>Gregory G. Sapakoff Attorney Reg. No. 16184 Deputy Regulation Counsel Office of Attorney Regulation Counsel Telephone: (303) 928-7782 Fax No.: (303) 501-1141 Email: g.sapakoff@csc.state.co.us</p>	<p>FILED IN THE SUPREME COURT</p> <p>DATE FILED: March 29, 2018 4:37 PM MAR 29 2018</p> <p>OF THE STATE OF COLORADO Cheryl L. Stevens, Clerk</p> <hr/> <p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 18SA83</p>
<p align="center">MOTION FOR TEMPORARY SUSPENSION UNDER COLO. RJD 34</p>	

The Colorado Commission on Judicial Discipline (“Commission”) through its special counsel, Gregory G. Sapakoff, Deputy Regulation Counsel, requests that the Supreme Court order the temporary suspension, with pay, of the Honorable Laurie A. Booras, Judge of the Colorado Court of Appeals, pending disposition of judicial disciplinary proceedings in Commission Case No. 18-36, pursuant to Colo. RJD 34.

As grounds for this Motion, the Commission states and alleges the following:

1. On March 15, 2018, John Sakowicz, a California resident, submitted to the Commission a Request for Evaluation of Judicial Conduct relating to Judge Booras. Mr. Sakowicz followed up his submission with additional materials which the Commission received on March 20, 2018.

2. In his request to the Commission, Mr. Sakowicz represents that he also sent copies of the same materials to others, including the Honorable Alan M. Loeb, Chief Judge of the Colorado Court of Appeals; Governor Hickenlooper; Julia Olson, Esq., counsel for the Plaintiffs-Appellants in a case decided in 2017 by a panel of the Court of Appeals that included Judge Booras; and Kirk Mitchell, reporter for the Denver Post. After receiving the information and allegations made by Mr. Sakowicz, Ms. Olson submitted her own Request for Evaluation of Judicial Misconduct, which was received by the Commission on March 21, 2018.

3. The allegations made by Mr. Sakowicz are based upon information he learned, and events that occurred, during approximately a ten-year period of time from 2008 until 2018. Throughout much of this period of time, Mr. Sakowicz alleges he was involved in an affair with Judge Booras while Mr. Sakowicz was married. The allegations concern both private conduct and conduct relating to matters before the Colorado Court of Appeals.

4. With respect to private conduct, Mr. Sakowicz alleges that Judge Booras continued to send emails of a personal and sexual nature to Mr. Sakowicz after he asked her to stop. The Commission cannot determine whether there are sufficient grounds for disciplinary action based on these particular allegations of private misconduct and, therefore, these allegations are not cited as a specific basis for temporary suspension. These allegations will, however, be part of the investigation conducted by Special Counsel and will be part of the allegations to which Judge Booras should be asked to respond.

5. As described in the Statement of Reasons, attached to this Motion as Exhibit 1 and incorporated herein by this reference, the allegations of greatest concern to the Commission relate to Judge Booras’:

- a. Emails to Mr. Sakowicz concerning a case pending before the Court of Appeals, including an email in which Judge Booras disclosed the outcome of a case before publication of the decision, and in which Judge Booras referred to another judge who was part of the panel assigned to the case in a manner that demonstrates ethnic bias;
- b. Email to Mr. Sakowicz in which Judge Booras used a racial slur in referring to the current spouse of her ex-husband; and
- c. Failure to disclose the relationship between her son and parties appearing in a case before Judge Booras and her son’s potential financial interest in the outcome of that case.

6. At a special meeting held on March 26, 2018, the Commission:

(a) Determined that the Request for Evaluation submitted by Mr. Sakowicz, and the parallel request submitted by Ms. Olson, provided a reasonable basis for considering the allegations of misconduct as a complaint under Colo. RJD 13(b);

(b) Appointed the Office of Attorney Regulation Counsel ("OARC") as its special counsel, in accordance with Colo. RJD 16(b)(4), to advise the Commission regarding potential private disciplinary dispositions under Colo. RJD 35 or formal proceedings under Colo. RJD 18(a); and

(c) Directed special counsel to file this Motion with the Supreme Court for issuance of an order of temporary suspension of Judge Booras, as authorized by Colo. RJD 34.

7. The allegations, together with supporting documents, raise serious questions about the ability of Judge Booras to perform the duties of judicial office without bias or prejudice. Under these circumstances, temporary suspension is necessary to ensure the independent, fair and impartial judiciary that is indispensable to our system of justice. *See Colorado Code of Judicial Conduct, Preamble, paragraph 1.*

8. The investigation will also include an interview of Judge Booras, which can be scheduled more expeditiously if she is not burdened by an active appellate docket.

7. Accordingly, the Commission requests a temporary suspension order prohibiting Judge Booras from performing any functions as Judge of the Colorado Court of Appeals while the investigation is pending.

8. Upon a finding of the Supreme Court that it has been fully advised, the Commission requests the Supreme Court, under Colo. RJD 34, to issue an Order for Temporary Suspension, to be effective on the date of service of such Order on Judge Booras; and, further, to direct the Commission to issue an Order to Show Cause directing Judge Booras to respond to the Commission in writing within 21 days after service and show cause, if any, why she should not continue to be suspended, with pay, from all judicial duties as a Court of Appeals Judge, pending the outcome of preliminary or formal proceedings.

9. The Commission also requests that the Supreme Court appoint a special master to conduct a hearing on the Order to Show Cause in accordance with Colo. RJD 34(c).

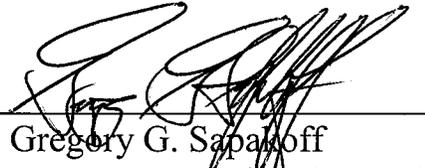
10. Service of the Motion and Order of Temporary Suspension on Judge Booras will be in compliance with Colo. RJD 8(a), and will be accompanied by the Commission's notice of these proceedings, as required by Colo. RJD 14(a).

WHEREFORE, the Commission respectfully requests the Court to issue an Order for Temporary Suspension of Judge Laurie A. Booras, with pay, from her duties as Court of Appeals Judge pending the resolution of disciplinary proceedings; direct the Commission to issue an Order to Show Cause directing Judge Booras to respond to the Commission in writing within 21 days after service and show cause, if any, why she should not continue to be suspended pending the outcome of disciplinary proceedings; and an Order appointing a special master to conduct a hearing on the Order to Show Cause in accordance with Colo. RJD 34(c), and for such other and further relief as this Court deems appropriate.

DATED this 29th day of March, 2018.

Special Counsel to the Colorado
Commission on Judicial Discipline

By: _____


Gregory G. Sapatoff
Deputy Regulation Counsel

Motion for Temporary Suspension Under Colo. RJD 34

EXHIBIT 1

**Statement of Reasons in Support of Temporary Suspension Under
Colo. RJD 34(a)**

IN THE MATTER OF:

Hon. Laurie A. Booras

**STATEMENT OF REASONS IN SUPPORT
OF TEMPORARY SUSPENSION
UNDER COLO. RJD 34(a)**

In support of its Motion to the Colorado Supreme Court for temporary suspension of Judge Laurie A. Booras under Colo. RJD 34(a), filed on March 29, 2018, the Commission on Judicial Discipline (“Commission”) submits this Statement of Reasons.

I. Introduction

The Commission is requesting the Colorado Supreme Court to issue an order temporarily suspending Court of Appeals Judge Laurie A. Booras, with pay, pursuant to Colo. CJD 34, while an investigation is conducted under Colo. RJD 14. The Commission’s case number is 18-36.

Colo. RJD 34(a) requires that a request for temporary suspension of a judge include a statement of the reasons in support of suspension.

The Commission utilizes staff of the Office of Attorney Regulation Counsel (“OARC”) to conduct its investigations and to act as special counsel.

This statement is based on information and documents provided to the Commission by John Sakowicz through his Request for Evaluation of Judicial Conduct received on March 15, 2018, and supplemental materials received on March 20, 2018.

Judge Booras was appointed as a Court of Appeals Judge in 2009.

II. Statement of Reasons in Support of Temporary Suspension

A. Applicable Canons. Judge Booras allegedly has engaged in conduct that violates the following Rules, under the Canons in the Colorado Code of Judicial Conduct:

1. Rule 1.2: A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

2. Rule 2.2: A judge shall uphold and apply the law, and shall perform all duties of the judicial office fairly and impartially.

3. Rule 2.3: A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice; and shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, national origin, or ethnicity.

4. Rule 2.4: A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

5. Rule 2.11: Concerning disqualification in proceedings in which the judge's impartiality might reasonably be questioned, including circumstances in which the judge has a personal bias or prejudice concerning a party, or when the judge knows that the judge's child has an economic interest in the subject matter in controversy.

B. Allegations regarding the conduct of Judge Booras.

1. According to John Sakowicz, the primary complaining witness in this matter, he and Judge Booras were involved in what Mr. Sakowicz describes as "an adulterous affair" for more than ten years, beginning in approximately 2008. During the entire period of time, Judge Booras knew that Mr. Sakowicz, who lives in California, was married.

2. During the course of the relationship, which Mr. Sakowicz sought to keep hidden from his wife, Mr. Sakowicz and Judge Booras exchanged hundreds of emails, some of which have been provided to the Commission.

3. Through their various communications over the years, Judge Booras provided information to Mr. Sakowicz concerning her son, Dan Guill, and his employment in the oil and gas industry. According to Mr. Sakowicz, Judge Booras informed him that her son was employed with PDC Energy, Inc. (“PDC”), a company headquartered in Denver, Colorado, through at least some time in 2015.

4. According to its website, “PDC’s operations include production, development, exploration and marketing of crude oil, natural gas and natural gas liquids.” Also according to PDC’s website, PDC is a member of the Colorado Oil and Gas Association, and was recognized with an award from the Colorado Oil & Gas Conservation Commission in 2012.

5. The Colorado Oil & Gas Conservation Commission is the Defendant-Appellee in Colorado Court of Appeals Case No. 16CA564, *Martinez v. Colorado Oil and Gas Conservation Commission*, a case decided by a panel of the Court of Appeals that included Judge Booras. The case is currently on certiorari to the Colorado Supreme Court.

6. Mr. Sakowicz alleges that Dan Guill was, at all times relevant to the briefing and argument of the *Martinez* case, a consultant in the oil and gas industry in Colorado with a direct financial interest in the outcome of the case. Judge Booras, however, did not disqualify herself from the case or otherwise disclose any potential conflict of interest to the parties based on her son’s financial interest in the subject matter of the controversy before her.

7. Oral argument was heard in the *Martinez* case on February 21, 2017, before Judges Fox, Vogt and Booras. On February 22, 2017, while the case was still pending before the Court of Appeals and before any decision had been announced, Judge Booras sent an email to Mr. Sakowicz in which she stated: “We had an oral argument yesterday re: fracking ban where there was standing room only and a hundred people in our overflow video room. The little Mexican is going to write in favor of the Plaintiffs and it looks like

I am dissenting in favor of the Oil and Gas commission. You and Sid will be so disappointed.”

8. The opinion in the *Martinez* case was issued on March 23, 2017, and was written by Judge Fox, in favor of the Plaintiff-Appellants, with Judge Vogt concurring. Judge Booras wrote the dissenting opinion.

9. In her email dated February 22, 2017, Judge Booras appears to be referring to Judge Terry Fox, who she knew would be writing the opinion in the case, as the “little Mexican.” Judge Fox was sworn in as a judge of the Court of Appeals in 2011, and famously became the first Latina to sit on the Court of Appeals in its 134-year history. Her background, including growing up as the oldest of three daughters of a single, migrant farm-worker mother, has been well publicized.

10. In another email to Mr. Sakowicz, Judge Booras referred to her ex-husband’s wife at the time, who is allegedly of native-American descent, as “the squaw.”

11. The ethnic slurs and demeaning nicknames used by Judge Booras are precisely the type that manifest bias or prejudice as referenced in the comment to Rule 2.3 of the Code of Judicial Conduct. Such manifestations of bias are all the more disturbing in the context of the *Martinez* case. The lead plaintiff in the lawsuit is Xiuhtezcatl Martinez, a teenager who has gained notoriety for his environmental activism and celebration of his indigenous roots.

III. Conclusion

The Commission has concluded that the foregoing allegations, supported by documentary evidence, warrant temporary suspension of Judge Booras while further investigation is conducted. The allegations raise serious questions about the Judge’s ability to perform the duties of judicial office without bias or prejudice, and without causing the judiciary to fall into disrepute. Temporary suspension will also help to expedite the investigation and the Commission’s decision, in consultation with Special Counsel, as to

whether the complaint should result in private disciplinary measures, formal proceedings, or dismissal.

Exhibit 2

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: March 30, 2018 9:35 AM
Original Proceeding in Discipline	
In the Matter of Laurie A. Booras	
	Supreme Court Case No: 2018SA83
ORDER OF COURT	

The Court having considered the Motion for Temporary Suspension Under Colo. RJD 34, filed by the Colorado Commission on Judicial Discipline (“Commission”), hereby ORDERS that the Honorable Laurie A. Booras is suspended temporarily, with pay, from performing any and all judicial duties as Judge of the Colorado Court of Appeals on the 30th day of March, 2018, effective upon service, pending the resolution of preliminary or formal proceedings before the Commission.

IT IS FURTHER ORDERED that pursuant to Colo. RJD 34(f) the Commission’s investigation, pleadings, and other records with respect to the temporary suspension and its record of proceedings in preliminary or formal proceedings shall remain confidential unless and until a recommendation for sanctions or a recommendation for approval of a stipulated resolution filed with the Court under Colo. RJD 37.

IT IS FURTHER ORDERED that the commission shall issue to Judge Laurie A. Booras, an Order to Show Cause directing her to respond in writing to the Commission within 21 days of the date of such Order to Show Cause, if any, why she should not continue to be suspended temporarily from any and all judicial duties pending the outcome of preliminary or formal proceedings before the Commission.

The Commission's Order to Show Cause shall be served upon Judge Laurie A. Booras with service of this Order.

IT IS FURTHER ORDERED that the following judges are appointed as special masters in disciplinary proceedings against Respondent Laurie A. Booras, pursuant to Colo. RJD 18.5(a) and 34(c) with the Presiding Special Master serving under RJD 34(c):

1. Hon. James F. Hartmann, Jr., 19th Judicial District, Presiding Special Master
2. Hon. Pattie P. Swift, 12th Judicial District
3. Hon. Gregory J. Hobbs, Senior Judge

BY THE COURT, EN BANC, MARCH 30, 2018.

Exhibit 3

<p>SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN JUDICIAL DISCIPLINE</p> <p>2 East 14th Avenue Denver, Colorado 80203</p> <hr/> <p>In the matter of:</p> <p>LAURIE A. BOORAS</p> <hr/> <p>William J. Campbell Executive Director Colorado Commission on Judicial Discipline 1300 Broadway, Suite 210 Denver, Colorado 80203 Telephone: (303) 457-5131 Email: w.campbell@jd.state.co.us</p>	<p style="text-align: center;">FILED IN THE SUPREME COURT</p> <p style="text-align: center;">DATE FILED: December 19, 2018 3:58 PM</p> <p style="text-align: center;">DEC 17 2018</p> <p style="text-align: center;">OF THE STATE OF COLORADO Cheryl L. Stevens, Clerk</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 2018SA83</p>
<p>COMMISSION'S RECOMMENDATION TO THE SUPREME COURT PURSUANT TO Colo. RJD 37</p>	

Pursuant to Colo. RJD 37, the Colorado Commission on Judicial Discipline, upon consideration of the Report of the Special Masters issued on December 12, 2018, a copy of which is attached hereto as Exhibit 1, and by unanimous vote of the Commission on December 17, 2018, recommends to the Colorado Supreme Court that the Hon. Laurie A. Booras be removed from the Colorado Court of Appeals, in accordance with Colo. RJD 36(a), and assessed costs incurred by the Commission in accordance with Colo. RJD 36(g).

As grounds for its recommendation, the Commission adopts the Factual Findings and Conclusions of Law in the Special Masters' Report, and incorporates herein the Record of Proceedings that accompanies this recommendation.

In accordance with Colo. RJD 36(g), the Commission also requests that the Court assess Judge Booras \$5,442.02 in costs incurred in the Commission's prosecution of these proceedings, as itemized in the Statement of Costs attached hereto as Exhibit 2.

Exceptions to this Recommendation may be filed in accordance with Colo. RJD 38.

DATED this 17th day of December, 2018.

Respectfully submitted,



William J. Campbell
Executive Director
Colorado Commission on Judicial Discipline
1300 Broadway, Suite 210
Denver, Colorado 80203

Certificate of Service

The undersigned certifies that the foregoing COMMISSION'S RECOMMENDATION TO THE SUPREME COURT PURSUANT TO Colo. RJD 37 was served on the following by U. S. mail and by email on December 17, 2018:

Counsel for Respondent

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David Beller, Esq.
Rick Kornfeld, Esq.
Erin Holweger
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(By email only)

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Exhibit 1

Report of the Special Masters

<p>SUPREME COURT, STATE OF COLORADO</p> <p><i>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE COLORADO COMMISSION ON JUDICIAL DISCIPLINE</i></p> <p>1300 Broadway, Suite 210 Denver, Colorado 80203</p>	<p style="text-align: center;">^ Court Use Only ^</p>
<p>In re the Matter of</p> <p>THE PEOPLE OF THE STATE OF COLORADO, Complainant,</p> <p>And</p> <p>LAURIE A. BOORAS, A Judge of the Colorado Court of Appeals, Respondent.</p>	
	<p>Case No.: 2018SA83 Commission Case 18-36</p>
<p>REPORT OF THE SPECIAL MASTERS</p>	

I. INTRODUCTION

In this original proceeding in discipline, the Special Masters find and conclude that the People have proved, by clear and convincing evidence, that Judge Laurie A. Booras of the Colorado Court of Appeals, as charged by the People, violated three Canons of the Colorado Code of Judicial Conduct; namely, Canon 1, Rule 1.2 (Promoting Confidence in the Judiciary); Canon 3, Rule 3.1 (Extrajudicial Activities in General) and Canon 3, Rule 3.5 (Use of Nonpublic Information).

After reviewing the evidence and considering the range of sanctions available under Colorado Rule of Judicial Discipline 36, the Special Masters unanimously recommend that Judge Booras be removed from office.

II. PROCEDURAL HISTORY

Judge Booras took an oath of office as a judge on the Colorado Court of Appeals in 2009. In March 2018, John Sakowicz, a man with whom Judge Booras was previously romantically involved, disclosed to the media, Chief Judge Alan Loeb of the Colorado Court of Appeals, and Governor Hickenlooper several written communications sent to him by Judge Booras during their ten-year relationship. Mr. Sakowicz, who was married to another woman throughout his relationship with Judge Booras, released this information after Judge Booras confirmed to his wife the existence of the extramarital affair. He claimed that the content of these communications called into question Judge Booras' qualifications to serve on the Colorado Court of Appeals and requested an investigation. Based on the substance of the written materials provided by Mr. Sakowicz, Chief Judge Loeb immediately provided all documents to the Colorado Commission on Judicial Discipline (the "Commission") for investigation.

The Commission filed a motion with the Colorado Supreme Court on March 29, 2018, pursuant to Colo. RJD 34, requesting the temporary suspension of Judge Booras, with pay, pending resolution of the disciplinary proceedings. On March 30, 2018, the Colorado Supreme Court granted the motion and temporarily suspended Judge Booras with pay. The Supreme Court appointed Judge James F. Hartmann, Judge Pattie P. Swift, and Justice Gregory J. Hobbs, Jr. (ret.) to serve as Special Masters for this action.

The Commission filed Notice of Formal Charges and a Statement of Charges on August 17, 2018, alleging Judge Booras violated three Canons of the Code of Judicial Conduct. Charge One alleges a violation of Canon 1, Rule 1.2 (“a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety”), when Judge Booras, in separate e-mails sent to Mr. Sakowicz in 2016 and 2017, referred to her former husband’s second wife, who Judge Booras knows is Native American, as “the squaw,” and referred to her fellow Court of Appeals Judge Terry Fox, who is Latina, as “The little Mexican.” Charge Two, which is also based on the two racial remarks Judge Booras made in her e-mails, alleges that Judge Booras violated Canon 3, Rule 3.1(C) (“a judge shall not participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality”). The final charge alleges Judge Booras violated Canon 3, Rule 3.5 (“a judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge’s judicial duties”), when Judge Booras disclosed to Mr. Sakowicz, four weeks before the panel released its opinion to the public, that Judge Fox would be ruling in favor of the plaintiffs in the *Martinez* case and Judge Booras would likely be writing a dissenting opinion in favor of the Colorado Oil and Gas Conservation Commission. The Court of Appeals decision announced on March 23, 2017 shows Judge Fox authoring the majority opinion, with Senior Judge Joann Vogt concurring, and Judge Booras dissenting.

Judge Booras filed a response to the Commission's Statement of Charges on September 12, 2018. In her response, Judge Booras admitted that she wrote and sent the emails at issue to Mr. Sakowicz, but asserted they were protected speech under the First Amendment to the United States Constitution. She further claimed she had a reasonable expectation of privacy in her personal, private emails sent to her former intimate partner.

The Special Masters convened a two-day hearing on December 4 and 5, 2018. Mr. Gregory Sapakoff, Deputy Regulation Counsel, represented the Commission. Judge Booras appeared with her attorneys, Mr. David M. Beller and Mr. Richard K. Kornfeld. The parties stipulated to the admission into evidence of Exhibits 1 through 17. The Commission presented testimony from Judge Laurie A. Booras, Chief Judge Alan Loeb of the Colorado Court of Appeals, and Judge Terry Fox of the Colorado Court of Appeals. Judge Booras called Ms. Evan Jones, Esq., Ms. Melissa McClure, Esq., and Judge John Dailey of the Colorado Court of Appeals. The Special Masters took the matter under advisement and now present this written report to the executive director of the Commission, pursuant to Rules 26 and 32, Colo. RJD, and Article VI, Section 23(3)(e), Colo. Const.

III. STANDARD OF PROOF

The standard of proof in formal disciplinary hearings is clear and convincing evidence. Colo. RJD 31. Colorado Civil Jury Instruction 3.2 provides that "a fact or proposition has been proved by 'clear and convincing evidence' if, considering all the evidence, [the fact finders] find it to be highly probable and [the fact finders] have no

serious or substantial doubt.” The Special Masters find that the Commission has met its burden of proving the allegations against Judge Booras by this clear and convincing standard.

IV. FACTUAL FINDINGS

A. Emails sent by Judge Booras and her relationship with Mr. Sakowicz.

On February 22, 2017, Judge Booras, a member of the Colorado Court of Appeals since 2009, intentionally revealed confidential privileged information concerning a case pending before the court to a third party, not a member of the court or its staff. Judge Booras was a member of the three-judge panel assigned to hear the case of *Martinez v. Colorado Oil and Gas Conservation Commission* (2017 COA37, announced March 23, 2017) (Cert. Granted Colorado Supreme Court 17SC297, January 29, 2018). The panel held oral argument on February 21, 2017, and the following day – February 22, 2017 – Judge Booras provided confidential privileged information concerning the preliminary decision in this case to Mr. Sakowicz.

In the course of revealing this privileged information, Judge Booras referred to one of her panel colleagues, Judge Terry Fox, the first Latina appointed to the Colorado Court of Appeals, as “The little Mexican.” The email message Judge Booras sent to Mr. Sakowicz at 6:12:00 AM, February 22, 2017 (Exhibit 4) reads:

“We had an oral argument yesterday re: fracking ban where there was standing room only and a hundred people in our overflow video room. The little Mexican is going to write in favor of the Plaintiffs and it looks like I am dissenting in favor of the Oil and Gas commission. You and Sid will be so disappointed. (followed by emoji of frown face)”

Mr. Sakowicz responded by email message on February 22, 2017 at 10:49 AM (Exhibit 5) as follows:

“no fracking”

At 2:33 PM that same day, February 22, 2017, Judge Booras forwarded to Mr. Sakowicz by email an article authored by Alan Prendergast and published in *Westword* on February 21, the day oral argument occurred in the *Martinez* case (Exhibit 5). In part, this article identifies the lead plaintiff in the case as “sixteen-year old Xiuhtezcatl Martinez, EG’s (Earth Guardians) telegenic youth director and ‘indigenous hip hop artist.’” (Exhibit 5).

Written hours in advance of the oral argument, the *Westword* article (Exhibit 5) also describes the contentious public setting of the oral argument hearing before the Court of Appeals:

On Tuesday afternoon, February 21, in what promises to be an usually (sic, “unusually”) well attended and closely watched session of the otherwise staid Colorado Court of Appeals, attorneys for six underage plaintiffs will be arguing that the state’s oil-and-gas regulators should be doing more – a hell of a lot more – to protect Colorado’s children from the real and potential ill effects of the fracking industry.

A year prior, on February 22, 2016, Judge Booras sent an email message to Mr. Sakowicz in which she referred to her former husband’s second wife as “the squaw” (Exhibit 3). Judge Booras, prior to sending the email, knew that this person is of Navajo heritage.

Judge Booras and Mr. Sakowicz met each other through an online dating site in 2007. Over the course of ten years they conversed frequently by telephone and

exchanged numerous email messages. Judge Booras testified that they had a strong intellectual, artistic, emotional, and physical attraction to each other, despite meeting only five times in person. She said that she had a closer relationship with Mr. Sakowicz than she did with her former husband. She believed the two would eventually wed.

Their relationship, however, was also fraught with troubles. In his dating profile, Mr. Sakowicz identified himself as a divorced man living in Denver (Exhibit 1). Soon after they began communicating, Mr. Sakowicz told Judge Booras that he actually lived in California. Within a couple of years, Judge Booras, after doing some research online, discovered Mr. Sakowicz was still married and confronted him with this fact. He told Judge Booras that he and his wife no longer shared a physical relationship and they would live in the same household only until their youngest son graduated from college, at which time they would divorce. Mr. Sakowicz did not file for divorce during his relationship with Judge Booras. Mr. Sakowicz's wife ultimately contacted Judge Booras in 2018 about the nature of their relationship. Judge Booras confirmed that she and Mr. Sakowicz had a longtime affair. Mr. Sakowicz responded to Judge Booras' revelation of the affair to his wife by simultaneously mailing packages to Chief Judge Loeb of the Colorado Court of Appeals, Governor John Hickenlooper and *The Denver Post*. These packages contained an accusatory cover letter and copies of several email messages Judge Booras and Mr. Sakowicz exchanged over the years.

Several of the exhibits in the record of this case demonstrate the deteriorating nature of their relationship. In an email message dated Friday September 30, 2016

(Exhibit 6), Judge Booras told Mr. Sakowicz she'd had a "real 'eye-opener'" when he'd been in Denver for his granddaughter's school event without seeing Judge Booras.

I hope you are enjoying your weekend. I thought about parking near the school this morning just to get a glimpse of you. It is only a couple of blocks away from my usual route to work. But then I had a WTF moment – What the Fuck, Laurie – why do you care? He hasn't given a shit about seeing you the past year. In fact, he rarely even calls. So I just went about my normal business, and it felt fine. This week has been a real 'eye-opener' for me.

Mr. Sakowicz initially told Judge Booras that she could attend this event with him, but those plans were changed at the last minute by Mr. Sakowicz when his wife decided to accompany him to Colorado.

Sometime in late 2016 or early 2017, Judge Booras invited Mr. Sakowicz to attend her law school reunion in Texas, which was scheduled for June 2017. Mr. Sakowicz initially accepted the invitation, but later informed Judge Booras that he would not be attending.

On May 20, 2017, Judge Booras sent two bitter email messages to Mr. Sakowicz (Exhibit 10) about his failure to divorce his wife. The first, sent at 10:22:44 AM, reads:

You have a mandatory six month period in CA. So why haven't you filed yet? You aren't going to be divorced until next year. Plenty of time to sell your fucking house.

And the second, sent at 11:07 AM:

Why don't you get back to me after you and Shannon take some affirmative step in the divorce process instead of just bitching about how unhappy you both are. I am starting not to give a shit about that. It's your choice to stay with her.

Mr. Sakowicz wrote back at 5:30 PM that day: "I understand, Laurie."

On January 25, 2018, Judge Booras sent Mr. Sakowicz an email message (Exhibit 13) stating that “Your wife called my chambers number and left a message at 10:00 PM. I do not want to talk to her.” Judge Booras testified she then received a letter from Mr. Sakowicz’s wife and felt sorry for her, so Judge Booras called her and told her about the affair.

B. Testimony concerning COA deliberative privilege.

Chief Judge Alan Loeb and Judge John Dailey of the Court of Appeals both testified about the deliberative privilege that exists within that court for all communications occurring among the judges and staff related to case assignments up to the public release of a final opinion. They confirmed that no judge or staff member may disclose to anyone outside of the judges and their staff any information about a case pending before the court, not even to a spouse or one’s most intimate companion or friend. All new judges and employees of the Court of Appeals are trained in the absolute necessity of abiding by this non-disclosure duty. Judge Dailey testified that a judge is a judge “24/7” and has no reasonable expectation of privacy in statements made to even the closest intimates, and judges are responsible for any such statements that are ultimately disclosed to others or made public.

Chief Judge Loeb testified that all new judges and law clerks receive confidentiality training:

Q. And what – can you tell the – the Special Masters what you would tell the new judges in regard to confidentiality?

A. Well, it was very simple. And it’s the same thing that I would tell – excuse me – the all the new law clerks when I did their welcoming orientation as well,

that that is just bottom line, pure and simple everything that we do in our court, all of your conferences with your division members are – that’s not public information, that we respect each others’s views. We talk candidly with each other, but we don’t talk about our cases with anybody outside the Court, itself, period, end of discussion.

(Transcript, Vol. December 4, 2018 at 137-38).

Chief Judge Loeb testified that Judge Booras revealed confidential information:

Q. And with respect to Exhibit 4, you were asked about a number of questions about relationships with individuals and whether they’d be a wife or a boyfriend or something like that.

In terms of the prohibition against discussing nonpublic information outside the Court, first of all, would the information that’s included in Exhibit 4 relating to the Martinez case, would that be nonpublic information?

A. Absolutely.

Q. Or at least the--the part about who was going to vote in which way and who was going to write which opinions?

A. And the result of the case.

Q. And would it matter to whom that e-mail was sent, if they were somebody outside the Court?

A. Not one bit, because the minute this information gets out that’s nonpublic at that time you have all kinds of risks, including insider trading, leaks to the press, all kinds of other things that would cause great danger to the – to the individual judges, to the Court, to the judicial system.

(Transcript, Vol. 1, December 4, 2018 at 209-210).

When testifying, Judge Dailey was not shown Exhibit 4. However, when asked a hypothetical question he also testified that disclosing information about a pending case to a person not a member of the court or its staff was inappropriate. Both Chief Judge Loeb and Judge Dailey testified that this rule of non-disclosure is fundamental to the

internal working relationships among the judges and staff members of the court. Trust in each other's integrity is indispensable to the quality of the judicial work product. Only because the judges can trust one another to keep their deliberations private can the judges freely discuss their differences of opinion and even change their minds during the course of reaching a decision. The deliberative process privilege attaches to all the court's internal work product leading up to the final announced opinion, including the "predisposition memorandum" ("PDM") authored by a staff attorney or one of the three judges assigned to the panel for the case.

Chief Judge Loeb and Judge Dailey each described aspects of the process for assignment and decision of cases pending before the Court of Appeals. The Court of Appeals maintains on its judicial web-site a detailed description of the Court's Protocols. (<https://www.courts.state.co.us/Courts/Court Of Appeals/Protocols.cfm>).

PDMs

Once a case arrives on the assigned judge's desk, he or she prepares a "predisposition memorandum," or PDM, directed to the other two panel members.

The judge, with the assistance of his or her law clerks, drafts the PDM after reviewing the briefs, pertinent law, and the record. Each chambers typically writes PDMs in draft opinion form with a proposed disposition of the case. Each judge is responsible for drafting at least two PDMs for each sitting, and the authoring judge circulates the PDM to the other division members no later than the Friday before the scheduled sitting When the judges prepare for oral argument, the PDM serves to provide insight and to focus questions for each division member.

Conference

On the day of the scheduled sitting, usually immediately after oral arguments, the division meets 'in conference' to discuss all of the cases assigned for that sitting, including waived cases. If the division reaches consensus on a case, they confirm authorship, and the case continues towards announcement. If they cannot reach consensus, the judges may decide to discuss it again at a later division conference. These cases may require additional research, further record review, or further discussion before the panel reaches a decision.

All PDMs are tentative, as is authorship. The PDM may form the basis of the majority opinion. But it may represent a dissenting view, if the other two judges disagree with it, in which case one of the remaining two division members will author the majority opinion. It is not uncommon for all division members to disagree with at least part of the PDM; the initial author-judge may then prepare one or more revised drafts before a draft is acceptable to the other members of the division.

The Protocols explain how the court goes about its work, without revealing any confidential information about any of the individual cases. Judge Dailey contrasted revealing confidential information about a case, which is absolutely forbidden, from talking with members of the public about the court's decision-making procedures in general, which the judges often do. Chief Judge Loeb testified that changing the composition of the three-judge panels every four months in this high-volume, case-intensive court promotes collegiality and contributes substantially to the quality of the court's work product – as the twenty-one judges get to work personally with each other every two and one-half years.

The Colorado General Assembly has recognized the importance of maintaining the confidentiality of the judicial deliberative process by codifying, at C.R.S. § 13-1-128, the requirement that "each decision of a court of record shall be confidential until

publicly announced.”¹ The Court of Appeals is a court of record, pursuant to C.R.S. § 13-1-111 and C.R.S. § 13-4-101.

C. Judge Fox's testimony concerning Judge Booras' use of racial epithet.

Judge Terry Fox testified she felt “sub-human” when she learned her trusted colleague, Judge Booras, referred to her as “The little Mexican.” She provided powerful, compelling testimony about how she had to overcome obstacles her entire life due to the prejudice of others, yet she never expected to be subjected to racist remarks from a fellow judge on the Court of Appeals. Should Judge Booras return to the court, Judge Fox said she would seriously consider resigning rather than serve with a person who had exhibited such prejudice towards her and her ethnicity.

D. Intentional disclosure by Judge Booras of privileged information and intentional racial epithet directed at Judge Fox.

Based on clear and convincing evidence in this case, we find that Judge Booras intentionally disclosed non-public Court of Appeals information to a third party regarding the *Martinez* case and intentionally referred to her colleague Judge Terry Fox with a racial epithet in her February 22, 2017 communication to Mr. Sakowicz (Exhibit 4). Judge Booras mailed a letter of apology to Judge Fox on June 18, 2018 (Exhibit 7), stating that she “did not intend to hurt you and I understand my words likely did.” In hindsight, Judge Booras realizes “there is no justification for using the phrase.”

¹ Section 13-1-128(4), C.R.S. provides that any person who knowingly violates the provisions of C.R.S. § 13-1-128(1) commits a class six felony. Judge Booras was not charged with violating the law under Canon 1, Rule 1.1 in the Statement of Charges filed by the Commission. The Special Masters advised Judge Booras of her Fifth Amendment privilege not to incriminate herself prior to her testimony. She waived that right on the record.

Nonetheless, words are the art of an appellate judge who is trained to consider what she is writing before she sends off a written communication containing them. Judge Booras intentionally invoked the words “The little Mexican” in her February 22, 2017 communication to Mr. Sakowicz. Her asserted expectation that he would not further release the Exhibit 4 communication to others is belied by the fact that she no longer trusted his words and intentions towards her, as shown by the email she sent him nearly four months before on September 30, 2016 (Exhibit 6).

E. Evidence in defense of the allegations in the complaint.

As should be apparent from the above factual findings, the facts in this case are largely uncontested. In her defense, Judge Booras presented testimony from her colleague, Judge Dailey; from a Court of Appeals staff attorney, Melissa McClure; and from an attorney who worked with Judge Booras both at the Colorado Attorney General’s office and later as a Court of Appeals staff attorney, Evan Jones. Each of these witnesses testified that they had never observed Judge Booras to exhibit bias or prejudice in professional or personal interactions. They testified that Judge Booras was a good friend, was well-liked on the Court of Appeals, was a good mentor, a hard-worker and very diligent. On cross-examination, Judge Loeb testified that other than the issues raised in this judicial discipline matter, Judge Loeb had no other evidence that Judge Booras had engaged in misconduct and had no concerns about her demeanor on or off the bench.

Judge Booras testified that she cooperated in the Judicial Discipline investigation, that she has never previously been accused of inappropriate conduct as either an

attorney or a judge, and that in 2017² she personally paid-for and attended a National Judicial College online course on judicial ethics, which included instruction on ways judges could avoid implicit bias. Judge Booras also informed the Special Masters that, if she is reinstated to the Court of Appeals, she does not intend to run for retention in 2020.

Judge Booras provided a copy of her 2011 interim report and 2012 retention report prepared for the Judicial Performance Commission by the Talmey-Drake research group (Exhibit 17). These comprehensive reports cover a broad spectrum of areas related to a judge's (or justice's) performance, including whether a judge has engaged in *ex parte* discussions and has treated parties equally regardless of race, gender, or economic status. The reports utilize a scoring system that is akin to traditional educational scores, with an "A" receiving 4 points, a "B" three points, a "C" two points, a "D" one point, and "F" receives zero points. The survey is provided to attorneys randomly selected who have had cases before that judge, trial and appellate judges, and Court of Appeals staff attorneys. Those responding to the survey remain anonymous to promote candid responses. Judge Booras received very high scores in all areas covered in the two reports, receiving an average combined score for the years covered (2009-2012) of 3.48 on a four-point grading scale.

² Judge Booras completed this course on October 27, 2017, which was after the e-mails at issue in this disciplinary action were sent and before they were disclosed to the public by Mr. Sakowicz.

Judge Booras explained that she used the words “squaw” and “little Mexican” only after Mr. Sakowicz first used those words when referring to her former husband’s second wife and Judge Fox, respectively. She said that she interpreted Mr. Sakowicz’s use of the words “little Mexican,” when he referred to Judge Fox during a verbal conversation with Judge Booras, to be an attempt by him to imply that he considered Judge Fox to be attractive. Judge Booras inferred this based on Mr. Sakowicz’s voice inflection and his habit of insinuating to Judge Booras when he found another woman to be attractive. Judge Booras described that when she told Mr. Sakowicz about her former husband’s new wife, he laughed and said “oh, Tim married a squaw,” and Judge Booras laughed and responded, “yeah, I guess he did.”

Judge Booras said her intent was not to insult either her former husband’s second wife or Judge Fox when using these racial epithets, but only to refer to those two persons using words that would enable Mr. Sakowicz to understand who she was talking about. Judge Booras testified that she believed her emails would be maintained in confidence by Mr. Sakowicz and she was very embarrassed, ashamed, saddened, and remorseful when the emails were made public.

F. Constitutional arguments presented by Judge Booras.

Judge Booras argues that her emails to Mr. Sakowicz are protected by the First Amendment and that she has a constitutional privacy interest that would be violated if she is sanctioned for sending these emails to her intimate partner. Although she concedes, as she must, that her emails are not covered by the marital privilege, C.R.S. § 13-90-107(1)(a)(I), she argues that communications made to Mr. Sakowicz nevertheless

fall within a “zone of privacy” and cannot be used against her. The Special Masters disagree.

First Amendment protections extend to public employees commenting on matters of public concern. *Pickering v. Board of Education*, 391 U.S. 563, 568, 88 S.Ct. 1731, 20 L.Ed.2d 811, (1968). If the court determines that the speech at issue is not of public concern, then First Amendment protections are not as stringent. *Connick v. Myers*, 461 U.S. 138, 146, 103 S.Ct. 1684, 75 L.Ed.2d 708, (1983). The responsibility of reviewing courts is “to ensure that citizens are not deprived of fundamental rights by virtue of working for the government; this does not require a grant of immunity for employee grievances not afforded by the First Amendment to those who do not work for the state.” *Id.* at 147. The *Connick* decision made clear “that when a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee's behavior.” *Id.*

The cases cited by Judge Booras in this matter are readily distinguishable from this disciplinary action. Judge Booras points to several attorney discipline cases for the proposition that disciplinary actions cannot violate the First Amendment. However, those cases deal with matters of public concern. *In re Green*, concerned an attorney who, after the judge asked the clerk in Mr. Green’s presence which attorney Mr. Green was reviewing the court file for (Mr. Green was the attorney for one of the parties), wrote letters to a judge that referred to the judge as a “racist” and “bigot” for “stereotyping

(Mr. Green) as unable to be an attorney because (Mr. Green is) black,” and he asked the judge to recuse himself from the case due to racial bias shown by the judge. 11 P.3d 1078, 1082. Under those circumstances, the Colorado Supreme Court stated that criticism of a judge by an attorney should be analyzed under a standard similar to that applied in *New York Times v. Sullivan*.³ *Id.* at 1085. The court noted that there is particular importance in not restricting an attorney’s right to criticize judges, because doing so would “hinder the public’s access to the class of people in the best position to comment on the functioning of the judicial system.” *Id.* This shows that the holding in *Green* did not turn on the more private nature of the comments, but rather, the speech in *Green* related to a matter of public concern and it implicated the right of an attorney to criticize a public official. These factors do not apply to Judge Booras’ words.

Judge Booras also cites *Givhan v. Western Line Consol. Sch. Dist.*, 439 U.S. 410, 99 S.Ct. 693, 58 L.Ed.2d 619, (1979) and *Rankin v. McPherson*, 483 U.S. 378, 107 S.Ct. 2891, 97 L.Ed.2d 315, (1987) for the proposition that the First Amendment protects private communications. However, the speech at issue in those cases involved matters of public concern. In *Givhan*, the court made clear that constitutionally protected speech applies to comments made both publicly and privately. 439 U.S. at 415-16. The court was not called upon in *Givhan* to assess the content of the speech, but the court in *Connick* noted that, “[a]lthough the subject-matter of Mrs. Givhan’s statements were not the issue before the Court, it is clear that her statements concerning the school district’s

³ 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed. 2d 686 (1964)

allegedly racially discriminatory policies involved a matter of public concern.” 461 U.S. at 146. In *Rankin*, the court found that a deputy constable, whose duties were clerical and not those of a commissioned law enforcement officer, was wrongfully fired when, after hearing of an attempted assassination of the President, she remarked to her boyfriend, who was a fellow employee, “if they go for him again, I hope they get him.” 483 U.S. at 381. In assessing this remark, the court stated that the threshold question was whether “McPherson’s speech may be ‘fairly characterized as constituting speech on a matter of public concern.’” *Id.* at 385, citing *Connick*, 461 U.S. at 146. The court noted that the statement occurred in the context of a conversation about the policies of the President’s administration and found that the comment was of a matter of public concern. *Id.* at 386. Therefore, the cases cited by Judge Booras confirm that the court will protect private speech if it relates to a matter of public concern.

Judge Booras’ speech clearly did not relate to a matter of public concern, as disparaging insults and racial epithets are not considered matters of legitimate public concern. *Miss. Com’n on Judicial Performance v. Boland*, 975 So.2d 882, 891-92 (Miss. 2008). As such, those statements may properly form the basis for discipline under the Colorado Code of Judicial Conduct.

Even when statements qualify as matters of public concern, those statements do not automatically garner constitutional protection. There are circumstances when the state’s interest in maintaining the services provided to the public outweigh the public employee’s freedom of speech. When evaluating whether statements made by an employee are subject to constitutional protection, the state must balance the interests of

an employee, as a citizen, in commenting upon matters of public concern and the interest of the state, as an employer, in promoting the efficiency of the public services it performs through its employees. *Pickering*, 391 U.S. at 568. In *Connick*, the court noted the importance of working relationships in assessing speech by public employees, where the court approved of the termination of an assistant district attorney for circulating a questionnaire that was critical of her supervisors to other district attorneys in the office. The court found that “when close working relationships are essential to fulfilling public responsibilities, a wide degree of deference to the employer’s judgment is appropriate.” *Connick*, 461 U.S. at 151-52.

The statements made by Judge Booras irreparably damaged her working relationship not only with Judge Fox, but also very likely with the other Court of Appeals judges, who would find it incredibly difficult to work with Judge Booras if she returned to the court. Thus, even if Judge Booras’ use of racial epithets had fallen within the spectrum of protected speech, those statements would nonetheless subject Judge Booras to disciplinary proceedings because of the state of Colorado’s legitimate interest in maintaining close working relationships between judges on the Court of Appeals, as well as promoting public confidence in the judiciary.

With regard to Judge Booras’ pre-announcement statements pertaining to the *Martinez* case, the public most certainly had an interest in learning the outcome of this highly publicized case; however, as noted by the *Pickering* court, “it is possible to conceive of some positions in public employment in which the need for confidentiality is so great that even completely correct public statements might furnish a permissible

ground for dismissal.” *Pickering*, 391 U.S. at 570, FN 3. The need for decisions of the court to remain confidential until they are formally announced to the public is axiomatic. The importance of maintaining confidentiality of decisions is confirmed not only by court policies requiring confidentiality, but also through the passage of a state law that imposes criminal penalties if a decision of a court of record is knowingly released prior to public announcement.

Judge Booras also argues that scrutinizing a statement between her and an intimate partner, which she contends falls within a recognized “zone of privacy,” violates her right to free association. The Special Masters, again, disagree.

Judge Booras cites to *Roberts v. U.S. Jaycees*, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed.2d 462, (1984), in support of her “zone of privacy” argument. The Jaycees were a civic organization that limited voting membership, holding office within the organization, and participating in certain leadership programs to young men⁴ between the ages of 18 and 35. *Id.* at 613. The case concerned a dispute about whether Minnesota’s human rights act, requiring the Jaycees to admit women as regular members, violated the First Amendment. *Id.* at 615. The Jaycees argued that requiring the organization to admit females as regular members, as opposed to associate members, violated its First Amendment freedom of association. *Id.* Prior to discussing the constitutionality of this statute (the court found that the requirement to admit

⁴ The Jaycees’ bylaws permitted women to join as associate members, but not as regular members, which did not allow women to cast votes in organizational elections, or serve as officers, or to participate in certain leadership programs.

women as regular members was constitutional) the court discussed the importance of protecting intimate relationships from state interference. In this discussion the court stated “the Constitution undoubtedly imposes constraints on the State’s power to control the selection of one’s spouse that would not apply to regulations affecting the choice of one’s fellow employees.” *Id.* at 620. This statement provides a good example of why the disciplinary action against Judge Booras does not violate the freedom of association. The quotes cited in Judge Booras’ brief relate to the state’s limited ability to constrain an individual’s right to engage in intimate associations of their choosing. The state is not regulating Judge Booras’ choice of an intimate partner. Rather, this disciplinary proceeding was filed in response to certain statements that were made public by Judge Booras’ former partner. As with any other citizen, the realization that Judge Booras wrote emails containing racial epithets in private can impact her employment with the Colorado Judicial Branch. Likewise, the discovery that she revealed private deliberations of the court, prior to formal announcement of the decision, can also impact her employment status. The *Jaycees* case confirms the proposition that the state may not unjustly interfere with highly personal relationships that are entitled to constitutional protection; however, *Jaycees* does not stand for the proposition that all statements made between intimate partners are insulated from having employment or professional consequences, once the statements are made public, under a theory that to allow use of these statements would unreasonably chill a person’s right to freedom of association.

Adhering to Judge Booras' position on freedom of association would lead to irrational results. In this case, Judge Booras, through email, disclosed information about the deliberative process on a pending case prior to her panel releasing the decision, and she used two racial epithets. Under Judge Booras' rationale, she could have made any number of disclosures of confidential matters or repeatedly used racial epithets, provided those statements were made to an intimate partner. Allowing this type of conduct, under a theory that it is protected under the freedom of association, would preclude the court from properly disciplining a judge for conduct that clearly violates the Code of Judicial Conduct.

Finally, the cases cited by the Commission establish that disciplining a judge for communications and conduct occurring outside of the courtroom is not uncommon. A judge's actions in wearing black makeup on his face, an afro wig, and a prison jumpsuit to a Halloween party were actionable because the judge failed to uphold the integrity and independence of the profession, thereby bringing "the judiciary of (Louisiana) into disrepute, and for such conduct (the Supreme Court of Louisiana is) compelled to impose discipline." *In re Ellender* 889 So.2d 225, 231 (La. 2004). While the acts in *Ellender* occurred in a public setting, discipline has also extended to purely private communications. A judge in *In re Eakin* was disciplined for a number of sexist, pornographic, and racist emails that were sent privately to friends and professional acquaintances. 150 A.3d 1042 (Pa. Ct. Jud. Discipline 2016). The court found that when the private emails became public, that the judge's "conduct not only did not promote the public's confidence in the integrity and impartiality of the judiciary, but drastically

damaged the reputation of the state judiciary,” and content of the emails “could cause citizens to wonder whether their cases received unbiased consideration by the Respondent, something that we find abhorrent to the principles to which Respondent has ostensibly dedicated his entire professional career.” *Id.* at 1058.

V. Conclusions of Law

We conclude that Judge Booras violated three Canons of the Colorado Code of Judicial Conduct by clear and convincing evidence; namely, Canon 1, Rule 1.2 (Promoting Confidence in the Judiciary); Canon 3, Rule 3.1 (Extrajudicial Activities in General) and Canon 3, Rule 3.5 (Use of Non-Public Information).

In contravention of Rule 1.2, Judge Booras acted in a manner that undermines public confidence in the independence, integrity and impartiality of the judiciary. To the contrary, she has engaged in impropriety by releasing confidential information belonging to the Court of Appeals. She has engaged in the appearance of impropriety by writing racial epithets into two of her communications, “the squaw” and “The little Mexican.” Native-Americans and Mexican-Americans, like those of all other ethnicities and nationalities, have matters that come before Colorado courts. Judge Booras chose to use racial slurs when she easily could have, and should have, referred to these persons by their proper names when speaking of them. Comment 3 to Canon 3, Rule 3.1 makes clear that “discriminatory actions and expressions of bias or prejudice by a judge, even outside of the judge’s official or judicial actions, are likely to appear to a reasonable person to call into question the judge’s integrity and impartiality.” Such is the case with Judge Booras’ use of racial epithets.

In contravention of Rule 3.1 (C), Judge Booras has participated in activities that would appear to a reasonable person to undermine her independence, integrity and impartiality. The reasonable person standard applied to this case demands that she respect judicial confidences, maintain the trust of her court colleagues in her personal communications outside of the court, and not use racial epithets in her oral or written communications.

The violations of these first two rules are intertwined in her violation of the third rule. In contravention of Rule 3.5, she intentionally disclosed non-public information she had gained in her judicial capacity for a personal purpose unrelated to her duties. Judge Booras knew Mr. Sakowicz and his business associate, Sid, opposed fracking. Whether to impress or gig them both, Judge Booras announced she intended to write an opinion favorable to the fracking industry's position in the case, whereas Judge Fox intended to write to the opposite result. We do not find credible the testimony of Judge Booras that she believed she was at liberty to make this disclosure to a romantic partner. Rule 3.5 provides explicitly that "A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties." When judges take the oath of office, they swear to abide by the Colorado Code of Judicial Conduct, which entails restrictions not applicable to members of the public. Abiding by the judicial deliberative process privilege is one such constraint.

Rule 3.5 establishes a deliberative process privilege attaching to all oral and written communications between and among judges and staff members of the Court of

Appeals regarding any decision pending within the court up to its public announcement. The purpose of this rule is to foster and protect frank expression and discussion among the judges and staff upon whom rests the responsibility for the integrity and quality of the work product of the court. Every decision pending before the court undergoes a process of research, analysis, drafting, reiterative consultation, redrafting, and review before the assigned panel of the court votes upon and finalizes the decision for public announcement by the court. This privilege has its counterpart in the common law deliberative process privilege for Colorado governmental decision-making. See *City of Colorado Springs v. White*, 967 P.2d 1042, 1047, 1050, (Colo. 1998). Pre-decisional information retains its protection after the court announces the decision. *Id.* at 1052. The common law governmental process privilege is a qualified privilege. *Id.* at 1054. In contrast, Rule 3.5 is absolute, save a circumstance not present here – a judge’s ability to act on information necessary to protect the health or safety of persons within the judge’s family, the judiciary or court personnel. Rule 3.5, Comment 2.

VI. Recommended Sanction

Judge Booras has enjoyed a high reputation for her integrity and work product while she has served as a Court of Appeals judge. This reputation has been earned and given in the absence, however, of knowledge by her colleagues and the public regarding her breach of the Code of Judicial Conduct evidenced by the record in this case.

The Colorado Code of Judicial Conduct commences with a “Preamble and Scope” statement. Paragraph 1 of the “Preamble” states that “the judiciary plays a

central role in preserving the principles of justice and the rule of law. Inherent in all the rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system." Paragraph 6 under "Scope" states that "the black letter of the Rules is binding and enforceable." Nevertheless, the Rules do not contemplate that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a "reasonable and reasoned application of the Rules." Factors to be considered include "the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others."

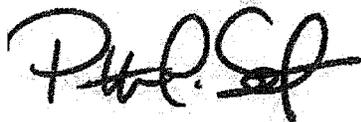
Considering the full range of sanctions we might recommend in this case under Colo. RJD 36, which includes no sanction, diversion, private reprimand, public reprimand, suspension, retirement, or removal from office, we recommend that Judge Laurie Booras be removed from office as a judge of the Colorado Court of Appeals and that she be ordered to pay the costs and fees incurred by the Commission. She intentionally breached her duty not to disclose to any third party a confidential discussion the judges of the panel in *Martinez v. Colorado Oil and Gas Conservation Commission* had with each other during their deliberations. This breach of trust is fatal to an ongoing collegial relationship among the judges of the Court of Appeals, should Judge Booras remain on the court. Such a breach of trust is highly concerning on its

own. But the fact that Judge Booras also included a racial epithet to refer to her Latina colleague, Judge Fox, about the *Martinez* case, which involved the lead plaintiff, Xiuhtezcatl Martinez, who is of Native American and Latino lineage, creates a double-barreled appearance of impropriety undermining the public's trust that she acted without racial bias when dissenting in the case. This appearance of bias is accentuated when considering her prior reference to a Native American woman as "the squaw." The appropriate sanction for Judge Booras' breaches of the Colorado Code of Judicial Conduct is removal from office both because of harm caused to the independence, integrity and impartiality of the judicial office she holds and because such a sanction carries with it the warranted value of deterrence.

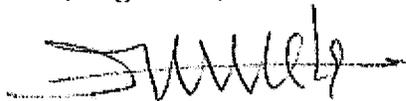
Date: December 12, 2018

BY THE SPECIAL MASTERS:


James F. Hartmann
Chief Judge, 19th Judicial District



Pattie P. Swift
Chief Judge, 12th Judicial District



Gregory J. Hobbs, Jr.
Justice, Colorado Supreme Court (ret.), Senior Judge

Exhibit 2

Statement of Costs

Statement of Costs

**Laurie A. Booras
18SA83, and Commission Case No 18-36**

8/15/2018	Perkins Coie, Mediation Services. Inv #5865904	\$	493.45
11/14/2018	Javernick & Stenstrom, Deposition. Inv #21153	\$	462.25
12/5/2018	The Art, a Hotel, Lodging for Judge Swift	\$	407.72
12/5/2018	Mileage Reimbursements to/from Alamosa (2) for Judge Swift	\$	215.60
12/13/2018	Javernick & Stenstrom, LLC, Hearing Trascrition. Inv #21190	\$	3,639.00
12/14/2018	Administrative Fee	\$	224.00
			<hr/>
	AMOUNT DUE	\$	5,442.02

1201 Third Avenue, Suite 4900
Seattle, Washington 98101
PHONE: 206.359.8000

EMAIL: clientacct@perkinscoie.com
ACCOUNTING: 206.359.3143
FAX: 206.359.9000

RECEIVED

AUG 23 2018

PERKINS COIE

ATTORNEY
REGULATION

Colorado Commission on Judicial Discipline
Attn: William J. Campbell, Esq., Executive Director
1300 Broadway, Suite 210
Denver, CO 80203

INVOICE # 5865904	BILL DATE August 15, 2018
ACCOUNT # 114336.0019	DUE DATE September 14, 2018

Matter Number / Name 114336.0019 / OARC v. Booras

TOTAL FOR SERVICES: \$492.75	TOTAL FOR DISBURSEMENTS AND OTHER SERVICES: \$0.70	TOTAL FOR LATE CHARGES:	TOTAL DUE THIS INVOICE: \$493.45
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Payment due in U.S. Currency

COPY

INFORMATION MAY BE SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

TAX ID#: 91-0591206

For CHECK REMITTANCE make checks payable to

Perkins Coie LLP
Attn: Client Accounting
PO Box 24643
Seattle, WA 98124-0643

Please reference:

Perkins Coie Account No. 114336 and invoice 5865904

For WIRE REMITTANCE please direct to

Perkins Coie LLP
US Bank
Seattle, WA
Bank ABA # 125000105
Account # 1 535 5592 1236
Swift Code # US BK US 441 MT

Please reference:

Perkins Coie Account No. 114336 and invoice 5865904

Booras - CJD Case No. 18-36

Approved: *[Signature]*, Deputy Reg. Counsel

[Signature] COJS - TRLS - 1935 (Mediation Services)



SCANNED

After 30 days, a monthly late charge of 1% per month from the invoice date (or such lower rate as required by applicable law) will be due. Should a collection action or proceeding be necessary, attorneys' fees and costs for such collection effort will be added.

GAX 2019-029967



**J A V E R N I C K
& S T E N S T R O M, L L C**
certified shorthand reporters

3131 South Vaughn Way, Suite 224
Aurora, Colorado 80014
(720) 449-0329 FEIN 84-1566167

INVOICE

DATE	INVOICE #
11/14/2018	21153

BILL TO:
GREGORY G. SAPAKOFF, ESQ. Office of Attorney Regulation Counsel 1300 Broadway Suite 500 Denver, Colorado 80203

RE:
People v. Laurie A. Booras Supreme Court, State of Colorado Original Proceeding in Discipline Before the CO Commission on Judicial Discipline Case No.18SA83

DUE DATE	REPORTER	SHIP DATE	SHIP VIA
12/14/2018	EJ	11/14/2018	UPS

QUANTITY	ITEM	DESCRIPTION	RATE	AMOUNT
58	Depo ARC	Deposition of LAURIE A. BOORAS Original Transcript Preparation November 6, 2018	3.90	226.20
1	e-Transcript	e-Transcript	25.00	25.00
1	Admin Fee		50.00	50.00
10	Exhibits Sca...	Exhibits Scanned	1.00	10.00
7	Index Tabs	Index Tabs	0.15	1.05
1	AF - Half Day	Appearance Fee - Half Day	125.00	125.00
1	0+1 Delivery	Shipping and Handling (Original)	25.00	25.00

Interest will be charged at the rate of 1.5% per month on any amount not paid within 30 days.

Total \$462.25

Approved: *[Signature]*, Deputy Reg. Counsel
Booras - 18SA83, 18-1088
C.N.S. - TRIC - 1022



Court Services/SCAO
1300 Broadway
Ste 1200
Denver, CO 80203
United States

Room No. : 808
 Arrival : 12-03-18
 Departure : 12-05-18
 Folio No. : 99011
 Conf. No. : 11761939
 Cashier No. : 51

Company Name: Colorado Judicial Courts and Probation
 Group Name:
INVOICE

Date	Description	Charges	Credits
12-03-18	Parking - Overnight Valet Room# 808 : CHECK# 4282	40.00	
12-03-18	Room Charge	169.00	
12-03-18	Room Tax City	18.17	
12-03-18	Tourism Improvement District Tax	1.69	
12-04-18	Parking - Overnight Valet Room# 808 : CHECK# 4282	40.00	
12-04-18	Room Charge	169.00	
12-04-18	Room Tax City	18.17	
12-04-18	Tourism Improvement District Tax	1.69	
12-05-18	Adj Parking Neg. valet rate \$15	-50.00	

Total Charges	407.72	
Total Credits		0.00
Balance		407.72

Approved: *[Signature]*, Deputy Regulation Counsel

CDJS-TRLS-2510

(Special Master lodging and parking during trial)
 (Su)

From: swift, pattie [mailto:pattie.swift@judicial.state.co.us]
Sent: Friday, December 14, 2018 2:53 PM
To: hobbs, gregory <gregory.hobbs@judicial.state.co.us>; William Campbell <w.campbell@jd.state.co.us>
Cc: hartmann, james <james.hartmann@judicial.state.co.us>
Subject: RE: Travel and other expenses regarding Special Masters duties

Mr. Campbell,

I believe that Cheryl Stevens submitted my hotel bill to you.

I would also ask to be reimbursed for mileage:

12/3/18 Alamosa to Denver	220 mi. x .49/mi = \$107.80
12/5/18 Denver to Alamosa	220 mi. x .49/mi = \$107.80
TOTAL	\$215.60

Please let me know if you need further information.

Thank you,

Pattie P. Swift
Chief Judge – 12th Judicial District
Water Judge – Water Division 3
8955 Independence Way
Alamosa, CO 81101
719-589-7616 (direct line)

J A V E R N I C K
& S T E N S T R O M, L L C
certified shorthand reporters

3131 South Vaughn Way, Suite 224
Aurora, Colorado 80014
(720) 449-0329 FEIN 84-1566167

INVOICE

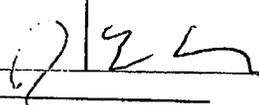
DATE	INVOICE #
12/13/2018	21190

BILL TO:
GREGORY G. SAPAKOFF, ESQ. Office of Attorney Regulation Counsel 1300 Broadway Suite 500 Denver, Colorado 80203

RE:
People v. Laurie A. Booras Supreme Court, State of Colorado Original Proceeding in Discipline Before the CO Commission on Judicial Discipline Case No.18SA83

DUE DATE	REPORTER	SHIP DATE	SHIP VIA
1/13/2019	EJ	12/10/2018	UPS

QUANTITY	ITEM	DESCRIPTION	RATE	AMOUNT
288	Hearing	Hearing, Volume I December 4, 2018	6.00	1,728.00
1	e-Transcript	e-Transcript	25.00	25.00
1	Admin Fee		50.00	50.00
1	PDJ-AF	Hearing Appearance Fee	125.00	125.00
7	PDJ-HOURLY	Hearing Appearance Fee-Hourly	50.00	350.00
156	Hearing	Hearing, Volume II December 5, 2018	6.00	936.00
1	e-Transcript	e-Transcript	25.00	25.00
1	Admin Fee		50.00	50.00
1	PDJ-AF	Hearing Appearance Fee	125.00	125.00
4	PDJ-HOURLY	Hearing Appearance Fee-Hourly	50.00	200.00
1	0+1 Delivery	Shipping and Handling (Original)	25.00	25.00

X 
Approved by J E Yates

Interest will be charged at the rate of 1.5% per month on any amount not paid within 30 days.

Total \$3,639.00

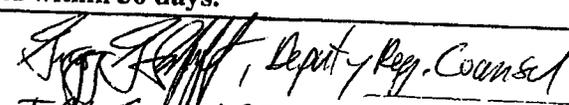
Approved:  Deputy Reg. Counsel
COJS-TRLS-1935

Exhibit 4

Timeline of *Martinez* case and Investigation into Judge Booras’ Misconduct

“COGCC” refers to the Colorado Oil and Gas Conservation Commission

“Commission” refers to the Colorado Commission on Judicial Discipline

Grey shading indicates events associated with the proceedings in the case *Martinez v. COGCC*, while no shading indicates events associated with the conduct of Judges Booras and judicial disciplinary proceedings related to that conduct, *In re Laurie A. Booras*, Case No. 2018SA83 (Colo. 2018).

2009	“Judge Booras took an oath of office as a judge on the Colorado Court of Appeals” Report at 2. ¹
Feb. 21, 2017 Oral Argument before Court of Appeals in <i>Martinez v. COGCC</i>	Oral argument was held before the Colorado Court of Appeals in the <i>Martinez v. COGCC</i> case. “Judge Booras was a member of the three-judge panel assigned to hear the case” and presided over the hearing. Report at 5.
Feb. 22, 2017	<p>Judge Booras “intentionally revealed confidential privileged information concerning a case pending before the court to a third party, not a member of the court or its staff.” Report at 5. The day after oral argument in the <i>Martinez</i> case, “Judge Booras provided confidential privileged information concerning the preliminary decision in this case to Mr. Sakowicz.” Report at 5.</p> <p>“In the course of revealing this privileged information, Judge Booras referred to one of her panel colleagues, Judge Terry Fox, the first Latina appointed to the Colorado Court of Appeals, as ‘The little Mexican.’” Report at 5.</p> <p>The email message from Judge Booras reads:</p> <p> ““We had an oral argument yesterday re: fracking ban where there was standing room only and a hundred people in our overflow video room. The little Mexican is going to write in favor of the Plaintiffs and it looks like I am dissenting in favor of the Oil and</p>

¹ All citations to “Report at _” are citations to the December 12, 2018 “Report of the Special Masters,” which was adopted by the Colorado Commission on Judicial Discipline and filed with the Colorado Supreme Court in *In re Laurie A. Booras*, Case No. 2018SA83 on December 17, 2018.

	<p>Gas commission. You and Sid will be so disappointed. (followed by emoji of frown face)” Report at 5.</p> <p>That same day, “Judge Booras forwarded to Mr. Sakowicz by email an article authored by Alan Prendergast and published in <i>Westward</i> on February 21, the day oral argument occurred in the <i>Martinez</i> case In part, this article identifies the lead plaintiff in the case as ‘sixteen-year old Xiuhtezcatl Martinez, EG’s (Earth Guardians) telegenic youth director and ‘indigenous hip hop artist.’”</p> <p>“A year prior, on February 22, 2016, Judge Booras sent an email message to Mr. Sakowicz in which she referred to her former husband’s second wife as “the squaw.” Judge Booras, prior to sending the email, knew that this person is of Navajo heritage.” Report at 6.</p>
<p>Mar. 23, 2017</p> <p>Court of Appeals Issues Decision in <i>Martinez v. COGCC</i></p>	<p>Court of Appeals 2-1 decision was announced in <i>Martinez v. Colorado Oil and Gas Conservation Commission</i>, with Judge Booras dissenting in favor of the Oil and Gas Commission. Report at 5.</p>
<p>May 18, 2017</p> <p>Petitions for review filed with CO Supreme Court in <i>Martinez v. COGCC</i></p>	<p>COGCC and fossil fuel Intervenors file Petitions for Writ of Certiorari with Colorado Supreme Court. Both parties cite to Judge Booras’ dissenting opinion in their briefs to the Supreme Court.</p>
<p>Jan. 29, 2018</p> <p>Petition for Certiorari granted in <i>Martinez v. COGCC</i></p>	<p>Colorado Supreme Court grants Petitions for Writ of Certiorari and sets briefing schedule.</p>
<p>Mar. 2018</p> <p>Request for Evaluation of Judicial Misconduct Submitted to Commission</p>	<p>“John Sakowicz, a man with whom Judge Booras was previously romantically involved, disclosed to the media, Chief Judge Alan Loeb of the Colorado Court of Appeals, and Governor Hickenlooper several written communications sent to him by Judge Booras during their ten-year relationship. . . . Based on the substance of the written materials provided by Mr. Sakowicz, Chief Judge Loeb immediately provided all documents to the Colorado Commission on Judicial Discipline (the ‘Commission’) for investigation.” Report at 2.</p>

	<p>“John Sakowicz, a California resident, submitted to the Commission a Request for Evaluation of Judicial Conduct relating to Judge Booras.” Motion at 1.²</p> <p>“In his request to the Commission, Mr. Sakowicz represents that he also sent copies of the same materials to others, including” Chief Judge Alan Loeb of the Colorado Court of Appeals, Governor Hickenlooper, Julia Olson, and a Denver Post reporter. Motion at 2.</p>
Mar. 21, 2018	Julia Olson submitted her own Request for Evaluation of Judicial Misconduct based on the materials received from Mr. Sakowicz.
Mar. 26, 2018	The Commission held a meeting, where it considered the allegations in the requests for evaluations, appointed special counsel, and directed special counsel to file a motion with the Supreme Court for an order temporarily suspending Judge Booras. Motion at 3.
Mar. 29, 2018 Commission’s Motion for Suspension of Judge Booras	<p>The Commission filed a motion with the Colorado Supreme Court requesting the temporary suspension of Judge Booras, with pay, pending resolution of the disciplinary proceedings.</p> <p>“[T]he allegations of greatest concern to the Commission relate to Judge Booras’:</p> <ol style="list-style-type: none"> a. Emails to Mr. Sakowicz concerning a case pending before the Court of Appeals, including an email in which Judge Booras disclosed the outcome of a case before publication of the decision, and in which Judge Booras referred to another judge who was part of the panel assigned to the case in a manner that demonstrates ethnic bias; b. Email to Mr. Sakowicz in which Judge Booras used a racial slur in referring to the current spouse of her ex-husband; and c. Failure to disclose the relationship between her son and parties appearing in a case before Judge Booras and her son’s potential financial interest in the outcome of that case.” Motion at 2.
Mar. 30, 2018 Colorado Supreme Court Order Suspending Judge Booras and	The Colorado Supreme Court granted the Commission’s motion and temporarily suspended Judge Booras, with pay, pending disciplinary proceedings before the Commission. The Court also appointed the following judges as special masters in disciplinary proceedings against Judge Booras:

² All citations to “Motion at _” are citations to the “Motion for Temporary Suspension Under Colo. RJD 34” filed by the Colorado Commission on Judicial Discipline with the Colorado Supreme Court in *In re Laurie A. Booras*, Case No. 2018SA83 on March 29, 2018.

<p>Appointing Special Masters in <i>In re Booras</i></p>	<ol style="list-style-type: none"> 1. Hon. James F. Hartmann, Jr., 19th Judicial District, Presiding Special Master 2. Hon. Pattie P. Swift, 12th Judicial District 3. Hon. Gregory J. Hobbs, Senior Judge
<p>April 2, 2018 Opening Briefs filed in <i>Martinez v. COGCC</i></p>	<p>COGCC and Intervenors file Opening Briefs to Colorado Supreme Court. Both briefs rely heavily on Judge Booras’ dissenting Court of Appeals opinion and ignore the fact that Judge Booras has been suspended from the court and disciplinary proceedings have been initiated against her.</p>
<p>May 25, 2018 Youth Plaintiffs file brief in <i>Martinez v. COGCC</i></p>	<p>Youth Respondents (Plaintiffs) file Colorado Supreme Court brief, and in a footnote, state: “Youth Respondents are informed and feel obligated to note that the Colorado Supreme Court suspended Judge Booras on March 30, 2018 from the Court of Appeals pending investigation by the Colorado Commission on Judicial Discipline.”</p>
<p>June 15, 2018 Reply briefs filed in <i>Martinez v. COGCC</i></p>	<p>COGCC and Intervenors file their reply briefs to Supreme Court and again fail to acknowledge the ongoing disciplinary proceedings against Judge Booras.</p>
<p>Aug. 17, 2018 Notice of Formal Charges and a Statement of Charges in <i>In re Booras</i></p>	<p>“The Commission filed Notice of Formal Charges and a Statement of Charges on August 17, 2018, alleging Judge Booras violated three Canons of the Code of Judicial Conduct. Charge One alleges a violation of Canon 1, Rule 1.2 (‘a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety’), when Judge Booras, in separate e-mails sent to Mr. Sakowicz in 2016 and 2017, referred to her former husband’s second wife, who Judge Booras knows is Native American, as ‘the squaw,’ and referred to her fellow Court of Appeals Judge Terry Fox, who is Latina, as ‘The little Mexican.’ Charge Two, which is also based on the two racial remarks Judge Booras made in her e-mails, alleges that Judge Booras violated Canon 3, Rule 3.1(C) (‘a judge shall not participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality’). The final charge alleges Judge Booras violated Canon 3, Rule 3.5 (‘a judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge’s judicial duties’), when Judge Booras disclosed to Mr. Sakowicz, four weeks before the panel released its opinion to the public, that Judge Fox would be ruling in favor of the plaintiffs in the</p>

	<p><i>Martinez</i> case and Judge Booras would likely be writing a dissenting opinion in favor of the Colorado Oil and Gas Conservation Commission. The Court of Appeals decision announced on March 23, 2017 shows Judge Fox authoring the majority opinion, with Senior Judge Joann Vogt concurring, and Judge Booras dissenting.” Report at 3.</p>
<p>Sept. 12, 2018 Judge Booras responds to Statement of Charges</p>	<p>Judge Booras filed a response to the Commission’s Statement of Charges and “admitted that she wrote and sent the emails at issue to Mr. Sakowicz, but asserted they were protected speech under the First Amendment to the United States Constitution. She further claimed she had a reasonable expectation of privacy in her personal, private emails sent to her former intimate partner.” Report at 4.</p>
<p>Oct. 16, 2018 Oral Argument before Supreme Court in <i>Martinez v. COGCC</i></p>	<p>Oral argument was held before the Colorado Supreme Court in the <i>Martinez v. COGCC</i> case.</p>
<p>Dec. 4-5, 2018 Special Masters Hearing in <i>In re Booras</i></p>	<p>The Special Masters convened a two-day hearing.</p> <p>“Chief Judge Alan Loeb and Judge John Dailey of the Court of Appeals both testified about the deliberative privilege that exists within that court for all communications occurring among the judges and staff related to case assignments up to the public release of a final opinion. They confirmed that no judge or staff member may disclose to anyone outside of the judges and their staff any information about a case pending before the court, not even to a spouse or one’s most intimate companion or friend. All new judges and employees of the Court of Appeals are trained in the absolute necessity of abiding by this non-disclosure duty.” Report at 9.</p> <p>“Chief Judge Loeb testified that Judge Booras revealed confidential information,” stating that the information relating to the <i>Martinez</i> case was “absolutely” nonpublic information and that it did not matter to whom the information was sent “because the minute this information gets out that's nonpublic at that time you have all kinds of risks, including insider trading, leaks to the press, all kinds of other things that would cause great danger to the -to the individual judges, to the Court, to the judicial system.” Report at 10.</p> <p>“Both Chief Judge Loeb and Judge Dailey testified that this rule of non-disclosure is fundamental to the internal working relationships among the judges and staff members of the court. Trust in each other's integrity is indispensable to the quality of the judicial work product.</p>

	<p>Only because the judges can trust one another to keep their deliberations private can the judges freely discuss their differences of opinion and even change their minds during the course of reaching a decision.” Report at 11.</p> <p>“Judge Terry Fox testified she felt ‘sub-human’ when she learned her trusted colleague, Judge Booras, referred to her as ‘The little Mexican.’ She provided powerful, compelling testimony about how she had to overcome obstacles her entire life due to the prejudice of others, yet she never expected to be subjected to racist remarks from a fellow judge on the Court of Appeals. Should Judge Booras return to the court, Judge Fox said she would seriously consider resigning rather than serve with a person who had exhibited such prejudice towards her and her ethnicity.” Report at 13.</p>
<p>Dec. 12, 2018</p> <p>Special Masters’ Report in <i>In re Booras</i></p>	<p>The Report of the Special Masters was filed with the Colorado Commission on Judicial Discipline. “Based on clear and convincing evidence in this case,” the Special Masters found “that Judge Booras intentionally disclosed non-public Court of Appeals information to a third party regarding the <i>Martinez</i> case and intentionally referred to her colleague Judge Terry Fox with a racial epithet in her February 22, 2017 communication to Mr. Sakowicz.” Report at 13.</p> <p>The Special Masters find: “The need for decisions of the court to remain confidential until they are formally announced to the public is axiomatic. The importance of maintaining confidentiality of decisions is confirmed not only by court policies requiring confidentiality, but also through the passage of a state law that imposes criminal penalties if a decision of a court of record is knowingly released prior to public announcement.” Report at 21.</p> <p>“Considering the full range of sanctions we might recommend in this case under Colo. RJD 36, which includes no sanction, diversion, private reprimand, public reprimand, suspension, retirement, or removal from office, we recommend that Judge Laurie Booras be removed from office as a judge of the Colorado Court of Appeals and that she be ordered to pay the costs and fees incurred by the Commission. She intentionally breached her duty not to disclose to any third party a confidential discussion the judges of the panel in <i>Martinez v. Colorado Oil and Gas Conservation Commission</i> had with each other during their deliberations. This breach of trust is fatal to an ongoing collegial relationship among the judges of the Court of Appeals, should Judge Booras remain on the court. Such a breach of trust is highly concerning on its own. But the fact that Judge Booras also included a racial epithet to refer to her Latina colleague, Judge Fox, about the <i>Martinez</i> case, which involved the lead plaintiff, Xiuhtezcatl Martinez, who is of Native American and Latino lineage,</p>

	<p>creates a double-barreled appearance of impropriety undermining the public’s trust that she acted without racial bias when dissenting in the case. This appearance of bias is accentuated when considering her prior reference to a Native American woman as ‘the squaw.’ The appropriate sanction for Judge Booras’ breaches of the Colorado Code of Judicial Conduct is removal from office both because of harm caused to the independence, integrity and impartiality of the judicial office she holds and because such a sanction carries with it the warranted value of deterrence.” Report at 27-28</p>
<p>Dec. 17, 2018 Commission’s Recommendation to the Supreme Court in <i>In re Booras</i></p>	<p>The Colorado Commission on Judicial Discipline, upon consideration of the Report of the Special Masters, and by unanimous vote, recommends to the Colorado Supreme Court in a formal filing that Judge Booras be removed from the Colorado Court of Appeals. “As grounds for its recommendation, the Commission adopts the Factual Findings and Conclusions of Law in the Special Masters’ Report, and incorporates herein the Record of Proceedings that accompanies this recommendation.” Recommendation at 1.</p>
<p>Jan. 2, 2019 Judge Booras resigns</p>	<p>Judge Booras submits letter of resignation to Colorado Supreme Court Chief Justice Coats, effective January 31, 2019, and indicates that she has filed a retirement application with Colorado PERA.</p>
<p>Jan. 14, 2019 Supreme Court issues Decision in <i>Martinez v. COGCC</i></p>	<p>The Colorado Supreme Court issues unanimous decision in <i>Martinez v. COGCC</i>, ruling against the youth respondents and overturning the majority opinion of the Court of Appeals, relying in part on the dissenting opinion from Judge Booras but failing to note the judicial disciplinary proceedings against Judge Booras, the conclusions and recommendation of the Special Masters and the Commission that Judge Booras be removed from the Court of Appeals, or the fact that Judge Booras had submitted her letter of resignation.</p>