Code of Judicial Conduct

21-001. Preamble.

A. An independent, fair, and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, 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.

B. Judges should maintain the dignity of judicial office at all times and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence. At the same time, the Code recognizes that a judge's participation in community activities provides important benefits both to society and to the judge personally. The Code seeks to strike a balance between those activities that may create an appearance of impropriety or bias and therefore affect the public's perception of judicial fairness and those activities that are a part of necessary and healthy public life. Judges often are asked to participate in activities on behalf of charitable non-profit organizations. The Code permits such activities with certain limitations, primarily relating to fundraising activities. A judge should always be mindful to avoid any participation that would create the appearance of impropriety or lend the prestige of judicial office to private, fundraising activities. Judges and judicial candidates are also encouraged to pay extra attention to issues surrounding emerging technology, including those regarding social media, and are urged to exercise extreme caution in its use so as not to violate the Code.

C. The Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges and judicial candidates in maintaining the highest standards of judicial and personal conduct and to provide a basis for regulating their conduct through disciplinary agencies.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, added the Rule Number "21-001" to the Preamble of the Code of Judicial Conduct, deleted the numeric paragraph designations [1], [2] and [3], and

redesignated the paragraphs as A, B and C, respectively; in Paragraph B, in the third sentence, after “benefits”, added “both”, after the first occurrence of “to”, deleted “both”, in the fourth sentence, after “balance between”, added “those”, in the sixth sentence, changed “fund-raising” to “fundraising”, in the seventh sentence, changed “fund-raising” to “fundraising”, and added the last sentence of the paragraph; and in Paragraph C, in the third sentence, after “assist judges”, added “and judicial candidates”.

Judges must adhere to the Code of Judicial Conduct when using electronic social media. — The limitations set forth in Rule 21-001(B) NMRA apply with equal force to virtual actions and online comments, and must be kept in mind if and when a judge decides to participate in electronic social media. *State v. Thomas*, 2016-NMSC-024.

21-002. Scope.

A. The Code of Judicial Conduct consists of four canons, numbered rules under each canon, and comments that generally follow and explain each rule. Scope and terminology sections provide additional guidance in interpreting and applying the Code. An application section establishes when the various rules apply to a judge or judicial candidate.

B. The canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a rule, the canons provide important guidance in interpreting the rules. When a rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

C. The comments that accompany the rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the rules. They contain exemplary material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the rules. Therefore, when a comment contains the term “must,” it does not mean that the comment itself is binding or enforceable; it signifies that the rule in question, properly understood, is obligatory as to the conduct at issue.

D. Second, the comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the canons, judges should strive to exceed the standards of conduct established by the rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

E. The rules of the Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The rules should not

be interpreted to impinge upon the essential independence of judges in making judicial decisions.

F. Although the black letter of the rules is binding and enforceable, it is not contemplated 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 and should depend upon factors such as the seriousness 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. *See* Judicial Standards Commission Rule 30 for factors considered in recommending the imposition of discipline.

G. The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, added the Rule Number "21-002" to the Scope of the Code of Judicial Conduct, deleted the numeric paragraph designations and redesignated the paragraphs as A, B, C, D, E, F and G, respectively.

21-003. Terminology.

A. "Aggregate," in relation to contributions for a candidate, means not only contributions in cash or in kind made directly to a candidate's campaign committee, but also all contributions made indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate's opponent. *See* Rule 21-315 NMRA.

B. "Appearance of impropriety" includes conduct that would create in reasonable minds a perception that the judge violated the Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

C. "Appropriate authority" means the authority with responsibility for initiation of disciplinary process in connection with the violation to be reported. *See* Rules 21-214 and 21-215 NMRA.

D. "Contribution" means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if

obtained by the recipient otherwise, would require a financial expenditure. *See* Rules 21-211, 21-301, 21-307, 21-313, 21-401, 21-402, and 21-404 NMRA.

E. "De minimis," in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality. *See* Rule 21-211 NMRA.

F. "Domestic partner" means a person with whom another person maintains a household and an intimate relationship, without a legally recognized marriage. *See* Rules 21-211, 21-213, 21-313, and 21-314 NMRA.

G. "Economic interest" means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before the judge, it does not include the following:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge. *See* Rules 21-103 and 21-211 NMRA.

H. "Fiduciary" includes relationships such as executor, administrator, trustee, or guardian. *See* Rules 21-211, 21-302, and 21-308 NMRA.

I. "Impartial," "impartiality," and "impartially" mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. *See* Canons 1, 2, and 4, and Rules 21-102, 21-202, 21-210, 21-211, 21-213, 21-301, 21-312, 21-313, 21-401, and 21-402 NMRA.

J. "Impending matter" is a matter that is imminent or expected to occur in the near future. *See* Rules 21-209, 21-210, 21-313, and 21-401 NMRA.

K. "Impropriety" includes conduct that violates the law, court rules, or provisions of this Code and conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. *See* Canon 1 and Rule 21-102 NMRA.

L. “Independence” means a judge’s freedom from influence or controls other than those established by law. *See* Canons 1 and 4, and Rules 21-102, 21-301, 21-312, and 21-402 NMRA.

M. “Integrity” means probity, fairness, uprightness, and soundness of character. *See* Canon 1 and Rule 21-102 NMRA.

N. “Judge” means all justices and judges of the Supreme Court, Court of Appeals, district courts, magistrate courts, metropolitan courts, probate courts, and municipal courts.

O. “Judicial candidate” means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. *See* Rules 21-211, 21-400, 21-401, 21-402, 21-403, and 21-404 NMRA.

P. “Knowingly,” “knowledge,” “known,” and “knows” means actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. *See* Rules 21-211, 21-213, 21-215, 21-216, 21-306, and 21-401 NMRA.

Q. “Law” encompasses court rules as well as statutes, constitutional provisions, and decisional law. *See* Rules 21-101, 21-201, 21-202, 21-206, 21-207, 21-209, 21-301, 21-304, 21-312, 21-313, 21-314, 21-315, 21-401, 21-402, 21-404, and 21-405 NMRA.

R. “Member of the candidate’s family” means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.

S. “Member of the judge’s family” means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. *See* Rules 21-307, 21-308, 21-310, and 21-311 NMRA.

T. “Member of the judge’s family residing in the judge’s household” means any relative of a judge by blood or marriage, or a person treated by the judge as a member of the judge’s family, who resides in the judge’s household. *See* Rules 21-211 and 21-313 NMRA.

U. “Nonpublic information” means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. *See* Rule 21-305 NMRA.

V. “Pending matter” is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. *See* Rules 21-209, 21-210, 21-313, and 21-401 NMRA.

W. “Personally solicit” means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. *See* Rules 21-307, 21-401, and 21-404 NMRA.

X. “Political organization” means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this code, the term does not include a judicial candidate’s campaign committee as authorized by Rule 21-404 NMRA. *See* Rules 21-401 and 21-402 NMRA.

Y. “Public election” includes primary and general elections, partisan elections, non-partisan elections, and retention elections. *See* Rules 21-402 and 21-404 NMRA.

Z. “Third degree of relationship” includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. *See* Rule 21-211 NMRA.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, added the Rule Number “21-003” to the Terminology of the Code of Judicial Conduct, added Paragraph N, and designated the previously undesignated defined terms as Paragraphs A through Z.

21-004. Application.

A. **Applicability of this Code.** Unless a particular rule provides otherwise, the provisions of this Code apply in their entirety to full-time judges, including justices of the Supreme Court and judges of the Court of Appeals, district courts, metropolitan courts, magistrate courts, municipal courts, and probate courts. The provisions of this Code also apply to elected part-time judges of probate and municipal courts and judges serving by contract or appointment on a part-time basis, except as specifically provided in this rule or another particular rule. Where stated, the Code also applies to judicial candidates.

B. **Exceptions for part-time judges.**

(1) An elected part-time probate or municipal judge, or a judge appointed to a vacant seat on a part-time probate or municipal court,

(a) is not required to comply with Rules 21-304 (Appointments to governmental positions), 21-308(A) (Appointments to fiduciary positions), 21-309 (Service as arbitrator or mediator), 21-310 (Practice of law), and 21-311(B) (Financial or business activities) NMRA;

(b) is not required to comply with Rule 21-315 NMRA (Reporting requirements), unless the extrajudicial compensation, expense reimbursement, or waiver of fees or charges to be reported relates to the judge's judicial duties; and

(c) shall not practice law in the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

(2) Other judges serving by contract or appointment on a part-time basis

(a) are not required to comply at any time with Rules 21-304 (Appointments to governmental positions), 21-308(A) (Appointments to fiduciary positions), 21-309 (Service as arbitrator or mediator), 21-310 (Practice of law), and 21-311(B) (Financial or business activities) NMRA;

(b) are not required to comply with Rule 21-315 NMRA (Reporting requirements), unless the extrajudicial compensation, expense reimbursement, or waiver of fees or charges to be reported relates to the judge's judicial duties;

(c) are not required to comply, except while serving as a judge, with Rules 21-302 (Appearances before governmental bodies and consultation with government officials) and 21-401(C)(1) through (4) (Political activity and election for judges generally, and who are not currently running in either a partisan, non-partisan, or retention election) NMRA; and

(d) shall not practice law in the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

C. **Hearing officers and special commissioners.** A child support hearing officer, domestic violence special commissioner, domestic relations hearing officer, children's court hearing officer, mental health commissioner, or any other hearing officer or commissioner employed by the judicial branch shall comply, as a condition of the person's employment, with Rules 21-100 to 21-215, 21-300 to 21-311, 21-313, 21-400 to 21-401, 21-403, and 21-405 NMRA.

D. **Time for compliance.** A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 21-308 (Appointments to fiduciary positions) and 21-311 (Financial or business activities) NMRA apply shall comply with those rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015; as amended by Supreme Court Order No. 17-8300-021, effective December 31, 2017.]

Committee commentary. —

Applicability of this Code

[1] The rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function and are premised on the supposition that, to the extent possible, a uniform system of ethical principles should apply to all those authorized to perform judicial functions.

[2] In recent years many jurisdictions have created what are often called “problem solving” courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts’ programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. When local rules specifically authorize conduct not otherwise permitted under these rules, they take precedence over the provisions set forth in the Code. Nevertheless, judges serving on “problem solving” courts shall comply with this Code except to the extent local rules provide and permit otherwise.

Part-time Judge

[3] The exceptions for part-time judges from the reporting requirements of Rule 21-315 NMRA do not apply to extrajudicial activities that are related to the judge’s judicial duties. The Committee believes reporting is required for activities that are related to the judge’s general duties as a judge as well as activities that concern the same subject matter as those addressed by the judge in the course of the judge’s judicial duties. For example, if a part-time judge receives payment, reimbursement, or a waiver of fees for presenting at or attending a conference on improving the judiciary, this payment, reimbursement, or waiver is required to be reported under the rules (unless the reimbursement or waiver is provided by a governmental entity or entity funded by state or federal funds in connection with judicial education and training). Likewise, if a part-time judge who handles DWI cases receives payment, reimbursement, or a waiver of fees for presenting at or attending a DWI conference, this payment, reimbursement, or waiver is required to be reported under the rules. But a part-time judge who, for example, is a realtor and sells real estate for compensation, or presents at or attends a real estate conference and receives payment, reimbursement, or a waiver of fees, would not be required to report that payment, reimbursement, or waiver. The Committee notes that although there may be an overlap of subject matter in some circumstances, compensation from the judge’s outside employment will not need to be reported in most instances. For example, extrajudicial compensation received from a judge’s

representation of clients in the course of the judge's law practice is not contemplated by the Committee to be subject to the reporting requirements of the rules.

[4] When a person who has been a part-time judge is no longer a part-time judge, that person may act as a lawyer in a proceeding in which the person has served as a judge or in any other proceeding related thereto only with the informed written consent of all parties and approval of the court, and under any applicable rules of professional conduct.

Hearing Officers and Special Commissioners

[5] Application of the Code to certain types of hearing officers and special commissioners as a condition of employment is required by statute. *See* NMSA 1978, § 40-4B-4 (child support hearing officers); NMSA 1978, § 40-13-9 (domestic violence special commissioners).

Time for Compliance

[6] If serving as a fiduciary when selected as a judge, a new judge may, notwithstanding the prohibitions in Rule 21-308 NMRA, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 21-311 NMRA, continue in that activity for a reasonable period, but in no event longer than one year.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015; as amended by Supreme Court Order No. 17-8300-021, effective December 31, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-021, effective December 31, 2017, consolidated certain provisions of the rule relating to part-time probate and part-time municipal judges, provided that the exceptions for part-time judges from the reporting requirements of Rule 21-315 NMRA do not apply to extrajudicial activities that are related to the judge's judicial duties, made technical revisions to the rule, and revised the Committee commentary; in Paragraph A, after "provided in", deleted "either a particular rule or this Application provision" and added "this rule or another particular rule"; in Paragraph B, in Subparagraph B(1), after each occurrence of "part-time probate", added "or municipal", in Subparagraph B(1)(a), after "(Practice of law),", added "and", after "business activities)", deleted "21-315 (Reporting requirements)", and after the semicolon, deleted "and", added new Subparagraph B(1)(b) and redesignated former Subparagraph B(1)(b) as Subparagraph B(1)(c), deleted former Subparagraph B(2) and redesignated former Subparagraph B(3) as Subparagraph B(2), in Subparagraph B(2)(a), after "(Practice of law),", added "and",

after “business activities)”, deleted “21-315 (Reporting requirements)”, and after the semicolon, deleted “and”, and added new Subparagraph B(2)(b) and redesignated former Subparagraph B(2)(b) as Subparagraph B(2)(d).

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, completely rewrote the rule; added the Rule Number “21-004” to the Application of the Code of Judicial Conduct; deleted Section I, which provided for the Applicability of the Code of Judicial Conduct; deleted Section II, which provided for judges serving repeatedly on a part-time basis by election under a continuing appointment or by contract; deleted Section III, which provided for judges serving on a periodic part-time basis under a separate appointment or by contract; deleted Section IV, which provided for pro-tempore part-time judges who serve once or only sporadically on a part-time basis under a separate appointment or by contract; deleted Section V, which provided for the time allowed for compliance with the Code of Judicial Conduct; added new Paragraphs A through D; and deleted the former committee commentary and added the new committee commentary.

21-100. Canon 1.

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

JUDICIAL REPRIMANDS

Driving while intoxicated. — Where a judge was convicted of a first offense of driving while under the influence of intoxicating liquor, the judge’s conduct constituted willful misconduct in office. *In re Robles*, S.Ct. No. 32,854 (Filed May 31, 2011), Inquiry Concerning a Judge No. 2011-022 (decided prior to the 2011 recompilation).

Fund-raising activities. — Where a magistrate judge personally participated in the solicitation of funds for a baseball tournament for the benefit of municipal and high school baseball programs and used the prestige of the judge’s judicial office for the fund-raising and created the appearance that the judge had done so, the judge’s conduct constituted willful misconduct in office. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Potential witness in a criminal case. — Where a magistrate judge released the defendant on the defendant’s own recognizance; the defendant had been arrested for driving while intoxicated after a baseball tournament; the judge was not the designated on-call judge on the day the defendant was arrested; the judge knew the defendant and had been at the tournament with the defendant earlier in the day; and the judge knew

that there were people drinking alcoholic beverages at the tournament, the judge's conduct constituted willful misconduct in office because the judge was a potential witness in the defendant's criminal case. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Personal acquaintance with the defendant in a criminal case. — Where the defendant had been arrested for driving while intoxicated after a baseball tournament; the defendant's spouse telephoned the magistrate judge's spouse at the judge's home to discuss the defendant's arrest; the defendant and the defendant's spouse knew the judge's family well enough to call the judge's spouse in an attempt to influence the judge; and the judge agreed to release the defendant on the defendant's own recognizance even though the judge was not on-call or assigned to handle the matter, the judge's conduct constituted willful misconduct in office because the judge took judicial action based on the telephone calls from the defendant's family to the judge's home. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

21-101. Compliance with the law.

A judge shall respect and comply with the law, including the Code of Judicial Conduct.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] Judges must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and the judicial system.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

JUDICIAL REPRIMANDS

Acting in a matter without jurisdiction. — Where respondent was a municipal judge; the motorcycle of an acquaintance of respondent had been seized and towed by police officers during a criminal case pending in magistrate court; respondent asked the acquaintance's attorney to prepare an ex parte order regarding the motorcycle; in the order, respondent ordered the towing company to return the motorcycle to the acquaintance; the order falsely stated that respondent held a hearing on the matter; respondent did not give the towing company notice or an opportunity to be heard; respondent embossed the seal of the municipal court on the order even though there

was no case pending in the municipal court; respondent failed to inquire if the matter was pending in magistrate court; when respondent signed the order, respondent was on probation with the Judicial Standards Commission in another matter; and respondent failed to consult with the judge who was appointed to mentor and supervise respondent prior to issuing the order, respondent's conduct constituted willful misconduct in office. *In re Salazar*, 2013-NMSC-007, 299 P.3d 409.

Issuance of a temporary restraining order by a municipal judge. — Where, in a criminal case filed by one resident against another resident for vehicle vandalism, the municipal judge in a small community issued a temporary restraining order in an attempt to keep the peace between the parties, knowing that a municipal judge did not have jurisdiction to issue restraining orders, the municipal judge's conduct constituted willful misconduct in office. *In re Rael*, S.Ct. No. 33,633 (Filed October 3, 2012), Inquiry Concerning a Judge No. 2011-040 (decided prior to the 2011 recompilation).

Driving while intoxicated. — Where a judge was convicted of a first offense of driving while under the influence of intoxicating liquor, the judge's conduct constituted willful misconduct in office. *In re Robles*, S.Ct. No. 32,854 (Filed May 31, 2011), Inquiry Concerning a Judge No. 2011-022 (decided prior to the 2011 recompilation).

Potential witness in a criminal case. — Where a magistrate judge released the defendant on the defendant's own recognizance; the defendant had been arrested for driving while intoxicated after a baseball tournament; the judge was not the designated on-call judge on the day the defendant was arrested; the judge knew the defendant and had been at the tournament with the defendant earlier in the day; and the judge knew that there were people drinking alcoholic beverages at the tournament, the judge's conduct constituted willful misconduct in office because the judge was a potential witness in the defendant's criminal case. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Personal acquaintance with the defendant in a criminal case. — Where the defendant had been arrested for driving while intoxicated after a baseball tournament; the defendant's spouse telephoned the magistrate judge's spouse at the judge's home to discuss the defendant's arrest; the defendant and the defendant's spouse knew the judge's family well enough to call the judge's spouse in an attempt to influence the judge; and the judge agreed to release the defendant on the defendant's own recognizance even though the judge was not on-call or assigned to handle the matter, the judge's conduct constituted willful misconduct in office because the judge took judicial action based on the telephone calls from the defendant's family to the judge's home. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Involvement in the trial of a case pending before the judge. — Where in one DWI trial, the judge stepped off the bench to assist an officer in presenting the officer's case and in sight and earshot of the jury told the court manager that the defendant "blew a

.3", the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Unlawfully claiming per diem expenses. — Where a judge wanted to attend training in another municipality; the judge certified and submitted a travel voucher claiming reimbursement for per diem expenses; the training was cancelled; the judge arranged to pick up the training material in the other municipality, drove to the other municipality, and then drove to another municipality out-of-state; and the judge told the treasurer of the municipality that the training had been cancelled because of bad weather, the judge's conduct constituted willful misconduct in office. *In re Lozano*, S.Ct. No. 29,264 (Filed June 8, 2010) (decided prior to the 2011 recompilation).

Improperly touching a party. — Where at a hearing in a case involving a building permit, the judge kept moving the judge's chair closer to the code enforcement officer and the defendant, kept moving the judge's hands around, and touched the defendant with the result that the code enforcement officer and the defendant felt uncomfortable and moved away from the judge; and prior to the hearing, the mayor of the municipality had told the judge that the code enforcement officer had filed an EEOC claim against the judge based on improper touching, the judge's conduct constituted willful misconduct in office. *In re Lozano*, S.Ct. No. 29,264 (Filed June 8, 2010) (decided prior to the 2011 recompilation).

Insufficient evidence of willful misconduct. — Where a municipal judge accepted an uncounseled guilty plea and sentenced the defendant; the defendant's attorney appealed to the district court; in the district court, the municipal attorney made an oral motion to dismiss the appeal and the district court judge allowed the defendant to enter another guilty plea; when the municipal judge received the district court judgment and discovered that a written motion to dismiss had not been filed by the municipal attorney, the municipal judge believed that the municipal attorney and the defendant's attorney had misrepresented the municipal proceedings to the district court judge; after researching the law of contempt and consulting the Municipal League and the Attorney General's Office, the municipal judge charged the municipal attorney and the defendant's attorney with contempt; and when the municipal judge reviewed the district court proceedings and discovered that a motion to dismiss had been made, the municipal judge dismissed the contempt charges, the evidence did not clearly and convincingly demonstrate that the municipal judge's actions constituted willful misconduct in office. *In re Locatelli*, 2007-NMSC-029, 141 N.M. 755, 161 P.3d 252 (decided prior to the 2011 recompilation).

Alcoholism. — Where a judge recessed a criminal jury trial for a long holiday weekend; the judge did not return to court on the date set for completion of the trial; the judge told an administrative assistant that the judge was ill, but would be in court in the afternoon; the judge did not return that day and the judge's staff rescheduled the trial for two days later; on the day the trial was to resume, the judge told the assistant that the judge was hospitalized for heart-related tests; after the trial was twice reset due to the judge's unavailability, a stipulated mistrial order was entered; the judge was absent for two

weeks during which the judge was hospitalized for six days; the judge's heart ailment and hospitalization were due to alcohol withdrawal; and to justify the judge's absence, the judge told a reporter that the judge was being treated for and was recovering from a mild heart attack, the judge's conduct constituted willful misconduct in office. *In re Pope*, S.Ct. No. 29,778 (June 13, 2007) (decided prior to the 2011 recompilation).

Adoption of procedural rules. — Where a judge implemented the judge's own rule that precluded any individual from appearing before the judge unless the individual presented photographic identification; a defendant, who appeared ten minutes before the defendant's trial was refused admittance into the courtroom; the defendant left to obtain a new driver's license; staff advised the judge that the defendant had arrived, but had left to obtain a new driver's license to comply with the photo-identification rule; the defendant returned to the courthouse within one hour, but was told that the judge had left and would return the next day; and when the defendant appeared the next day, the defendant was arrested on a bench warrant issued by the judge, the judge's conduct constituted willful misconduct in office. *In re Pineda*, S.Ct. No. 29,479 (Filed November 29, 2007) (decided prior to the 2011 recompilation).

Interference in a friend's criminal case. — Where a judge developed a personal relationship with the defendant in a DUI case, told the presiding judge at the defendant's bond hearing to make special concessions with regard to the defendant's bond, talked to the presiding judge at the defendant's probation violation hearing to influence the disposition of the case, instructed the court clerks to issue a clearance of the defendant's driver's license, and attempted to influence a police officer when the defendant was stopped for speeding, the judge's conduct constituted willful misconduct in office. *In re Garza*, 2007-NMSC-028, 141 N.M. 831, 161 P.3d 876 (decided prior to the 2011 recompilation).

Drug abuse. — Where a judge knowingly evaded the service of an order of the Judicial Standards Commission to submit to drug testing; the judge did not appear for drug testing for more than seventy-two hours after the judge learned of the commission's order, refused to submit to the collection of a sample, and ordered the judge's own tests to obtain results that would be available only to the judge; and when the judge finally submitted to the drug testing as ordered by the commission, the judge tested positive for cocaine, the judge's conduct constituted willful misconduct in office. *In re Garza*, 2007-NMSC-028, 141 N.M. 831, 161 P.3d 876 (decided prior to the 2011 recompilation).

Directing secretary to handle traffic docket. — Where a judge took a vacation knowing that the judge would not return in time to handle the judge's traffic docket; the judge called the judge's secretary, told the secretary that the judge's return had been delayed, and instructed the secretary to handle the judge's traffic docket; the secretary handled the traffic docket and used the judge's signature stamp to process the docket; and when the other judges, court personnel, and the media learned about what had occurred, the judge reviewed and signed the cases that the judge's secretary had handled in the judge's absence, the judge's conduct constituted willful misconduct in

office. *In re Griego*, S.Ct. No. 30,203 (Filed June 13, 2007) (decided prior to the 2011 recompilation).

Inappropriate behavior on the bench. — Where a judge, who was acting in the judge's judicial capacity during a juvenile court hearing, raised the judge's voice with the defense attorney, prevented the attorney from making a full objection for the record, and admonished the attorney in front of the attorney's client, the judge's conduct constituted willful misconduct in office. *In re Ramirez*, 2006-NMSC-021, 139 N.M. 529, 135 P.3d 230 (decided prior to the 2011 recompilation).

Interference in child's criminal case. — Where the adult child and friends of the child of a district court judge were cited for drinking in public in violation of a municipal ordinance; as the police officers were issuing the citations, the judge identified the judge to one of the officers as the child's parent by showing the officer the judge's court identification card and driver's license; the judge asked the officer if the officer remembered who the judge was; the judge collected all of the citations from the recipients and later instructed the judge's bailiff to assist the child and the child's friends in responding to the citations in municipal court; the bailiff prepared and filed written waivers of arraignment and not guilty pleas on municipal court forms; when pretrial conferences were scheduled, the judge contacted a municipal judge who was not the assigned judge to advise the municipal judge that the judge was sending the judge's child and some of the friends to the municipal judge to change their pleas before the pretrial conference set by the assigned judge was scheduled to occur; and the judge's child and some of the friends appeared before the municipal judge and pled no contest and received more lenient sentences than the child's friends who appeared before the assigned municipal judge, the judge's conduct constituted willful misconduct in office. *In re Ramirez*, 2006-NMSC-021, 139 N.M. 529, 135 P.3d 230 (decided prior to the 2011 recompilation).

Violation of law. — A judge who pled nolo contendere to charges of DWI, no headlamps and running a stop sign, and who was convicted and sentenced for DWI and no headlamps committed willful misconduct in office. *In re Cornish*, S.Ct. No. 27,253 (Filed May 6, 2002) (decided prior to the 2011 recompilation).

Issuing insufficient funds checks. — Where a judge, on three separate occasions, issued checks in payment of the judge's debts knowing at the time the checks were issued that there were insufficient funds in or credit with the bank to pay the checks in full upon presentation, and the judge failed to cooperate with and comply with the rules, requirements, and procedures of the Judicial Standards Commission by failing to file a written response to the commission's notice of preliminary investigation, the judge's conduct was willful misconduct in office. *In re Vigil*, S.Ct. No. 26,328 (Filed May 7, 2001) (decided prior to the 2011 recompilation).

Failure to pay taxes and debts. — Where a judge failed to pay gross receipts taxes for the judge's private business activities for five consecutive years; failed to timely file state personal income tax returns for three consecutive years; used the facilities and

equipment of the probate court for the judge's private business activities; failed to pay the county for copying charges incurred at the county clerks' office for the judge's private business and gave the county clerk an insufficient funds check to pay for the copying; and failed to cooperate with and comply with the rules, regulations, and procedures of the Judicial Standards Commission by failing to file a written response to the commission's notice of preliminary investigation, the judge's conduct constituted willful misconduct in office. *In re Vigil*, S.Ct. No. 26,328 (Filed June 13, 2000) (decided prior to the 2011 recompilation).

Improper comments. — A judge who was critical of the legal system during voir dire, implying that the system is governed by legislative whim rather than by well-settled principles, and who told the jury during trial of the consequences of their verdict, in terms of the mandated sentences for first- and second-degree murder committed reversible error by depriving defendant of a fair trial. *State v. Henderson*, 1998-NMSC-018, 125 N.M. 434, 963 P.2d 511 (decided prior to the 2011 recompilation).

Harassment and abuse of staff and failure to obey orders of the chief judge. — Where a judge ordered the court administrator to ignore the chief judge's orders; ordered a deputy sheriff to arrest the administrator for contempt; repeatedly refused to comply with the chief judge's orders; used profanity and yelled at a deputy sheriff when the deputy sheriff asked for the judge's daily docket sheet; refused to hear domestic violence cases the judge had agreed to hear to relieve the load on a hearing officer; after being ordered to hear domestic cases by the chief judge, the judge failed to hear all issues and ordered the hearing officer to hear the issues; treated the hearing officer discourteously and disrespectfully; worked very little for a seven-month period; and made inquiries into an adoption case that involved a relative of the chief judge and disclosed confidential information from the file, the judge's conduct constituted willful misconduct in office. *In re Castellano*, 1995-NMSC-007, 119 N.M. 140, 889 P.2d 175 (decided prior to the 2011 recompilation).

Abuse of the prestige of judicial office. — Where a judge had de facto control over a non-profit organization that regularly engaged in proceedings before the judge; the judge personally selected a majority of the board of directors and personally caused the hiring and firing of directors; the judge's spouse served as executive director of the organization; and the judge allowed the judge's spouse to use the judge's chambers and telephone and the judge's name, title, official stationary, and photograph to be used in solicitation of funds for the organization, the judge's conduct constituted willful misconduct in office. *In re Castellano*, 1995-NMSC-007, 119 N.M. 140, 889 P.2d 175 (decided prior to the 2011 recompilation).

Intentional denial of right to appeal. — Where a judge ruled in favor of the defendant, refused to enter a judgment in the case to prevent the plaintiff from appealing in order to force the plaintiff to settle with the defendant; when the Supreme Court ordered the judge to enter a judgment, the judge expanded the issues litigated in the case; and after being reversed, the judge refused to award costs to the plaintiff, precipitating another appeal, the judge's conduct constituted willful misconduct in office. *In re Castellano*,

1995-NMSC-007, 119 N.M. 140, 889 P.2d 175 (decided prior to the 2011 recompilation).

Delegation of judicial power. — A magistrate court judge who delegated the duty to perform marriages to a municipal clerk, the judge's actions committed willful misconduct in office. *In re Perea*, 1986-NMSC-001, 103 N.M. 617, 711 P.2d 894 (decided prior to the 2011 recompilation).

Countermanding presiding judge's orders. — Where, in a case that was assigned to the presiding judge, the presiding judge ordered that a commitment be issued to transport the defendants to the penitentiary upon receipt of the appellant court mandate; while the presiding judge was hearing cases in another district, the judge who was not assigned to the case and who was a friend of the parent of one of the defendants stopped the sheriff from transporting the defendants; without a motion by the counsel for the defendants, notice to the district attorney, or a hearing, the judge prepared an order delaying the transportation; when consulted by the sheriff, the presiding judge ordered the sheriff to proceed with the transportation of the defendants; the judge again stopped the sheriff, served the sheriff with a writ of habeas corpus, and ordered the sheriff to return the defendants to jail; and the presiding judge directed the state police to assist the sheriff with transporting the defendants, the judge's conduct constituted willful misconduct in office. *In re Martinez*, 1982-NMSC-115, 99 N.M. 198, 656 P.2d 861 (decided prior to the 2011 recompilation).

Denying the district attorney the right to perform statutory duties. — Where the judge issued an order removing the district attorney as juvenile attorney and appointed private attorneys to act as juvenile attorneys with compensation to be paid from the district attorney's budget, the judge's conduct constituted willful misconduct in office. *In re Martinez*, 1982-NMSC-115, 99 N.M. 198, 656 P. 2d 861 (decided prior to the 2011 recompilation).

21-102. Promoting confidence in the judiciary.

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.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the

Code and should do so freely and willingly. Examples are the restrictions on judicial speech imposed by Rules 21-401 and 21-402 NMRA that are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. The test for appearance of impropriety is a rule of reason that should be applied consistently with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances.

[6] A judge may initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

[7] The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of the law, court rules, or other specific provisions of this Code.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

Threats against a presiding judge. — Where thee criminal cases pending against the defendant were assigned to the same judge; during the pendency of the three cases, the defendant was charged with conspiring to commit an assault with a deadly weapon on the judge; the judge filed a recusal in the conspiracy case, but not in the other three pending cases; and there was no showing of bias by the judge against the defendant,

the judge did not abuse the judge's discretion in denying the defendant's motion requesting the recusal of the judge. *State v. Riordan*, 2009-NMSC-022, 146 N.M. 281, 209 P.3d 773 (decided prior to the 2011 recompilation).

Denial of recusal not an abuse of discretion. — Where defendant was a child offender under the juvenile system; the court determined that defendant was not amenable to rehabilitation or treatment as a child and sentenced defendant as an adult after defendant pled guilty to second degree murder; prior to being appointed as district judge, the trial judge had been appointed as a contract public defender to represent the victim, who had been murdered by defendant, in a juvenile delinquency proceeding; the judge's former law partner actually appeared at all the hearings in the victim's case; and the judge did not personally represent the victim, engage in plea negotiations on the victim's behalf, discuss a plea with the victim or the victim's parents, appear before the court on behalf of the victim or the victim's parents, or have direct contact with the victim in the juvenile proceedings, the judge did not err in denying defendant's request for recusal. *State v. Trujillo*, 2009-NMCA-128, 147 N.M. 334, 222 P.3d 1040, cert. quashed, 2010-NMCERT-011, 150 N.M. 490, 262 P.3d 1143 (decided prior to the 2011 recompilation).

Judge's relatives having ties to the victim. — Recusal of a judge at a murder trial was not required where the judge's brother-in-law was the attorney representing the victim's family in a wrongful death action against defendant and the judge's son was employed as a law clerk by the district attorney. *State v. Fero*, 1987-NMSC-008, 105 N.M. 339, 732 P.2d 866, *aff'd*, 1988-NMSC-053, 107 N.M. 369, 758 P.2d 783 (decided prior to the 2011 recompilation).

Request for findings of fact and conclusions of law. — Because the court had decided in the state's favor, it was reasonable for the trial court to want to see requested findings of fact and conclusions of law from the plaintiff. Its request for those findings and conclusions did not show a bias or prejudice that would necessitate recusal, despite the defendant's assertion of an apparent personal interest of the court in ensuring that the state submit its requested findings and conclusions. *State ex rel. Taxation & Revenue Dep't Motor Vehicle Div. v. Van Ruiten*, 1988-NMCA-059, 107 N.M. 536, 760 P.2d 1302, cert. denied, 107 N.M. 413, 759 P.2d 200 (decided prior to the 2011 recompilation).

JUDICIAL REPRIMANDS

Driving while intoxicated. — Where a judge was convicted of a first offense of driving while under the influence of intoxicating liquor, the judge's conduct constituted willful misconduct in office. *In re Robles*, S.Ct. No. 32,854 (Filed May 31, 2011), Inquiry Concerning a Judge No. 2011-022 (decided prior to the 2011 recompilation).

Fund-raising activities. — Where a magistrate judge personally participated in the solicitation of funds for a baseball tournament for the benefit of municipal and high school baseball programs and used the prestige of the judge's judicial office for the

fund-raising and created the appearance that the judge had done so, the judge's conduct constituted willful misconduct in office. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Potential witness in a criminal case. — Where a magistrate judge released the defendant on the defendant's own recognizance; the defendant had been arrested for driving while intoxicated after a baseball tournament; the judge was not the designated on-call judge on the day the defendant was arrested; the judge knew the defendant and had been at the tournament with the defendant earlier in the day; and the judge knew that there were people drinking alcoholic beverages at the tournament, the judge's conduct constituted willful misconduct in office because the judge was a potential witness in the defendant's criminal case. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Personal acquaintance with the defendant in a criminal case. — Where the defendant had been arrested for driving while intoxicated after a baseball tournament; the defendant's spouse telephoned the magistrate judge's spouse at the judge's home to discuss the defendant's arrest; the defendant and the defendant's spouse knew the judge's family well enough to call the judge's spouse in an attempt to influence the judge; and the judge agreed to release the defendant on the defendant's own recognizance even though the judge was not on-call or assigned to handle the matter, the judge's conduct constituted willful misconduct in office because the judge took judicial action based on the telephone calls from the defendant's family to the judge's home. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Potential witness in a criminal case. — Where a magistrate judge released the defendant on the defendant's own recognizance; the defendant had been arrested for driving while intoxicated after a baseball tournament; the judge was not the designated on-call judge on the day the defendant was arrested; the judge knew the defendant and had been at the tournament with the defendant earlier in the day; the judge knew that there were people drinking alcoholic beverages at the tournament; and the judge was a potential witness in the defendant's criminal case, the judge's conduct constituted willful misconduct in office *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Failure to recuse after appearance of impropriety occurs. — Where a district judge developed a romantic relationship with an attorney who had cases pending before the judge; the judge told the attorney that the judge would enter a blanket recusal in the attorney's cases, but failed to do so; and when the attorney's cases came before the judge, the judge entered a recusal, made dishonest statements from the bench concerning the judge's reasons for entering a recusal, and notwithstanding the entry of a recusal, entered rulings in the cases, the judge committed willful misconduct in office.

In re Schwartz, 2011-NMSC-019, 149 N.M. 721, 255 P.3d 299 (decided prior to the 2011 recompilation).

Improper demeanor and abuse of contempt power. — Where a judge referred to the presiding judge in a condescending manner to court staff and the court manager; refused to listen to a litigant, raised the judge's voice, and banged on the bench when the litigant tried to explain why the litigant failed to appear at a pre-trial conference and then held the litigant in direct contempt; and in another case, held a litigant in contempt during a pre-trial conference and then released the contempt order an hour later, the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Involvement in the trial of a case pending before the judge. — Where in a DWI trial, the judge stepped off the bench to assist an officer in presenting the officer's case and in sight and earshot of the jury, told the court manager that the defendant "blew a .3", the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Failure or inability to perform judicial duties. — Where a judge refused to arraign defendants who had failed to appear and instead served the defendants with bench warrants when they appeared, failed to properly sentence defendants, was not familiar with sentencing laws, and failed to complete arraignment forms, the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Ex parte communications. — Where a judge engaged in ex parte communications with litigants, parties, officers, and bail bondsmen in which the judge told defendants in cases not pending before the judge that the judge would help them out and to ask for the judge when they came to court, which resulted in the judge converting a juvenile bench warrant to an adult bench warrant and dismissing a case, the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Napping. — Where a judge took naps during the noon hour in view of the public and court staff and on one occasion, the judge fell asleep while defendants were waiting for paperwork from the judge's secretary, the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Unlawfully claiming per diem expenses. — Where a judge wanted to attend training in another municipality; the judge certified and submitted a travel voucher claiming reimbursement for per diem expenses; the training was cancelled; the judge arranged to pick up the training material in the other municipality, drove to the other municipality, and then drove to another municipality out-of-state; and the judge told the treasurer of the municipality that the training had been cancelled because of bad weather, the

judge's conduct constituted willful misconduct in office. *In re Lozano*, S.Ct. No. 29,264 (Filed June 8, 2010) (decided prior to the 2011 recompilation).

Improperly touching a party. — Where at a hearing in a case involving a building permit, the judge kept moving the judge's chair closer to the code enforcement officer and the defendant, kept moving the judge's hands around, and touched the defendant with the result that the code enforcement officer and the defendant felt uncomfortable and moved away from the judge; and prior to the hearing, the mayor of the municipality had told the judge that the code enforcement officer had filed an EEOC claim against the judge based on improper touching, the judge's conduct constituted willful misconduct in office. *In re Lozano*, S.Ct. No. 29,264 (Filed June 8, 2010) (decided prior to the 2011 recompilation).

Warning defendant of imminent arrest. — A judge, who learned that a friend might be arrested for a probation violation, warned the friend that a bail enforcement agent was on the way and might arrest the friend, and told the friend not to get arrested, but to appear in the judge's court the following day to straighten things out, committed willful misconduct in office. *In re Aldaz-Mills*, S.Ct. No. 31,197 (Filed May 1, 2009) (decided prior to the 2011 recompilation).

Abusing prestige of judicial office. — Where a municipal judge had private conversations with a contractor about the contractor's personal financial dispute with landowners who allegedly owed the contractor money for cleaning up the landowners' property; the judge called the landowners and left a message on the landowners' answering machine in which the judge identified himself as a judge and stated that the judge was calling about the financial dispute between them and the contractor and that the judge wanted the matter cleared up; the judge subsequently wrote the landowners a letter on municipal stationery, using the judge's title and court name discussing the contractor's claim and indicating that a lawsuit would be filed if the contractor was not paid; two weeks later, the judge was assigned to preside over a nuisance action by the municipality concerning the land that the contractor had supposedly cleaned; and the judge accepted the case and issued a summons to the landowners that did not conform with the rules of procedure, the judge's conduct constituted willful misconduct in office. *In re Ramirez*, S.Ct. No. 31,664 (Filed June 26, 2009) (decided prior to the 2011 recompilation).

Giving advice to a witness in a case pending before the judge. — Where the judge had an ex parte conversation with the complaining witness in a domestic violence case that was pending before the judge; the witness had been subpoenaed by the state to appear and testify at the witness' spouse's trial; the judge advised the witness that if the witness did not want to testify, there would be no adverse consequences; the witness did not appear at the trial; the assistant district attorney informed the judge that the district attorney's office had been informed of the ex parte communication with the witness; the judge began drafting a recusal; when the witness appeared, the judge recalled the case and dismissed it; and the judge subsequently produced a recusal that was different from the document that had been reviewed by the assistant district

attorney, the judge's conduct constituted willful misconduct in office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

Making campaign promise to provide assistance if elected. — Where, during the time a judge was a candidate for magistrate court judge, the judge told a landlord that the judge would help if the landlord had a problem in court; when the judge learned that the landlord was having trouble with a tenant, the judge reviewed the lease and advised the landlord to file suit after the judge was elected; the judge also explained how the landlord could excuse the other magistrate court judges to make sure the judge heard the case; after the judge was elected, the landlord filed suit and excused the other magistrate court judges; and at a hearing on the case, the judge became impatient with the landlord and filed a recusal, the judge violated the Code of Judicial Conduct, subjecting the judge to removal from office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

Insufficient evidence of willful misconduct in office. — Where a judge called the jail and set bond for a defendant who was the parent of the judge's friend and who had been arrested for DWI; when no one was available to accept the bond, the judge changed the release order to release the defendant to the custody of the defendant's spouse and hand-delivered the release order late at night to the jail in another town; the judge presided over the arraignment of the defendant; and the judge filed a recusal when a newspaper reported on the matter, there was no clear and convincing evidence that the judge committed willful misconduct in office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

Adjudicating traffic cases for family members and friends. — Where a judge adjudicated more than twenty cases involving family members, friends, and family members of friends and staff, ex parte without hearings or taking evidence; the judge was not the assigned judge and adjudicated the cases before their scheduled arraignment dates, either deferring or continuing the cases with the requirement that no further traffic violations occur within ninety days; and where defendants had failed to appear, the judge cancelled bench warrants and dismissed charges for failure to appear, the judge's conduct constituted willful misconduct in office. *In re Griego*, 2008-NMSC-020, 143 N.M. 698, 181 P.3d 690 (decided prior to the 2011 recompilation).

Insufficient evidence of willful misconduct. — Where a municipal judge accepted an uncounseled guilty plea and sentenced the defendant; the defendant's attorney appealed to the district court; in the district court, the municipal attorney made an oral motion to dismiss the appeal and the district court judge allowed the defendant to enter another guilty plea; when the municipal judge received the district court judgment and discovered that a written motion to dismiss had not been filed by the municipal attorney, the municipal judge believed that the municipal attorney and the defendant's attorney had misrepresented the municipal proceedings to the district court judge; after researching the law of contempt and consulting the Municipal League and the Attorney General's office, the municipal judge charged the municipal attorney and the

defendant's attorney with contempt; and when the municipal judge reviewed the district court proceedings and discovered that a motion to dismiss had been made, the municipal judge dismissed the contempt charges, the evidence did not clearly and convincingly demonstrate that the municipal judge's actions constituted willful misconduct in office. *In re Locatelli*, 2007-NMSC-029, 141 N.M. 755, 161 P.3d 252 (decided prior to the 2011 recompilation).

Interference in a friend's criminal case. — Where a judge developed a personal relationship with the defendant in a DUI case, told the presiding judge at the defendant's bond hearing to make special concessions with regard to the defendant's bond, talked to the presiding judge at the defendant's probation violation hearing to influence the disposition of the case, instructed the court clerks to issue a clearance of the defendant's driver's license, and attempted to influence a police officer when the defendant was stopped for speeding, the judge's conduct constituted willful misconduct in office. *In re Garza*, 2007-NMSC-028, 141 N.M. 831, 161 P.3d 876 (decided prior to the 2011 recompilation).

Drug abuse. — Where a judge knowingly evaded the service of an order of the Judicial Standards Commission to submit to drug testing; the judge did not appear for drug testing for more than seventy-two hours after the judge learned of the commission's order and refused to submit to the collection of a sample, and ordered the judge's own tests to obtain results that would be available only to the judge; and when the judge finally submitted to the drug testing as ordered by the commission, the judge tested positive for cocaine, the judge's conduct constituted willful misconduct in office. *In re Garza*, 2007-NMSC-028, 141 N.M. 831, 161 P.3d 876 (decided prior to the 2011 recompilation).

Alcoholism. — Where a judge recessed a criminal jury trial for a long holiday weekend; the judge did not return to court on the date set for the completion of the trial; the judge told an administrative assistant that the judge was ill but would be in court in the afternoon; the judge did not return that day and the judge's staff rescheduled the trial for two days later; on the day the trial was to resume, the judge told the assistant that the judge was hospitalized for heart-related tests; after the trial was twice reset due to the judge's unavailability, a stipulated mistrial order was entered; the judge was absent for two weeks during which the judge was hospitalized for six days; the judge's heart ailment and the hospitalization were due to alcohol withdrawal; and to justify the judge's absence, the judge told a reporter that the judge was being treated for and was recovering from a mild heart attack, the judge's conduct constituted willful misconduct in office. *In re Pope*, S.Ct. No. 29,778 (Filed June 13, 2007) (decided prior to the 2011 recompilation).

Adoption of procedural rules. — Where a judge implemented the judge's own rule that precluded any individual from appearing before the judge unless the individual presented photographic identification; a defendant, who appeared ten minutes before the defendant's trial was refused admittance into the courtroom; the defendant left to obtain a new driver's license; staff advised the judge that the defendant had arrived, but

had left to obtain a new driver's license to comply with the photo-identification rule; the defendant returned to the courthouse within one hour but was told that the judge had left and would return the next day; and when the defendant appeared the next day, the defendant was arrested on a bench warrant issued by the judge, the judge's conduct constituted willful misconduct in office. *In re Pineda*, S.Ct. No. 29,479 (Filed July 31, 2007) (decided prior to the 2011 recompilation).

Directing secretary to handle traffic docket. — Where a judge took a vacation knowing that the judge would not return in time to handle the judge's traffic docket; the judge called the judge's secretary, told the secretary that the judge's return had been delayed, and instructed the secretary to handle the judge's traffic docket; the secretary handled the traffic docket and used the judge's signature stamp to process the docket; and when the other judges, court personnel, and the media learned about what had occurred, the judge reviewed and signed the cases that the judge's secretary had handled in the judge's absence, the judge's conduct constituted willful misconduct in office. *In re Griego*, S.Ct. No. 30,203 (Filed June 13, 2007) (decided prior to the 2011 recompilation).

Allowing a friendship relationship to influence judicial conduct — Where a judge was assigned a criminal case in which the defendant was charged with multiple counts of trafficking cocaine and distribution of methamphetamine; during the proceedings, the judge stipulated that the judge knew that by presiding over defendant's case the judge would not appear to be impartial, because the judge had a personal relationship with the attorney for and fiancé of the defendant who subsequently became the spouse of the defendant; the judge did not recuse from the case; the defendant pled no contest; the pre-sentence report stated that the defendant was a drug dealer and recommended prison sentences; at the sentencing hearing, the judge considered assigning the defendant to a new drug court program in lieu of incarceration; the judge agreed with the chief judge to recuse from the case; at a sentencing hearing before the new judge, the defendant stated that the original judge wanted to revoke the recusal; the new judge recused; and the original judge revoked the recusal and accepted jurisdiction over sentencing, the judge's conduct constituted willful misconduct in office. *In re McBee*, 2006-NMSC-024, 138 N.M. 482, 134 P.3d 769 (decided prior to the 2011 recompilation).

Interference in child's criminal case. — Where the adult child and friends of the child of a district court judge were cited for drinking in public in violation of a municipal ordinance; as the police officers were issuing the citations, the judge identified the judge to one of the officers as the child's parent by showing the officer the judge's court identification card and driver's license; the judge asked the officer if the officer remembered who the judge was; the judge collected all of the citations from the recipients and later instructed the judge's bailiff to assist the child and the child's friends in responding to the citations in municipal court; the bailiff prepared and filed written waivers of arraignment and not guilty pleas on municipal court forms; when pretrial conferences were scheduled, the judge contacted a municipal judge who was not the assigned judge to advise the municipal judge that the judge was sending the judge's

child and some of the friends to the municipal judge to change their pleas before the pretrial conference set by the assigned judge was scheduled to occur; and the judge's child and some of the friends appeared before the municipal judge and pled no contest and received more lenient sentences than the child's friends who appeared before the assigned municipal judge, the judge's conduct constituted willful misconduct in office. *In re Ramirez*, 2006-NMSC-021, 139 N.M. 529, 135 P.3d 230 (decided prior to the 2011 recompilation).

Negotiating a plea with defendant's parent. — Where a judge allowed defendant's parent to negotiate a plea agreement, failed to notify defendant of court hearings, failed to conduct an arraignment, failed to advise defendant of defendant's constitutional rights, failed to appoint legal counsel to represent defendant, held court proceedings in the absence of defendant or an attorney for defendant, and signed a judgment and sentence that falsely stated that defendant appeared pro se, pleaded no contest/guilty, and was sentenced, when in fact, defendant was incarcerated and did not do any of those acts, the judge's conduct constituted willful misconduct in office. *In re Martinez*, S.Ct. No. 29,180 (Filed May 12, 2005) (decided prior to the 2011 recompilation).

Failure to hear cases, follow rules, and respect judges and court officials. — Where a judge intentionally violated courthouse rules and policies; treated security officers in a hostile, rude, angry, threatening manner; used offensive language toward security officers and court employees; tossed objects, yelled and pounded on a desk when court personnel withheld the judge's assistant's paycheck pursuant to court rules and policies; asserted that the assistant was not required to comply with security guidelines and policies and prohibited security personnel from screening the assistant; permitted the assistant to behave in an unprofessional manner and condoned and assisted the assistant in violating and refusing to comply with court policies, being rude to court employees, and complaining about other judges; refused to issue bench warrants during traffic arraignment court week, because the judge did not want the assistant to process the warrants during traffic arraignment dockets and filed recusals in those cases; and waived prior supervised probation costs imposed by statute, the judge committed willful misconduct in office. *In re Barnhart*, S.Ct. No 29,379 (Filed October 19, 2005) (decided prior to the 2011 recompilation).

Use of judicial position to advance private interest in pending case. — A metropolitan judge who initiated ex parte communications with a special commissioner and a district court judge to influence a child placement in a case involving a family member within the third degree of relationship committed willful misconduct in office. *In re Gentry*, S.Ct. No. 28,986 (Filed June 29, 2005) (decided prior to the 2011 recompilation).

Outside employment. — A full-time magistrate court judge, who was paid a salary as a full-time magistrate and who served as a tribal judge pro tempore for a tribal court at times when the judge was being paid by the state to serve as a magistrate court judge, committed willful misconduct in office. *In re Martinez*, S.Ct. 29,309 (Filed October 19, 2005) (decided prior to the 2011 recompilation).

Involvement in a pending criminal case involving the judge's child. — Where the judge's child was cited for speeding and no proof of insurance and the judge contacted the sheriff to complain that the child had been mistreated and held for an excessive time by the deputy sheriff at the traffic stop; accessed the court's file on the child's case by a private request to the clerk's office to obtain the file from the presiding judge; called the presiding judge to reschedule the child's hearing due to car trouble; provided the presiding judge with a memorandum that the district attorney's office would not appear in the case; and attended hearings with the child where members of the public were present, the judge committed willful misconduct in office. *In re Chaparro*, S.Ct. No. 27,923 (Filed June 22, 2005) (decided prior to the 2011 recompilation).

Failure to maintain judicial demeanor. — Where, during a bench trial, a judge became agitated with and yelled at the defendant, stood up and hit a gavel on the bench that caused debris, including paper clips, to scatter across the room, striking the defendant and the prosecuting officer, the judge's conduct constituted willful misconduct in office. *In re Pindea*, S.Ct. No. 29,479 (Filed November 29, 2005) (decided prior to the 2011 recompilation).

Knowingly failing to credit inmates with statutory credit for incarceration. — Where a judge knowingly failed to follow and apply the law when the judge incarcerated citizens for failure to pay fines by crediting inmates with only $5.00 per day of time served toward payment of fines and fees, the judge's conduct constituted willful misconduct in office. *In re Wood*, S.Ct. No. 29,085 (Filed May 12, 2005) (decided prior to the 2011 recompilation).

Display of extreme anger. — Where, after the judge declared a mistrial and recused from a criminal trial, the judge came off the bench and yelled at the defendant; defense counsel stood in front of the defendant to block the judge's access to the defendant; the judge then passed through the swinging gate, turned, and told defense counsel and the defendant that they could write to the Judicial Standards Commission and tell them what the judge thought of the commission; the judge brought the jury back into the courtroom and explained that there had been a mistrial; and the judge apologized to the counsel several times and agreed to recuse in their cases, the conduct of the judge constituted willful misconduct in office. *In re Vincent*, S.Ct. No. 27,266 (Filed May 19, 2004) (decided prior to the 2011 recompilation).

False statements about judicial disciplinary complaints. — Where, during a radio broadcast debate, a judge made false or misleading statements that no judicial disciplinary complaints had been filed against the judge with the Judicial Standards Commission, the judge committed willful misconduct in office. *In re Miller-Byrnes*, S.Ct. No. 28,716 (Filed August 31, 2004) (decided prior to the 2011 recompilation).

Personal involvement with trial counsel and harassment of trial counsel. — Where a judge presided over and took judicial action in cases in which the assistant district attorney appeared on behalf of the state during the time the judge was engaged in a personal relationship with the assistant district attorney; the judge failed to inform all

counsel or parties of record of the judge's relationship with the assistant district attorney in cases where the assistant district attorney appeared before the judge; the judge failed to be patient, dignified and courteous to counsel by making inappropriate remarks to assistant district attorneys about the judge's rulings in front of defendants, defense counsel, and co-counsel; and in one case, the judge suppressed evidence of a breath test, refused to allow the assistant district attorney to call the officer who administered the breath test to testify, and then taunted the assistant district attorney about not being able to prove the state's case, the judge committed willful misconduct in office. *In re Galvan*, S.Ct. No. 28,609 (May 17, 2004) (decided prior to the 2011 recompilation).

Maintaining residence outside judicial district. — A municipal judge who failed to maintain a continuous and significant physical presence at a residence within the municipal limits of the municipality as required by municipal ordinance committed willful misconduct in office. *In re Gallegos*, S.Ct. No. 27,906 (Filed April 15, 2003) (decided prior to the 2011 recompilation).

Causing court employee to be arrested. — Where the judge became embroiled in a controversy with court interpreters; the judge failed to be patient, dignified, and courteous with interpreters, another judge, and the court clerk; the judge issued a warrant for the arrest of a court interpreter on a criminal contempt charge relating to a prior dispute over interpreting services; and the judge had an ex parte communication with another judge about presiding over a pending writ case that involved the judge, which caused the other judge to feel threatened and intimidated and to file a recusal in the case, the judge's conduct constituted willful misconduct in office. *In re Chaparro*, S.Ct. No. 27,923 (Filed April 15, 2003) (decided prior to the 2011 recompilation).

Violation of law. — A judge who pled nolo contendere to charges of DWI, no headlamps and running a stop sign, and who was convicted and sentenced for DWI and no headlamps committed willful misconduct in office. *In re Cornish*, S.Ct. No. 27,253 (Filed May 6, 2002) (decided prior to the 2011 recompilation).

Inappropriate demeanor, interference in pending case, and illegal modification of sentence. — Where a judge made inappropriate, age and/or gender-based references to female attorneys who appeared before the judge; after the state lost a six-month rule hearing, the judge threatened the Public Defender's Office and its employees; the judge told a defendant in a criminal drug case that the defendant was covering up for the defendant's children and that the defendant could post a property bond with the intention that the state could get rid of the defendant's house if there were complaints by the defendant's neighbors; after filing a recusal in a case, the judge became involved in a pretrial conference in the case and testified against a motion filed by the Public Defender's Office; referred to a female magistrate court judge in an inappropriate, derogatory, and gender-based manner; criticized a female attorney for being employed by the Public Defender's Office; and after the Public Defender's Office filed a notice of appeal from the judge's ruling, the judge verbally modified the sentence and order of eligibility by ex parte communication with the monitoring agent, the judge's conduct

constituted willful misconduct in office. *In re Vincent*, S.Ct. No. 27,266 (Filed March 22, 2002) (decided prior to the 2011 recompilation).

Abusing prestige of judicial office. — Where a judge directly or indirectly solicited, commanded, requested, induced, employed, or otherwise attempted to promote, facilitate, or obtain favored treatment or avoidance of due process of the law from law enforcement officers for the judge's friend, the judge committed willful misconduct in office. *In re Maestas*, S.Ct. No. 27,348 (Filed March 5, 2002) (decided prior to the 2011 recompilation).

Issuing insufficient funds checks. — Where a judge, on three separate occasions, issued checks in payment of the judge's debts knowing at the time the checks were issued that there were insufficient funds in or credit with the bank to pay the checks in full upon presentation, and the judge failed to cooperate with and comply with the rules, requirements, and procedures of the Judicial Standards Commission by failing to file a written response to the commission's notice of preliminary investigation, the judge's conduct was willful misconduct in office. *In re Vigil*, S.Ct. No. 26,328 (Filed May 7, 2001) (decided prior to the 2011 recompilation).

Involvement in friend's criminal case. — Where a judge became involved in the pending criminal case of a friend by speaking with the arresting state police officer by cellular telephone during the traffic stop and arrest; personally going to the adult detention center and ordered the friend's release and taking the friend to the judge's house, and speaking to a registered nurse and asking the nurse to draw an independent blood sample from the friend; and the judge had an alcoholic drink before going to the jail to release the friend and may have had the odor of alcohol on the judge's breath, the judge's conduct constituted willful misconduct in office. *In re Sanchez*, S.Ct. No. 25,821 (Filed March 14, 2001) (decided before the 2011 recompilation).

Ex parte communications with police officers about pending cases. — A judge who had ex parte communications with police officers concerning defendants' out-of-court demeanor, attitude or behavior with the officers and about the use of "smiling" and "frowning" faces to be drawn on uniform traffic citations by the officers, which would inform the judge about defendants' demeanor, attitude or behavior with the officers during traffic stops, the judge committed willful misconduct in office. *In re Arnold*, S.Ct. No. 26,645 (Filed January 10, 2001) (decided prior to the 2011 recompilation).

Failure to pay taxes and debts. — Where a judge failed to pay gross receipts taxes for the judge's private business activities for five consecutive years; failed to timely file state personal income tax returns for three consecutive years; used the facilities and equipment of the probate court for the judge's private business activities; failed to pay the county for copying charges incurred at the county clerks' office for the judge's private business, and gave the county clerk an insufficient funds check to pay for the copying; and failed to cooperate and comply with the rules, regulations, and procedures of the Judicial Standards Commission by failing to file a written response to the commission's notice of preliminary investigation, the judge's conduct constituted willful

misconduct in office. *In re Vigil*, S.Ct. No. 26,328 (Filed June 13, 2000) (decided prior to the 2011 recompilation).

Failure to comply with the law. — Where a judge approved and agreed in a plea and disposition agreement to withhold from the Motor Vehicle Division an abstract of record upon the defendant's completion of a probationary period and in another case, failed to impose the mandatory minimum sentence required by law, the judge's conduct constituted willful misconduct in office. *In re Sanchez*, S.Ct. No. 25,821 (Filed August 17, 1999) (decided prior to the 2011 recompilation).

Failure to perform judicial duties. – Where a magistrate judge delayed in signing and filing written judgments and sentences; failed to impose the mandatory minimum sentences required by law; failed to submit abstracts of record to the Department of Motor Vehicles within the time required by law; and had ex parte communications with the former court administrator of the district court concerning the sentencing and disposition of a defendant who was a relative of the former court administrator and the desire of the defendant's family that the defendant be ordered to obtain alcohol/drug counseling, the judge's conduct constituted willful misconduct in office. *In re Perea*, S.Ct. No. 25,822 (Filed August 17, 1999) (decided prior to the 2011 recompilation).

Harassment and abuse of staff and failure to obey orders of the chief judge. — Where a judge ordered the court administrator to ignore the chief judge's orders; ordered a deputy sheriff to arrest the administrator for contempt; repeatedly refused to comply with the chief judge's orders; used profanity and yelled at a deputy sheriff when the deputy sheriff asked for the judge's daily docket sheet; refused to hear domestic violence cases the judge had agreed to hear to relieve the load on a hearing officer; after being ordered to hear domestic cases by the chief judge, the judge failed to hear all issues and ordered the hearing officer to hear the issues; treated the hearing officer discourteously and disrespectfully; worked very little for a seven-month period; and made inquiries into an adoption case that involved a relative of the chief judge and disclosed confidential information from the file, the judge's conduct constituted willful misconduct in office. *In re Castellano*, 1995-NMSC-007, 119 N.M. 140, 889 P.2d 175 (decided prior to the 2011 recompilation).

Abuse of the prestige of judicial office. — Where a judge had de facto control over a non-profit organization that regularly engaged in proceedings before the judge; the judge personally selected a majority of the board of directors and personally caused the hiring and firing of directors; the judge's spouse served as executive director of the organization; and the judge allowed the judge's spouse to use the judge's chambers and telephone and the judge's name, title, official stationery, and photograph to be used in solicitation of funds for the organization, the judge's conduct constituted willful misconduct in office. *In re Castellano*, 1995-NMSC-007, 119 N.M. 140, 889 P.2d 175 (decided prior to the 2011 recompilation).

Intentional denial of right to appeal. — Where a judge ruled in favor of the defendant, refused to enter a judgment in the case to prevent the plaintiff from appealing in order to

force the plaintiff to settle with the defendant; when the Supreme Court ordered the judge to enter a judgment, the judge expanded the issues litigated in the case; and after being reversed, the judge refused to award costs to the plaintiff, precipitating another appeal, the judge's conduct constituted willful misconduct in office. *In re Castellano*, 1995-NMSC-007, 119 N.M. 140, 889 P.2d 175 (decided prior to the 2011 recompilation).

Director of a DWI school. — Where, as permitted by a municipal ordinance, a municipal judge was the owner and director of a DWI school and had a pecuniary interest in having individuals initially appear before the judge in court and then attend the DWI school, the judge's conduct violated the Code of Judicial Conduct. *In re Rainaldi*, 1986-NMSC-079, 104 N.M. 762, 727 P.2d 70 (decided prior to the 2011 recompilation).

Delegation of judicial power. — A magistrate court judge who delegated the duty to perform marriages to a municipal clerk committed willful misconduct in office. *In re Perea*, 1986-NMSC-001, 103 N.M. 617, 711 P.2d 894 (decided prior to the 2011 recompilation).

Adjudicating cases in which the judge has a personal interest. — Where a judge filed a criminal complaint for criminal trespass against the defendant who had disregarded the judge's direction by visiting the premises rented by the judge's tenant, scheduled an arraignment in the judge's court, and later filed a recusal in the case; and in a second case, the judge filed a criminal complaint for criminal damage to property against the defendant, who was a former tenant of the judge, arraigned the defendant, committed the defendant to jail, and dismissed the charges without prejudice when the defendant agreed to repair the damages to the premises that the defendant had rented from the judge, the judge's conduct constituted willful misconduct in office. *In re Lucero*, 1985-NMSC-053, 102 N.M. 745, 700 P.2d 648 (decided prior to the 2011 recompilation).

Accepting a favor. — Where a judge accepted a favor from a person appearing before the judge, the judge's conduct violated the Code of Judicial Conduct. *In re Terry*, 1984-NMSC-066, 101 N.M. 360, 683 P.2d 42 (decided prior to the 2011 recompilation).

21-103. Avoiding abuse of the prestige of judicial office.

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be

improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. A judge must not use judicial letterhead in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based on the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office. A judge may write letters of recommendation for any candidate for judicial appointment.

[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this rule or other applicable law. In contracts for the publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation. A judge who publishes may include the judge's title and include a biographical statement in the publication.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

JUDICIAL REPRIMANDS

Fund-raising activities. — Where a magistrate judge personally participated in the solicitation of funds for a baseball tournament for the benefit of municipal and high school baseball programs and used the prestige of the judge's judicial office for the fund-raising and created the appearance that the judge had done so, the judge's conduct constituted willful misconduct in office. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Unlawfully accepting per diem expenses. — Where the judge wanted to attend training in another municipality; the judge certified and submitted a travel voucher claiming reimbursement for per diem expenses; the training was cancelled; the judge arranged to pick up the training material in the other municipality, drove to the other

municipality and then drove to another municipality out-of-state; and the judge told the treasurer of the municipality that the training had been cancelled because of bad weather, the judge's conduct constituted willful misconduct in office. *In re Lozano*, S.Ct. No. 29,264 (Filed June 8, 2010) (decided prior to the 2011 recompilation).

Abuse of the prestige of judicial office. — Where a municipal judge had private conversations with a contractor about the contractor's personal financial dispute with landowners who allegedly owed the contractor money for cleaning up the landowners' property; the judge called the landowners and left a message on the landowners' answering machine in which the judge identified himself as a judge and stated that the judge was calling about the financial dispute between them and the contractor and that the judge wanted the matter cleared up; the judge subsequently wrote the landowners a letter on municipal stationery, using the judge's title and court name discussing the contractor's claim and indicating that a lawsuit would be filed if the contractor was not paid; two weeks later, the judge was assigned to preside over a nuisance action by the municipality concerning the land that the contractor had supposedly cleaned; and the judge accepted the case and issued a summons to the landowners that did not conform with the rules of procedure, the judge's conduct constituted willful misconduct in office. *In re Ramirez*, S.Ct. No. 31,664 (Filed June 26, 2009) (decided prior to the 2011 recompilation).

Attempt to influence a judge for the benefit of a relative. — Where, after the step-child of a magistrate judge was jailed by the district court for nonpayment of child support, the magistrate judge telephoned the district court judge, told the district court judge that the step-child was not a flight risk, and asked the district court judge to reduce the step-child's bond or let the step-child out of jail, the magistrate judge's telephone call to the district court judge was an attempt to gain favorable treatment for the step-child and constituted willful misconduct in office. *In re Naranjo*, 2013-NMSC-026.

Endorsement of political candidate. — Where a magistrate court judge authorized the use of the judge's name for an endorsement of a candidate for reelection as mayor of a municipality, and the endorsement, which was published in a local newspaper, did not explicitly identify the judge as a magistrate court judge, the judge violated the Code of Judicial Conduct. *In re Vincent*, 2007-NMSC-056, 143 N.M. 56, 172 P.3d 605 (decided prior to the 2011 recompilation).

Interference in friend's criminal case. — Where a judge developed a personal relationship with the defendant in a DUI case; the judge told the presiding judge at the defendant's bond hearing to make special concessions with regard to the defendant's bond, talked to the presiding judge at the defendant's probation violation hearing to influence the disposition of the case, instructed the court clerks to issue a clearance of the defendant's driver's license, and attempted to influence a police officer when the defendant was stopped for speeding, the judge's conduct constituted willful misconduct in office. *In re Garza*, 2007-NMSC-028, 141 N.M. 831, 161 P.3d 876 (decided prior to the 2011 recompilation).

Interference in child's criminal case. — Where the adult child and friends of the child of a district court judge were cited for drinking in public in violation of a municipal ordinance; as the police officers were issuing the citations, the judge identified the judge to one of the officers as the child's parent by showing the officer the judge's court identification card and driver's license; the judge asked the officer if the officer remembered who the judge was; the judge collected all of the citations from the recipients and later instructed the judge's bailiff to assist the child and the child's friends in responding to the citations in municipal court; the bailiff prepared and filed written waivers of arraignment and not guilty pleas on municipal court forms; when pretrial conferences were scheduled, the judge contacted a municipal judge who was not the assigned judge to advise the municipal judge the judge was sending the judge's child and some of the friends to the municipal judge to change their pleas before the pretrial conference set by the assigned judge was scheduled to occur; and the judge's child and some of the friends appeared before the municipal judge and pled no contest and received more lenient sentences than the child's friends who appeared before the assigned municipal judge, the judge's conduct constituted willful misconduct in office. *In re Ramirez*, 2006-NMSC-021, 139 N.M. 529, 135 P.3d 230 (decided prior to the 2011 recompilation).

Use of judicial position to advance private interest in pending case. — A metropolitan court judge who initiated ex parte communications with a special commissioner and a district court judge to influence a child placement in a case involving a family member within the third degree of relationship committed willful misconduct in office. *In re Gentry*, S.Ct. No. 28,986 (Filed June 29, 2005) (decided prior to the 2011 recompilation).

Involvement in a pending criminal case involving the judge's child. — Where the judge's child was cited for speeding and no proof of insurance and the judge contacted the sheriff to complain that the child had been mistreated and held for an excessive time by the deputy sheriff at the traffic stop; accessed the court's file on the child's case by a private request to the clerk's office to obtain the file from the presiding judge; called the presiding judge to reschedule the child's hearing due to car trouble; provided the presiding judge with a memorandum that the district attorney's office would not appear in the case; and attended hearings with the child where members of the public were present, the judge committed willful misconduct in office. *In re Chaparro*, S.Ct. No. 27,923 (Filed June 22, 2005) (decided prior to the 2011 recompilation).

Abusing prestige of judicial office. — Where a judge directly or indirectly solicited, commanded, requested, induced, employed, or otherwise attempted to promote, facilitate, or obtain favored treatment or avoidance of due process of the law from law enforcement officers for the judge's friend, the judge committed willful misconduct in office. *In re Maestas*, S.Ct. No. 27,348 (Filed 5, March 2002) (decided prior to the 2011 recompilation).

Where a judge had de facto control over a non-profit organization that regularly engaged in proceedings before the judge; the judge personally selected the majority of

the board of directors and caused the hiring and firing of directors; the judge's spouse served as executive director of the organization; and the judge allowed the judge's spouse to use the judge's chambers and telephone to solicit funds for the organization and the judge's name, title, official stationery, and photograph to be used in solicitation of funds, the judge's conduct constituted willful misconduct in office. *In re Castellano*, 1995-NMSC-007, 119 N.M. 140, 889 P.2d 175 (decided prior to the 2011 recompilation).

Countermanding presiding judge's orders. — Where, in a case that was assigned to the presiding judge, the presiding judge ordered that a commitment be issued to transport the defendants to the penitentiary upon receipt of the appellant court mandate; while the presiding judge was hearing cases in another district, the judge who was not assigned to the case and who was a friend of the parent of one of the defendants stopped the sheriff from transporting the defendants; without a motion by the counsel for the defendants, notice to the district attorney, or a hearing, the judge prepared an order delaying the transportation; when consulted by the sheriff, the presiding judge ordered the sheriff to proceed with the transportation of the defendants; the judge again stopped the sheriff, served the sheriff with a writ of habeas corpus, and ordered the sheriff to return the defendants to jail; and the presiding judge directed the state police to assist the sheriff with transporting the defendants, the judge's conduct constituted willful misconduct in office. *In re Martinez*, 1982-NMSC-115, 99 N.M. 198, 656 P.2d 861 (decided prior to the 2011 recompilation).

Denying district attorney the right to perform statutory duties. — Where the judge issued an order removing the district attorney as juvenile attorney and appointed private attorneys to act as juvenile attorneys with compensation to be paid from the district attorney's budget, the judge's conduct constituted willful misconduct in office. *In re Martinez*, 1982-NMSC-115, 99 N.M. 198, 656 P. 2d 861 (decided prior to the 2011 recompilation).

21-200. Canon 2.

A judge shall perform the duties of judicial office impartially, competently, and diligently.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

21-201. Giving precedence to the duties of judicial office.

The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. *See* Canon 3.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

JUDICIAL REPRIMANDS

Potential witness in a criminal case. — Where a magistrate judge released the defendant on the defendant's own recognizance; the defendant had been arrested for driving while intoxicated after a baseball tournament; the judge was not the designated on-call judge on the day the defendant was arrested; the judge knew the defendant and had been at the tournament with the defendant earlier in the day; and the judge knew that there were people drinking alcoholic beverages at the tournament, the judge's conduct constituted willful misconduct in office because the judge was a potential witness in the defendant's criminal case. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Personal acquaintance with the defendant in a criminal case. — Where the defendant had been arrested for driving while intoxicated after a baseball tournament; the defendant's spouse telephoned the magistrate judge's spouse at the judge's home to discuss the defendant's arrest; the defendant and the defendant's spouse knew the judge's family well enough to call the judge's spouse in an attempt to influence the judge; and the judge agreed to release the defendant on the defendant's own recognizance even though the judge was not on-call or assigned to handle the matter, the judge's conduct constituted willful misconduct in office because the judge took judicial action based on the telephone calls from the defendant's family to the judge's home. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Alcoholism. — Where a judge recessed a criminal jury trial for a long holiday weekend; the judge did not return to court on the date set for the completion of the trial; the judge told an administrative assistant that the judge was ill, but would be in court in the afternoon; the judge did not return that day and the judge's staff rescheduled the trial for two days later; on the day the trial was to resume, the judge told the assistant that the

judge was hospitalized for heart-related tests; after the trial was twice reset due to the judge's unavailability, a stipulated mistrial order was entered; the judge was absent for two weeks during which the judge was hospitalized for six days; the judge's heart ailment and the hospitalization were due to alcohol withdrawal; and to justify the judge's absence, the judge told a reporter that the judge was being treated for and was recovering from a mild heart attack, the judge's conduct constituted willful misconduct in office. *In re Pope*, S.Ct. No. 29,778 (Filed June 13, 2007) (decided prior to the 2011 recompilation).

Directing secretary to handle traffic docket. — Where a judge took a vacation knowing that the judge would not return in time to handle the judge's traffic docket; the judge called the judge's secretary, told the secretary that the judge's return had been delayed, and instructed the secretary to handle the judge's traffic docket; the secretary handled the traffic docket and used the judge's signature stamp to process the docket; and when the other judges, court personnel, and the media learned what had occurred, the judge reviewed and signed the cases that the judge's secretary had handled in the judge's absence, the judge's conduct constituted willful misconduct in office. *In re Griego*, S.Ct. No. 30,203 (Filed June 13, 2007) (decided prior to the 2011 recompilation).

Failure to perform judicial duties. — Where a magistrate judge delayed in signing and filing written judgments and sentences, the judge's conduct constituted willful misconduct in office. *In re Perea*, S.Ct. No. 25,822 (Filed August 17, 1999) (decided prior to the 2011 recompilation).

Delegation of judicial power. — A magistrate court judge who delegated the duty to perform marriages to a municipal clerk committed willful misconduct in office. *In re Perea*, 1986-NMSC-001, 103 N.M. 617, 711 P.2d 894 (decided prior to the 2011 recompilation).

21-202. Impartiality and fairness.

A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this rule.

[4] When pro-se litigants appear in court, they should comply with the rules and orders of the court and will not be treated differently from litigants with counsel. It is not a violation of this rule, however, for a judge to make reasonable accommodations to ensure all litigants the opportunity to have their matters fairly heard.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

Judge's relatives having ties to the victim. — Recusal of a judge at a murder trial was not required where the judge's brother-in-law was the attorney representing the victim's family in a wrongful death action against defendant and the judge's son was employed as a law clerk by the district attorney. *State v. Fero*, 1987-NMSC-008, 105 N.M. 339, 732 P.2d 866, *aff'd*, 1988-NMSC-053, 107 N.M. 369, 758 P.2d 783 (decided prior to the 2011 recompilation).

Impartiality throughout a case is required. — When a judge believes that the judge will be unable to remain impartial, the judge should recuse from the case in order to avoid a hint of impropriety. *Gerety v. Demers*, 1978-NMSC-097, 92 N.M. 396, 589 P.2d 180 (decided prior to the 2011 recompilation).

JUDICIAL REPRIMANDS

Potential witness in a criminal case. — Where a magistrate judge released the defendant on the defendant's own recognizance; the defendant had been arrested for driving while intoxicated after a baseball tournament; the judge was not the designated on-call judge on the day the defendant was arrested; the judge knew the defendant and had been at the tournament with the defendant earlier in the day; and the judge knew that there were people drinking alcoholic beverages at the tournament, the judge's conduct constituted willful misconduct in office because the judge was a potential witness in the defendant's criminal case. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Personal acquaintance with the defendant in a criminal case. — Where the defendant had been arrested for driving while intoxicated after a baseball tournament; the defendant's spouse telephoned the magistrate judge's spouse at the judge's home to discuss the defendant's arrest; the defendant and the defendant's spouse knew the judge's family well enough to call the judge's spouse in an attempt to influence the

judge; and the judge agreed to release the defendant on the defendant's own recognizance even though the judge was not on-call or assigned to handle the matter, the judge's conduct constituted willful misconduct in office because the judge took judicial action based on the telephone calls from the defendant's family to the judge's home. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Improper demeanor and abuse of contempt power. — Where a judge referred to the presiding judge in a condescending manner to court staff and the court manager; refused to listen to a litigant, raised the judge's voice, and banged on the bench when the litigant tried to explain why the litigant failed to appear at a pre-trial conference and then held the litigant in direct contempt; and in another case, held a litigant in contempt during a pre-trial conference and then released the contempt order an hour later, the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Ex parte communications. — Where a judge engaged in ex parte communications with litigants, parties, officers, and bail bondsmen in which the judge told defendants in cases not pending before the judge that the judge would help them out and to ask for the judge when they came to court, which resulted in the judge converting a juvenile bench warrant to an adult bench warrant and dismissing a case, the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Involvement in the trial of a case pending before the judge. — Where in a DWI trial, the judge stepped off the bench to assist an officer in presenting the officer's case and in sight and earshot of the jury, told the court manager that the defendant "blew a .3", the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Abusing prestige of judicial office. — Where a municipal judge had private conversations with a contractor about the contractor's personal financial dispute with landowners who allegedly owed the contractor money for cleaning up the landowners' property; the judge called the landowners and left a message on the landowners' answering machine in which the judge identified himself as a judge and stated that the judge was calling about the financial dispute between them and the contractor and that the judge wanted the matter cleared up; the judge subsequently wrote the landowners a letter on municipal stationery, using the judge's title and court name discussing the contractor's claim and indicating that a lawsuit would be filed if the contractor was not paid; two weeks later, the judge was assigned to preside over a nuisance action by the municipality concerning the land that the contractor had supposedly cleaned; and the judge accepted the case and issued a summons to the landowners that did not conform with the rules of procedure, the judge's conduct constituted willful misconduct in office. *In re Ramirez*, S.Ct. No. 31,664 (Filed June 26, 2009) (decided prior to the 2011 recompilation).

Giving advice to a witness in a case pending before the judge. — Where the judge had an ex parte conversation with the complaining witness in a domestic violence case that was pending before the judge; the witness had been subpoenaed by the state to appear and testify at the witness' spouse's trial; the judge advised the witness that if the witness did not want to testify, there would be no adverse consequences; the witness did not appeal at the trial; the assistant district attorney informed the judge that the district attorney's office has been informed of the ex parte communication with the witness; the judge began drafting a recusal; when the witness appeared, the judge recalled the case and dismissed it; and the judge subsequently produced a recusal that was different from the document that had been reviewed by the assistant district attorney, the judge's conduct constituted willful misconduct in office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

Making campaign promise to provide assistance if elected. — Where, during the time a judge was a candidate for magistrate court judge, the judge told a landlord that the judge would help if the landlord had a problem in court; when the judge learned that the landlord was having trouble with a tenant, the judge reviewed the lease and advised the landlord to file suit after the judge was elected; the judge also explained how the landlord could excuse the other magistrate court judges to make sure the judge heard the case; after the judge was elected, the landlord filed suit and excused the other magistrate court judges; and at a hearing on the case, the judge became impatient with the landlord and filed a recusal, the judge violated the Code of Judicial Conduct, subjecting the judge to removal from office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

Adjudicating traffic cases for family members and friends. — Where a judge adjudicated more than twenty cases involving family members, friends, and family members of friends and staff, ex parte without hearings or taking evidence; the judge was not the assigned judge and adjudicated the cases before their scheduled arraignment dates, either deferring or continuing the cases with the requirement that no further traffic violations occur within ninety days; and where defendants had failed to appear, the judge cancelled bench warrants and dismissed charges for failure to appear, the judge's conduct constituted willful misconduct in office. *In re Griego*, 2008-NMSC-020, 143 N.M. 698, 181 P.3d 690 (decided prior to the 2011 recompilation).

Alcoholism. — Where a judge recessed a criminal jury trial for a long holiday weekend; the judge did not return to court on the date set for the completion of the trial; the judge told an administrative assistant that the judge was ill, but would be in court in the afternoon; the judge did not return that day and the judge's staff rescheduled the trial for two days later; on the day the trial was to resume, the judge told the assistant the judge was hospitalized for heart-related tests; after the trial was twice reset due to the judge's unavailability, a stipulated mistrial order was entered; the judge was absent for two weeks during which the judge was hospitalized for six days; the judge's heart ailment and the hospitalization were due to alcohol withdrawal; and to justify the judge's absence, the judge told a reporter that the judge was being treated for and was

recovering from a mild heart attack, the judge's conduct constituted willful misconduct in office. *In re Pope*, S.Ct. No. 29,778 (Filed June 13, 2007) (decided prior to the 2011 recompilation).

Allowing a relationship to influence judicial conduct. — Where a judge was assigned a criminal case in which the defendant was charged with multiple counts of trafficking cocaine and distribution of methamphetamine; during the proceedings, the judge stipulated that the judge knew that by presiding over defendant's case the judge would not appear to be impartial, because the judge had a personal relationship with the attorney for and fiancé of the defendant who subsequently became the spouse of the defendant; the judge did not recuse from the case; the defendant pled no contest; the pre-sentence report stated that the defendant was a drug dealer and recommended prison sentences; at the sentencing hearing, the judge considered assigning the defendant to a new drug court program in lieu of incarceration; the judge agreed with the chief judge to recuse from the case; at a sentencing hearing before the new judge, the defendant stated that the original judge wanted to revoke the recusal; the new judge recused; and the original judge revoked the recusal and accepted jurisdiction over sentencing. *In re McBee*, 2006-NMSC-024, 138 N.M. 482, 134 P.3d 769 (decided prior to the 2011 recompilation).

Director of a DWI school. — Where, as permitted by a municipal ordinance, a municipal judge was the owner and director of a DWI school and had a pecuniary interest in having individuals initially appear before the judge in court and then attend the DWI school, the judge's conduct violated the Code of Judicial Conduct. *In re Rainaldi*, 1986-NMSC-079, 104 N.M. 762, 727 P.2d 70 (decided prior to the 2011 recompilation).

Failure to maintain judicial demeanor. — Where, during a bench trial, a judge became agitated with and yelled at the defendant, stood up and hit a gavel on the bench that caused debris, including paper clips, to scatter across the room, striking the defendant and the prosecuting officer, the judge's conduct constituted willful misconduct in office. *In re Pindea*, S.Ct. No. 29,479 (November 29, 2005) (decided prior to the 2011 recompilation).

Involvement in a pending criminal case involving the judge's child. — Where the judge's child was cited for speeding and no proof of insurance and the judge contacted the sheriff to complain that the child had been mistreated and held for an excessive time by the deputy sheriff at the traffic stop; accessed the court's file on the child's case by a private request to the clerk's office to obtain the file from the presiding judge; called the presiding judge to reschedule the child's hearing due to car trouble; provided the presiding judge with a memorandum that the district attorney's office would not appear in the case; and attended hearings with the child where members of the public were present, the judge committed willful misconduct in office. *In re Chaparro*, S.Ct. No. 27,923 (Filed June 22, 2005) (decided prior to the 2011 recompilation).

Use of judicial position to advance private interest in pending case. — A metropolitan court judge who initiated ex parte communications with a special commissioner and a district court judge to influence a child placement in a case involving a family member within the third degree of relationship committed willful misconduct in office. *In re Gentry*, S.Ct. No. 28,986 (Filed June 29, 2005) (decided prior to the 2011 recompilation).

Knowingly failing to credit inmates with statutory credit for incarceration. — Where a judge knowingly failed to follow and apply the law when the judge incarcerated citizens for failure to pay fines by crediting inmates with only $5.00 per day of time served toward payment of fines and fees, the judge's conduct constituted willful misconduct in office. *In re Wood*, S.Ct. No. 29,085 (Filed May 12, 2005) (decided prior to the 2011 recompilation).

Display of extreme anger. — Where, after the judge declared a mistrial and recused from a criminal trial, the judge came off the bench and yelled at the defendant; defense counsel stood in front of the defendant to block the judge's access to the defendant; the judge then passed through the swinging gate, turned, and told defense counsel and the defendant that they could write to the Judicial Standards Commission and tell them what the judge thought of the commission; the judge brought the jury back into the courtroom and explained that there had been a mistrial; and the judge apologized to the counsel several times and agreed to recuse in their cases, the conduct of the judge constituted willful misconduct in office. *In re Vincent*, S.Ct. No. 27,266 (Filed May 19, 2004) (decided prior to the 2011 recompilation).

Personal involvement with and harassment of trial counsel. — Where a judge presided over and took judicial action in cases in which the assistant district attorney appeared on behalf of the state during the time the judge was engaged in a personal relationship with the assistant district attorney; the judge failed to inform all counsel or parties of record of the judge's relationship with the assistant district attorney in cases where the assistant district attorney appeared before the judge; the judge failed to be patient, dignified and courteous to counsel by making inappropriate remarks to assistant district attorneys about the judge's rulings in front of defendants, defense counsel, and co-counsel; and in one case, the judge suppressed evidence of a breath test, refused to allow the assistant district attorney to call the officer who administered the breath test to testify, and then taunted the assistant district attorney about not being able to prove the state's case, the judge committed willful misconduct in office. *In re Galvan*, S.Ct. No. 28,609 (Filed May 17, 2004) (decided prior to the 2011 recompilation).

Causing court employee to be arrested. — Where the judge became embroiled in a controversy with court interpreters; the judge failed to be patient, dignified, and courteous with interpreters, another judge, and the court clerk; the judge issued a warrant for the arrest of a court interpreter on a criminal contempt charge relating to a prior dispute over interpreting services; and the judge had an ex parte communication with another judge about presiding over a pending writ case which involved the judge which caused the other judge to feel threatened and intimidated and to file a recusal in

the case, the judge's conduct constituted willful misconduct in office. *In re Chaparro*, S.Ct. No. 27,923 (Filed April 15, 2003) (decided prior to the 2011 recompilation).

Inappropriate demeanor, interference in pending case and illegal modification of sentence. — Where a judge made inappropriate, age and/or gender-based references to female attorneys who appeared before the judge; after the state lost a six-month rule hearing, the judge threatened the Public Defender's Office and its employees; the judge told a defendant in a criminal drug case that the defendant was covering up for the defendant's children and that the defendant could post a property bond with the intention that the state could get rid of the defendant's house if there were complaints by the defendant's neighbors; after filing a recusal in a case, the judge became involved in a pretrial conference in the case and testified against a motion filed by the Public Defender's Office; referred to a female magistrate court judge in an inappropriate, derogatory, and gender-based manner; criticized a female attorney for being employed by the Public Defender's Office; and after the Public Defender's Office filed a notice of appeal from the judge's ruling, verbally modified a sentence and order of eligibility by ex parte communication with the monitoring agent, the judge's conduct constituted willful misconduct in office. *In re Vincent*, S.Ct. No. 27,266 (Filed March 22, 2002) (decided prior to the 2011 recompilation).

Abusing prestige of judicial office. — Where a judge directly or indirectly solicited, commanded, requested, induced, employed, or otherwise attempted to promote, facilitate, or obtain favored treatment or avoidance of due process of the law from law enforcement officers for the judge's friend, the judge committed willful misconduct in office. *In re Maestas*, S.Ct. No. 27,348 (Filed March 5, 2002) (decided prior to the 2011 recompilation).

Involvement in friend's criminal case. — Where a judge became involved in the pending criminal case of a friend by speaking with the arresting state police officer by cellular telephone during the traffic stop and arrest; personally going to the adult detention center and ordered the friend's release and taking the friend to the judge's house, and speaking to a registered nurse and asking the nurse to draw an independent blood sample from the friend; and the judge had an alcoholic drink before going to the jail to release the friend and may have had the odor of alcohol on the judge's breath, the judge's conduct constituted willful misconduct in office. *In re Sanchez*, S.Ct. No. 25,821 (Filed March 14, 2001) (decided before the 2011 recompilation).

Ex parte communications with police officers about pending cases. — A judge who had ex parte communications with police officers concerning defendants' out-of-court demeanor, attitude or behavior with the officers and about the use of "smiling" and "frowning" faces to be drawn on uniform traffic citations by the officers, which would inform the judge about defendants' demeanor, attitude or behavior with the officers during traffic stops, the judge committed willful misconduct in office. *In re Arnold*, S.Ct. No. 26,645 (Filed January 10, 2001) (decided prior to the 2011 recompilation).

Issuing insufficient funds checks. — Where a judge, on three separate occasions, issued checks in payment of the judge's debts knowing at the time the checks were issued that there were insufficient funds in or credit with the bank to pay the checks in full upon presentation, and the judge failed to cooperate with and comply with the rules, requirements, and procedures of theJudicial Standards Commission by failing to file a written response to the commission's notice of preliminary investigation, the judge's conduct was willful misconduct in office. *In re Vigil*, S.Ct. No. 26,328 (Filed May 7, 2001) (decided prior to the 2011 recompilation).

Failure to perform judicial duties. — Where a magistrate judge delayed in signing and filing written judgments and sentences; failed to impose the mandatory minimum sentences required by law and failed to submit abstracts of record to the Department of Motor Vehicles within the time required by law, the judge's conduct constituted willful misconduct in office. *In re Perea*, S.Ct. No. 25,822 (Filed August 17, 1999) (decided prior to the 2011 recompilation).

Director of a DWI school. — Where, as permitted by a municipal ordinance, a municipal judge was the owner and director of a DWI school and had a pecuniary interest in having individuals initially appear before the judge in court and then attend the DWI school, the judge's conduct violated the Code of Judicial Conduct. *In re Rainaldi*, 1986-NMSC-079, 104 N.M. 762, 727 P.2d 70 (decided prior to the 2011 recompilation).

21-203. Bias, prejudice, and harassment.

A. A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

B. A judge 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, religion, color, national origin, ethnicity, ancestry, sex, sexual orientation, gender identity, marital status, spousal affiliation, socioeconomic status, political affiliation, age, physical or mental handicap or serious medical condition; and shall not permit court staff, court officials, or others subject to the judge's direction or control to do so.

C. A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including, but not limited to, race, religion, color, national origin, ethnicity, ancestry, sex, sexual orientation, gender identity, marital status, spousal affiliation, socioeconomic status, political affiliation, age, physical or mental handicap or serious medical condition, against parties, witnesses, lawyers, or others.

D. The restrictions of Paragraphs B and C of this rule do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include, but are not limited to, epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based on stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in Paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, religion, color, national origin, ethnicity, ancestry, sex, sexual orientation, gender identity, marital status, spousal affiliation, socioeconomic status, political affiliation, age, physical or mental handicap or serious medical condition. Judges are also subject to the New Mexico Judicial Branch harassment policy.

[4] Sexual harassment includes, but is not limited to, sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

Threats against a presiding judge. — Where thee criminal cases pending against the defendant were assigned to the same judge; during the pendency of the three cases, the defendant was charged with conspiring to commit an assault with a deadly weapon on the judge; the judge filed a recusal in the conspiracy case, but not in the other three pending cases; and there was no showing of bias by the judge against the defendant, the judge did not abuse the judge's discretion in denying the defendant's motion requesting the recusal of the judge. *State v. Riordan*, 2009-NMSC-022, 146 N.M. 281, 209 P.3d 773 (decided prior to the 2011 recompilation).

Denial of recusal not an abuse of discretion. — Where defendant was a child offender under the juvenile system; the court determined that defendant was not

amenable to rehabilitation or treatment as a child and sentenced defendant as an adult after defendant pled guilty to second degree murder; prior to being appointed as district judge, the trial judge had been appointed as a contract public defender to represent the victim, who had been murdered by defendant, in a juvenile delinquency proceeding; the judge's former law partner actually appeared at all the hearings in the victim's case; and the judge did not personally represent the victim, engage in plea negotiations on the victim's behalf, discuss a plea with the victim or the victim's parents, appear before the court on behalf of the victim or the victim's parents, or have direct contact with the victim in the juvenile proceedings, the judge did not err in denying defendant's request for recusal. *State v. Trujillo*, 2009-NMCA-128, 147 N.M. 334, 222 P.3d 1040, cert. quashed, 2010-NMCERT-011, 150 N.M. 490, 262 P.3d 1143 (decided prior to the 2011 recompilation).

Judge acting as mediator and as hearing officer to impose sanctions. — Where a district judge appointed another district judge as a mediator to conduct a settlement conference; the mediator judge was subsequently appointed to hear motions for sanctions against one party for alleged bad faith participation in the settlement conference; the mediator judge heard the motions, made findings of fact, concluded that the party had conducted itself in bad faith at the conference, and entered an order requiring the party to pay a sanction; and the appointing district judge independently reviewed the mediator judge's decision and came to its own independent conclusion regarding sanctions; the appointing judge did not abuse its discretion in appointing the mediator judge to hear the motions for sanctions. *Carlsbad Hotel Associates, L.L.C. v. Patterson-UTI Drilling Co.*, 2009-NMCA-005, 145 N.M. 385, 199 P.3d 288, cert. quashed, 2010-NMCERT-001, 147 N.M. 673, 227 P.3d 1055 (decided prior to the 2011 recompilation).

Recusal not required for prior judicial encounters. — The defendant's arguments that the trial judge was biased, based on the judge's previous contempt charges and sanctions or dislike toward the defendant, were without merit, since bias requiring recusal must arise from a personal, extra-judicial source, not a judicial source. *Purpura v. Purpura*, 1993-NMCA-001, 115 N.M. 80, 847 P.2d 314 (decided prior to the 2011 recompilation).

Request for findings of fact and conclusions of law. — Because the court had decided in the state's favor, it was reasonable for the trial court to want to see requested findings of fact and conclusions of law from the plaintiff. Its request for those findings and conclusions did not show a bias or prejudice that would necessitate recusal, despite the defendant's assertion of an apparent personal interest of the court in ensuring that the state submit its requested findings and conclusions. *State ex rel. Taxation & Revenue Dep't Motor Vehicle Div. v. Van Ruiten*, 1988-NMCA-059, 107 N.M. 536, 760 P.2d 1302, cert. denied, 107 N.M. 413, 759 P.2d 200 (decided prior to the 2011 recompilation).

Bias or prejudice as grounds for disqualification. — Bias or prejudice towards an attorney on each matter raised in the trial court is insufficient to disqualify a judge. This

rule, however, is not absolute. If the bias or prejudice toward an attorney is of such a degree as to adversely affect the interest of the client, bias and prejudice toward an attorney is sufficient. *Martinez v. Carmona*, 1980-NMCA-139, 95 N.M. 545, 624 P.2d 54, cert. quashed, 95 N.M. 593, 624 P.2d 535 (1981) (decided prior to the 2011 recompilation).

When a district judge believes that the judge's impartiality might reasonably be questioned with reference to bias and prejudice concerning a party, the judge must not exercise the judge's judicial function. *Martinez v. Carmona*, 1980-NMCA-139, 95 N.M. 545, 624 P.2d 54, cert. quashed, 95 N.M. 593, 624 P.2d 535 (1981); *Klindera v. Worley Mills, Inc.*, 1981-NMCA-104, 96 N.M. 743, 634 P.2d 1295 (decided prior to the 2011 recompilation).

Comment reflecting feelings about violent crimes after conviction was obtained. — A comment reflecting the judge's feelings about violent crime once a conviction was obtained did not suggest that the judge had a personal bias or prejudice against defendant during trial. *State v. Swafford*, 1989-NMCA-069, 109 N.M. 132, 782 P.2d 385, cert. denied, 109 N.M. 54, 781 P.2d 782 (decided prior to the 2011 recompilation).

Imposition of the maximum sentence. — A claim of judicial bias cannot be based upon the imposition of the maximum legal sentence. *State v. Swafford*, 1989-NMCA-069, 109 N.M. 132, 782 P.2d 385, cert. denied, 109 N.M. 54, 781 P.2d 782 (decided prior to the 2011 recompilation).

Judge's refusal to accept a tendered plea agreement did not demonstrate judicial bias or prejudice, where, when the plea and disposition agreement was tendered, the judge reserved ruling on it until the judge could consider a presentence report, information or treatment programs, and written statements from the victim of the crime and the victim's sibling regarding their feelings and views on the proposed disposition. *State v. Swafford*, 1989-NMCA-069, 109 N.M. 132, 782 P.2d 385, cert. denied, 109 N.M. 54, 781 P.2d 782 (decided prior to the 2011 recompilation).

JUDICIAL REPRIMANDS

Potential witness in a criminal case. — Where a magistrate judge released the defendant on the defendant's own recognizance; the defendant had been arrested for driving while intoxicated after a baseball tournament; the judge was not the designated on-call judge on the day the defendant was arrested; the judge knew the defendant and had been at the tournament with the defendant earlier in the day; and the judge knew that there were people drinking alcoholic beverages at the tournament, the judge's conduct constituted willful misconduct in office because the judge was a potential witness in the defendant's criminal case. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Personal acquaintance with the defendant in a criminal case. — Where the defendant had been arrested for driving while intoxicated after a baseball tournament; the defendant's spouse telephoned the magistrate judge's spouse at the judge's home to discuss the defendant's arrest; the defendant and the defendant's spouse knew the judge's family well enough to call the judge's spouse in an attempt to influence the judge; and the judge agreed to release the defendant on the defendant's own recognizance even though the judge was not on-call or assigned to handle the matter, the judge's conduct constituted willful misconduct in office because the judge took judicial action based on the telephone calls from the defendant's family to the judge's home. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Unlawfully accepting per diem expenses. — Where the judge wanted to attend training in another municipality; the judge certified and submitted a travel voucher claiming reimbursement for per diem expenses; the training was cancelled; the judge arranged to pick up the training material in the other municipality, drove to the other municipality and then drove to another municipality out-of-state; and the judge told the treasurer of the municipality that the training had been cancelled because of bad weather, the judge's conduct constituted willful misconduct in office. *In re Lozano*, S.Ct. No. 29,264 (Filed June 8, 2010) (decided prior to the 2011 recompilation).

Abusing prestige of judicial office. — Where a municipal judge had private conversations with a contractor about the contractor's personal financial dispute with landowners who allegedly owed the contractor money for cleaning up the landowners' property; the judge called the landowners and left a message on the landowners' answering machine in which the judge identified himself as a judge and stated that the judge was calling about the financial dispute between them and the contractor and that the judge wanted the matter cleared up; the judge subsequently wrote the landowners a letter on municipal stationery, using the judge's title and court name discussing the contractor's claim and indicating that a lawsuit would be filed if the contractor was not paid; two weeks later, the judge was assigned to preside over a nuisance action by the municipality concerning the land that the contractor had supposedly cleaned; and the judge accepted the case and issued a summons to the landowners that did not conform with the rules of procedure, the judge's conduct constituted willful misconduct in office. *In re Ramirez*, S.Ct. No. 31,664 (Filed June 26, 2009) (decided prior to the 2011 recompilation).

Allowing relationship to influence judicial conduct. — Where a judge was assigned a criminal case in which the defendant was charged with multiple counts of trafficking cocaine and distribution of methamphetamine; during the proceedings, the judge stipulated that the judge knew that by presiding over defendant's case the judge would not appear to be impartial, because the judge had a personal relationship with the attorney for and fiancé of the defendant who subsequently became the spouse of the defendant; the judge did not recuse from the case; the defendant pled no contest; the pre-sentence report stated that the defendant was a drug dealer and recommended prison sentences; at the sentencing hearing, the judge considered assigning the

defendant to a new drug court program in lieu of incarceration; the judge agreed with the chief judge to recuse from the case; at a sentencing hearing before the new judge, the defendant stated that the original judge wanted to revoke the recusal; the new judge recused; and the original judge revoked the recusal and accepted jurisdiction over sentencing. *In re McBee*, 2006-NMSC-024, 138 N.M. 482, 134 P.3d 769 (decided prior to the 2011 recompilation).

Personal involvement with and harassment of trial counsel. — Where a judge presided over and took judicial action in cases in which the assistant district attorney appeared on behalf of the state during the time the judge was engaged in a personal relationship with the assistant district attorney; the judge failed to inform all counsel or parties of record of the judge's relationship with the assistant district attorney in cases where the assistant district attorney appeared before the judge; the judge failed to be patient, dignified and courteous to counsel by making inappropriate remarks to assistant district attorneys about the judge's rulings in front of defendants, defense counsel, and co-counsel; and in one case, the judge suppressed evidence of a breath test, refused to allow the assistant district attorney to call the officer who administered the breath test to testify, and then taunted the assistant district attorney about not being able to prove the state's case, the judge committed willful misconduct in office. *In re Galvan*, S.Ct. No. 28,609 (Filed May 17, 2004) (decided prior to the 2011 recompilation).

Intentional denial of right to appeal. — Where a judge ruled in favor of the defendant, refused to enter a judgment in the case to prevent the plaintiff from appealing in order to force the plaintiff to settle with the defendant; when the Supreme Court ordered the judge to enter a judgment, the judge expanded the issues litigated in the case; and after being reversed, the judge refused to award costs to the plaintiff, precipitating another appeal, the judge's conduct constituted willful misconduct in office. *In re Castellano*, 1995-NMSC-007, 119 N.M. 140, 889 P.2d 175 (decided prior to the 2011 recompilation).

21-204. External influences on judicial conduct.

A. A judge shall not be swayed by public opinion or fear of criticism.

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

C. A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular

with the public, the media, government officials, or the judge's friends and family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

Judge acting as mediator and as hearing officer to impose sanctions. — Where a district judge appointed another district judge as a mediator to conduct a settlement conference; the mediator judge was subsequently appointed to hear motions for sanctions against one party for alleged bad faith participation in the settlement conference; the mediator judge heard the motions, made findings of fact, concluded that the party had conducted itself in bad faith at the conference, and entered an order requiring the party to pay a sanction; and the appointing district judge independently reviewed the mediator judge's decision and came to its own independent conclusion regarding sanctions; the appointing judge did not abuse its discretion in appointing the mediator judge to hear the motions for sanctions. *Carlsbad Hotel Associates, L.L.C. v. Patterson-UTI Drilling Co.*, 2009-NMCA-005, 145 N.M. 385, 199 P.3d 288, cert. quashed, 2010-NMCERT-001, 147 N.M. 673, 227 P.3d 1055 (decided prior to the 2011 recompilation).

Judge's relatives having ties to the victim. — Recusal of a judge at a murder trial was not required where the judge's brother-in-law was the attorney representing the victim's family in a wrongful death action against defendant and the judge's son was employed as a law clerk by the district attorney. *State v. Fero*, 1987-NMSC-008, 105 N.M. 339, 732 P.2d 866, *aff'd*, 1988-NMSC-053, 107 N.M. 369, 758 P.2d 783 (decided prior to the 2011 recompilation).

JUDICIAL REPRIMANDS

Issuance of a temporary restraining order based on personal knowledge of the parties. — Where, in a criminal case filed by one resident against another resident for vehicle vandalism, the municipal judge in a small community, in an attempt to keep the peace between the parties, issued a temporary restraining order based on the judge's personal knowledge of an incident that occurred between the parties that was outside the scope of the complaint or any court proceedings, the municipal judge's conduct constituted willful misconduct in office. *In re Rael*, S.Ct. No. 33,633 (Filed October 3, 2012), Inquiry Concerning a Judge No. 2011-040 (decided prior to the 2011 recompilation).

Fund-raising activities. — Where a magistrate judge personally participated in the solicitation of funds for a baseball tournament for the benefit of municipal and high school baseball programs and used the prestige of the judge's judicial office for the fund-raising and created the appearance that the judge had done so, the judge's conduct constituted willful misconduct in office. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Potential witness in a criminal case. — Where a magistrate judge released the defendant on the defendant's own recognizance; the defendant had been arrested for driving while intoxicated after a baseball tournament; the judge was not the designated on-call judge on the day the defendant was arrested; the judge knew the defendant and had been at the tournament with the defendant earlier in the day; and the judge knew that there were people drinking alcoholic beverages at the tournament, the judge's conduct constituted willful misconduct in office because the judge was a potential witness in the defendant's criminal case. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Personal acquaintance with the defendant in a criminal case. — Where the defendant had been arrested for driving while intoxicated after a baseball tournament; the defendant's spouse telephoned the magistrate judge's spouse at the judge's home to discuss the defendant's arrest; the defendant and the defendant's spouse knew the judge's family well enough to call the judge's spouse in an attempt to influence the judge; and the judge agreed to release the defendant on the defendant's own recognizance even though the judge was not on-call or assigned to handle the matter, the judge's conduct constituted willful misconduct in office because the judge took judicial action based on the telephone calls from the defendant's family to the judge's home. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Improperly touching a party. — Where, at a hearing in a case involving a building permit, the judge kept moving the judge's chair closer to the code enforcement officer and the defendant, kept moving the judge's hands around, and touched the defendant with the result that the code enforcement officer and the defendant felt uncomfortable and moved away from the judge; and prior to the hearing, the mayor of the municipality had told the judge that the code enforcement officer had filed an EEOC claim against the judge based on improper touching, the judge's conduct constituted willful misconduct in office. *In re Lozano*, S.Ct. No. 29,264 (Filed June 8, 2010) (decided prior to the 2011 recompilation).

Making campaign promise to provide assistance if elected. — Where, during the time a judge was a candidate for magistrate court judge, the judge told a landlord that the judge would help if the landlord had a problem in court; when the judge learned that the landlord was having trouble with a tenant, the judge reviewed the lease and advised the landlord to file suit after the judge was elected; the judge also explained how the

landlord could excuse the other magistrate court judges to make sure the judge heard the case; after the judge was elected, the landlord filed suit and excused the other magistrate court judges; and at a hearing on the case, the judge became impatient with the landlord and filed a recusal, the judge violated the Code of Judicial Conduct, subjecting the judge to removal from office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

Insufficient evidence of willful misconduct in office. — Where a judge called the jail and set bond for a defendant who was the parent of the judge's friend and who had been arrested for DWI; when no one was available to accept the bond, the judge changed the release order to release the defendant to the custody of the defendant's spouse and hand-delivered the release order late at night to the jail in another town; the judge presided over the arraignment of the defendant; and the judge filed a recusal when a newspaper reported on the matter, there was no clear and convincing evidence that the judge committed willful misconduct in office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

Adjudicating traffic cases for family members and friends. — Where a judge adjudicated more than twenty cases involving family members, friends, and family members of friends and staff, ex parte without hearings or taking evidence; the judge was not the assigned judge and adjudicated the cases before their scheduled arraignment dates, either deferring or continuing the cases with the requirement that no further traffic violations occur within ninety days; and where defendants had failed to appear, the judge cancelled bench warrants and dismissed charges for failure to appear, the judge's conduct constituted willful misconduct in office. *In re Griego*, 2008-NMSC-020, 143 N.M. 698, 181 P.3d 690 (decided prior to the 2011 recompilation).

Insufficient evidence of willful misconduct. — Where a municipal judge accepted an uncounseled guilty plea and sentenced the defendant; the defendant's attorney appealed to the district court; in the district court, the municipal attorney made an oral motion to dismiss the appeal and the district court judge allowed the defendant to enter another guilty plea; when the municipal judge received the district court judgment and discovered that a written motion to dismiss had not been filed by the municipal attorney, the municipal judge believed that the municipal attorney and the defendant's attorney had misrepresented the municipal proceedings to the district court judge; after researching the law of contempt and consulting the Municipal League and the Attorney General's office, the municipal judge charged the municipal attorney and the defendant's attorney with contempt; and when the municipal judge reviewed the district court proceedings and discovered that a motion to dismiss had been made, the municipal judge dismissed the contempt charges, the evidence did not clearly and convincingly demonstrate that the municipal judge's actions constituted willful misconduct in office. *In re Locatelli*, 2007-NMSC-029, 141 N.M. 755, 161 P.3d 252 (decided prior to the 2011 recompilation).

Attempt to gain favorable treatment for a relative. — Where, after the step-child of a magistrate judge was jailed by the district court for nonpayment of child support, the

magistrate judge telephoned the district court judge, told the district court judge that the step-child was not a flight risk, and asked the district court judge to reduce the step-child's bond or let the step-child out of jail, the magistrate judge's telephone call to the district court judge was an attempt to gain favorable treatment for the step-child and constituted willful misconduct in office. *In re Naranjo*, 2013-NMSC-026.

Interference in friend's criminal case. — Where a judge developed a personal relationship with the defendant in a DUI case; the judge told the presiding judge at the defendant's bond hearing to make special concessions with regard to the defendant's bond, talked to the presiding judge at the defendant's probation violation hearing to influence the disposition, instructed the court clerks to issue a clearance of the defendant's driver's license, and attempted to influence a police officer when the defendant was stopped for speeding, the judge's conduct constituted willful misconduct in office. *In re Garza*, 2007-NMSC-028, 141 N.M. 831, 161 P.3d 876 (decided prior to the 2011 recompilation).

Allowing relationship to influence judicial conduct. — Where a judge was assigned a criminal case in which the defendant was charged with multiple counts of trafficking cocaine and distribution of methamphetamine; during the proceedings, the judge stipulated that the judge knew that by presiding over defendant's case the judge would not appear to be impartial, because the judge had a personal relationship with the attorney for and fiancé of the defendant who subsequently became the spouse of the defendant; the judge did not recuse from the case; the defendant pled no contest; the pre-sentence report stated that the defendant was a drug dealer and recommended prison sentences; at the sentencing hearing, the judge considered assigning the defendant to a new drug court program in lieu of incarceration; the judge agreed with the chief judge to recuse from the case; at a sentencing hearing before the new judge, the defendant stated that the original judge wanted to revoke the recusal; the new judge recused; and the original judge revoked the recusal and accepted jurisdiction over sentencing, the judge's conduct constituted willful misconduct in office. *In re McBee*, 2006-NMSC-024, 138 N.M. 482, 134 P.3d 769 (decided prior to the 2011 recompilation).

Interference in child's criminal case. — Where the adult child and friends of the child of a district court judge were cited for drinking in public in violation of a municipal ordinance; as the police officers were issuing the citations, the judge identified the judge to one of the officers as the child's parent by showing the officer the judge's court identification card and driver's license; the judge asked the officer if the officer remembered who the judge was; the judge collected all of the citations from the recipients and later instructed the judge's bailiff to assist the child and the child's friends in responding to the citations in municipal court; the bailiff prepared and filed written waivers of arraignment and not guilty pleas on municipal court forms; when pretrial conferences were scheduled, the judge contacted a municipal judge who was not the assigned judge to advise the municipal judge the judge was sending the judge's child and some of the friends to the municipal judge to change their pleas before the pretrial conference set by the assigned judge was scheduled to occur; and the judge's child and

some of the friends appeared before the municipal judge and pled no contest and received more lenient sentences than the child's friends who appeared before the assigned municipal judge, the judge's conduct constituted willful misconduct in office. *In re Ramirez*, 2006-NMSC-021, 139 N.M. 529, 135 P.3d 230 (decided prior to the 2011 recompilation).

Director of a DWI school. — Where, as permitted by a municipal ordinance, a municipal judge was the owner and director of a DWI school and had a pecuniary interest in having individuals initially appear before the judge in court and then attend the DWI school, the judge's conduct violated the Code of Judicial Conduct. *In re Rainaldi*, 1986-NMSC-079, 104 N.M. 762, 727 P.2d 70 (decided prior to the 2011 recompilation).

Ex parte communications with police officers about pending cases. — A judge who had ex parte communications with police officers concerning defendants' out-of-court demeanor, attitude or behavior with the officers and about the use of "smiling" and "frowning" faces to be drawn on uniform traffic citations by the officers, which would inform the judge about defendants' demeanor, attitude or behavior with the officers during traffic stops, the judge committed willful misconduct in office. *In re Arnold*, S.Ct. No. 26,645 (Filed January 10, 2001) (decided prior to the 2011 recompilation).

Failure to pay taxes and debts. — Where a judge failed to pay gross receipts taxes for the judge's private business activities for five consecutive years; failed to timely file state personal income tax returns for three consecutive years; used the facilities and equipment of the probate court for the judge's private business activities; failed to pay the county for copying charges incurred at the county clerks' office for the judge's private business and gave the county clerk an insufficient funds check to pay for the copying; and failed to cooperate with and comply with the rules, regulations, and procedures of the Judicial Standards Commission by failing to file a written response to the commission's notice of preliminary investigation, the judge's conduct constituted willful misconduct in office. *In re Vigil*, S.Ct. No. 26,328 (Filed June 13, 2000) (decided prior to the 2011 recompilation).

Failure to comply with the law. — Where a judge approved and agreed in a plea and disposition agreement to withhold from the Motor Vehicle Division an abstract of record upon the defendant's completion of a probationary period and in another case, and failed to impose the mandatory minimum sentence required by law, the judge's conduct constituted willful misconduct in office. *In re Sanchez*, S.Ct. No. 25,821 (Filed August 17, 1999) (decided prior to the 2011 recompilation).

Failure to perform judicial duties. — Where a magistrate judge delayed in signing and filing written judgments and sentences; failed to impose the mandatory minimum sentences required by law; failed to submit abstracts of record to the Department of Motor Vehicles within the time required by law; and had ex parte communications with the former court administrator of the district court concerning the sentencing and disposition of a defendant who was a relative of the former court administrator and the

desire of the defendant's family that the defendant be ordered to obtain alcohol/drug counseling, the judge's conduct constituted willful misconduct in office. *In re Perea*, S.Ct. No. 25,822 (Filed August 17, 1999) (decided prior to the 2011 recompilation).

Control of an organization that appeared before the judge. — Where a judge had de facto control over a non-profit organization that regularly engaged in proceedings before the judge; the judge personally selected the majority of the board of directors and caused the hiring and firing of directors; the judge's spouse served as executive director; and the judge allowed the judge's spouse to use the judge's chambers and telephone and the judge's name, title, official stationery, and photograph to be used in solicitation of funds for the organization, the judge's conduct constituted willful misconduct in office. *In re Castellano*, 1995-NMSC-007, 119 N.M. 140, 889 P.2d 175 (decided prior to the 2011 recompilation).

Director of a DWI school. — Where, as permitted by a municipal ordinance, a municipal judge was the owner and director of a DWI school and had a pecuniary interest in having individuals initially appear before the judge in court and then attend the DWI school, the judge's conduct violated the Code of Judicial Conduct. *In re Rainaldi*, 1986-NMSC-079, 104 N.M. 762, 727 P.2d 70 (decided prior to the 2011 recompilation).

Delegation of judicial power. — A magistrate court judge who delegated the duty to perform marriages to a municipal clerk committed willful misconduct in office. *In re Perea*, 1986-NMSC-001, 103 N.M. 617, 711 P.2d 894 (decided prior to the 2011 recompilation).

21-205. Competence, diligence, and cooperation.

A. A judge shall perform judicial and administrative duties competently and diligently.

B. A judge shall cooperate with other judges and court officials in the administration of court business.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office. Judges should make diligent effort to maintain knowledge of current developments in the law through ongoing education.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end. The business of the court is a full-time demand. A judge's extrajudicial activities should not unreasonably interfere with the administration of justice and the timely performance of judicial duties.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor or supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

JUDICIAL REPRIMANDS

Failure or inability to perform judicial duties. — Where a judge refused to arraign defendants who had failed to appear and instead served the defendants with bench warrants when they appeared, failed to properly sentence defendants, was not familiar with sentencing laws, and failed to complete arraignment forms, the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Abusing prestige of judicial office. — Where a municipal court judge had private conversations with a contractor about the contractor's personal financial dispute with landowners who allegedly owned the contractor money for cleaning up the landowners' property; the judge called the landowners and left a message on the landowners' answering machine in which the judge identified himself as a judge and stated that the judge was calling about the financial dispute between them and the contractor and that the judge wanted the matter cleared up; the judge subsequently wrote the landowners a letter on municipal stationery, using the judge's title and court name discussing the contractor's claim and indicating that a lawsuit would be filed if the contractor was not paid; two weeks later, the judge was assigned to preside over a nuisance action by the municipality concerning the land that the contractor had supposedly cleaned; and the judge accepted the case and issued a summons to the landowners that did not conform with the rules of procedure, the judge's conduct constituted willful misconduct in office. *In re Ramirez*, S.Ct. No. 31,664 (Filed June 29, 2009) (decided prior to the 2011 recompilation).

Giving advice to a witness in a case pending before the judge. — Where the judge had an ex parte conversation with the complaining witness in a domestic violence case that was pending before the judge; the witness had been subpoenaed by the state to appear and testify at the witness' spouse's trial; the judge advised the witness that if the witness did not want to testify, there would be no adverse consequences; the witness did not appeal at the trial; the assistant district attorney informed the judge that the district attorney's office has been informed of the ex parte communication with the witness; the judge began drafting a recusal; when the witness appeared, the judge recalled the case and dismissed it; and the judge subsequently produced a recusal that was different from the document that had been reviewed by the assistant district attorney, the judge's conduct constituted willful misconduct in office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

Adjudicating traffic cases for family members and friends. — Where a judge adjudicated more than twenty cases involving family members, friends, and family members of friends and staff, ex parte without hearings or taking evidence; the judge was not the assigned judge and adjudicated the cases before their scheduled arraignment dates, either deferring or continuing the cases with the requirement that no further traffic violations occur within ninety days; and where defendants had failed to appear, the judge cancelled bench warrants and dismissed charges for failure to appear, the judge's conduct constituted willful misconduct in office. *In re Griego*, 2008-NMSC-020, 143 N.M. 698, 181 P.3d 690 (decided prior to the 2011 recompilation).

Alcoholism. — Where a judge recessed a criminal jury trial for a long holiday weekend; the judge did not return to court on the date set for the completion of the trial; the judge told an administrative assistant that the judge was ill, but would be in court in the afternoon; the judge did not return that day and the judge's staff rescheduled the trial for two days later; on the day the trial was to resume, the judge told the assistant that the judge was hospitalized for heart-related tests; after the trial was twice reset due to the judge's unavailability, a stipulated mistrial order was entered; the judge was absent for two weeks during which the judge was hospitalized for six days; the judge's heart ailment and the hospitalization were due to alcohol withdrawal; and to justify the judge's absence, the judge told a reporter that the judge was being treated for and was recovering from a mild heart attack, the judge's conduct constituted willful misconduct in office. *In re Pope*, S.Ct. No. 29,778 (Filed June 13, 2007) (decided prior to the 2011 recompilation).

Adoption of procedural rules. — Where a judge implemented the judge's own rule that precluded any individual from appearing before the judge unless the individual presented photographic identification; a defendant, who appeared ten minutes before the defendant's trial was refused admittance into the courtroom; the defendant left to obtain a new driver's license; staff advised the judge that the defendant had arrived, but had left to obtain a new driver's license to comply with the photo-identification rule; the defendant returned to the courthouse within one hour, but was told that the judge had left and would return the next day; and when the defendant appeared the next day, the

defendant was arrested on a bench warrant issued by the judge, the judge's conduct constituted willful misconduct in office. *In re Pineda*, S.Ct. No. 29,479 (Filed July 31, 2007) (decided prior to the 2011 recompilation).

Failure to hear cases, follow rules and respect judges and court officials. — Where a judge intentionally violated courthouse rules and policies; treated security officers in a hostile, rude, angry, threatening manner; used offensive language toward security officers and court employees; tossed objects, yelled and pounded on a desk when court personnel withheld the judge's assistant's paycheck pursuant to court rules and policies; asserted that the assistant was not required to comply with security guidelines and policies and prohibited security personnel from screening the assistant; permitted the assistant to behave in an unprofessional manner and condoned and assisted the assistant in violating and refusing to comply with court policies, being rude to court employees, and complaining about other judges refused to issue bench warrants during traffic arraignment court week because the judge did not want the assistant to process the warrants during traffic arraignment dockets and filed recusals in those cases; and waived prior supervised probation costs imposed by statute, the judge committed willful misconduct in office. *In re Barnhart*, S.Ct. No 29,379 (Filed October 19, 2005) (decided prior to the 2011 recompilation).

Allowing a friendship relationship to influence judicial conduct. — Where a judge was assigned a criminal case in which the defendant was charged with multiple counts of trafficking cocaine and distribution of methamphetamine; during the proceedings, the judge stipulated that the judge knew that by presiding over defendant's case the judge would not appear to be impartial, because the judge had a personal relationship with the attorney for and fiance of the defendant who subsequently became the spouse of the defendant; the judge did not recuse from the case; the defendant pled no contest; the pre-sentence report stated that the defendant was a drug dealer and recommended prison sentences; at the sentencing hearing, the judge considered assigning the defendant to a new drug court program in lieu of incarceration; the judge agreed with the chief judge to recuse from the case; at a sentencing hearing before the new judge, the defendant stated that the original judge wanted to revoke the recusal; the new judge recused; and the original judge revoked the recusal and accepted jurisdiction over sentencing, the judge's conduct constituted willful misconduct in office. *In re McBee*, 2006-NMSC-024, 138 N.M. 482, 134 P.3d 769 (decided prior to the 2011 recompilation).

Knowingly failing to credit inmates with statutory credit for incarceration. — Where a judge knowingly failed to follow and apply the law when the judge incarcerated citizens for failure to pay fines by crediting inmates with only $5.00 per day of time served toward payment of fines and fees, the judge's conduct constituted willful misconduct in office. *In re Wood*, S.Ct. No. 29,085 (Filed May 12, 2005) (decided prior to the 2011 recompilation).

Display of extreme anger. — Where, after the judge declared a mistrial and recused from a criminal trial, the judge came off the bench and yelled at the defendant; defense

counsel stood in front of the defendant to block the judge's access to the defendant; the judge then passed through the swinging gate, turned, and told defense counsel and the defendant that they could write to the Judicial Standards Commission and tell them what the judge thought of the commission; and the judge brought the jury back into the courtroom and explained that there had been a mistrial; and the judge apologized to the counsel several times and agreed to recuse in their cases, the conduct of the judge constituted willful misconduct in office. *In re Vincent*, S.Ct. No. 27,266 (Filed May 19, 2004) (decided prior to the 2011 recompilation).

Inappropriate demeanor, interference in pending case and illegal modification of sentence. — Where a judge made inappropriate, age and/or gender-based references to female attorneys who appeared before the judge; after the state lost a six-month rule hearing, the judge threatened the Public Defender's Office and its employees; the judge told a defendant in a criminal drug case that the defendant was covering up for the defendant's children and that the defendant could post a property bond with the intention that the state could get rid of the defendant's house if there were complaints by the defendant's neighbors; after filing a recusal in a case, the judge became involved in a pretrial conference in the case and testified against a motion filed by the Public Defender's Office; referred to a female magistrate court judge in an inappropriate, derogatory, and gender-based manner; criticized a female attorney for being employed by the Public Defender's Office; and after the Public Defender's Office filed a notice of appeal from the judge's ruling, verbally modified a sentence and order of eligibility by ex parte communication with the monitoring agent, the judge's conduct constituted willful misconduct in office. *In re Vincent*, S.Ct. No. 27,266 (Filed March 22, 2002) (decided prior to the 2011 recompilation).

Issuing insufficient funds checks. — Where a judge, on three separate occasions, issued checks in payment of the judge's debts knowing at the time the checks were issued that there were insufficient funds in or credit with the bank to pay the checks in full upon presentation and the judge failed to cooperate and comply with the rules, requirements and procedures of the Judicial Standards Commission by failing to file a written response to the commission's notice of preliminary investigation, the judge's conduct was willful misconduct in office. *In re Vigil*, S.Ct. No. 26,328 (Filed May 7, 2001) (decided prior to the 2011 recompilation).

Failure to comply with the law. — Where a judge approved and agreed in a plea and disposition agreement to withhold from the Motor Vehicle Division an abstract of record upon the defendant's completion of a probationary period and in another case, failed to impose the mandatory minimum sentence required by law, the judge's conduct constituted willful misconduct in office. *In re Sanchez*, S.Ct. No. 25,821 (Filed August 17, 1999) (decided prior to the 2011 recompilation).

Failure to perform judicial duties. — Where a magistrate judge delayed in signing and filing written judgments and sentences; failed to impose the mandatory minimum sentences required by law and failed to submit abstracts of record to the Department of Motor Vehicles within the time required by law, the judge's conduct constituted willful

misconduct in office. *In re Perea*, S.Ct. No. 25,822 (August 17, 1999) (decided prior to the 2011 recompilation).

Harassment and abuse of staff and failure to obey orders of the chief judge. — Where a judge ordered the court administrator to ignore the chief judge's orders; ordered a deputy sheriff to arrest the administrator for contempt; repeatedly refused to comply with the chief judge's orders; used profanity and yelled at a deputy sheriff when the deputy sheriff asked for the judge's daily docket sheet; refused to hear domestic violence cases the judge had agreed to hear to relieve the load on a hearing officer; after being ordered to hear domestic cases by the chief judge, the judge failed to hear all issues and ordered the hearing officer to hear the issues; treated the hearing officer discourteously and disrespectfully; worked very little for a seven-month period; and made inquiries into an adoption case that involved a relative of the chief judge and disclosed confidential information from the file, the judge's conduct constituted willful misconduct in office. *In re Castellano*, 1995-NMSC-007, 119 N.M. 140, 889 P.2d 175 (decided prior to the 2011 recompilation).

Intentional denial of right to appeal. — Where a judge ruled in favor of the defendant, refused to enter a judgment in the case to prevent the plaintiff from appealing in order to force the plaintiff to settle with the defendant; when the Supreme Court ordered the judge to enter a judgment, the judge expanded the issues litigated in the case; and after being reversed, the judge refused to award costs to the plaintiff, precipitating another appeal, the judge's conduct constituted willful misconduct in office. *In re Castellano*, 1995-NMSC-007, 119 N.M. 140, 889 P.2d 175 (decided prior to the 2011 recompilation).

Countermanding presiding judge's orders. — Where, in a case that was assigned to the presiding judge, the presiding judge ordered that a commitment be issued to transport the defendants to the penitentiary upon receipt of the appellant court mandate; while the presiding judge was hearing cases in another district, the judge who was not assigned to the case and who was a friend of the parent of one of the defendants stopped the sheriff from transporting the defendants; without a motion by the counsel for the defendants, notice to the district attorney or a hearing, the judge prepared an order delaying the transportation; when consulted by the sheriff, the presiding judge ordered the sheriff to proceed with the transportation of the defendants; the judge again stopped the sheriff, served the sheriff with a writ of habeas corpus, and ordered the sheriff to return the defendants to jail; and the presiding judge directed the state police to assist the sheriff with transporting the defendants, the judge's conduct constituted willful misconduct in office. *In re Martinez*, 1982-NMSC-115, 99 N.M. 198, 656 P.2d 861 (decided prior to the 2011 recompilation).

21-206. Ensuring the right to be heard.

A. A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

B. A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

Establishing record of impropriety. — It is improper for a trial judge to refuse defense counsel an opportunity to establish on the record defense counsel's objections to comments defense counsel claimed the trial judge had made during a recess. *State v. Martin*, 1984-NMSC-077, 101 N.M. 595, 686 P.2d 937 (decided prior to the 2011 recompilation).

JUDICIAL REPRIMANDS

Improper demeanor and abuse of contempt power. — Where a judge referred to the presiding judge in a condescending matter to court staff and the court manager; refused to listen to a litigant, raised the judge's voice, and banged on the bench when the litigant tried to explain why the litigant failed to appear at a pre-trial conference and then held the litigant in direct contempt; and in another case, held a litigant in contempt during a pre-trial conference and then released the contempt order an hour later, the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Ex parte communications. — Where a judge engaged in ex parte communications with litigants, parties, officers and bail bondsmen in which the judge told defendants in cases not pending before the judge that the judge would help them out and to ask for the judge when they came to court, which resulted in the judge converting a juvenile

bench warrant to an adult bench warrant and dismissing a case, the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Napping. — Where a judge took naps during the noon hour in view of the public and court staff and on one occasion, the judge fell asleep while defendants were waiting for paperwork from the judge's secretary, the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Involvement in the trial of a case pending before the judge. — Where in a DWI trial, the judge stepped off the bench to assist an officer in presenting the officer's case and in sight and earshot of the jury, told the court manager that the defendant "blew a .3", the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Alcoholism. — Where a judge recessed a criminal jury trial for a long holiday weekend; the judge did not return to court on the date set for the completion of the trial; the judge told an administrative assistant that the judge was ill, but would be in court in the afternoon; the judge did not return that day and the judge's staff rescheduled the trial for two days later; on the day the trial was to resume, the judge told the assistant that the judge was hospitalized for heart-related tests; after the trial was twice reset due to the judge's unavailability, a stipulated mistrial order was entered; the judge was absent for two weeks during which the judge was hospitalized for six days; the judge's heart ailment and the hospitalization were due to alcohol withdrawal; and to justify the judge's absence, the judge told a reporter that the judge was being treated for and was recovering from a mild heart attack, the judge's conduct constituted willful misconduct in office. *In re Pope*, S.Ct. No. 29,778 (Filed June 13, 2007) (decided prior to the 2011 recompilation).

Adoption of procedural rules. — Where a judge implemented the judge's own rule that precluded any individual from appearing before the judge unless the individual presented photographic identification; a defendant, who appeared ten minutes before the defendant's trial was refused admittance into the courtroom; the defendant left to obtain a new driver's license; staff advised the judge that the defendant had arrived, but had left to obtain a new driver's license to comply with the photo-identification rule; the defendant returned to the courthouse within one hour, but was told that the judge had left and would return the next day; and when the defendant appeared the next day, the defendant was arrested on a bench warrant issued by the judge, the judge's conduct constituted willful misconduct in office. *In re Pineda*, S.Ct. No. 29,479 (Filed July 31, 2007) (decided prior to the 2011 recompilation).

Interference in a friend's criminal case. — Where a judge developed a personal relationship with the defendant in a DUI case; the judge told the presiding judge at the defendant's bond hearing to make special concessions with regard to the defendant's bond, talked to the presiding judge at the defendant's probation violation hearing to

influence the disposition, instructed the court clerks to issue a clearance of the defendant's driver's license, and attempted to influence a police officer when the defendant was stopped for speeding, the judge's conduct constituted willful misconduct in office. *In re Garza*, 2007-NMSC-028, 141 N.M. 831, 161 P.3d 876 (decided prior to the 2011 recompilation).

Directing secretary to handle traffic docket. — Where a judge took a vacation knowing that the judge would not return in time to handle the judge's traffic docket; the judge called the judge's secretary, told the secretary that the judge's return had been delayed, and instructed the secretary to handle the judge's traffic docket; the secretary handled the traffic docket and used the judge's signature stamp to process the docket; and when the other judges, court personnel, and the media learned about what had occurred, the judge reviewed and signed the cases that the judge's secretary had handled in the judge's absence, the judge's conduct constituted willful misconduct in office. *In re Griego*, S.Ct. No. 30,203 (Filed June 13, 2007) (decided prior to the 2011 recompilation).

Director of a DWI school. — Where, as permitted by a municipal ordinance, a municipal judge was the owner and director of a DWI school and had a pecuniary interest in having individuals initially appear before the judge in court and then attend the DWI school, the judge's conduct violated the Code of Judicial Conduct. *In re Rainaldi*, 1986-NMSC-079, 104 N.M. 762, 727 P.2d 70 (decided prior to the 2011 recompilation).

Intentional denial of right to appeal. — Where a judge ruled in favor of the defendant, refused to enter a judgment in the case to prevent the plaintiff from appealing in order to force the plaintiff to settle with the defendant; when the Supreme Court ordered the judge to enter a judgment, the judge expanded the issues litigated in the case; and after being reversed, the judge refused to award costs to the plaintiff, precipitating another appeal, the judge's conduct constituted willful misconduct in office. *In re Castellano*, 1995-NMSC-007, 119 N.M. 140, 889 P.2d 175 (decided prior to the 2011 recompilation).

21-207. Responsibility to hear and decide.

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 21-211 NMRA, the constitution, or other law.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts.

Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

JUDICIAL REPRIMANDS

Potential witness in a criminal case. — Where a magistrate judge released the defendant on the defendant's own recognizance; the defendant had been arrested for driving while intoxicated after a baseball tournament; the judge was not the designated on-call judge on the day the defendant was arrested; the judge knew the defendant and had been at the tournament with the defendant earlier in the day; and the judge knew that there were people drinking alcoholic beverages at the tournament, the judge's conduct constituted willful misconduct in office because the judge was a potential witness in the defendant's criminal case. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Personal acquaintance with the defendant in a criminal case. — Where the defendant had been arrested for driving while intoxicated after a baseball tournament; the defendant's spouse telephoned the magistrate judge's spouse at the judge's home to discuss the defendant's arrest; the defendant and the defendant's spouse knew the judge's family well enough to call the judge's spouse in an attempt to influence the judge; and the judge agreed to release the defendant on the defendant's own recognizance even though the judge was not on-call or assigned to handle the matter, the judge's conduct constituted willful misconduct in office because the judge took judicial action based on the telephone calls from the defendant's family to the judge's home. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Failure or inability to perform judicial duties. — Where a judge refused to arraign defendants who had failed to appear and instead served the defendants with bench warrants when they appeared, failed to properly sentence defendants, was not familiar with sentencing laws; and failed to complete arraignment forms, the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Failure to perform judicial duties. — Where a magistrate judge delayed in signing and filing written judgments and sentences and failed to submit abstracts of record to the Department of Motor Vehicles within the time required by law, the judge's conduct constituted willful misconduct in office. *In re Perea*, S.Ct. No. 25,822 (Filed August 17, 1999) (decided prior to the 2011 recompilation).

Delegation of judicial power. — A magistrate court judge who delegated the duty to perform marriages to a municipal clerk committed willful misconduct in office. *In re Perea*, 1986-NMSC-001, 103 N.M. 617, 711 P.2d 894 (decided prior to the 2011 recompilation).

Alcoholism. — Where a judge recessed a criminal jury trial for a long holiday weekend; the judge did not return to court on the date set for the completion of the trial; the judge told an administrative assistant that the judge was ill, but would be in court in the afternoon; the judge did not return that day and the judge's staff rescheduled the trial for two days later; on the day the trial was to resume, the judge told the assistant that the judge was hospitalized for heart-related tests; after the trial was twice reset due to the judge's unavailability, a stipulated mistrial order was entered; the judge was absent for two weeks during which the judge was hospitalized for six days; the judge's heart ailment and the hospitalization were due to alcohol withdrawal; and to justify the judge's absence, the judge told a reporter that the judge was being treated for and was recovering from a mild heart attack, the judge's conduct constituted willful misconduct in office. *In re Pope*, S.Ct. No. 29,778 (Filed June 13, 2007) (decided prior to the 2011 recompilation).

Directing secretary to handle traffic docket. — Where a judge took a vacation knowing that the judge would not return in time to handle the judge's traffic docket; the judge called the judge's secretary, told the secretary that the judge's return had been delayed, and instructed the secretary to handle the judge's traffic docket; the secretary handled the traffic docket and used the judge's signature stamp to process the docket; and when the other judges, court personnel, and the media learned about what had occurred, the judge reviewed and signed the cases that the judge's secretary had handled in the judge's absence, the judge's conduct constituted willful misconduct in office. *In re Griego*, S.Ct. No. 30,203 (Filed June 13, 2007) (decided prior to the 2011 recompilation).

Failure to hear cases, follow rules and respect judges and court officials. — Where a judge intentionally violated courthouse rules and policies; treated security officers in a hostile, rude, angry, threatening manner; used offensive language toward security officers and court employees; tossed objects, yelled and pounded on a desk when court personnel withheld the judge's assistant's paycheck pursuant to court rules and policies; asserted that the assistant was not required to comply with security guidelines and policies and prohibited security personnel from screening the assistant; permitted the assistant to behave in an unprofessional manner and condoned and assisted the assistant in violating and refusing to comply with court policies, being rude to court employees, and complaining about other judges; refused to issue bench

warrants during traffic arraignment court week, because the judge did not want the assistant to process the warrants during traffic arraignment dockets and filed recusals in those cases; and waived prior supervised probation costs imposed by statute, the judge committed willful misconduct in office. *In re Barnhart*, S.Ct. No 29,379 (Filed October 19, 2005) (decided prior to the 2011 recompilation).

21-208. Decorum, demeanor, and communication with jurors.

A. A judge shall require order and decorum in proceedings before the court.

B. A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

C. A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 21-205 NMRA to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

JUDICIAL REPRIMANDS

Improperly touching a party. — Where, at a hearing in a case involving a building permit, the judge kept moving the judge's chair closer to the code enforcement officer and the defendant, kept moving the judge's hands around, and touched the defendant with the result that the code enforcement officer and the defendant felt uncomfortable and moved away from the judge; and prior to the hearing, the mayor of the municipality had told the judge that the code enforcement officer had filed an EEOC claim against the judge based on improper touching, the judge's conduct constituted willful misconduct in office. *In re Lozano*, S.Ct. No. 29,264 (Filed June 8, 2010) (decided prior to the 2011 recompilation).

Improper demeanor and abuse of contempt power. — Where a judge referred to the presiding judge in a condescending matter to court staff and the court manager; refused to listen to a litigant, raised the judge's voice, and banged on the bench when the litigant tried to explain why the litigant failed to appear at a pre-trial conference and then held the litigant in direct contempt; and in another case, held a litigant in contempt during a pre-trial conference and then released the contempt order an hour later, the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Napping. — Where a judge took naps during the noon hour in view of the public and court staff and on one occasion, the judge fell asleep while defendants were waiting for paperwork from the judge's secretary, the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Director of a DWI school. — Where, as permitted by a municipal ordinance, a municipal judge was the owner and director of a DWI school and had a pecuniary interest in having individuals initially appear before the judge in court and then attend the DWI school, the judge's conduct violated the Code of Judicial Conduct. *In re Rainaldi*, 1986-NMSC-079, 104 N.M. 762, 727 P.2d 70 (decided prior to the 2011 recompilation).

Failure to hear cases, follow rules and respect judges and court officials. — Where a judge intentionally violated courthouse rules and policies; treated security officers in a hostile, rude, angry, threatening manner; used offensive language toward security officers and court employees; tossed objects, yelled and pounded on a desk when court personnel withheld the judge's assistant's paycheck pursuant to court rules and policies; asserted that the assistant was not required to comply with security guidelines and policies and prohibited security personnel from screening the assistant; permitted the assistant to behave in an unprofessional manner and condoned and assisted the assistant in violating and refusing to comply with court policies, being rude to court employees, and complaining about other judges; refused to issue bench warrants during traffic arraignment court week, because the judge did not want the assistant to process the warrants during traffic arraignment dockets and filed recusals in those cases; and waived prior supervised probation costs imposed by statute, the judge

committed willful misconduct in office. *In re Barnhart*, S.Ct. No 29,379 (Filed October 19, 2005) (decided prior to the 2011 recompilation).

Failure to maintain judicial demeanor. — Where, during a bench trial, a judge became agitated with and yelled at the defendant, stood up and hit a gavel on the bench that caused debris, including paper clips, to scatter across the room, striking the defendant and the prosecuting officer, the judge's conduct constituted willful misconduct in office. *In re Pindea*, S.Ct. No. 29,479 (Filed November 29, 2005) (decided prior to the 2011 recompilation).

Personal involvement with trial counsel and harassment of trial counsel. — Where a judge presided over and took judicial action in cases in which the assistant district attorney appeared on behalf of the state during the time the judge was engaged in a personal relationship with the assistant district attorney; the judge failed to inform all counsel or parties of record of the judge's relationship with the assistant district attorney in cases where the assistant district attorney appeared before the judge; the judge failed to be patient, dignified and courteous to counsel by making inappropriate remarks to assistant district attorneys about the judge's rulings in front of defendants, defense counsel, and co-counsel; and in one case, the judge suppressed evidence of a breath test, refused to allow the assistant district attorney to call the officer who administered the breath test to testify, and then taunted the assistant district attorney about not being able to prove the state's case, the judge committed willful misconduct in office. *In re Galvan*, S.Ct. No. 28,609 (Filed May 17, 2004) (decided prior to the 2011 recompilation).

Failure to maintain judicial demeanor was not willful misconduct. — Where a defendant's parent posted a cash bond to obtain the release of the defendant; the judge had not set bail; when the parent inquired of the judge about obtaining the return of the cash bond, the judge acted in a rude and angry manner and informed the judge's secretary to forfeit the bond even though no trial had been held and no plea had been entered for the defendant; and the judge directed the parent to surrender the receipt for the cash bond and then told the parent that the cash bond would not be refunded and that the receipt would not be returned to the parent, because the cash bond would take care of the fine, the judge's conduct constituted willful misconduct in office. *In re Romero*, 1983-NMSC-054, 100 N.M. 180, 668 P.2d 296 (decided prior to the 2011 recompilation).

21-209. Ex parte communications.

A. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received. A probate judge may obtain written or verbal advice from a disinterested expert on the law applicable to a proceeding before the judge without notice to the parties.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law, rule, or Supreme Court order to do so.

B. If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

C. A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

D. A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

Committee commentary. —

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge. A judge may utilize court staff for the purposes of

screening potential ex parte communications. Court staff should return ex parte communications to the sender with the admonition that the sender, if an attorney, must comply with Rule 16-305(B) NMRA.

[2] Whenever the presence of a party or notice to a party is required by this rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this rule. An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, rule, or Supreme Court order, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of Subparagraph (A)(2).

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, authorized probate judges to obtain advice from experts on the law applicable to a proceeding before the probate judge without having to provide notice to the parties, and revised the committee commentary; in Subparagraph A(2), added the last sentence; and in the committee commentary, in Paragraph [7], after "restrictions of", changed "Paragraph" to "Subparagraph".

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

JUDICIAL REPRIMANDS

Municipal judge in a small community. — Where, in a criminal case filed by one resident against another resident for vehicle vandalism, the municipal judge in a small community, in an attempt to keep the peace and to protect each party, had separate ex parte communications about the complaint with each party without notice to the other party, the municipal judge's conduct constituted willful misconduct in office. *In re Rael*, S.Ct. No. 33,633 (Filed October 3, 2012), Inquiry Concerning a Judge No. 2011-040 (decided prior to the 2011 recompilation).

Ex parte communications. — Where respondent was a municipal judge; the motorcycle of an acquaintance of respondent had been seized and towed by police officers during a criminal case pending in magistrate court; respondent asked the acquaintance's attorney to prepare an ex parte order regarding the motorcycle; in the order, respondent ordered the towing company to return the motorcycle to the acquaintance; the order falsely stated that respondent held a hearing on the matter; respondent did not give the towing company notice or an opportunity to be heard; respondent embossed the seal of the municipal court on the order even though there was no case pending in the municipal court; respondent failed to inquire if the matter was pending in magistrate court; when respondent signed the order, respondent was on probation with the Judicial Standards Commission in another matter; and respondent failed to consult with the judge who was appointed to mentor and supervise respondent prior to issuing the order, respondent's conduct constituted willful misconduct in office. *In re Salazar*, 2013-NMSC-007, 299 P.3d 409.

Where a judge engaged in ex parte communications with litigants, parties, officers and bail bondsmen in which the judge told defendants in cases not pending before the judge that the judge would help them out and to ask for the judge when they came to court, which resulted in the judge converting a juvenile bench warrant to an adult bench warrant and dismissing a case, the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Giving advice to witness in case pending before judge. — Where the judge had an ex parte conversation with the complaining witness in a domestic violence case that was pending before the judge; the witness had been subpoenaed by the state to appear and testify at the witness' spouse's trial; the judge advised the witness that if the witness did not want to testify, there would be no adverse consequences; the witness did not appeal at the trial; the assistant district attorney informed the judge that the district attorney's office had been informed of the ex parte communication with the witness; the judge began drafting a recusal; when the witness appeared, the judge recalled the case and dismissed it; and the judge subsequently produced a recusal that was different from the document that had been reviewed by the assistant district attorney, the judge's conduct constituted willful misconduct in office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

Making campaign promise to provide assistance if elected. — Where, during the time a judge was a candidate for magistrate court judge, the judge told a landlord that the judge would help if the landlord had a problem in court; when the judge learned that the landlord was having trouble with a tenant, the judge reviewed the lease and advised the landlord to file suit after the judge was elected; the judge also explained how the landlord could excuse the other magistrate court judges to make sure the judge heard the case; after the judge was elected, the landlord filed suit and excused the other magistrate court judges; and at a hearing on the case, the judge became impatient with the landlord and filed a recusal, the judge violated the Code of Judicial Conduct, subjecting the judge to removal from office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

Adjudicating traffic cases for family members and friends. — Where a judge adjudicated more than twenty cases involving family members, friends, and family members of friends and staff, ex parte without hearings or taking evidence; the judge was not the assigned judge and adjudicated the cases before their scheduled arraignment dates, either deferring or continuing the cases with the requirement that no further traffic violations occur within ninety days; and where defendants had failed to appear, the judge cancelled bench warrants and dismissed charges for failure to appear, the judge's conduct constituted willful misconduct in office. *In re Griego*, 2008-NMSC-020, 143 N.M. 698, 181 P.3d 690 (decided prior to the 2011 recompilation).

Allowing relationship to influence judicial conduct. — Where a judge was assigned a criminal case in which the defendant was charged with multiple counts of trafficking cocaine and distribution of methamphetamine; during the proceedings, the judge stipulated that the judge knew that by presiding over defendant's case, the judge would not appear to be impartial because the judge had a personal relationship with the attorney for and fiancé of the defendant who subsequently became the spouse of the defendant; the judge did not recuse from the case; the defendant pled no contest; the pre-sentence report stated that the defendant was a drug dealer and recommended prison sentences; at the sentencing hearing, the judge considered assigning the defendant to a new drug court program in lieu of incarceration; the judge agreed with the chief judge to recuse from the case; at a sentencing hearing before the new judge, the defendant stated that the original judge wanted to revoke the recusal; the new judge recused; and the original judge revoked the recusal and accepted jurisdiction over sentencing, the judge's conduct constituted willful misconduct in office. *In re McBee*, 2006-NMSC-024, 138 N.M. 482, 134 P.3d 769 (decided prior to the 2011 recompilation).

Ex parte communication in a case pending before another judge. — Where, after the step-child of a magistrate judge was jailed by the district court for nonpayment of child support, the magistrate judge telephoned the district court judge, told the district court judge that the step-child was not a flight risk, and asked the district court judge to reduce the step-child's bond or let the step-child out of jail, the magistrate judge's telephone call to the district court judge was an ex parte communication in the step-

child's child support enforcement case and constituted willful misconduct in office. *In re Naranjo*, 2013-NMSC-026.

Ex parte communications with police officers about pending cases. — A judge who had ex parte communications with police officers concerning defendants' out-of-court demeanor, attitude or behavior with the officers and about the use of "smiling" and "frowning" faces to be drawn on uniform traffic citations by the officers, which would inform the judge about defendants' demeanor, attitude or behavior with the officers during traffic stops, the judge committed willful misconduct in office. *In re Arnold*, S.Ct. No. 26,645 (Filed January 10, 2001) (decided prior to the 2011 recompilation).

Ex parte communications with a relative about sentencing defendant. — Where a magistrate judge had ex parte communications with the former court administrator of the district court concerning the sentencing and disposition of a defendant who was a relative of the former court administrator, and the desire of the defendant's family was that the defendant be ordered to obtain alcohol/drug counseling, the judge's conduct constituted willful misconduct in office. *In re Perea*, S.Ct. No. 25,822 (Filed August 17, 1999) (decided prior to the 2011 recompilation).

21-210. Judicial statements on pending and impending cases.

A. A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

B. A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

C. A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by Paragraphs A and B.

D. Notwithstanding the restrictions in Paragraph A, a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

E. Subject to the requirements of Paragraph A, a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] This rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary. The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process until final disposition.

[2] This rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. The judge must not comment publicly on cases in which the judge is a litigant in an official capacity, such as a writ of mandamus.

[3] The judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

JUDICIAL REPRIMANDS

Making a statement likely to interfere with a fair hearing. — Where, after the step-child of a magistrate judge was jailed by the district court for nonpayment of child support, the magistrate judge telephoned the district court judge, told the district court judge that the step-child was not a flight risk, and asked the district court judge to reduce the step-child's bond or let the step-child out of jail, the magistrate judge's telephone call to the district court judge had the potential to interfere with the lawful resolution of the release issue in the step-child's case and constituted willful misconduct in office. *In re Naranjo*, 2013-NMSC-026.

Intervening in trial. — Where in a DWI trial, the judge stepped off the bench to assist an officer in presenting the officer's case and in sight and earshot of the jury, told the court manager that the defendant "blew a .3", the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Abusing prestige of judicial office. — Where a municipal judge had private conversations with a contractor about the contractor's personal financial dispute with landowners who allegedly owned the contractor money for cleaning up the landowners' property; the judge called the landowners and left a message on the landowners' answering machine in which the judge identified himself as a judge and stated that the judge was calling about the financial dispute between them and the contractor, and that the judge wanted the matter cleared up; the judge subsequently wrote the landowners a letter on municipal stationery, using the judge's title and court name discussing the

contractor's claim and indicating that a lawsuit would be filed if the contractor was not paid; two weeks later, the judge was assigned to preside over a nuisance action by the municipality concerning the land that the contractor had supposedly cleaned; and the judge accepted the case and issued a summons to the landowners that did not conform with the rules of procedure, the judge's conduct constituted willful misconduct in office. *In re Ramirez*, S.Ct. No. 31,664 (Filed June 26, 2009) (decided prior to the 2011 recompilation).

Making campaign promise to provide assistance if elected. — Where, during the time a judge was a candidate for magistrate court judge, the judge told a landlord that the judge would help if the landlord had a problem in court; when the judge learned that the landlord was having trouble with a tenant, the judge reviewed the lease and advised the landlord to file suit after the judge was elected; the judge also explained how the landlord could excuse the other magistrate court judges to make sure the judge heard the case; after the judge was elected, the landlord filed suit and excused the other magistrate court judges; and at a hearing on the case, the judge became impatient with the landlord and filed a recusal, the judge violated the Code of Judicial Conduct, subjecting the judge to removal from office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

21-211. Disqualification.

A. A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person, or a member of the judge's staff is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's

family residing in the judge's household, has an economic interest in the subject matter in controversy or is a party to the proceeding.

(4) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

B. A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

C. A judge subject to disqualification under this rule, other than for bias or prejudice under Subparagraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

Committee commentary. —

[1] Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of Subparagraphs (A)(1) through (A)(5) apply. The terms "recusal" and "disqualification" are often used interchangeably.

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under Paragraph A, or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under Subparagraph (A)(2)(c), the judge's disqualification is required.

[5] The fact that an employee of the court is a party to the proceeding does not of itself disqualify the judge. The judge shall consider the specifics of the case in determining whether the judge's impartiality might reasonably be questioned and if a recusal is required. Specific rules of procedure, including local court rules, may dictate automatic recusal, but when no rule exists, this comment shall apply.

[6] In *Caperton v. Massey Coal Co*., 129 S. Ct. 2252 (2009), the United States Supreme Court held that the failure of a state supreme court justice to recuse when a party had made extraordinary and disproportionate contributions in support of the justice's candidacy in the previous election violated the opposing party's due process rights. The Court applied an objective standard and stated "that there is a serious risk of actual bias—based on objective and reasonable perceptions—when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising or directing the judge's election campaign when the case was pending or imminent." *Id*. at 2263-64. The Court recognized that states may, in their codes of judicial conduct, set more stringent standards for disqualification than imposed by the due process clause. *Id*. at 2267. A judge's impartiality might reasonably be questioned under Paragraph A of this rule as a result of campaign contributions even though they are not so extraordinary and disproportionate as to violate a person's due process rights. The intent of the Code of Judicial Conduct is to insulate judges from this type of bias; Rules 21-402(E) and 21-403 NMRA contemplate that a judge or judicial candidate not solicit or be informed of campaign contributions from attorneys and litigants. Despite these prohibitions, a judge may become aware of contributions made on behalf of the judge's campaign.

[7] Excessive contributions to a judge's campaign by a party or a party's attorney may also undermine the public's confidence in a fair and impartial judiciary. An appearance of impropriety may result when attorneys or parties appearing before a

judge generate large amounts of money for a campaign, either by contributing directly to the campaign, by contributing to political action committees supporting the judge, or by organizing large fund raisers. However, contributions made by attorneys to the campaigns of judicial candidates would not require a judge's disqualification in the absence of extraordinary circumstances.

[8] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[9] "Economic interest," as set forth in the terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(a) an interest in the individual holdings within a mutual or common investment fund;

(b) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(c) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(d) an interest in the issuer of government securities held by the judge.

[10] Remittal of disqualification. A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek, or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and gives informed consent. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

[11] The issue of whether a judge is required to recuse for an appearance of impropriety after being threatened by a defendant is "whether an objective, disinterested observer, fully informed of the underlying facts, would entertain significant doubt that justice would be done absent recusal." *State v. Riordan*, 2009-NMSC-022, ¶ 11, 146 N.M. 281, 209 P.3d 773 (internal quotation marks and citations omitted). Threats alone do not require recusal, and deference should be given to the trial court's decision when there is a significant possibility that the defendant is attempting to manipulate the justice system. *Id*.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, made technical changes to the rule, and revised the committee commentary; in Paragraph C, changed "Paragraph A(1)" to "Subparagraph (A)(1)"; and in the committee commentary, added the last sentence in Paragraph [5], and made technical changes throughout.

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

Threats against a presiding judge. — Where thee criminal cases pending against the defendant were assigned to the same judge; during the pendency of the three cases, the defendant was charged with conspiring to commit an assault with a deadly weapon on the judge; the judge filed a recusal in the conspiracy case, but not in the other three pending cases; and there was no showing of bias by the judge against the defendant, the judge did not abuse the judge's discretion in denying the defendant's motion requesting the recusal of the judge. *State v. Riordan*, 2009-NMSC-022, 146 N.M. 281, 209 P.3d 773 (decided prior to the 2011 recompilation).

Denial of recusal not an abuse of discretion. — Where defendant was a child offender under the juvenile system; the court determined that defendant was not amenable to rehabilitation or treatment as a child and sentenced defendant as an adult after defendant pled guilty to second degree murder; prior to being appointed as district judge, the trial judge had been appointed as a contract public defender to represent the victim, who had been murdered by defendant, in a juvenile delinquency proceeding; the judge's former law partner actually appeared at all the hearings in the victim's case; and the judge did not personally represent the victim, engage in plea negotiations on the victim's behalf, discuss a plea with the victim or the victim's parents, appear before the court on behalf of the victim or the victim's parents, or have direct contact with the victim in the juvenile proceedings, the judge did not err in denying defendant's request for recusal. *State v. Trujillo*, 2009-NMCA-128, 147 N.M. 334, 222 P.3d 1040, cert. quashed, 2010-NMCERT-011, 150 N.M. 490, 262 P.3d 1143 (decided prior to the 2011 recompilation).

Judge acting as mediator and as hearing officer to impose sanctions. — Where a district judge appointed another district judge as a mediator to conduct a settlement conference; the mediator judge was subsequently appointed to hear motions for sanctions against one party for alleged bad faith participation in the settlement conference; the mediator judge heard the motions, made findings of fact, concluded that the party had conducted itself in bad faith at the conference, and entered an order requiring the party to pay a sanction; and the appointing district judge independently

reviewed the mediator judge's decision and came to its own independent conclusion regarding sanctions; the appointing judge did not abuse its discretion in appointing the mediator judge to hear the motions for sanctions. *Carlsbad Hotel Associates, L.L.C. v. Patterson-UTI Drilling Co.*, 2009-NMCA-005, 145 N.M. 385, 199 P.3d 288, cert. quashed, 2010-NMCERT-001, 147 N.M. 673, 227 P.3d 1055 (decided prior to the 2011 recompilation).

Extrajudicial source. — The refusal of a judge to recuse in a malicious abuse of process case was proper where the analogy the court drew between a party and a well-known literary character (Jay Gatsby) did not establish any meaningful extrajudicial source. *Dawley v. La Puerta Architectural Antiques, Inc.*, 2003-NMCA-029,133 N.M. 389, 62 P.3d 1271 (decided prior to the 2011 recompilation).

Motion to recuse after waiver. — Where the district judge disclosed the basis for the judge's disqualification and the respondent waived disqualification by agreeing to abide by the judge's decisions on all issues of the case, the judge was not required to recuse upon the motion of the petitioner after the waiver. *In re Adoption Petn. of Rebecca M.*, 2008-NMCA-038, 143 N.M. 554, 178 P.3d 839 (decided prior to the 2011 recompilation).

Request for findings of fact and conclusions of law. — Because the court had decided in the state's favor, it was reasonable for the trial court to want to see requested findings of fact and conclusions of law from the plaintiff. Its request for those findings and conclusions did not show a bias or prejudice that would necessitate recusal, despite the defendant's assertion of an apparent personal interest of the court in ensuring that the state submit its requested findings and conclusions. *State ex rel. Taxation & Revenue Dep't Motor Vehicle Div. v. Van Ruiten*, 1988-NMCA-059, 107 N.M. 536, 760 P.2d 1302, cert. denied, 107 N.M. 413, 759 P.2d 200 (decided prior to the 2011 recompilation).

Judge's relatives having ties to the victim. — Recusal of a judge at a murder trial was not required where the judge's brother-in-law was the attorney representing the victim's family in a wrongful death action against defendant and the judge's son was employed as a law clerk by the district attorney. *State v. Fero*, 1987-NMSC-008, 105 N.M. 339, 732 P.2d 866, *aff'd*, 1988-NMSC-053, 107 N.M. 369, 758 P.2d 783 (decided prior to the 2011 recompilation).

Duty to exercise judicial function. — Except in those cases where a judge's impartiality might be reasonably questioned, the judge must exercise the judge's judicial function. *Gerety v. Demers,* 1978-NMSC-097, 92 N.M. 396, 589 P.2d 180 (decided prior to the 2011 recompilation).

Recusal rests within the discretion of the trial judge. *Demers v. Gerety*, 1978-NMCA-019, 92 N.M. 749, 595 P.2d 387, *aff'd in part, rev'd in part*, 1978-NMSC-097, 92 N.M. 396, 589 P.2d 180; *Klindera v. Worley Mills, Inc.*,1981-NMCA-104, 96 N.M. 743, 634 P.2d 1295 (decided prior to the 2011 recompilation).

Judge has discretionary power to disqualify sua sponte whenever the existence of any semblance of judicial bias or impropriety in a proceeding in the judge's court comes to the judge's attention. *Demers v. Gerety*, 1978-NMCA-019, 92 N.M. 749, 595 P.2d 387, *aff'd in part, rev'd in part*, 1978-NMSC-097, 92 N.M. 396, 589 P.2d 180 (decided prior to the 2011 recompilation).

Statement of reasons for recusal not required. — When a recusal is challenged, and the challenge is denied, a district judge does not have a duty to state in the order of denial that the judge has valid reasons for recusing. *Gerety v. Demers*, 1978-NMSC-097, 92 N.M. 396, 589 P.2d 180 (decided prior to the 2011 recompilation).

Compelling constitutional, statutory or ethical reason for recusal required. — Although the reasons for a judge to disqualify may be personal and the judge need not state them, nonetheless a judge has a duty to perform the judge's judicial role, and the judge has no right to disqualify unless there is a compelling constitutional, statutory or ethical cause for doing so. *Gerety v. Demers*, 1978-NMSC-097, 92 N.M. 396, 589 P.2d 180 (decided prior to the 2011 recompilation).

Grounds relied on for disqualification must be adequate, because a judge has no right to disqualify in the absence of a valid reason. *Demers v. Gerety*, 1978-NMCA-019, 92 N.M. 749, 595 P.2d 387, *aff'd in part, rev'd in part*, 1978-NMSC-097, 92 N.M. 396, 589 P.2d 180 (decided prior to the 2011 recompilation).

Suspicion of bias or prejudice is not enough to disqualify a judge. *Roybal v. Morris,* 1983-NMCA-101, 100 N.M. 305, 669 P.2d 1100 (decided prior to the 2011 recompilation).

Casual transaction cannot be basis of disqualification. — A casual transaction between people is not a negative confrontation, so as to amount to an appearance of bias requiring voluntary disqualification. *Lujan v. N.M. State Police Bd.*, 1983-NMSC-062, 100 N.M. 149, 667 P.2d 456 (decided prior to the 2011 recompilation).

Impartiality throughout a case is required. — When a judge believes that the judge will be unable to remain impartial, the judge should recuse from the case in order to avoid a hint of impropriety. *Gerety v. Demers*, 1978-NMSC-097, 92 N.M. 396, 589 P.2d 180 (decided prior to the 2011 recompilation).

Bias or prejudice as grounds for disqualification. — Bias or prejudice towards an attorney on each matter raised in the trial court is insufficient to disqualify a judge. This rule, however, is not absolute. If the bias or prejudice toward an attorney is of such a degree as to adversely affect the interest of the client, bias and prejudice toward an attorney is sufficient. *Martinez v. Carmona*, 1980-NMCA-139, 95 N.M. 545, 624 P.2d 54, cert. quashed, 95 N.M. 593, 624 P.2d 535 (1981) (decided prior to the 2011 recompilation).

When a district judge believes that the judge's impartiality might reasonably be questioned with reference to bias and prejudice concerning a party, the judge must not exercise the judge's judicial function. *Martinez v. Carmona*, 1980-NMCA-139, 95 N.M. 545, 624 P.2d 54, cert. quashed, 95 N.M. 593, 624 P.2d 535 (1981); *Klindera v. Worley Mills, Inc.*, 1981-NMCA-104, 96 N.M. 743, 634 P.2d 1295 (decided prior to the 2011 recompilation).

Recusal not required for prior judicial encounters. — The defendant's arguments that the trial judge was biased, based on the judge's previous contempt charges and sanctions or dislike toward the defendant, were without merit, since bias requiring recusal must arise from a personal, extra-judicial source, not a judicial source. *Purpura v. Purpura*, 1993-NMCA-001, 115 N.M. 80, 847 P.2d 314 (decided prior to the 2011 recompilation).

Review of decision not to recuse. — A decision contrary to recusal is reviewable on appeal only if it amounts to an abuse of sound judicial discretion. *Martinez v. Carmona*, 1980-NMCA-139, 95 N.M. 545, 624 P.2d 54, cert. quashed, 95 N.M. 593, 624 P.2d 535 (1981) (decided prior to the 2011 recompilation).

When a movant has failed to meet its burden of establishing that the judge has a personal or extrajudicial bias or prejudice against it, the judge's refusal to disqualify is proper. *United Nuclear Corp. v. General Atomic Co.*, 1980-NMSC-094, 96 N.M. 155, 629 P.2d 231, appeal dismissed, 451 U.S. 901, 101 S.Ct. 1966, 68 L. Ed 2d 289 (1981) (decided prior to the 2011 recompilation).

Comment reflecting feelings about violent crimes after conviction was obtained. — A comment reflecting the judge's feelings about violent crime once a conviction was obtained did not suggest that the judge had a personal bias or prejudice against defendant during trial. *State v. Swafford*, 1989-NMCA-069, 109 N.M. 132, 782 P.2d 385, cert. denied, 109 N.M. 54, 781 P.2d 782 (decided prior to the 2011 recompilation).

Imposition of the maximum sentence. — A claim of judicial bias cannot be based upon the imposition of the maximum legal sentence. *State v. Swafford*, 1989-NMCA-069, 109 N.M. 132, 782 P.2d 385, cert. denied, 109 N.M. 54, 781 P.2d 782 (decided prior to the 2011 recompilation).

Judge's refusal to accept a tendered plea agreement did not demonstrate judicial bias or prejudice, where, when the plea and disposition agreement was tendered, the judge reserved ruling on it until the judge could consider a presentence report, information or treatment programs, and written statements from the victim of the crime and the victim's sibling regarding their feelings and views on the proposed disposition. *State v. Swafford*, 1989-NMCA-069, 109 N.M. 132, 782 P.2d 385, cert. denied, 109 N.M. 54, 781 P.2d 782 (decided prior to the 2011 recompilation).

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Potential witness in a criminal case. — Where a magistrate judge released the defendant on the defendant's own recognizance; the defendant had been arrested for driving while intoxicated after a baseball tournament; the judge was not the designated on-call judge on the day the defendant was arrested; the judge knew the defendant and had been at the tournament with the defendant earlier in the day; and the judge knew that there were people drinking alcoholic beverages at the tournament, the judge's conduct constituted willful misconduct in office because the judge was a potential witness in the defendant's criminal case. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Personal acquaintance with the defendant in a criminal case. — Where the defendant had been arrested for driving while intoxicated after a baseball tournament; the defendant's spouse telephoned the magistrate judge's spouse at the judge's home to discuss the defendant's arrest; the defendant and the defendant's spouse knew the judge's family well enough to call the judge's spouse in an attempt to influence the judge; and the judge agreed to release the defendant on the defendant's own recognizance even though the judge was not on-call or assigned to handle the matter, the judge's conduct constituted willful misconduct in office because the judge took judicial action based on the telephone calls from the defendant's family to the judge's home. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

Failure to recuse after appearance of impropriety occurs. — Where a district judge developed a romantic relationship with an attorney who had cases pending before the judge; the judge told the attorney that the judge would enter a blanket recusal in the attorney's cases, but failed to do so; and when the attorney's cases came before the judge, the judge entered a recusal, made dishonest statements from the bench concerning the judge's reasons for entering a recusal, and notwithstanding the entry of a recusal, entered rulings in the cases, the judge committed willful misconduct in office. *In re Schwartz*, 2011-NMSC-019, 149 N.M. 721, 255 P.3d 299 (decided prior to the 2011 recompilation).

Abusing prestige of judicial office. — Where a municipal judge had private conversations with a contractor about the contractor's personal financial dispute with landowners who allegedly owed the contractor money for cleaning up the landowners' property; the judge called the landowners and left a message on the landowners' answering machine in which the judge identified himself as a judge and stated that the judge was calling about the financial dispute between them and the contractor and that the judge wanted the matter cleared up; the judge subsequently wrote the landowners a letter on municipal stationery, using the judge's title and court name discussing the contractor's claim and indicating that a lawsuit would be filed if the contractor was not paid; two weeks later, the judge was assigned to preside over a nuisance action by the municipality concerning the land that the contractor had supposedly cleaned; and the judge accepted the case and issued a summons to the landowners that did not conform with the rules of procedure, the judge's conduct constituted willful misconduct in office.

In re Ramirez, S.Ct. No. 31,664 (Filed June 26, 2009) (decided prior to the 2011 recompilation).

Giving advice to a witness in a case pending before the judge. — Where the judge had an ex parte conversation with the complaining witness in a domestic violence case that was pending before the judge; the witness had been subpoenaed by the state to appear and testify at the witness' spouse's trial; the judge advised the witness that if the witness did not want to testify, there would be no adverse consequences; the witness did not appeal at the trial; the assistant district attorney informed the judge that the district attorney's office has been informed of the ex parte communication with the witness; the judge began drafting a recusal; when the witness appeared, the judge recalled the case and dismissed it; and the judge subsequently produced a recusal that was different from the document that had been reviewed by the assistant district attorney, the judge's conduct constituted willful misconduct in office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

Making campaign promise to provide assistance if elected. — Where, during the time a judge was a candidate for magistrate court judge, the judge told a landlord that the judge would help if the landlord had a problem in court; when the judge learned that the landlord was having trouble with a tenant, the judge reviewed the lease and advised the landlord to file suit after the judge was elected; the judge also explained how the landlord could excuse the other magistrate court judges to make sure the judge heard the case; after the judge was elected, the landlord filed suit and excused the other magistrate court judges; and at a hearing on the case, the judge became impatient with the landlord and filed a recusal, the judge violated the Code of Judicial Conduct, subjecting the judge to removal from office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

Insufficient evidence of willful misconduct in office. — Where a judge called the jail and set bond for a defendant who was the parent of the judge's friend and who had been arrested for DWI; when no one was available to accept the bond, the judge changed the release order to release the defendant to the custody of the defendant's spouse and hand-delivered the release order late at night to the jail in another town; the judge presided over the arraignment of the defendant; and the judge filed a recusal when a newspaper reported on the matter, there was no clear and convincing evidence that the judge committed willful misconduct in office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

Adjudicating traffic cases for family members and friends. — Where a judge adjudicated more than twenty cases involving family members, friends, and family members of friends and staff, ex parte without hearings or taking evidence; the judge was not the assigned judge and adjudicated the cases before their scheduled arraignment dates, either deferring or continuing the cases with the requirement that no further traffic violations occur within ninety days; and where defendants had failed to appear, the judge cancelled bench warrants and dismissed charges for failure to

appear, the judge's conduct constituted willful misconduct in office. *In re Griego*, 2008-NMSC-020, 143 N.M. 698, 181 P.3d 690 (decided prior to the 2011 recompilation).

Insufficient evidence of willful misconduct. — Where a municipal judge accepted an uncounseled guilty plea and sentenced the defendant; the defendant's attorney appealed to the district court; the municipal judge believed that the municipal attorney and the defendant's attorney had misrepresented the municipal proceedings to the district court judge and charged the municipal attorney and the defendant's attorney with contempt; the municipal judge did not file a recusal; a pretrial hearing and a trial were automatically scheduled by the clerk's office; and when the municipal judge reviewed the district court proceedings and discovered that the municipal proceedings had not been misrepresented to the district court, the municipal judge dismissed the contempt charges, the evidence did not clearly and convincingly demonstrate that, by acting in a case in which the municipal judge should have filed a recusal, the municipal judge's actions constituted willful misconduct in office. *In re Locatelli*, 2007-NMSC-029, 141 N.M. 755, 161 P.3d 252 (decided prior to the 2011 recompilation).

Allowing relationship to influence judicial conduct. — Where a judge was assigned a criminal case in which the defendant was charged with multiple counts of trafficking cocaine and distribution of methamphetamine; during the proceedings, the judge stipulated that the judge knew that by presiding over defendant's case the judge would not appear to be impartial, because the judge had a personal relationship with the attorney for and fiancé of the defendant who subsequently became the spouse of the defendant; the judge did not recuse from the case; the defendant pled no contest; the pre-sentence report stated that the defendant was a drug dealer and recommended prison sentences; at the sentencing hearing, the judge considered assigning the defendant to a new drug court program in lieu of incarceration; the judge agreed with the chief judge to recuse from the case; at a sentencing hearing before the new judge, the defendant stated that the original judge wanted to revoke the recusal; the new judge recused; and the original judge revoked the recusal and accepted jurisdiction over sentencing, the judge's conduct constituted willful misconduct in office. *In re McBee*, 2006-NMSC-024, 138 N.M. 482, 134 P.3d 769 (decided prior to the 2011 recompilation).

Personal involvement with and harassment of trial counsel. — Where a judge presided over and took judicial action in cases in which the assistant district attorney appeared on behalf of the State during the time the judge was engaged in a personal relationship with the assistant district attorney; the judge failed to inform all counsel or parties of record of the judge's relationship with the assistant district attorney in cases where the assistant district attorney appeared before the judge; the judge failed to be patient, dignified and courteous to counsel by making inappropriate remarks to assistant district attorneys about the judge's rulings in front of defendants, defense counsel and co-counsel; and in one case, the judge suppressed evidence of a breath test, refused to allow the assistant district attorney to call the officer who administered the breath test to testify, and then taunted the assistant district attorney about not being able to prove the

state's case, the judge committed willful misconduct in office. *In re Galvan*, S.Ct. No. 28,609 (Filed May 17, 2004) (decided prior to the 2011 recompilation).

Involvement in friend's criminal case. — Where a judge became involved in the pending criminal case of a friend by speaking with the arresting state police officer by cellular telephone during the traffic stop and arrest; personally going to the adult detention center and ordered the friend's release and taking the friend to the judge's house, and speaking to a registered nurse and asking the nurse to draw an independent blood sample from the friend; and the judge had an alcoholic drink before going to the jail to release the friend and may have had the odor of alcohol on the judge's breath, the judge's conduct constituted willful misconduct in office. *In re Sanchez*, S.Ct. No. 25,821 (Filed March 14, 2001) (decided before the 2011 recompilation).

Ex parte communications with a relative about sentencing defendant. — Where a magistrate judge had ex parte communications with the former court administrator of the district court concerning the sentencing and disposition of a defendant who was a relative of the former court administrator and the desire of the defendant's family was that the defendant be ordered to obtain alcohol/drug counseling, the judge's conduct constituted willful misconduct in office. *In re Perea*, S.Ct. No. 25,822 (Filed August 17, 1999) (decided prior to the 2011 recompilation).

Intentional denial of right to appeal. — Where a judge ruled in favor of the defendant, refused to enter a judgment in the case to prevent the plaintiff from appealing in order to force the plaintiff to settle with the defendant; when the Supreme Court ordered the judge to enter a judgment, the judge expanded the issues litigated in the case; and after being reversed, the judge refused to award costs to the plaintiff, precipitating another appeal, the judge's conduct constituted willful misconduct in office. *In re Castellano*, 1995-NMSC-007, 119 N.M. 140, 889 P.2d 175 (decided prior to the 2011 recompilation).

Adjudicating cases in which the judge has a personal interest. — Where a judge filed a criminal complaint for criminal trespass against the defendant who had disregarded the judge's direction by visiting the premises rented by the judge's tenant; scheduled an arraignment in the judge's court, and later filed a recusal in the case; and in a second case, the judge filed a criminal complaint for criminal damage to property against the defendant, who was a former tenant of the judge, arraigned the defendant, committed the defendant to jail, and dismissed the charges without prejudice when the defendant agreed to repair the damages to the premises, which the defendant had rented from the judge, the judge's conduct constituted willful misconduct in office. *In re Lucero*, 1985-NMSC-053, 102 N.M. 745, 700 P.2d 648 (decided prior to the 2011 recompilation).

21-212. Supervisory duties.

A. A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

B. A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

C. A judge shall not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

D. A judge shall not retaliate against court personnel who refuse to engage in conduct that would violate the Code if undertaken by the judge.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction and control.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

[3] A judge shall inform and require the judge's staff, court officials, and others subject to the judge's direction and control to observe the standards of confidentiality, fidelity, and diligence that apply to the judge and to refrain from bias and prejudice in the performance of their official duties.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

JUDICIAL REPRIMANDS

Adjudicating traffic cases for family members and friends. — Where a judge adjudicated more than twenty cases involving family members, friends, and family members of friends and staff, ex parte without hearings or taking evidence; the judge was not the assigned judge and adjudicated the cases before their scheduled

arraignment dates, either deferring or continuing the cases with the requirement that no further traffic violations occur within ninety days; and where defendants had failed to appear, the judge cancelled bench warrants and dismissed charges for failure to appear, the judge's conduct constituted willful misconduct in office. *In re Griego*, 2008-NMSC-020, 143 N.M. 698, 181 P.3d 690 (decided prior to the 2011 recompilation).

Directing secretary to handle traffic docket. — Where a judge took a vacation knowing that the judge would not return in time to handle the judge's traffic docket; the judge called the judge's secretary, told the secretary that the judge's return had been delayed, and instructed the secretary to handle the judge's traffic docket; the secretary handled the traffic docket and used the judge's signature stamp to process the docket; and when the other judges, court personnel, and the media learned about what had occurred, the judge reviewed and signed the cases that the judge's secretary had handled in the judge's absence, the judge's conduct constituted willful misconduct in office. *In re Griego*, S.Ct. No. 30,203 (Filed June 13, 2007) (decided prior to the 2011 recompilation).

Failure to hear cases, follow rules and respect judges and court officials. — Where a judge intentionally violated courthouse rules and policies; treated security officers in a hostile, rude, angry and threatening manner; used offensive language toward security officers and court employees; tossed objects, yelled and pounded on a desk when court personnel withheld the judge's assistant's paycheck pursuant to court rules and policies; asserted that the assistant was not required to comply with security guidelines and policies and prohibited security personnel from screening the assistant; permitted the assistant to behave in an unprofessional manner and condoned and assisted the assistant in violating and refusing to comply with court policies, being rude to court employees, and complaining about other judges; refused to issue bench warrants during traffic arraignment court week because the judge did not want the assistant to process the warrants during traffic arraignment dockets and filed recusals in those cases; and waived prior supervised probation costs imposed by statute, the judge committed willful misconduct in office. *In re Barnhart*, S.Ct. No 29,379 (Filed October 19, 2005) (decided prior to the 2011 recompilation).

Interference in child's criminal case. — Where the adult child and friends of the child of a district court judge were cited for drinking in public in violation of a municipal ordinance; as the police officers were issuing the citations, the judge identified the judge to one of the officers as the child's parent by showing the officer the judge's court identification card and driver's license; the judge asked the officer if the officer remembered who the judge was; the judge collected all of the citations from the recipients and later instructed the judge's bailiff to assist the child and the child's friends in responding to the citations in municipal court; the bailiff prepared and filed written waivers of arraignment and not guilty pleas on municipal court forms; when pretrial conferences were scheduled, the judge contacted a municipal judge who was not the assigned judge to advise the municipal judge the judge was sending the judge's child and some of the friends to the municipal judge to change their pleas before the pretrial conference set by the assigned judge was scheduled to occur; and the judge's child and

some of the friends appeared before the municipal judge and pled no contest and received more lenient sentences than the child's friends who appeared before the assigned municipal judge, the judge's conduct constituted willful misconduct in office. *In re Ramirez*, 2006-NMSC-021, 139 N.M. 529, 135 P.3d 230 (decided prior to the 2011 recompilation).

21-213. Administrative appointments.

A. In making administrative appointments, including the appointment of lawyers, a judge:

(1) shall exercise the power of appointment impartially and on the basis of merit;

(2) shall avoid nepotism, favoritism, and unnecessary appointments; and

(3) shall avoid the appearance of impropriety.

B. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, mediators, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Paragraph (A).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

21-214. Disability and impairment.

A. A judge who has a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to the Lawyer's Assistance Committee of the State Bar, Alcoholics Anonymous, Narcotics Anonymous, or other support group recognized by the New Mexico Disciplinary Board or the New Mexico Judicial Standards Commission.

B. Notwithstanding the provisions of Paragraph A of this rule, any incumbent judge who illegally sells, purchases, possesses, or uses drugs or any substance considered unlawful under the provisions of the Controlled Substances Act, shall be subject to discipline under the Code of Judicial Conduct.

C. Any judge who has specific, objective, and articulable facts, or reasonable inferences that can be drawn from those facts, that a judge has engaged in the misconduct described in Paragraph B of this rule shall report those facts to the New Mexico Judicial Standards Commission. Reports of such misconduct shall include the following information:

(1) the name of the person filing the report;

(2) the address and telephone number where the person may be contacted;

(3) a detailed description of the alleged misconduct; and

(4) any supporting evidence or material that may be available to the reporting person.

The Judicial Standards Commission shall review and evaluate reports of such misconduct to determine if the report warrants further review or investigation.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system or the public at large. Depending upon the circumstances, appropriate action may include, but is not limited to, speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending on the gravity of the conduct that has come to the judge's attention, however, the judge may be

required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. *See* Rule 21-215 NMRA.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

JUDICIAL REPRIMANDS

Drug abuse. — Where a judge knowingly evaded the service of an order of the Judicial Standards Commission to submit to drug testing; the judge did not appear for drug testing for more than seventy-two hours after the judge learned of the commission's order, refused to submit to the collection of a sample, and ordered the judge's own tests to obtain results that would be available only to the judge; and when the judge finally submitted to the drug testing as ordered by the commission, the judge tested positive for cocaine, the judge's conduct constituted willful misconduct in office. *In re Garza*, 2007-NMSC-028, 141 N.M. 831, 161 P.3d 876 (decided prior to the 2011 recompilation).

Alcoholism. — Where a judge recessed a criminal jury trial for a long holiday weekend; the judge did not return to court on the date set for the completion of the trial; the judge told an administrative assistant that the judge was ill, but would be in court in the afternoon; the judge did not return that day and the judge's staff rescheduled the trial for two days later; on the day the trial was to resume, the judge told the assistant that the judge was hospitalized for heart-related tests; after the trial was twice reset due to the judge's unavailability, a stipulated mistrial order was entered; the judge was absent for two weeks during which the judge was hospitalized for six days; the judge's heart ailment and the hospitalization were due to alcohol withdrawal; and to justify the judge's absence, the judge told a reporter that the judge was being treated for and was recovering from a mild heart attack, the judge's conduct constituted willful misconduct in office. *In re Pope*, S.Ct. No. 29,778 (Filed June 13, 2007) (decided prior to the 2011 recompilation).

21-215. Responding to judicial and lawyer misconduct.

A. A judge who knows that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the Judicial Standards Commission.

B. A judge who knows that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty,

trustworthiness, or fitness as a lawyer in other respects shall inform the Disciplinary Board.

C. A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

D. A judge who receives information indicating a substantial likelihood that a lawyer has committed a violations of the Rules of Professional Conduct shall take appropriate action.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This rule limits the reporting obligation to those offenses that an independent judiciary must rigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under Paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer committed a violation of the Rules of Professional Conduct may include, but are not limited to, communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

21-216. Cooperation with disciplinary authorities.

A. A judge shall cooperate and be candid and honest with and comply with all rules, requirements, and procedures of the New Mexico Judicial Standards Commission, the

New Mexico Disciplinary Board, and the New Mexico Judicial Performance Evaluation Commission.

B. A judge shall not retaliate, directly or indirectly, against a person known or suspected to have filed a complaint or to have assisted or cooperated with an investigation of a judge or a lawyer.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in Paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

JUDICIAL REPRIMANDS

Refusal to submit to drug testing. — Where a judge knowingly evaded the service of an order of the Judicial Standards Commission to submit to drug testing; the judge did not appear for drug testing for more than seventy-two hours after the judge learned of the commission's order, refused to submit to the collection of a sample, and ordered the judge's own tests to obtain results that would be available only to the judge; and when the judge finally submitted to the drug testing as ordered by the commission, the judge tested positive for cocaine, the judge's conduct constituted willful misconduct in office. *In re Garza*, 2007-NMSC-028, 141 N.M. 831, 161 P.3d 876 (decided prior to the 2011 recompilation).

Failure to cooperate with the Judicial Standards Commission. — Where a judge failed to cooperate with and comply with the rules, requirements, and procedures of the Judicial Standards Commission by failing to file a written response to the commission's notice of preliminary investigation, the judge's conduct was willful misconduct in office. *In re Vigil*, S.Ct. No. 26,328 (Filed May 7, 2001) (decided prior to the 2011 recompilation).

21-300. Canon 3.

A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

JUDICIAL REPRIMANDS

Driving while intoxicated. — Where a judge was convicted of a first offense of driving while under the influence of intoxicating liquor, the judge's conduct constituted willful misconduct in office. *In re Robles*, S.Ct. No. 32,854 (Filed May 31, 2011), Inquiry Concerning a Judge No. 2011-022 (decided prior to the 2011 recompilation).

21-301. Extrajudicial activities in general.

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

A. participate in activities that will interfere with the proper performance of the judge's judicial duties;

B. participate in activities that will lead to frequent disqualification of the judge;

C. participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

D. engage in conduct that would appear to a reasonable person to be coercive; or

E. make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. They may also speak, write, lecture, teach, and engage in other extrajudicial activities concerning non-legal subjects, subject to the requirements of this Code. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal, or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. *See* Rule 21-307 NMRA.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside 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. Examples include jokes or other remarks that demean individuals based upon race, religion, color, national origin, ethnicity, ancestry, sex, sexual orientation, gender identity, marital status, spousal affiliation, socioeconomic status, political affiliation, age, physical or mental handicap or serious medical condition, or undermine the public's confidence in or perception of the judicial process. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. *See* Rule 21-306 NMRA.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 21-307(A) NMRA, might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, in Paragraph [1] of the committee commentary, after "scholarly research projects", added "They may also speak, write, lecture, teach, and engage in other extrajudicial activities concerning non-legal subjects, subject to the requirements of this Code.".

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

JUDICIAL REPRIMANDS

Failure to recuse after appearance of impropriety occurs. — Where a district judge developed a romantic relationship with an attorney who had cases pending before the judge; the judge told the attorney that the judge would enter a blanket recusal in the attorney's cases, but failed to do so; and when the attorney's cases came before the judge, the judge entered a recusal, made dishonest statements from the bench concerning the judge's reasons for entering a recusal, and notwithstanding the entry of a recusal, entered rulings in the cases, the judge committed willful misconduct in office.

In re Schwartz, 2011-NMSC-019, 149 N.M. 721, 255 P.3d 299 (decided prior to the 2011 recompilation).

Napping. — Where a judge took naps during the noon hour in view of the public and court staff and on one occasion fell asleep while defendants were waiting for paperwork from the judge's secretary, the judge's conduct constituted willful misconduct in office. *In re Guillory*, S.Ct. No. 31,920 (Filed December 7, 2010) (decided prior to the 2011 recompilation).

Unlawfully accepting per diem expenses. — Where the judge wanted to attend training in another municipality; the judge certified and submitted a travel voucher claiming reimbursement for per diem expenses; the training was cancelled; the judge arranged to pick up the training material in the other municipality, drove to the other municipality, and then drove to another municipality out-of-state; and the judge told the treasurer of the municipality that the training had been cancelled because of bad weather, the judge's conduct constituted willful misconduct in office. *In re Lozano*, S.Ct. No. 29,264 (Filed June 8, 2010) (decided prior to the 2011 recompilation).

Abusing prestige of judicial office. — Where a municipal judge had private conversations with a contractor about the contractor's personal financial dispute with landowners who allegedly owed the contractor money for cleaning up the landowners' property; the judge called the landowners and left a message on the landowners' answering machine in which the judge identified himself as a judge and stated that the judge was calling about the financial dispute between them and the contractor, and that the judge wanted the matter cleared up; the judge subsequently wrote the landowners a letter on municipal stationery, using the judge's title and court name discussing the contractor's claim and indicating that a lawsuit would be filed if the contractor was not paid; two weeks later, the judge was assigned to preside over a nuisance action by the municipality concerning the land that the contractor had supposedly cleaned; and the judge accepted the case and issued a summons to the landowners that did not conform with the rules of procedure, the judge's conduct constituted willful misconduct in office. *In re Ramirez*, S.Ct. No. 31,664 (Filed June 26, 2009) (decided prior to the 2011 recompilation).

Interference in a friend's criminal case. — Where a judge developed a personal relationship with the defendant in a DUI case, told the presiding judge at the defendant's bond hearing to make special concessions with regard to the defendant's bond, talked to the presiding judge at the defendant's probation violation hearing to influence the disposition of the case, instructed the court clerks to issue a clearance of the defendant's driver's license, and attempted to influence a police officer when the defendant was stopped for speeding, the judge's conduct constituted willful misconduct in office. *In re Garza*, 2007-NMSC-028, 141 N.M. 831, 161 P.3d 876 (decided prior to the 2011 recompilation).

Drug abuse. — Where a judge knowingly evaded the service of an order of the Judicial Standards Commission to submit to drug testing; the judge did not appear for drug

testing for more than seventy-two hours after the judge learned of the commission's order and refused to submit to the collection of a sample; ordered the judge's own tests to obtain results that would be available only to the judge; and when the judge finally submitted to the drug testing as ordered by the commission, the judge tested positive for cocaine, the judge's conduct constituted willful misconduct in office. *In re Garza*, 2007-NMSC-028, 141 N.M. 831, 161 P.3d 876 (decided prior to the 2011 recompilation).

Alcoholism. — Where a judge recessed a criminal jury trial for a long holiday weekend; the judge did not return to court on the date set for the completion of the trial; the judge told an administrative assistant that the judge was ill, but would be in court in the afternoon; the judge did not return that day and the judge's staff rescheduled the trial for two days later; on the day the trial was to resume, the judge told the assistant that the judge was hospitalized for heart-related tests; after the trial was twice reset due to the judge's unavailability, a stipulated mistrial order was entered; the judge was absent for two weeks during which the judge was hospitalized for six days; the judge's heart ailment and the hospitalization were due to alcohol withdrawal; and to justify the judge's absence, the judge told a reporter that the judge was being treated for and was recovering from a mild heart attack, the judge's conduct constituted willful misconduct in office. *In re Pope*, S.Ct. No. 29,778 (Filed June 13, 2007) (decided prior to the 2011 recompilation).

Directing secretary to handle traffic docket. — Where a judge took a vacation knowing that the judge would not return in time to handle the judge's traffic docket; the judge called the judge's secretary, told the secretary that the judge's return had been delayed, and instructed the secretary to handle the judge's traffic docket; the secretary handled the traffic docket and used the judge's signature stamp to process the docket; and when the other judges, court personnel, and the media learned about what had occurred, the judge reviewed and signed the cases that the judge's secretary had handled in the judge's absence, the judge's conduct constituted willful misconduct in office. *In re Griego*, S.Ct. No. 30,203 (Filed June 13, 2007) (decided prior to the 2011 recompilation).

Use of judicial position to advance private interest in pending case. — A metropolitan judge who initiated ex parte communications with a special commissioner and a district court judge to influence a child placement in a case involving a family member within the third degree of relationship committed willful misconduct in office. *In re Gentry*, S.Ct. No. 28,986 (Filed June 29, 2005) (decided prior to the 2011 recompilation).

Outside employment. — A full-time magistrate court judge, who was paid a salary as a full-time magistrate and who served as a tribal judge pro tempore for a tribal court at times when the judge was being paid by the state to serve as a magistrate court judge committed willful misconduct in office. *In re Martinez*, S.Ct. 29,309 (Filed October 19, 2005) (decided prior to the 2011 recompilation).

False statements about judicial disciplinary complaints. — Where, during a radio broadcast debate, a judge made false or misleading statements that no judicial disciplinary complaints had been filed against the judge with the Judicial Standards Commission, the judge committed willful misconduct in office. *In re Miller-Byrnes*, S.Ct. No. 28,716 (Filed August 31, 2004) (decided prior to the 2011 recompilation).

Personal involvement with and harassment of trial counsel. — Where a judge presided over and took judicial action in cases in which the assistant district attorney appeared on behalf of the state during the time the judge was engaged in a personal relationship with the assistant district attorney; the judge failed to inform all counsel or parties of record of the judge's relationship with the assistant district attorney in cases where the assistant district attorney appeared before the judge; the judge failed to be patient, dignified and courteous to counsel by making inappropriate remarks to assistant district attorneys about the judge's rulings in front of defendants, defense counsel, and co-counsel; and in one case, the judge suppressed evidence of a breath test, refused to allow the assistant district attorney to call the officer who administered the breath test to testify, and then taunted the assistant district attorney about not being able to prove the state's case, the judge committed willful misconduct in office. *In re Galvan*, S.Ct. No. 28,609 (Filed May 17, 2004) (decided prior to the 2011 recompilation).

Maintaining residence outside judicial district. — A municipal judge who failed to maintain a continuous and significant physical presence at a residence within the municipal limits of the municipality as required by municipal ordinance committed willful misconduct in office. *In re Gallegos*, S.Ct. No. 27,906 (Filed April 15, 2003) (decided prior to the 2011 recompilation).

Violation of law. — A judge who pled nolo contendere to charges of DWI, no headlamps, and running a stop sign and who was convicted and sentenced for DWI and no headlamps committed willful misconduct in office. *In re Cornish*, S.Ct. No. 27,253 (Filed May 6, 2002) (decided prior to the 2011 recompilation).

Inappropriate demeanor, interference in pending case and illegal modification of sentence. — Where a judge made inappropriate, age and/or gender-based references to female attorneys who appeared before the judge; after the state lost a six-month rule hearing, the judge threatened the Public Defender's Office and its employees; the judge told a defendant in a criminal drug case that the defendant was covering up for the defendant's children and that the defendant could post a property bond with the intention that the State could get rid of the defendant's house if there were complaints by the defendant's neighbors; after filing a recusal in a case, the judge became involved in a pretrial conference in the case and testified against a motion filed by the Public Defender's Office; referred to a female magistrate court judge in an inappropriate, derogatory and gender-based manner; criticized a female attorney for being employed by the Public Defender's Office; and after the Public Defender's Office filed a notice of appeal from the judge's ruling, verbally modified a sentence and order of eligibility by ex parte communication with the monitoring agent, the judge's conduct constituted willful

misconduct in office. *In re Vincent*, S.Ct. No. 27,266 (Filed March 22, 2002) (decided prior to the 2011 recompilation).

Involvement in friend's criminal case. — Where a judge became involved in the pending criminal case of a friend by speaking with the arresting state police officer by cellular telephone during the traffic stop and arrest; personally going to the adult detention center and ordered the friend's release and taking the friend to the judge's house, and speaking to a registered nurse and asking the nurse to draw an independent blood sample from the friend; and the judge had an alcoholic drink before going to the jail to release the friend and may have had the odor of alcohol on the judge's breath, the judge's conduct constituted willful misconduct in office. *In re Sanchez*, S.Ct. No. 25,821 (Filed March 14, 2001) (decided before the 2011 recompilation).

Issuing insufficient funds checks. — Where a judge, on three separate occasions, issued checks in payment of the judge's debts knowing at the time the checks were issued that there were insufficient funds in or credit with the bank to pay the checks in full upon presentation, the judge's conduct was willful misconduct in office. *In re Vigil*, S.Ct. No. 26,328 (Filed May 7, 2001) (decided prior to the 2011 recompilation).

Failure to pay taxes and debts. — Where a judge failed to pay gross receipts taxes for the judge's private business activities for five consecutive years; failed to timely file state personal income tax returns for three consecutive years; used the facilities and equipment of the probate court for the judge's private business activities; and failed to pay the county for copying charges incurred at the county clerks' office for the judge's private business and gave the county clerk an insufficient funds check to pay for the copying, the judge's conduct constituted willful misconduct in office. *In re Vigil*, S.Ct. No. 26,328 (Filed June 13, 2000) (decided prior to the 2011 recompilation).

Control of organization that appeared before judge. — Where a judge had de facto control over a non-profit organization that regularly engaged in proceedings before the judge; the judge personally selected the majority of the board of directors and caused the hiring and firing of directors; the judge's spouse served as executive director; and the judge allowed the judge's spouse to use the judge's chambers and telephone and the judge's name, title, official stationery, and photograph to be used in solicitation of funds for the organization, the judge's conduct constituted willful misconduct in office. *In re Castellano*, 1995-NMSC-007, 119 N.M. 140, 889 P.2d 175 (decided prior to the 2011 recompilation).

Director of a DWI school. — Where, as permitted by a municipal ordinance, a municipal judge was the owner and director of a DWI school and had a pecuniary interest in having individuals initially appear before the judge in court and then attend the DWI school, the judge's conduct violated the Code of Judicial Conduct. *In re Rainaldi*, 1986-NMSC-079, 104 N.M. 762, 727 P.2d 70 (decided prior to the 2011 recompilation).

21-302. Appearance before governmental bodies and consultation with government officials.

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

A. in connection with matters concerning the legal system or the administration of justice; or

B. when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] Judges possess special expertise in the legal system and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials. Judges shall not, however, testify about substantive legal issues that may come before them for decision.

[2] For example, it may be necessary for the Chief Justice or judges who have budgetary responsibilities for the courts to provide testimony about budgetary or administrative matters. A judge's participation in such settings is not prohibited by this rule. In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 21-103 NMRA, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 21-210 NMRA, governing public comment on pending and impending matters, and Rule 21-301(C) NMRA, prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[3] In general, it would appear to be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

JUDICIAL REPRIMANDS

Control of an organization that appeared before the judge. — Where a judge had de facto control over a non-profit organization that regularly engaged in proceedings before the judge; the judge personally selected the majority of the board of directors and caused the hiring and firing of directors; the judge's spouse served as executive director; and the judge allowed the judge's spouse to use the judge's chambers and telephone and the judge's name, title, official stationary, and photograph to be used in solicitation of funds for the organization, the judge's conduct constituted willful misconduct in office. *In re Castellano*, 1995-NMSC-007, 119 N.M. 140, 889 P.2d 175 (decided prior to the 2011 recompilation).

21-303. Testifying as a character witness.

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] A judge who, without being subpoenaed, testifies as a character witness lends the prestige of judicial office to advance the interests of another. *See* Rule 21-103 NMRA. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

Vouching for the character of a relative. — Where, after the step-child of a magistrate judge was jailed by the district court for nonpayment of support, the magistrate judge telephoned the district court judge, told the district court judge that the step-child was not a flight risk, and asked the district court judge to reduce the step-child's bond or let the step-child out of jail, the magistrate judge vouched for the trustworthiness of the step-child in an attempt to influence the conditions of the step-child's release from jail and committed willful misconduct in office. *In re Naranjo*, 2013-NMSC-026.

21-304. Appointments to governmental positions.

A. A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is required by law, or is one that concerns the law, the legal system, or the administration of justice.

B. A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] Rule 21-304 NMRA implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

21-305. Use of nonpublic information.

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.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

[2] This rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of any member of the public if consistent with other provisions of this Code.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

21-306. Affiliation with discriminatory organizations.

A. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, religion, color, national origin, ethnicity, ancestry, sex, sexual orientation, gender identity, marital status, spousal affiliation, socioeconomic status, political affiliation, age, physical or mental handicap, or serious medical condition.

B. A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in Paragraph A.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, color, national origin, ethnicity, ancestry, sex, sexual orientation, gender identity, marital status, spousal affiliation, socioeconomic status, political affiliation, age, physical or mental handicap, or serious medical condition, persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends on how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this rule.

[5] This rule does not apply to national or state military service.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

21-307. Participation in educational, religious, charitable, fraternal, or civic organizations and activities.

A. Subject to the requirements of Rule 21-301 NMRA, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit including, but not limited to, the following activities:

(1) assisting such an organization or entity in planning related to fundraising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity. A judge shall not personally or expressly solicit financial support during the event;

(4) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the legal system, or the administration of justice; and

(5) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

B. A judge may encourage lawyers to provide pro bono publico legal services.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

Committee commentary. —

[1] The activities permitted by Paragraph A generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related charitable, and other organizations.

[2] A judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fundraising purpose, does not constitute a violation of Subparagraph (A)(3). Too strict a rule forbidding a judge's attendance at or participation in community events would discourage judges from participating in their communities and interacting with citizens and neighbors, a result that would isolate judges from the public they serve and would be detrimental to encouraging public support for the judiciary. At the same time, there is a potential for a judge's presence as a major participant at a fundraising event to exert undue influence on persons to contribute to the event. Subparagraph (A)(3) strikes a balance by recognizing a de minimis level of participation that is permitted and encouraged. It is generally permissible for a judge to serve as an usher or a food server or preparer, to be part of a theatrical or musical performance with others, to introduce speakers or present awards and to perform similar functions, at fundraising events. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office. A judge must be cognizant of the requirements of Rule 21-103 NMRA in connection with fundraising activities for educational, religious, charitable, fraternal, or civic organizations and activities.

[4] It shall be permissible for a judge's name to appear on an organization's letterhead, even if the letter solicits funds or membership, as long as the judge is not personally involved in the solicitation. A judge's title, however, shall not appear on an organization's letterhead for any purpose.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may

take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, in Subparagraph A(1), changed "fund-raising" to "fundraising"; and in the committee commentary, in Paragraph [4], deleted the first sentence which read "A judge's title or name shall not appear on a letter that solicits funds or membership", and added the present two sentences of the paragraph, and made technical changes throughout.

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the preceding table of corresponding rules for former rule numbers and the corresponding new rule numbers.

JUDICIAL REPRIMANDS

Fund-raising activities. — Where a magistrate judge personally participated in the solicitation of funds for a baseball tournament for the benefit of municipal and high school baseball programs and used the prestige of the judge's judicial office for the fund-raising and created the appearance that the judge had done so, the judge's conduct constituted willful misconduct in office. *In re Wingenroth*, S.Ct. No. 33,228 (Filed October 19, 2011), Inquiry Concerning a Judge No. 2011-020 (decided prior to the 2011 recompilation).

21-308. Appointments to fiduciary positions.

A. A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

B. A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

C. A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

D. If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] A judge should recognize that other restrictions imposed by this code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 21-211 NMRA because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

21-309. Service as arbitrator or mediator.

A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] This rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

21-310. Practice of law.

A full-time judge shall not practice law unless with the written approval of the Supreme Court while on unpaid leave. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's lawyer in any forum.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

Committee commentary. —

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. *See* Rule 21-103 NMRA.

[2] A part-time judge is not required to comply with Rule 21-310 NMRA but is prohibited from practicing law in the court on which the judge serves and from acting as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto. *See* Rule 21-004 NMRA.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, in the first sentence, after "A", added "full-time"; and added Paragraph [2] of the committee commentary.

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

Pro se appearance as a party defendant did not constitute the practice of law. — A state court judge's pro se appearance as a party defendant in a law suit pending before the federal district court did not constitute the practice of law. *United States v. Martinez*, 1984-NMSC-072, 101 N.M. 423, 684 P.2d 509 (decided prior to the 2011 recompilation).

21-311. Financial or business activities.

A. A judge may hold and manage investments of the judge and members of the judge's family.

B. A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

C. A judge shall not engage in financial activities permitted under Paragraphs A and B if they:

(1) will interfere with the proper performance of judicial duties;

(2) will lead to frequent disqualification of the judge;

(3) will involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves;

(4) may reasonably be perceived to exploit the judge's judicial position; or

(5) will result in violation of other provisions of this Code.

D. No full-time municipal, magistrate, metropolitan, district, or appellate judge may hold any other judicial position, elected or appointed.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with or unduly burdens the performance of judicial duties. *See* Rule 21-201 NMRA. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. *See* Rules 21-103 and 21-211 NMRA.

[2] As soon as is practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this rule.

[3] When a judge acquires information in a judicial capacity, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain.

[4] A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of judge with law firms appearing before the judge, *see* Rule 21-211 NMRA relating to disqualification.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

21-312. Compensation for extrajudicial activities.

A. A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.

B. **Conflicting compensated activities.** A judge shall not hold any other paid position, judicial or otherwise, that conflicts with the hours and duties the judge is required to perform for every judicial position. A judge shall devote the number of hours that is required by any judicial position held. In no event shall other paid employment or compensable activity hours be performed simultaneously.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. *See* Rule 21-201 NMRA.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. *See* Rule 21-315 NMRA.

[3] No judge may receive any remuneration, including a gratuity, for performing a marriage ceremony. For reasonable travel expenses, *see* Rule 21-314 NMRA.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

JUDICIAL REPRIMANDS

Outside employment. — A full-time magistrate court judge, who was paid a salary as a full-time magistrate and who served as a tribal judge pro tempore for a tribal court at times when the judge was being paid by the state to serve as a magistrate court judge committed willful misconduct in office. *In re Martinez*, S.Ct. 29,309 (Filed October 19, 2005) (decided prior to the 2011 recompilation).

Director of a DWI school. — Where, as permitted by a municipal ordinance, a municipal judge was the owner and director of a DWI school and had a pecuniary interest in having individuals initially appear before the judge in court and then attend the DWI school, the judge's conduct violated the Code of Judicial Conduct. *In re Rainaldi*, 1986-NMSC-079, 104 N.M. 762, 727 P.2d 70 (decided prior to the 2011 recompilation).

21-313. Acceptance of gifts, loans, bequests, benefits, or other things of value.

A. A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality, or if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

B. Unless otherwise prohibited by law, or by Paragraph A, a judge may accept the following:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 21-211 NMRA;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge;

(9) gifts incident to a public testimonial; or

(10) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal, or civic activities permitted by this Code, if the same invitation is offered to non-judges who are engaged in similar ways in the activity as is the judge.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 21-313 NMRA imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported.

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 21-211 NMRA, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 21-313 NMRA applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 21-313 NMRA and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely and incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

[5] Rule 21-313 NMRA does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other rules of this Code, including Rules 21-403 and 21-404 NMRA.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

Acceptance of gratuity for marriage ceremony. — Except for municipal judges, a judge may not accept a gratuity in connection with the performance of a marriage ceremony without violating the New Mexico Constitution. 1991 Op. Att'y Gen. No. 91-09 (opinion rendered prior to the 2011 recompilation).

21-314. Reimbursement of expenses and waivers of fees and charges.

A. Unless otherwise prohibited by Rules 21-301 and 21-313A NMRA or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

B. Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest.

C. A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 21-315 NMRA.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 21-211 NMRA;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

21-315. Extrajudicial compensation, expense reimbursement, and reporting.

A. **Compensation and reimbursement.** A judge may receive compensation and reimbursement of expenses for extrajudicial activities permitted by this Code, unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

B. **Extrajudicial compensation.**

(1) Extrajudicial compensation is the consideration received for services rendered by a judge to a person, firm, corporation, or association other than the salary, benefits, and perquisites of office provided to the judge for the performance of official judicial duties.

(2) Extrajudicial compensation does not include

(a) interest, dividends, rents, royalties, working interests, proceeds of or profits from the sale or exchange of assets;

(b) compensation or income earned prior to entering judicial service, including fees, salary, benefits, perquisites, disability benefits, or retirement benefits;

(c) reimbursement of expenses incurred prior to entering judicial service; or

(d) compensation or income of a spouse or domestic partner attributed to the judge by operation of community property or other law.

(3) Extrajudicial compensation should not exceed a reasonable amount for the activities performed, and should not exceed what a person who is not a judge would receive for the same activity.

(4) A judge shall publicly report extrajudicial compensation received.

C. **Expense reimbursement.** A judge shall publicly report reimbursement of expenses and waiver of fees or charges permitted by Rule 21-314 NMRA, unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed five hundred dollars ($500.00). Any payment in excess of actual cost is extrajudicial compensation subject to the requirements of this rule. Reimbursement of expenses and waiver of fees or charges, when provided by a governmental entity or entity primarily funded by state or federal funds in connection with judicial education and training, are neither extrajudicial compensation nor subject to the requirements of this rule.

D. **Public reports.** In addition to all other reports required by law, a judge should report the date, place, and nature of any activity for which the judge received extrajudicial compensation or expense reimbursement as defined in this rule, including the name of the payor and the amount, or character and value, of extrajudicial compensation or expense reimbursement so received. The judge's report shall be filed annually as a public document in the office of the clerk of the court on which the judge serves or other office designated by law, and, when technically feasible, posted by the court or office personnel on the court's website.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; partially suspended by Supreme Court Order No. 13-8300-009, effective immediately and until

further order of the Court, suspending Paragraph A in its application to part-time probate judges and part-time municipal judges, suspending Paragraph A to the extent that extrajudicial compensation includes income from interest, dividends, rents, royalties, working interests, proceeds of or profits from the sale or exchange of capital assets as defined by the Internal Revenue Code and regulations, or the collection of fees or retirement benefits earned or reimbursement of expenses incurred prior to entering judicial service, and suspending Paragraph A to the extent that it requires judges to report the reimbursement of expenses and the waiver of fees and charges by a governmental entity or entity primarily funded by state or federal funds, in connection with judicial education and training; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

Committee commentary. — The Code does not prohibit a judge from accepting honoraria or speaking fees, provided that the amount of the extrajudicial compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts of interest are created by the arrangements. A judge must not appear to trade on judicial office for personal advantage. A judge shall not spend significant time away from court duties in order to meet speaking or writing commitments. Neither the source of payment nor the amount paid as extrajudicial compensation must raise any question of undue influence or the judge's ability or willingness to be impartial. Engaging in business for profit with the State of New Mexico or any of its departments, officials, or political subdivisions, either in person or through an entity in which the judge owns an interest, should be carefully scrutinized to avoid creating a conflict of interest or suggesting that the judge is exploiting judicial office for personal advantage. For further guidance on compensation for extrajudicial activities, *see* Rule 21-312 NMRA. For further guidance on reimbursement of expenses and waivers of fees and charges, *see* Rule 21-314 NMRA.

[Adopted by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, completely rewrote the rule; in the heading, deleted "Reporting requirements" and added "Extrajudicial compensation, expense reimbursement, and reporting"; deleted former Paragraphs A through D, which provided for public reporting of extrajudicial compensation, and added new Paragraphs A through D; and added the committee commentary.

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

21-400. Canon 4.

A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] The public's perception of a fair and impartial judiciary may be greatly affected by the manner in which judges or candidates for judicial office comport themselves. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[2] Even when subject to public election, a judge plays a role different from that of other elected officials. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free from political influence and political pressure. So too, the public's perception of a fair and impartial judiciary may be greatly affected by the manner in which judges or candidates for judicial office comport themselves. This canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[3] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

[4] Rule 21-401 NMRA addresses the limitations on the political activities of judges generally, and who are not currently running for judicial office. Rule 21-402 NMRA establishes the boundaries for political and campaign activities that circumscribe the conduct of judges and non-judges who are judicial candidates engaged in a partisan, non-partisan, or retention election. Rule 21-403 NMRA addresses the limitations on activities of candidates seeking appointment to judicial office. Rule 21-404 NMRA requires that candidates for judicial office create campaign committees and establishes the rules for those campaign committees. Rule 21-405 NMRA addresses the activities of judges who either become candidates for or seek appointment to a non-judicial office. Finally, Rule 21-406 NMRA creates the mechanism for investigating and resolving violations of the Code, including challenges for violations of the Code in election campaigns.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, in the committee commentary, in Paragraph [4], deleted the first sentence, which read, "The Code organizes Canon 4 by the political status of the judge, that is, whether the judge is or is not a current candidate for judicial office." and in the present second sentence, after "conduct of judges and", added "non-judges who are".

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

21-401. Political activity and elections for judges generally, and who are not currently running in either a partisan, non-partisan, or retention election. non-partisan, or retention election.

A. A judge may engage in political activity on behalf of the legal system, the administration of justice, measures to improve the law and as expressly authorized by the law or by this Code.

B. A judge may, unless prohibited by law, attend non-fundraising political gatherings.

C. A judge shall not, except as permitted by Rule 21-402 NMRA,

(1) act as a leader or hold office in a political organization;

(2) publicly endorse or publicly oppose

(a) a candidate for public office, or

(b) a ballot issue unrelated to the administration of justice or the legal system;

(3) make speeches on behalf of a political organization;

(4) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate;

(5) knowingly, or with reckless disregard for the truth, make any false or misleading statement;

(6) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or

(7) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

D. A metropolitan, district, or appellate court judge shall not

(1) purchase tickets for or attend dinners or other fundraising events sponsored by a political organization or a candidate for public office; or

(2) publicly identify himself or herself as a candidate of a political organization.

E. A judge shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge, any activities prohibited under this Code.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

Committee commentary. —

Participation in Political Activities

[1] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited from assuming leadership roles in political organizations, such as ward chair or delegate to a party convention. *See* Subparagraph (C)(1) of this rule pertaining to judges and Rule 402(A)(2)(b) NMRA pertaining to judicial candidates. Non-candidates may attend political events, but must be conscious that a judge may abuse the prestige of judicial office by being present at the event and should consider whether the interests of the judiciary would best be served by not attending. A judge should not attend events organized for the sole purpose of raising money for a political campaign.

[2] Judges under Subparagraphs (C)(2) and (C)(3) of this rule, and judicial candidates as provided under Rule 402(A)(2)(b), are prohibited from publicly endorsing or opposing candidates for public office or making speeches on behalf of political organizations, to prevent them from lending the prestige of judicial office to advance the interests of others. *See* Rule 21-103 NMRA. These rules do not prohibit candidates from campaigning on their own behalf. *See* Rule 21-402(C)(1) NMRA.

[3] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in Subparagraph (C)(2)(a) of this rule or Rule 402(A)(2)(b) NMRA, against a judge or judicial candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member’s political activity or campaign for public office. To

avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that the judge or judicial candidate endorse any family member's candidacy or other political activity.

[4] Judges and judicial candidates retain the right to participate in the political process as voters in all local, state, and government elections.

[5] Subparagraph (C)(7) of this rule and Rule 21-402(A)(2)(b) make applicable to both judges and judicial candidates the prohibition relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[6] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge or judicial candidate should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[7] The Code does not prohibit a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. *See* Rule 21-302 NMRA.

[8] A judge is prohibited from publicly endorsing a judicial candidate or candidate for public office, e.g., adding the judge's name to a list of supporters or publicly recommending the judge's election or appointment. Private endorsements, however, are permitted. A judge or judicial candidate is not prohibited from privately expressing the judge's or judicial candidate's views on judicial candidates or other candidates for public office.

[9] Paragraph D of this rule exempts magistrate, municipal, and probate judges from the prohibitions identified in this paragraph.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, in the rule, in Paragraphs B and Subparagraph D(1), changed "non-fund raising" to "non-fundraising"; in the committee commentary, in Paragraph [1], in the second sentence, after "prohibited", deleted "by Paragraph (C)(1)", and at the end

of the sentence, added "*See* Subparagraph (C)(1) of this rule pertaining to judges and Rule 402(A)(2)(b) NMRA pertaining to judicial candidates."; in Paragraph [2], at the beginning of the first sentence, added "Judges under", deleted "Paragraphs", and added "Subparagraphs", after "(C)(3)", added "of this rule," and deleted "prohibit judges", after "judicial candidates", added "as provided under Rule 402(A)(2)(b), are prohibited", after "from", deleted "making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office" and added "publicly endorsing or opposing candidates for public office or making speeches on behalf of political organizations", after "organizations," deleted "respectively", and after the second occurrence of "*See*", deleted "Rule 21-402(A)(7)" and added "Rule 21-402(C)(1)"; in Paragraph [3], in the first sentence, after "prohibition in", deleted "Paragraph" and added "Subparagraph", and after "(C)(2)(a)", added "of this rule or Rule 402(A)(2)(b) NMRA"; in Paragraph [4], after the first sentence, deleted "Statements and Comments Made during a Campaign for Judicial Office (*see* also Rule 21-402 NMRA); Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office."; in Paragraph [5], at the beginning of the paragraph, deleted "Paragraph (C)(9) (and Rule 21-402(A)(2)(a))" and added "Subparagraph (C)(7) of this rule and Rule 21-402(A)(2)(b)", and after "the prohibition", deleted "that applies to judges in Rule 21-201(B) NMRA"; in Paragraph [6], in the third sentence, after "a judge", added "or judicial candidate"; and in Paragraph [7], after "*See*", deleted "Rule 21-312 NMRA" and added "Rule 21-302 NMRA".

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

JUDICIAL REPRIMANDS

Endorsement of political candidate. — Where a magistrate court judge authorized the use of the judge's name for an endorsement of a candidate for reelection as mayor of a municipality and the endorsement, which was published in a local newspaper, did not explicitly identify the judge as a magistrate court judge, the judge violated the Code of Judicial Conduct. *In re Vincent*, 2007-NMSC-056, 143 N.M. 56, 172 P.3d 605 (decided prior to the 2011 recompilation).

False statements about judicial disciplinary complaints. — Where, during a radio broadcast debate, a judge made false or misleading statements that no judicial disciplinary complaints had been filed against the judge with the Judicial Standards Commission, the judge committed willful misconduct in office. *In re. Miller-Byrnes*, S.Ct. No. 28,716 (Filed August 31, 2004) (decided prior to the 2011 recompilation).

21-402. Political and campaign activities of judicial candidates in public elections.

A. **Candidates for election to judicial office.** A judicial candidate in a partisan, non-partisan, or retention election,

(1) shall

(a) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;

(b) comply with all applicable election, election campaign, and election campaign fundraising laws and regulations;

(c) review and approve the content of all non-financial campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 21-404 NMRA, before their dissemination;

(d) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 21-404 NMRA, that the candidate is prohibited from doing under these rules; and

(e) if intending to accept funds from others or expend funds in excess of one thousand dollars ($1,000), establish a campaign committee pursuant to the provisions of Rule 21-404 NMRA;

(2) shall not

(a) seek to discover who has contributed to the campaign of either the judge or the judge’s opponent;

(b) engage in behaviors or activities prohibited by Rule 21-401(C)(1), (C)(2), (C)(3), (C)(5), (C)(6), and (C)(7) NMRA;

(c) solicit funds for a candidate or a political organization, or make a contribution to a candidate, except as permitted by Subparagraphs (A)(3)(b) and (c) below; or

(d) misrepresent the candidate's or the candidate's opponent's identity, qualifications, present position or other material fact;

(3) may

(a) speak on behalf of his or her candidacy through any medium, including, but not limited to, advertisements, websites, or other campaign literature;

(b) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;

(c) contribute to a political organization;

(d) use advertising that does not contain any misleading contents, and does not, in nonpartisan elections, contain any reference to the candidate's affiliation with a political party; and

(e) respond to personal attacks or attacks on the candidate's record as long as the response does not violate Rule 21-401(C)(6) NMRA.

B. **Contributions creating appearance of impropriety.** Candidates for judicial office in partisan, non-partisan, and retention elections shall refrain from campaign fundraising activity which has the appearance of impropriety, and shall not accept any contribution that creates an appearance of impropriety.

C. **Solicitation for other campaigns and candidates.** Candidates in partisan, non-partisan, and retention elections for judicial office shall not solicit funds for any other political campaign, or for any other candidate for any other office. Judicial candidates may, however, run for election as part of a slate of judicial candidates and may participate in joint fundraising events with other judicial candidates.

D. **Unopposed candidates in partisan and non-partisan elections.** Candidates in partisan and non-partisan elections for judicial office who have a campaign fund, but who are unopposed or become unopposed in the campaign, shall return all unused and uncommitted campaign funds pro rata to the contributors of the funds, or donate the funds to a charitable organization, or to the State of New Mexico, as the candidate may choose, with disbursement of such funds to occur within thirty (30) days after the absence of opposition becomes known. This paragraph does not apply to retention elections.

E. **Contributions by attorneys and litigants.** If a case is pending before any candidate for the judicial office being contested, restrictions of this paragraph apply to all candidates for that office. Contributions from attorneys and litigants shall be made only to a campaign committee, and are subject to all the requirements of this rule. Campaign committees may solicit contributions from attorneys. Campaign committees shall not knowingly solicit a contribution from a litigant whose case is then pending before the candidate. Campaign committees shall not disclose to the judge or candidate the identity or source of any funds raised by the committee.

F. **A judicial candidate in a partisan public election.** A judicial candidate in a partisan election may

(1) identify himself or herself as a candidate of a partisan political organization; and

(2) seek, accept, and use endorsements from a partisan political organization.

G. **A judicial candidate in a retention or non-partisan election.** A judicial candidate in a retention or non-partisan election may

(1) identify himself or herself as a candidate but shall not identify himself or herself with any specific partisan political organization; and

(2) seek, accept, and use endorsements from a partisan political organization.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-003, effective November 1, 2015.]

Committee commentary. —

[1] This rule restricts contributions for campaigns for judicial office to sources and amounts that do not create an appearance of impropriety. Under Rule 21-404 NMRA, candidates for judicial office shall not personally solicit or personally accept campaign contributions. Seed money under NMSA 1978, Sections 1-19A-2(K) and 1-19A-5, and qualifying contributions under NMSA 1978, Sections 1-19A-2(H) and 1-19A-4, are considered campaign contributions for the purposes of these rules. A judicial candidate is prohibited from personally soliciting or personally accepting such contributions. Candidates for election to judicial office are required to create campaign committees to solicit and accept contributions, to solicit public support, and to receive, manage, and disburse all campaign contributions. Each candidate must instruct the campaign committee to solicit or accept only those contributions that are reasonable under the circumstances, and that meet the requirements of this rule.

[2] Attorneys and litigants have the right as citizens to participate in the electoral process of public officers, including judges, and have the right to support and make contributions to candidates for judicial office. Therefore, campaign contributions by attorneys and litigants are permitted, within the restrictions of this rule. However, campaign contributions from litigants with cases pending before any candidate for the judicial office being contested may not be knowingly solicited or accepted by any candidate for that office or that candidate’s campaign committee. Once a campaign committee determines it has received a contribution from a litigant with a case pending before the judicial candidate, the contribution must be returned.

[3] Although Paragraph E does not forbid a judicial candidate’s campaign from accepting a contribution from a lawyer in a firm that has a pending case, a judicial candidate’s campaign committee should not accept the contribution if accepting such a contribution creates an appearance of impropriety. For example, a large contribution from a law firm with many lawyers may create the appearance of impropriety as might a smaller contribution from a firm with only two or three lawyers. These examples serve only to illustrate the point that campaign committees should exercise particular vigilance when accepting contributions from lawyers whose firm has a pending case.

[4] Campaign committees established under this rule should attempt to manage campaign finances responsibly, avoiding deficits that may necessitate post-election fundraising.

[5] Subparagraphs (A)(3)(a) through (e) of this rule permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 21-401 NMRA. A candidate may begin to engage in activities permitted under Rule 21-401 NMRA before the next applicable electoral event, such as a primary election, or as soon as the candidate makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes, or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office.

[6] Despite Subparagraphs (A)(3)(a) through (e) of this rule, judicial candidates for public election remain subject to many of the same provisions as are contained in Rule 21-401 NMRA. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. *See* Subparagraph (A)(2)(b) of this rule.

[7] In partisan public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot. A candidate for judicial office does not publicly endorse another candidate for public office by having that candidate's name on the same ticket, or by participating in joint fundraising with other judicial candidates, or by running for election as part of a slate of judicial candidates.

[8] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.

[9] Although judicial candidates in nonpartisan public elections are prohibited from running on a ticket or slate associated with a political organization, they may group themselves into slates or other alliances to conduct their campaigns more effectively.

[10] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[11] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Rule 21-401 (C)(7) NMRA (prohibiting the making of pledges or promises in connection with matters likely to come before the court that are inconsistent with the impartial performance of judicial duties) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates’ responses might be

viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating Subparagraph (A)(2)(b) of this rule and Rule 21-401(C)(7), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. *See* Rule 21-211 NMRA.

[12] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Judges and judicial candidates and their committees must refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading. *See* Subparagraph (A)(2)(b) of this rule and Rule 21-401(C)(5) NMRA.

[13] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate Subparagraph (A)(2)(b) of this rule as pertains to Subparagraphs (C)(3) (prohibiting speeches on behalf of a political organization), (C)(6) (prohibiting any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter impending or pending in any court), or (C)(7) (prohibiting the making of pledges or promises in connection with matters likely to come before the court that are inconsistent with the impartial performance of judicial duties) of Rule 21-401 NMRA, the candidate may respond directly and make a factually accurate public response. When a violation of the Code of Judicial Conduct may have occurred, a judicial candidate may proceed under Rule 21-406 NMRA of this Code.

[14] In addition, if a judge knows that an independent third party has made unwarranted attacks on a candidate's opponent, the candidate should disavow the attacks and request the third party to cease and desist. When false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited from making the facts public. Subject to Subparagraph (C)(6) of Rule 21-401 NMRA (prohibiting any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter impending or pending in any court), as made applicable by Subparagraph (A)(2)(b) of this rule, a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign. It is, however, preferable for someone else to respond if the allegations relate to a pending case.

[15] A candidate for elective judicial office is not prohibited from retaining during candidacy a public office such as district attorney, which is not an office in a "political organization."

[16] Candidates for judicial office should consider setting a limit on any individual contribution for purposes of determining whether contribution above that limit creates an appearance of impropriety or would otherwise undermine the public's confidence in the integrity and independence of the judiciary. Judicial candidates may be informed about the total amounts contributed to the campaign in order to make informed budgeting decisions relating to the campaign. Under most circumstances, however, judicial candidates should not be informed about the specific details of individual contributions.

[17] Candidates for judicial offices may, through a campaign committee, solicit endorsements of support, including endorsements from attorneys. The judicial candidate may not solicit endorsements and should not be informed about the identity of individual attorney supporters.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-003, effective November 1, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-003, effective November 1, 2015, provided additional restrictions on judicial candidates' political activities, provided that certain provisions of the rule apply to non-partisan elections as well as partisan and retention elections, removed the provision that candidates for judicial office may not personally accept campaign contributions, revised the committee commentary to note that the prohibition on candidates for judicial office from personally accepting campaign contributions is provided for in Rule 21-404 NMRA, and made technical changes; in Subparagraph A(1)(b), after "campaign", deleted "fund-raising" and added "fundraising"; in Subparagraph A(1)(e), at the beginning of the sentence, deleted "shall", after "intending to", deleted "raise" and added "accept funds from others", and at the end of the sentence, deleted the period and added a semicolon; deleted former Subparagraph A(2)(b) and added new Subparagraphs A(2)(b) and A(2)(c), and redesignated former Subparagraph A(2)(c) as Subparagraph A(2)(d); in Subparagraph A(3)(e), after "violate", deleted "Subparagraph (6) of Paragraph C of", and after "Rule 21-401", added "(C)(6)"; in Paragraph B, after "judicial office in", deleted "both", after "partisan", added "non-partisan", and after "campaign", deleted "fund-raising" and added "fundraising"; in Paragraph C, deleted the introductory sentence, which read, "Subject to the restrictions of Rule 21-404 NMRA and Paragraphs A and E of Rule 21-402 NMRA"; deleted Subparagraph C(1), which read, "candidates in both partisan and retention elections for judicial office may solicit contributions for their own campaigns, but shall not solicit funds for any other political campaign, or for any candidate for any other office; and"; deleted Subparagraph C(2), which read, "judicial candidates may run for election as part of a slate of judicial candidates and may participate in joint fundraising events with other judicial candidates.", and added the new

paragraph; in Paragraph E, deleted the second sentence which read, “Candidates for judicial office, in both partisan and retention elections, shall not personally solicit or personally accept campaign contributions from any attorney, or from any litigant in a case pending before the candidate.”; in the committee commentary, in Paragraph [1], deleted the second sentence which read, “Candidates for judicial office may solicit contributions for their own campaigns, within the restrictions of this rule, but not for the campaigns for other candidates or offices.” and added the second, third and fourth sentences; in Paragraph [11], after the first sentence, deleted “Paragraph A(2)(b)” and added “Rule 21-401 (C)(7) NMRA (prohibiting the making of pledges or promises in connection with matters likely to come before the court that are inconsistent with the impartial performance of judicial duties)”; at the end of Paragraph [13], deleted “In addition, a judicial candidate has recourse to the complaint procedures of the Fair Judicial Elections Committee of the State Bar. In extreme cases, when there may have been a violation of the Code of Judicial Conduct, a judicial candidate may proceed under Rule 21-406 NMRA of this Code” and added the last sentence; and made technical changes throughout the committee commentary.

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

Judge cannot simultaneously run for separate judicial positions. — Paragraph B of former Rule 21-700 NMRA indicates that a judge may be nominated or run for another judicial office without resigning. It does not, however, state that a judge may simultaneously run for separate judicial positions. 1990 Op. Att’y Gen. No. 90-04 (opinion rendered prior to the 2011 recompilation).

JUDICIAL REPRIMANDS

Making campaign promise to provide assistance if elected. — Where, during the time a judge was a candidate for magistrate court judge, the judge told a landlord that the judge would help if the landlord had a problem in court; when the judge learned that the landlord was having trouble with a tenant, the judge reviewed the lease and advised the landlord to file suit after the judge was elected; the judge also explained how the landlord could excuse the other magistrate court judges to make sure the judge heard the case; after the judge was elected, the landlord filed suit and excused the other magistrate court judges; and at a hearing on the case, the judge became impatient with the landlord and filed a recusal, the judge violated the Code of Judicial Conduct, subjecting the judge to removal from office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

21-403. Activities of candidates for appointive judicial office.

A. A candidate for appointment to judicial office shall not solicit or accept funds, personally or through a committee or otherwise, to support the candidacy.

B. A candidate for appointment to judicial office shall not engage in political activity to secure the appointment except that such candidate may:

(1) communicate with the appointing authority, including any nominating commission designated to screen candidates;

(2) seek support or endorsement for the appointment from organizations and from individuals to the extent requested, required or permitted by the appointing authority and the nominating commission; and

(3) provide to the appointing authority and the nominating commission information as to the candidate's qualifications for office.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. *See* Rules 21-401(C)(7) and 21-402(A)(2)(b) NMRA.

[2] Candidates for appointive judicial office should submit to the same requirements as a judicial candidate. *See* Rule 21-402 NMRA.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, in the committee commentary, in Paragraph [1], at the end of the paragraph, deleted "*See* Rules 21-401(A)(3)(c)(i) and 21-402(E)(6)(a) NMRA" and added "*See* Rules 21-401(C)(7) and 21-402(A)(2)(b) NMRA".

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

21-404. Campaign committees.

A. **Campaign committees.** Candidates in partisan, non-partisan, and retention elections shall establish committees of one or more responsible persons to conduct campaigns for the candidate using media advertisements, brochures, mailings, candidate forums and other means not prohibited by law or these rules. Campaign

committees may solicit and accept reasonable campaign contributions, and obtain public statements of support on behalf of the candidate, subject to the restrictions of these rules including, but not limited to, Rule 21-402 NMRA. Candidates shall not personally solicit or personally accept contributions for their own campaigns. Nor shall candidates solicit personally, or through campaign committees, contributions for the campaigns of other candidates or offices. All campaign contributions shall be paid or turned over to the campaign committee, and shall be managed and disbursed by the committee. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others. The candidate shall take reasonable steps to ensure that his or her campaign committee complies with applicable provisions of this Code and other applicable law.

B. **Unused campaign funds.** A candidate for judicial office in either a partisan, non-partisan, or retention election who has unused campaign funds remaining after election, and after all expenses of the campaign and election have been paid, shall refund the remaining funds pro rata to the campaign contributors, or donate the funds to a charitable organization, or to the State of New Mexico, as the candidate may choose, within thirty (30) days after the date the election results are certified.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-003, effective November 1, 2015.]

Committee commentary. —

[1] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. This rule recognizes that judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.

[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

[3] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, and in conformity with applicable law. Although lawyers and others who might appear before a successful candidate for judicial office are permitted to make campaign contributions, the candidate should instruct his or her campaign committee to be especially cautious in connection with such contributions, so they do not create grounds for disqualification if the candidate is elected to judicial office. *See* Rule 21-211 NMRA.

[4] Contributions for campaigns are limited to sources and amounts that do not create an appearance of impropriety. Candidates for election to judicial office are required to create campaign committees, *see* Rule 21-402(A)(1)(e) NMRA, to solicit and accept contributions, to solicit public support, and to receive, manage, and disburse all campaign contributions. Each candidate must instruct the campaign committee to solicit or accept only those contributions that are reasonable under the circumstances and that meet the requirements of this rule.

[5] Campaign committees established under this rule should attempt to manage campaign finances responsibly, avoiding deficits that may necessitate post-election fundraising.

[6] Judicial candidates for statewide judicial elective office may elect to participate in public financing that imposes restrictions on fundraising. *See* NMSA 1978, §§ 1-19A-1 to -17. The restrictions governing campaign finances and requirements for campaign committees apply to publicly financed campaigns. A judicial candidate who seeks or has been certified for public financing must comply with Rule 21-404 NMRA. Seed money under NMSA 1978, Sections 1-19A-2(K) and 1-19A-5, and qualifying contributions under NMSA 1978, Sections 1-19A-2(H) and 1-19A-4, are considered campaign contributions for the purposes of these rules. Unused campaign funds for a publicly financed judicial candidate must, by law, be returned to the public election fund.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-003, effective November 1, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-003, effective November 1, 2015, provided that candidates for judicial office are prohibited from personally soliciting or personally accepting campaign contributions for their own campaigns or for the campaigns of other candidates or offices, and revised the committee commentary; in Paragraph A, in the first sentence, after “Candidates in”, deleted “both”, in the second sentence, after “not limited to”, deleted “Rule 21-402D” and added “Rule 21-402”, and added the third and fourth sentences of the paragraph; and in the committee commentary, in Paragraph [1], after the first sentence, deleted “*See* Rule 21-402(C) NMRA”; in Paragraph [4], after the first sentence, deleted “Candidates for judicial office may solicit contributions for their own campaigns, within the restrictions of this rule, but not for the campaigns of other candidates or offices.”; in Paragraph [5], after “post-election”, deleted “fund-raising” and added “fundraising”; and in Paragraph [6], in the first sentence, after “restrictions on”, deleted “fund-raising” and added “fundraising”, after “*See*”, deleted “Sections 1-19A-1 through 1-19A-17 NMSA 1978” and added “NMSA 1978, §§ 1-19A-1 to -17”, and added the present fourth sentence to the paragraph to clarify that seed money and qualifying contributions are considered campaign contributions for the purposes of the Code of Judicial Conduct.

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

A candidate for judicial office is prohibited from using contributions in a subsequent campaign for other public office. — Under the Campaign Reporting Act (CRA), a candidate for judicial office may solicit and accept campaign funds but must return unused funds in accordance with the provisions of the Code of Judicial Conduct, and likewise, 21-404(B) NMRA of the Code of Judicial Conduct permits candidates for elective judicial office to accept contributions to support a campaign for judicial office, but prohibits the retention of contributions received after the election takes place, and therefore the CRA, which incorporates the Code of Judicial Conduct by reference, prohibits a municipal judge who intends to run for county office in 2022 from transferring unexpended contributions received as a candidate for judicial office to a newly-formed campaign committee that supports his candidacy for county office. Moreover, 21-405 NMRA of the Code of Judicial Conduct prohibits a judge seeking appointment or election to a public, nonjudicial office from soliciting or accepting funds, either personally or through a committee, to support the candidacy. 2022 Op. Ethics Comm'n No. 2022-02.

21-405. Activities of judges who become candidates for nonjudicial office.

A. A judge seeking appointment to a public, nonjudicial office shall not:

(1) solicit or accept funds, personally or through a committee, or otherwise, to support the candidacy;

(2) engage in any political activity to secure the appointment except:

(a) communicating with the appointing authority;

(b) seeking the support or endorsement for the appointment from organizations and from individuals to the extent requested, required or permitted by the appointing authority, subject to these rules; and

(c) providing to the appointing authority information concerning the candidate's qualifications for the office.

B. A judge seeking appointment to a public nonjudicial office, during the time the appointment is sought, shall be disqualified from presiding or participating as a judge in any legal proceeding involving or materially affecting the interests of:

(1) the appointing authority; or

(2) an organization or individual that has been contacted by the candidate to make, or is known by the candidate to be making, a recommendation to the appointing authority concerning the appointment.

C. No judge of any court in the State of New Mexico may while in office accept a nomination for, or be elected to, a public nonjudicial office. A judge must, when filing a statement of candidacy for elective nonjudicial office, resign the judge's office immediately.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

Committee commentary. —

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The "resign to run" rule set forth in Paragraph C ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, changed "non-judicial" to "nonjudicial" throughout the rule and committee commentary; and in Paragraph C, after "No", deleted "full-time".

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

21-406. Violations.

A. **Violations by judges.** Violations of any of the rules of the Code of Judicial Conduct by judges shall be investigated, proceeded upon, and disposed of by the

Judicial Standards Commission in accordance with its authority and rules of procedure, and by the Supreme Court of New Mexico acting under its powers of contempt and superintending control. Judges shall comply with all rules, requirements, and procedures of the Judicial Standards Commission, shall cooperate with the Judicial Standards Commission in the performance of its functions, and shall comply with all laws applicable to judicial office.

B. **Violations by non-judge candidates for judicial office.** Violations of any of the rules of the Code of Judicial Conduct by persons who are members of the bar shall be deemed to constitute violations of the Rules of Professional Conduct, and shall be investigated, proceeded upon, and disposed of by the Disciplinary Board of the Supreme Court in accordance with its authority and rules of procedure, and by the Supreme Court of New Mexico acting under its powers of contempt and superintending control. Violations of the rules by candidates who are not lawyers are within the superintending control of the Supreme Court, and may be grounds for petitioning the Supreme Court for relief by way of mandamus, injunction, or other equitable relief to require compliance and rectify non-compliance.

C. **Challenges of violations in election campaigns.** A candidate may bring an action to challenge a violation by the candidate's opponent of Rules 21-401 and 21-402 NMRA occurring in election campaigns for judicial office.

(1) ***Filing and venue.*** In election campaigns for the Supreme Court and Court of Appeals, by filing a complaint in the district court for Santa Fe County. In election campaigns for district, metropolitan, magistrate, municipal, and probate courts, by filing a complaint in the district court of the county in which the complainant or the defendant resides, but only within the judicial district where the election is to occur. The complainant shall serve all parties within three (3) days after filing the action. If available, any statement, advertisement, or publication alleged to constitute a violation shall be filed with the complaint.

(2) ***Standing; parties.*** Violations by a candidate or by a candidate's campaign committee can be challenged by an opposing candidate. The alleged violator shall be joined as a defendant and shall be served forthwith in person with the complaint, summons, and notice of hearing when issued. A candidate who has not been joined as a party may intervene in the proceeding by filing a notice of intervention and a response to the complaint within the time required by this rule.

(3) ***Hearing.*** The complaint shall be heard by the district court without a jury within ten (10) days after the action is filed, unless the time is extended for good cause. Peremptory challenges to the district judge shall be filed by the complainant within three (3) days after the action is filed and by a defendant within three (3) days after service of process on that defendant. The district court shall enter its decision, findings of fact, and conclusions of law, within not more than three (3) days after the hearing is completed. The decision of the district court shall constitute a final judgment immediately upon entry.

(4) ***Remedies.*** The district court is authorized to issue any order provided by the Rules of Civil Procedure for the District Courts and any remedial decrees for cessation of violations, retractions, corrective publications, or other relief as may be reasonably required to rectify the effects of the violation. The district court may also refer any violation to the Judicial Standards Commission or the Disciplinary Board of the Supreme Court for additional action.

(5) ***Discovery.*** Any documentary or demonstrative evidence to be offered at the hearing shall be exchanged by the opposing parties as ordered by the district court, and in any case not less than twenty-four (24) hours prior to the commencement of the hearing. Discovery shall not delay the hearing on the merits, but wrongful refusal, obstruction, or delay in discovery may be sanctioned in the discretion of the district court. The parties may, by subpoena, require the appearance of witnesses and the production of evidence at the hearing. The district court may allow oral testimony to be admitted telephonically.

(6) ***Appeals.*** Appeals shall be taken directly to the Supreme Court of New Mexico pursuant to the provisions of Rule 12-603 NMRA of the Rules of Appellate Procedure.

(7) ***Other rules applicable.*** The Rules of Civil Procedure for the District Courts, Rules of Appellate Procedure, and Rules of Evidence shall apply unless inconsistent with this rule.

(8) ***Other proceedings.*** The jurisdiction of the Judicial Standards Commission, the Supreme Court, and the Disciplinary Board to hear violations of the Code of Judicial Conduct is not affected by this paragraph.

D. **Violations by hearing officers and special commissioners.** Violations of any of the applicable rules of the Code of Judicial Conduct by a hearing officer or special commissioner shall be addressed by the chief judge of the judicial district in which the hearing officer or special commissioner is employed. Any such violation shall be treated as an employment matter and may result in discipline up to and including dismissal. In addition, the Supreme Court and the Disciplinary Board retain jurisdiction to hear violations of the Code of Judicial Conduct by hearing officers and special commissioners.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

Committee commentary. —

[1] Rule 21-406 NMRA governs violations of the Code of Judicial Conduct by both judges and judicial candidates.

[2] Judges are required to cooperate with the Judicial Standards Commission or the Supreme Court in the course of their investigations of alleged judicial misconduct. The failure to do so is a violation of Rule 21-406 NMRA.

[3] Judicial candidates are also subject to certain provisions of the Code of Judicial Conduct. Violations by members of the bar are deemed violations of the Rules of Professional Conduct and subject the violator to discipline.

[4] Rule 21-406 NMRA also provides a detailed procedure to obtain an expedited judicial review of alleged violations of the Code during election campaigns. The expedited review recognizes the importance of maintaining the integrity of the election process by swiftly resolving allegations of misconduct.

Judicial candidates may also be subject to other requirements imposed by law that implicate ethical considerations including the Voter Action Act, NMSA 1978, Sections 1-19A-1 to -17, for judicial candidates who have elected public financing, and the Campaign Reporting Act, NMSA 1978, Sections 1-19-25 to -36.

[5] Certain provisions of the Code are applicable by statute to hearing officers and special commissioners as a condition of their employment by the judicial branch. *See* NMSA 1978, § 40-4B-4 (child support hearing officers); *id*. § 40-13-9 (domestic violence special commissioners); *see also* Rule 21-004(C) NMRA. However, hearing officers and special commissioners are not subject to the jurisdiction of the Judicial Standards Commission, which is limited to matters that involve a "justice, judge or magistrate." *See* N.M. Const. Art. VI, § 32; NMSA 1978, § 34-10-2.1. Thus, Paragraph D provides that violations of the Code by a hearing officer or special commissioner shall be addressed as an employment matter by the chief judge of the judicial district in which the hearing officer or special commissioner is employed.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, provided for additional procedures to address violations of the Code of Judicial Conduct by non-judge candidates for judicial office, hearing officers, and special commissioners; in Paragraph A, in the heading, after "Violations by", deleted "incumbents" and added "judges"; in Paragraph B, in the heading, after "Violations by", added "non-judge", and after the heading, deleted "All candidates for judicial office shall comply with Rules 21-401, 21-402, 21-403, 21-404, or 21-405 NMRA of the Code of Judicial Conduct.", in the present first sentence, after "Violations of", deleted "those" and added "any of the", after "rules", added "of the Code of Judicial Conduct", after "Professional Conduct", added "and shall be investigated, proceeded upon, and disposed of by the Disciplinary Board of the Supreme Court in accordance with its authority and rules of procedure, and by the Supreme Court of New Mexico

acting under its powers of contempt and superintending control.", and in the present second sentence, after "Violations of", deleted "those" and added "the"; added Paragraph D; and in the committee commentary, added Paragraph [5] and made stylistic changes.

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. *See* the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

Table of Corresponding Rules
Code of Judicial Conduct

The table below lists the former rule number and corresponding new number, and the new rule number and the corresponding former rule number prior to recompilation by Supreme Court Order No. 11-8300-045.

Former Rule No.	**Corresponding New Rule No.**
Preamble	Preamble
21-001 A-J	Terminology
21-100	21-100, Canon 1
21-200 A	21-101, 21-102
21-200 B	21-103, 21-204 B,C, 21-303
21-200 C	21-306 A
21-300	21-200, Canon 2
21-300 A	21-201
21-300 B(1)	21-207
21-300 B(2)	Canon 2, 21-202 in part, 21-204 A
21-300 B(3)	21-208 A
21-300 B(4)	21-208 B
21-300 B(5)	21-202, 21-203 A,B
21-300 B(6)	21-203 C,D
21-300 B(7)	21-206 A, 21-209 A
21-300 B(7)(a)(i)	21-209 A(1)(a)
21-300 B(7)(a)(ii)	21-209 A(1)(b)
21-300 B(7)(b)	21-209 A(2)
21-300 B(7)(c)	21-209 A(3)
21-300 B(7)(d)	21-206 B, 21-209 A(4)
21-300 B(7)(e)	21-209 A(5)
21-300 B(8)	21-205 A
21-300 B(9)	21-205 B

21-300 B(10)	21-210 A,C,D
21-300 B(11)	21-210 B
21-300 B(12)	21-208 C
21-300 B(13)	21-305
21-300 C(1)	21-205 A,B
21-300 C(2)	21-212 A
21-300 C(3)	21-212 B
21-300 C(4)	21-213 A(1),(2),(3),B
21-300 D(1)	21-215 A,C
21-300 D(2)	21-215 B,D
21-300 D(3)(a)(b),(4)	21-214 A
21-300 E	21-214 B,C
21-300 F	Omitted
21-400 A	21-211 A
21-400 A(1)	21-211 A(1)
21-400 A(2)	21-211 A(5)(a)
21-400 A(3)	21-211 A(3)
21-400 A(4)	21-211 A(5)(d)
21-400 A(5)	21-211 A(2)
21-400 A(5)(a)	21-211 A(2)(a)
21-400 A(5)(b)	21-211 A(2)(b)
21-400 A(5)(c)	21-211 A(2)(c)
21-400 A(5)(d)	21-211 A(2)(d)
21-400 A(6)(a)(b)	21-211 A(4)
21-400 B	21-211 B
21-400 C	21-211 C
21-400 D(1)-(3)	Terminology
21-500	Canon 3
21-500 A	21-301
21-500 A(1)	21-301 C
21-500 A(2)	No direct counterpart
21-500 A(3)	21-301 A
21-500 A(4)	No direct counterpart
21-500 B	See Commentary [1], 21-301
21-500 C(1)	21-302 A,B
21-500 C(2)	21-304 A,B
21-500 C(3)	21-307 A
21-500 C(3)(a)	21-307 A(5)

21-500 C(3)(a)(i)	21-307 A(5)(a)
21-500 C(3)(a)(ii)	21-307 A(5)(b)
21-500 C(3)(b)(i)	21-307 A(1),(2),(3)
21-500 C(3)(b)(ii)	21-307 A(4)
21-500 C(3)(b)(iii)	21-307 A(2),(3)
21-500 C(3)(b)(iv)	No direct counterpart
21-500 D(1)	21-311 C(3)
21-500 D(1)(a)	21-311 C(4)
21-500 D(1)(b)	21-311 C(3)
21-500 D(2)	21-311 A
21-500 D(3)	21-311 B
21-500 D(3)(a)	21-311 B(1)
21-500 D(3)(b)	21-311 B(2)
21-500 D(4)	21-311 C(2)
21-500 D(5)	21-313 A
21-500 D(5)(a)	21-313 B(7),(9),(10)(a)
21-500 D(5)(b)	21-313 B(8)
21-500 D(5)(c)	21-313 B(3)
21-500 D(5)(d)	21-313 B(2),(10)(b)
21-500 D(5)(e)	21-313 B(2),(10)(b)
21-500 D(5)(f)	21-313 B(4)
21-500 D(5)(g)	21-313 B(6)
21-500 E(1)	21-308 A
21-500 E(2)	21-308 B
21-500 E(3)	21-308 C
21-500 F	21-309
21-500 G	21-310
21-500 H	21-312 B
21-500 I	21-311 D
21-600 A	21-312 A, 21-314 A
21-600 B	21-312
21-600 C	21-314 B
21-600 D	21-314 C, 21-315
21-700	21-401
21-700 A(1)	21-401 A
21-700 A(2)	21-401 B
21-700 A(2)(a)	Deleted. See 21-401 B,C(5), 21-402 A(3)(b)

21-700 A(2)(b)	21-402 F
21-700 A(2)(c)	Deleted. See 21-401 A(4), 21-402 A(3)(d)
21-700 A(3)(a)	21-401 C(1)
21-700 A(3)(b)	21-401 C(2)(a)
21-700 A(3)(c)	21-401 C(3)
21-700 A(3)(d)	21-401 C(4)
21-700 B	21-402
21-700 B(1)	21-402 A(1)(a)
21-700 B(2)	21-401 D, 21-402 A(1)(d)
21-700 B(2)(b)	21-403 B(2)
21-700 B(2)(c)	21-403 B(3)
21-700 B(3)	21-401 D, 21-402 A(1)(d)
21-700 B(4)(a)	21-401 A(2)(a)
21-700 B(4)(b)	21-401 A(2)(b)
21-700 B(5)	21-402 A(3)(a)
21-700 B(6)	21-402 A(3)(e)
21-700 B(7)	21-402 A(3)(f)
21-700 C	21-405 C
21-700 D	21-403
21-700 D(1)	21-403 A
21-700 D(2)	21-403 B
21-700 D(2)(a)	21-403 B(1)
21-700 D(2)(b)	21-403 B(2)
21-700 D(2)(c)	21-403 B(3)
21-700 E	21-405
21-700 E(1)(a)	21-405 A(1)
21-700 E(1)(b)(i)	21-405 A(2)(a)
21-700 E(1)(b)(ii)	21-405 A(2)(b)
21-700 E(1)(b)(iii)	21-405 A(2)(c)
21-700 E(2)	21-405 B
21-700 E(2)(a)	21-405 B(1)
21-700 E(2)(b)	21-405 B(2)
21-700 F	Terminology
21-800 A	21-402 B
21-800 B	21-402 C
21-800 C	21-402 A(1)(e), 21-404 A
21-800 D	21-402 D
21-800 E	21-402 B

21-800 F	21-402 E
21-900 A	21-216 A, 21-406 A
21-900 B	21-406 B
21-900 C	21-406 C
21-900 C(1)	21-406 C(1)
21-900 C(2)	21-406 C(2)
21-900 C(3)	21-406 C(3)
21-900 C(4)	21-406 C(4)
21-900 C(5)	21-406 C(5)
21-900 C(6)	21-406 C(6)
21-900 C(7)	21-406 C(7)
21-900 C(8)	21-406 C(8)
21-901 A, Scope	Rules 4.1(A)(8), 4.2(A)(1), Scope
21-901 B	See Rules 4.1(A)(4), 4.2(B)(3)
21-901 B(1)	Rule 4.2, Commentary [6],[7]
21-901 B(2)	Rules 4.1(A)(9), 4.2(B)(1), 4.4
21-901 C	See generally Rule 4.4
21-901 C(1)(a)	See generally Rule 4.4
21-901 C(1)(b)	See Rules 4.4, Commentary [3], 2.11(A)(4)
21-901 C(1)(c)	No direct counterpart
21-901 C(1)(d)(i),(ii),(2)	See generally Rule 4.1, Commentary [2]
21-901 D	No direct counterpart
21-901 E	Application V

Corresponding New Rule No.	**Former Rule No.**
Preamble	Preamble
Scope	21-901 A
Terminology	21-001, 21-400D, 21-700 F
Application	21-901
21-100 - Canon 1	21-100, 21-200 (titles)
21-101	21-200 A
21-102	21-200 A
21-103	21-200 B
21-200 - Canon 2	21-300 (title)
21-201	21-300 A
21-202	21-300 B(2),(5)
21-203 A	21-300 B(5)
21-203 B	21-300 B(5)
21-203 C	21-300 B(6)

21-203 D	21-300 B(6)
21-204 A	21-300 B(2)
21-204 B	21-200 B
21-204 C	21-200 B
21-205 A	21-300 B(8)
21-205 B	21-300 C(1)
21-206 A	21-300 B(7)
21-206 B	21-300 B(7)(d)
21-207	21-300 B(1)
21-208 A	21-300 B(3)
21-208 B	21-300 B(4)
21-208 C	21-300 B(12)
21-209 A	21-300 B(7)
21-209 A(1)	21-300 B(7)(a)
21-209 A(1)(a)	21-300 B(7)(a)(i)
21-209 A(1)(b)	21-300 B(7)(a)(ii)
21-209 A(2)	21-300 B(7)(b)
21-209 A(3)	21-300 B(7)(c)
21-209 A(4)	21-300 B(7)(d)
21-209 A(5)	21-300 B(7)(e)
21-209 B	No direct counterpart
21-209 C	21-300 - Commentary, Paragraph B(7)
21-209 D	21-300 - Commentary, Paragraph B(7)
21-210 A	21-300 B(10)
21-210 B	21-300 B(11)
21-210 C	21-300 B(10)
21-210 D	21-300 B(10)
21-210 E	No direct counterpart. See 21-700 B(7)
21-211 A	21-400 A
21-211 A(1)	21-400 A(1)
21-211 A(2)	21-400 A(5)
21-211 A(2)(a)	21-400 A(5)(a)
21-211 A(2)(b)	21-400 A(5)(b)
21-211 A(2)(c)	21-400 A(5)(c)
21-211 A(2)(d)	21-400 A(5)(d)
21-211 A(3)	21-400 A(3)
21-211 A(4)	21-400 A(6)(a)(b)
21-211 A(5)(a)	21-400 A(2)

21-211 A(5)(b)	No direct counterpart
21-211 A(5)(c)	21-400 A(2) in part
21-211 A(5)(d)	21-400 A(4)
21-211 B	21-400 B
21-211 C	21-400 C
21-212 A	21-300 C(2)
21-212 B	21-300 C(3)
21-212 C	No direct counterpart
21-212 D	No direct counterpart
21-213 A(1),(2),(3),B	21-300 C(4)
21-214 A	No direct counterpart
21-214 B	21-300 E
21-214 C	21-300 E
21-215 A	21-300 D(1)
21-215 B	21-300 D(2)
21-215 C	21-300 D(1)
21-215 D	21-300 D(2)
21-216 A	21-900 A
21-216 B	No direct counterpart
21-300 - Canon 3	21-300 (title)
21-301 A	21-500 A(3)
21-301 B	No direct counterpart
21-301 C	21-500 A(1)
21-301 D	No direct counterpart
21-301 E	No direct counterpart
21-302 A,B	21-500 C(1)
21-303	21-200 B
21-304 A,B	21-500 C(2)
21-305	21-300 B(13)
21-306 A	21-200 C
21-306 B	No direct counterpart
21-307 A	21-500 C(3)
21-307 A(1)(2)	21-500 C(3)(b)(i)
21-307 A(3)	No direct counterpart
21-307 A(4)	21-500 C(3)(b)(ii)
21-307 A(5)	21-500 C(3)(a)
21-307 A(5)(a)	21-500 C(3)(a)(i)
21-307 A(5)(b)	21-500 C(3)(a)(ii)

21-307 B	New provision
21-308 A	21-500 E(1)
21-308 B	21-500 E(2)
21-308 C	21-500 E(3)
21-308 D	See Commentary, 21-500 E
21-309	21-500 F
21-310	21-500 G
21-311 A	21-500 D(2)
21-311 B	21-500 D(3)
21-311 B(1)	21-500 D(3)(a)
21-311 B(2)	21-500 D(3)(b)
21-311 C	21-500 A
21-311 C(1)	21-500 A(3)
21-311 C(2)	No direct counterpart
21-311 C(3)	21-500 D(1)(b)
21-311 C(4)	No direct counterpart
21-311 C(5)	No direct counterpart
21-311 D	21-500 I
21-312 A	21-600 A
21-312 B	21-500 H
21-313 A	21-500 D(5)
21-313 B(1)	No direct counterpart
21-313 B(2)	21-500 D(5)(d)
21-313 B(3)	21-500 D(5)(c)
21-313 B(4)	21-500 D(5)(f)
21-313 B(5)	No direct counterpart
21-313 B(6)	21-500 D(5)(g)
21-313 B(7)	21-500 D(5)(a)
21-313 B(8)	21-500 D(5)(b)
21-313 B(9)	No direct counterpart
21-313 B(10)(a)	21-500 D(5)(a)
21-313 B(10)(b)	No direct counterpart. See 21-500 D(5)(d)
21-314 A	21-600 A
21-314 B	21-600 C
21-314 C	21-600 D
21-315	21-600 D
21-400 - Canon 4	No direct counterpart. See Commentary, Canon 4

21-401 A	21-700 A(1)
21-401 B	21-700 A(2)
21-401 C(1)	21-700 A(3)(a)
21-401 C(2)(a)	21-700 A(3)(b)
21-401 C(2)(b)	No direct counterpart
21-401 C(3)	21-700 A(3)(c)
21-401 C(4)	21-700 A(3)(d)
21-401 C(5)	No direct counterpart
21-401 C(6)	No direct counterpart
21-401 C(7)	No direct counterpart. See 21-700 B(6)
21-401 C(8)	No direct counterpart
21-401 C(9)	21-700 B(4)(a)
21-401 D	21-700 B(2)(3)
21-402 A(1)(a)	21-700 B(1)
21-402 A(1)(b)	No direct counterpart
21-402 A(1)(c)	No direct counterpart
21-402 A(1)(d)	21-700 B(2)(3)
21-402 A(1)(e)	21-800 C
21-402 A(2)(a)	21-700 B(4)(a)
21-402 A(2)(b)	21-700 B(4)(b)
21-402 A(3)(a)	21-700 B(5)
21-402 A(3)(b)	21-700 A(2)(a)
21-402 A(3)(c)	No direct counterpart. See 21-700 A(1)
21-402 A(3)(d)	21-700 A(2)(c)
21-402 A(3)(e)	21-700 B(6)
21-402A(3)(f)	21-700 B(7)
21-402 B	21-800 A
21-402 C	21-800 B
21-402 D	21-800 D
21-402 E	21-800 F
21-402 F	21-700 A(2)(b)
21-402 G	No direct counterpart. See 21-700A(1)
21-403 A	21-700 D(1)
21-403 B(1)	21-700 D(2)(a)
21-403 B(2)	21-700 B(2)(b)
21-403 B(3)	21-700 B(2)(c)
21-404 A	21-800 C
21-404 B	21-800 E

21-405 A(1)
21-405 A(2)(a)
21-405 A(2)(b)
21-405 A(2)(c)
21-405 B(1)
21-405 B(2)
21-405 C
21-406 A
21-406 B
21-406 C
21-406 C(1)
21-406 C(2)
21-406 C(3)
21-406 C(4)
21-406 C(5)
21-406 C(6)
21-406 C(7)
21-406 C(8)

21-700 E(1)(a)
21-700 E(1)(b)(i)
21-700 E(1)(b)(ii)
21-700 E(1)(b)(iii)
21-700 E(2)(a)
21-700 E(2)(b)
21-700 C
21-900 A
21-900 B
21-900 C
21-900 C(1)
21-900 C(2)
21-900 C(3)
21-900 C(4)
21-900 C(5)
21-900 C(6)
21-900 C(7)
21-900 C(8)