

IN RE PEREA, S.Ct. No. 25,822 (Filed August 17, 1999)

**IN THE MATTER OF TORIBIO L. (TODY) PEREA,
Magistrate Judge, Valencia County.**

NO. 25,822

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

August 17, 1999, Filed

Disciplinary Proceeding

COUNSEL

Peg A. Holguin, Executive Director & Chief Counsel, Randall D. Roybal, Deputy Director & Chief Staff Attorney, Albuquerque, New Mexico, for Judicial Standards Commission

Raul A. Sedillo, Belen, New Mexico, for Respondent

FORMAL REPRIMAND

Per Curiam.

{1} This matter came before the Court upon recommendation of the Judicial Standards Commission to approve a stipulation and agreement entered into between the Commission and Honorable Toribio L. (Tody) Perea, in which he be publicly censured, be suspended for two weeks without pay, be placed on unsupervised probation for six months, and pay all costs incurred by the commission. Having considered the stipulation and agreement and being sufficiently advised, this Court approves the recommendation to adopt the stipulation and agreement.

{2} This case arose from two inquiries before the commission: No. 98-65 and No. 99-06. After initial inquiry in No. 98-65, the commission issued a notice of formal proceedings to respondent on October 15, 1998, and an amended notice of formal proceedings on March 2, 1999. Respondent filed responses to the notices on November 2, 1998 and April 5, 1999, respectively. After initial inquiry in No. 99-06, the commission issued a notice of preliminary investigation to respondent on March 2, 1999, to which he responded in two parts on March 18, 1999 and April 5, 1999. The commission then issued an amended notice of preliminary investigation to respondent on April 23, 1999. Respondent filed his response to the amended notice on May 7, 1999.

{3} On June 25, 1999, respondent and the commission entered into a stipulation and agreement in which respondent stipulated to the factual and legal conclusions, and agreed to receive discipline from the Court. On June 28, 1999, the commission filed a

verified petition for discipline with the Court. The stipulated factual and legal conclusions are set forth below.

{4} Respondent delayed in signing and filing a written judgment and sentence in State v. Hocker, Cibola County Magistrate Court Case No. M0061-DR-980041-JA. Such conduct violated Rule 6-701 NMRA (entry of judgment is mandatory) and Canons 21-100 (judge shall uphold integrity and independence of judiciary), 21-200(A) (judge shall act in manner that promotes public confidence in integrity and impartiality of judiciary), 21-200(B) (judge shall avoid impropriety and appearance of impropriety in all activities), 21-300(A) (judicial duties take precedence over all other activities), 21-300(B)(1) (judge shall hear and decide assigned matters), 21-300(B)(2)(judge shall be faithful to law, maintain professional competence, and not be swayed by partisan interests, public clamor, or fear of criticism), and 21-300(B)(8) (judge shall dispose of judicial matters promptly, efficiently, and fairly) of the Code of Judicial Conduct and constitutes willful misconduct in office and/or constitutes persistent failure or inability to perform the duties of a judge.

{5} Respondent failed to impose the mandatory minimum sentences required by law in State v. Padilla, Valencia County Magistrate Court Case No. M-0060-DR-0000000035, and in State v. Saiz, Valencia County Magistrate Court Case No. 14-02-96-1671-F. Such conduct violated Canons 21-100 (judge shall uphold integrity and independence of judiciary), 21-200(A) (judge shall act in manner that promotes public confidence in integrity and impartiality of judiciary), and 21-300(B)(2) (judge shall be faithful to law, maintain professional competence, and not be swayed by partisan interests, public clamor, or fear of criticism) of the Code of Judicial Conduct and constitutes willful misconduct in office.

{6} Respondent failed to submit abstracts of record to the New Mexico Department of Motor Vehicles within the time required by law in the following matters: State v. Hocker, M-0061-DR-980041-JA; State v. Padilla, Valencia County Magistrate Court Case No. M-0060-DR-0000000035; State v. Saiz, Valencia County Magistrate Court Case No. 14-02-96-1671-F; and State v. Pearl, Cibola County Magistrate Court Case No. 33-01-97-0850-T. Such conduct violates Canons 21-100 (judge shall uphold integrity and independence of judiciary), 21-200 (A) (judge shall act in manner that promotes public confidence in integrity and impartiality of judiciary), and 21-300(B)(2) (judge shall be faithful to law, maintain professional competence, and not be swayed by partisan interests, public clamor, or fear of criticism), and 21-300(B)(8) (judge shall dispose of judicial matters promptly, efficiently, and fairly) of the Code of Judicial Conduct and constitutes willful misconduct in office and/or constitutes persistent failure or inability to perform the duties of a judge. Such conduct may violate NMSA 1978, Section 66-8-135 (1995) (guidelines for mandatory filing of record in traffic cases), and under paragraph F of that statute, constitutes misconduct in office and grounds for removal.

{7} Respondent delayed in signing and filing written judgment and sentence orders in State v. Padilla, Valencia County Magistrate Court Case No. M-0060-DR-0000000035, and in State v. Saiz, Valencia County Magistrate Court Case No. 14-02-96-1671-F.

Such conduct violated Rule 6-701 NMRA (1995) (entry of judgment is mandatory) and Canons 21-100 (judge shall uphold integrity and independence of judiciary), 21-200(A) (judge shall act in manner that promotes public confidence in integrity and impartiality of judiciary), 21-300(A) (judicial duties take precedence over all other activities), 21-300(B)(1) (judge shall hear and decide assigned matters), 21-300(B)(2) (judge shall be faithful to law, maintain professional competence, and not be swayed by partisan interests, public clamor, or fear of criticism), and 21-300(B)(8) (judge shall dispose of judicial matters promptly, efficiently, and fairly) of the Code of Judicial Conduct and constitutes willful misconduct in office and/or constitutes persistent failure or inability to perform a judge's duties.

{8} Respondent had ex parte communications with Richard Peña, the former Court Administrator of the 13th Judicial District Court, pertaining to the sentencing and disposition of State v. Padilla, Valencia County Magistrate Court Case No. M-60-DR-35, which was then pending before respondent. Mr. Peña is defendant's uncle. The substance of the ex parte communications concerned the family's desire to have defendant ordered to get counseling. Defendant ultimately was ordered to attend an alcohol/drug program. Such conduct violated Canons 21-100 (judge shall uphold integrity and independence of judiciary), 21-200(A) (judge shall act in manner that promotes public confidence in integrity and impartiality of judiciary), 21-200(B) (judge shall avoid impropriety and appearance of impropriety in all activities), 21-300(B)(1) (judge shall hear and decide assigned matters), 21-300(B)(2) (judge shall be faithful to law, maintain professional competence, and not be swayed by partisan interests, public clamor, or fear of criticism), and 21-300(B)(7) (judge shall not initiate, permit, or consider ex parte communications concerning a pending or impending proceeding), and 21-400(A)(1) (judge shall recuse himself where he has personal bias or prejudice concerning party or personal knowledge of disputed evidentiary facts) of the Code of Judicial Conduct and constitutes willful misconduct in office.

{9} WE HEREBY FIND that the recommended disciplinary measures for respondent's violations of the Code of Judicial Conduct are appropriate. Respondent shall comply fully with the requirements of the discipline imposed and with the Code of Judicial Conduct.

{10} NOW, THEREFORE, IT IS ORDERED that Honorable Toribio L. (Tody) Perea is disciplined as follows:

1. Respondent shall be and is hereby publicly censured;
2. Respondent shall take leave of absence without pay beginning July 31, 1999 to August 13, 1999;
3. Respondent shall be placed on unsupervised probation for six (6) months effective August 14, 1999; and

4. Respondent shall pay all costs incurred by the Judicial Standards Commission in this matter.

{11} IT IS FURTHER ORDERED that should respondent violate any provisions of the Code of Judicial Conduct during the probationary period, admissions in the Judicial Standards Commission Inquiry Nos. 98-65 and 99-06 shall be used in all proceedings including, but not limited to, probation revocation proceedings, and formal proceedings against respondent shall resume.

{13} IT IS SO ORDERED.

Chief Justice Pamela B. Minzner

Justice Joseph F. Baca

Justice Gene E. Franchini

Justice Patricio M. Serna

Justice Petra Jimenez Maes