

**IN RE PINEDA, S.Ct. No. 29,479 (Filed June 18, 2007)**

**IN THE MATTER OF HONORABLE HECTOR PINEDA,  
Municipal Judge, City of Roswell, New Mexico**

NO. 29,479

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

June 18, 2007, Filed

INQUIRY CONCERNING A JUDGE  
NO. 2005-095.

**COUNSEL**

James A. Noel, Esq., Randall D. Roybal, Esq., Albuquerque, New Mexico, For Judicial Standards Commission

Atwood, Malone, Turner & Sabin, P.A., Steven Bell, Esq., For Respondent

**FORMAL REPRIMAND**

**PER CURIAM.**

{1} This matter comes before the Court on a petition for discipline filed by the Judicial Standards Commission (Commission) concerning the Honorable Hector Pineda (Respondent). Respondent stipulated to factual findings contained in the petition. He did not agree that his actions violated the New Mexico Code of Judicial Conduct nor assent to the sanctions recommended by the Commission. Having heard oral argument, we granted the Commission's petition and ordered, among other sanctions recommended by the Commission, this formal public reprimand.

**FACTUAL BACKGROUND**

{2} Respondent is a full-time judge for the Roswell Municipal Court. This matter arises out of actions Respondent took while acting in that capacity.

{3} Respondent's misconduct began when he implemented his own rule that precluded individuals from appearing before him unless they first presented photographic identification. His photo-identification rule applied to all citizens, ranging from those attempting to appear as defendants in criminal or traffic matters, to those attempting to appear as legal guardians for minors, to individuals seeking civil marriages.

{4} Some months after Respondent effectuated his rule, a defendant in a criminal case attempted to appear approximately ten minutes early for his trial but was advised by municipal court staff that he needed photo-identification before he could appear in Respondent's courtroom. The defendant left the courthouse to obtain a new driver's license but did not return in time for his trial. Staff advised Respondent that the defendant had arrived but had left to obtain a driver's license in order to comply with the photo-identification rule. Respondent construed the defendant's absence as a failure to appear for his trial. The defendant returned to the courthouse that same day less than an hour after the time the trial was to have begun. Staff told him that Respondent was out and that he should come back the next morning.

{5} When the defendant returned the next morning as instructed, he was arrested on a bench warrant that had been issued by Respondent. Respondent set the defendant's bond at \$1,000 cash only. The defendant's inability to post bond resulted in his incarceration.

## **DISCUSSION**

{6} Both Respondent's unauthorized implementation of his own rule and his application of that rule in the specific situation set forth above violated multiple provisions of the Code of Judicial Conduct and constitute willful misconduct in office. See Rule 21-100 NMRA; Rule 21-200(A) NMRA; Rule 21-300(B)(2), (7)-(8) NMRA. A judge cannot adopt procedural rules not approved by the Supreme Court. See Rule 23-106(l) NMRA (setting forth the Supreme Court's rule-making procedures). Nor can a judge preclude an individual who has every right—and an obligation—to appear in court from appearing, and then punish that person for failing to meet his or her obligation to appear. See N.M. Const, art. II, § 13 (prohibiting imposition of excessive bail and cruel and unusual punishment); *id.* art. II, § 18 (guaranteeing due process and equal protection of law); *id.* art. II, § 19 (prohibiting ex post facto laws).

{7} Respondent's actions harmed the defendant who attempted to appear before him. Respondent improperly denied the defendant his right to be heard according to the law. See Rule 21-300(B)(7) ("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 the law."). But in even more concrete terms, the defendant was incarcerated, despite having appeared for a scheduled hearing, based on a violation of a rule never approved by this Court.

{8} In addition to the personal impact on an individual, Respondent's actions detrimentally impacted the judiciary. Rule 23-106 establishes the process by which rules governing court procedures are made, and the constitution of this state establishes certain minimum protections of individuals from the power of the government. By establishing his own rule and applying that rule so as to cause a defendant to fail to make a requisite appearance, and then punishing that defendant for failing to appear, Respondent failed to maintain and observe high standards of conduct, failed to preserve the integrity of his judicial position, and failed to respect, be faithful to, and comply with

the law. See Rule 21-100 ("A judge shall participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved."); Rule 21-200(A) ("A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."); Rule 21-300(B)(2) ("A judge shall be faithful to the law and maintain professional competence in it.").

{9} Finally, Respondent's photo-identification rule and his application of it carried ramifications for a system that strives for prompt, efficient, and fair disposition of matters that come before our courts. See Rule 21-300(B)(8) ("A judge shall dispose of all judicial matters promptly, efficiently and fairly."). By denying a defendant who attempted to come before him access to the courtroom and to the judicial process, Respondent prolonged that case. In so doing, he caused not only harsh and unfair consequences for the defendant, but delays and inefficiencies in the judicial process.

{10} The public should not be subject to the caprice of an individual judge, but should be able to presume the integrity and independence of the judiciary, its adherence to the rule of law, and its devotion to protecting the rights of those who come before it. In light of the foregoing, this reprimand shall be made public by publication in the *Bar Bulletin*.

**{11} IT IS SO ORDERED.**

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**EDWARD L. CHÁVEZ, Chief Justice**

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**PAMELA B. MINZNER, Justice**

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**PATRICIO M. SERNA, Justice**

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**PETRA JIMENEZ MAES, Justice**

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**RICHARD C. BOSSON, Justice**