

IN RE POPE, S.Ct. No. 29,778 (Filed June 13, 2007)

**IN THE MATTER OF JOHN W. POPE,
Thirteenth Judicial District Court Judge, Valencia County, New Mexico**

NO. 29,778

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

June 13, 2007, Filed

INQUIRY CONCERNING A JUDGE
NO. 2006-046

COUNSEL

James A. Noel, Randall D. Roybal, Albuquerque, NM, for Judicial Standards
Commission

Sheehan, Sheehan & Stelzner, P.A., Briggs F. Cheney, Luis G. Stelzner, Wendy E.
York, Albuquerque, NM, for Respondent

FORMAL REPRIMAND

PER CURIAM.

{1} This matter comes before the Court on a petition for discipline upon stipulation filed by the Judicial Standards Commission (Commission) concerning the Honorable John W. Pope (Respondent). We granted the petition and ordered, among other recommended sanctions set forth in the petition, this formal public reprimand.

FACTUAL BACKGROUND

{2} Respondent is a judge for the Thirteenth Judicial District Court. This matter arises from Respondent's conduct while serving in that capacity.

{3} Near the end of a criminal jury trial over which Respondent had been presiding—after the state had rested its case, but in the midst of the defense presenting its evidence—Respondent recessed and instructed the parties and the jury to return after a long holiday weekend. However, Respondent did not return to his court on that date for completion of the trial. Instead, he called his administrative assistant and told her that he was ill but that he would be in that afternoon. Yet Respondent did not return that afternoon and Respondent's staff told the jury and parties that the trial would resume two days later due to Respondent's illness. On the day the trial was to resume, Respondent told his assistant that he was at the hospital having heart-related tests

conducted and that she should vacate his docket for the rest of the week. After twice resetting the remainder of the trial due to Respondent's unavailability, a stipulated mistrial order was entered. Respondent remained absent for approximately two weeks, which necessitated that additional matters be continued or covered by other judges.

{4} During that time period, Respondent was hospitalized for approximately six days. While it is true, as Respondent told his staff, that he was being treated for a heart ailment, his condition and his hospitalization were due to alcohol withdrawal. Yet, expounding upon what he had told his staff, when contacted by a reporter Respondent attempted to justify his absence from the trial by giving a somewhat elaborate account of how he had been treated for, and was recovering from, a mild heart attack. He had not, however, had a heart attack.

{5} Respondent has since acknowledged that he suffers from the disease of alcoholism, that his absence was due to his alcohol abuse, and that he was admitted to the hospital for health issues primarily caused by withdrawal. He has also expressed regret for the misleading statements he made to justify his absence.

DISCUSSION

{6} Respondent's alcoholism led to his violating multiple provisions of the Code of Judicial Conduct and those violations amount to willful misconduct in office. See Rule 21-100 NMRA; Rule 21-200(A) NMRA; Rule 21-300(A), (B)(1)-(2), (7)-(8), (C)(1) NMRA; Rule 21-500(A)(2)-(4) NMRA. While we recognize that alcoholism is a pernicious disease in our society and afflicts judges and those who come before them alike, both are held accountable for the manifestations of their disease—that is, their conduct. Respondent's conduct adversely impacted the parties to the trial, the reputation of his judicial office, and judicial processes.

{7} Respondent's conduct harmed both the state and the defendant whose trial was thwarted in that they were improperly denied their 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 law."). As for the defendant, in particular, being the subject of a criminal trial has to be an anxiety-producing event, and Respondent's conduct must have prolonged that trepidation. See *id.*; Rule 21-300(B)(8) ("A judge shall dispose of all judicial matters promptly, efficiently and fairly."). In addition, the interruption of a felony trial cost both the defense and the state their limited resources in terms of the time and energy it takes to try a case to a jury. See *id.*

{8} In addition to the direct repercussions for the parties of the trial that was impeded, Respondent's conduct suggested a lack of respect for his judicial position and the law and undermined public confidence in the integrity of the judiciary. 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."). Likewise, Respondent's conduct demonstrated an inability to properly prioritize his judicial obligations over his personal affliction. See Rule 21-300(A) ("The judicial duties of a judge take precedence over all the judge's other activities."); see *also* Rule 21-500(A)(2)-(4) ("A judge shall conduct all of the judge's extra-judicial activities so that they do not: . . . (2) demean the judicial office; (3) interfere with the proper performance of judicial duties; or (4) violate the judge's oath and obligation to uphold the laws and constitutions of the United States and the State of New Mexico.").

{9} Respondent's conduct adversely impacted judicial processes as well. See Rule 21-300(B)(8) ("A judge shall dispose of all judicial matters promptly, efficiently and fairly."); Rule 21-300(C)(1) ("A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration and should cooperate with other judges and court officials in the administration of court business."); see *also* Rule 21-300(B)(1) ("A judge shall hear and decide matters assigned to the judge except those in which disqualification is required."). More specifically, Respondent's conduct prolonged the administration of justice for the defendant whose trial was interrupted and for others whose hearings had to be rescheduled, as well as forced court staff and Respondent's colleagues to take on additional responsibilities.

{10} We do have hope for Respondent's recovery, since he has taken significant steps to admit and address his problem. His story should be an impetus for others who face this disease to address it, taking advantage of all resources that are available to them to do so. See Supreme Court of N.M. Order No. 04-8200, at 2-3 (June 16, 2004) (attached as Appendix) (recommending that judges' alcohol abuse be reported to the Lawyers' Assistance Committee so as to encourage members of the judiciary to seek appropriate help for their problems).

{11} Nonetheless, we cannot overlook the misconduct that has occurred. This reprimand shall be made public by publication in the *Bar Bulletin*.

{12} IT IS SO ORDERED.

EDWARD L. CHÁVEZ, Chief Justice

PAMELA B. MINZNER, Justice

PETRA JIMENEZ MAES, Justice

RICHARD C. BOSSON, Justice

JAMES J. WECHSLER, Judge (sitting by designation)

APPENDIX

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 04-8200

IN THE MATTER OF REPORTING JUDICIAL

MISCONDUCT INVOLVING UNLAWFUL DRUGS

ORDER

WHEREAS, public confidence in the integrity and impartiality of the judiciary depends on a judge's respect for and compliance with the law *at all times*. See Rule 21-200 NMRA 2004. Therefore, 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, among other things, discipline under the Code of Judicial Conduct; and

WHEREAS, Rule 21-300(D)(1) NMRA 2004 provides that "[a] judge having knowledge that another judge has committed a violation of this Code [of Judicial Conduct] that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority." Inaction may be tantamount to encouraging or empowering illegal conduct by judges, thus, eroding public confidence in the orderly administration of justice. Therefore, this order is intended to further clarify the above-referenced reporting requirement as it relates to misconduct involving unlawful drugs, because such misconduct directly reflects on the judge's fitness for office and requires investigation.

1. Reporting to the Judicial Standards Commission

Any judge, employee of the judiciary, or lawyer, who has specific, objective, and articulable facts and/or reasonable inferences that can be drawn from those facts that a judge has engaged in the above-described misconduct, shall report those facts to the

Judicial Standards Commission. Reports of such misconduct should include the following information:

- A. Name of person filing the report;
- B. Address and telephone number where the person may be contacted;
- C. A detailed description of the alleged misconduct;
- D. Dates of the alleged misconduct; and
- E. 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. Pursuant to Judicial Standards Commission Rule 8 NMRA 2004, the Commission may require a judge under investigation to submit to drug testing in the manner set forth in State Personnel Board rules and regulations 1.7.8.12 and 1.7.8.13 NMAC 2004. Upon notification to the Supreme Court by the Judicial Standards Commission that the information reported warrants further review or investigation, an incumbent judge under investigation shall be placed on paid administrative leave pending completion of the investigation for a period not to exceed 90 work days unless otherwise ordered by the Supreme Court.

2. Reporting to the Lawyer Assistance Committee

The Supreme Court encourages any judge, employee of the judiciary, or lawyer who has a good faith basis to believe a judge is engaged in the above-described misconduct, but does not have specific, objective, and articulable facts regarding such conduct, to report such belief to the Lawyer Assistance Committee hotline. The suggested reporting is to encourage members of the judiciary to seek appropriate help for alcohol and/or substance abuse problems.

IT IS SO ORDERED.

Done in Santa Fe, New Mexico, this 16th day of June, 2004.

Chief Justice Petra Jimenez Maes

Justice Pamela B. Minzner

Justice Patricio M. Serna

Justice Richard C. Bosson

Justice Edward L. Chávez