

IN RE MARTINEZ, S.Ct. No. 29,180 (Filed May 12, 2005)

**IN THE MATTER OF TONY F. MARTINEZ,
Magistrate Judge Pro Tempore, Rio Arriba County, New Mexico**

NO. 29,180

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

May 12, 2005, Filed

INQUIRY CONCERNING A JUDGE
NO. 2004-127

COUNSEL

James A. Noel, Elizabeth A. Garcia, Albuquerque, New Mexico, for Judicial Standards Commission

Peter J. Holzem, Chama, 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 plea and stipulation agreement entered into between the Commission and Honorable Tony F. Martinez.

{2} On March 1, 2005, the Commission issued a notice of formal proceedings, notice of trial and pretrial scheduling order, and discovery order to respondent. On March 14, 2004, respondent filed his response to the Commission's notice of preliminary investigation. On April 12, 2005, respondent agreed to enter into a stipulation agreement and consent to discipline with the Commission, which the Commission accepted and filed on April 19, 2005. On April 19, 2005, the Commission filed a petition for discipline upon stipulation with this Court. The stipulated factual and legal conclusions are set forth below.

{3} Respondent permitted and engaged in ex parte communications with the defendant's mother (a non-party and non-lawyer) in Rio Arriba County Magistrate Court Cause No. M-43-MR-200300218, State of New Mexico vs. Estrada; respondent allowed defendant's mother to negotiate a plea agreement; respondent failed to notify defendant of court hearings; respondent failed to conduct an arraignment; respondent failed to advise defendant of his constitutional rights; respondent failed to appoint legal counsel to represent defendant; respondent held court proceedings in the absence of defendant

or an attorney for defendant; and finally, respondent signed a judgment and sentence order 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 the foregoing.

{4} Respondent's conduct violated the following Canons of the Code of Judicial Conduct: 21-100 NMRA 1995 (judge shall uphold integrity and independence of judiciary); 21-200(A) NMRA 1991 (judge shall avoid impropriety and appearance of impropriety in all activities); 21-300(B)(2) NMRA 1995 (judge shall perform the duties of office impartially and diligently); 21-300 (B)(4) NMRA 1995 (judge shall be patient, dignified, and courteous to litigants); 21-300(B)(5) NMRA (1995) (judge shall perform judicial duties without bias or prejudice); 21-300(B)(7) NMRA 1995 (judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard); and 21-300(B)(8) NMRA 1995 (judge shall dispose of all judicial matters promptly, efficiently, and fairly).

{5} Respondent's conduct constituted willful misconduct in office.

{6} 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 by this Court and with the Code of Judicial Conduct.

{7} NOW, THEREFORE, IT IS ORDERED that Honorable Tony F. Martinez is hereby disciplined as follows:

1. Respondent is hereby formally reprimanded. This reprimand shall be published in the Bar Bulletin;
2. Respondent shall never again hold, become a candidate for, or stand for election to any judicial office in the future. Additionally, Respondent shall not to seek, accept appointment to, nor serve pro tempore for any judicial office in the future.
3. Respondent shall pay a five hundred dollar (\$500) fine within 15 days of issuance of the Supreme Court order in this case. Payment shall be by certified check made payable to the State of New Mexico. Respondent shall promptly file proof of payment with this Court and the Judicial Standards Commission; and
4. Respondent shall abide by all terms and conditions of the stipulation agreement.

{8} IT IS FURTHER ORDERED that the parties shall bear their own costs and expenses incurred in this matter.

{9} IT IS SO ORDERED.

Chief Justice Richard C. Bosson

Justice Pamela B. Minzner

Justice Patricio M. Serna

Justice Petra Jimenez Maes

Justice Edward L. Chávez