

IN RE RAMIREZ, S.Ct. No. 31,664 (Filed June 26, 2009)

**IN THE MATTER OF SABINO RAMIREZ
Municipal Court Judge, Village of Hatch, New Mexico**

NO. 31,664

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

June 26, 2009, Filed

INQUIRY CONCERNING A JUDGE
NO. 2008-115

COUNSEL

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

Mario A. Esparza Law Office, Mario A. Esparza, Las Cruces, NM, for Respondent

FORMAL REPRIMAND

PER CURIAM.

{1} Judge Sabino Ramirez (Ramirez), municipal judge for the Village of Hatch, entered into a stipulation agreement and consent to discipline with the Judicial Standards Commission. In the agreement, Ramirez admits to conduct that (1) violates several rules of the Code of Judicial Conduct, (2) constitutes willful misconduct in office, and (3) would provide sufficient basis for the Court to impose discipline upon him pursuant to Article VI, Section 32 of the New Mexico Constitution. We have categorized the conduct into three categories for purposes of our discussion: (1) the use of judicial resources to resolve a private dispute; (2) failure to recuse in a case in which his impartiality might reasonably be questioned; and (3) improper issuance of a court summons.

{2} In reviewing a petition for discipline under Rule 27-401(A)(1) NMRA, this Court may "accept, reject or modify any or all of the findings and conclusions of the commission[.]" and "we are charged with independently evaluating the record for the presence or absence of clear and convincing evidence[.]" *In re Castellano*, 119 N.M. 140, 149, 889 P.2d 175, 184 (1995) (per curiam). In addition, under Rule 27-401(A)(3), the Court may impose discipline recommended by the Commission or "any other greater or lesser discipline" we deem to be appropriate under the circumstances. However, this matter is before the Court on a petition for discipline upon stipulation, and pursuant to its terms, we may only accept or reject the petition's ultimate disposition of discipline. The proceedings before the Commission have been held in abeyance pending acceptance

by this Court. If we reject all or a portion of the disciplinary recommendations, the matter must be remanded to the Commission for further proceedings. We grant the stipulated petition and publish this formal reprimand consistent with the discipline agreed to by the parties.

{3} The following facts are set forth in the stipulated petition. Beginning in September 2008, Ramirez had private conversations with David Trujillo about Trujillo's personal financial dispute with Leland and Lynette Jones. This matter was not pending before Ramirez, and as a civil dispute, could not have been brought before Ramirez. See NMSA 1978, § 35-14-2 (1961, as amended through 1988). During these private conversations, Trujillo apparently asserted that the Joneses owed him additional compensation for work Trujillo performed while cleaning their property. Based on these conversations, Ramirez placed a telephone call to the Joneses' residence on or about September 29, 2008. No one answered, and Ramirez left a message on the Joneses' answering machine, identifying himself as a judge and stating that he was calling in reference to the financial dispute between them and Trujillo. Ramirez left word that he wanted the situation "cleared up" and that he expected the Joneses to return his call soon. The Joneses apparently never called Judge Ramirez back.

{4} On October 16, 2008, Ramirez followed up his telephone call with a letter to the Joneses, written on Village of Hatch stationery, using his judicial title and court name. In the letter, Ramirez implied that he had been discussing the matter with Trujillo, who had informed him that he (Trujillo) had cleaned the Joneses' property, noted that he had seen pictures of the property before it was cleaned by Trujillo and "request[ed] that [they] come to an arrangement with Mr. Trujillo before the matter escalates." Ramirez then indicated that civil litigation would be initiated unless the Joneses made arrangement to pay Trujillo in full.

{5} We agree with the parties that these facts describe conduct that violates the following New Mexico Rules of Judicial Conduct: 21-100 (maintaining the integrity and the independence of the judiciary), 21-200 (avoiding the appearance of impropriety in all of a judge's activities), 21-300 (performing the duties of office impartially and diligently), and 21-500 (conducting extra-judicial activities to minimize the risk of conflict with judicial obligations). We address each of these violations in turn.

{6} Rule 21-100 states that "[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." The primary purpose of this rule is to charge each judge with the task of maintaining an independent judiciary so that the public confidence in our judicial system is reinforced. As is explained in the committee commentary to Rule 21-100:

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. A judiciary of integrity is one in which judges are known for their probity, fairness,

honesty, uprightness and soundness of character. An independent judiciary is one free of inappropriate outside influences. Although judges should be independent, they 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 thereby does injury to the system of government under law.

If the public perceives that a judge has been unfairly influenced when deciding the merits of a case, then public trust and confidence in the judiciary is eroded. Here, Ramirez gave the impression that he had decided the merits of Trujillo's claim against the Joneses without allowing them an opportunity to refute Trujillo's claims in court. Such actions can hardly be said to promote judicial independence. At a minimum, they suggest that Ramirez had improperly sided with Trujillo. At most, they invite the public to infer that Ramirez had advocated Trujillo's interests as a favor to him or for some personal gain. Such actions undermine, as opposed to promote, the integrity of the judiciary and are in violation of each judge's charge to maintain the judiciary's independence.

{7} Similarly, public trust and confidence is eroded when a judge uses his or her authority in office to resolve a dispute that is not before the judge. This point is made clear in Rule 21-200(A)-(B), which requires judges to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and forbids judges from "lend[ing] the prestige of judicial office to advance the private interest of the judge or others[.]" These principles go hand in hand. When Ramirez used the authority of his judicial office to promote Trujillo's interests, he made obvious his partiality to Trujillo's cause, thereby undermining the integrity and impartiality of the judiciary. Although this case was not pending before him, Ramirez's actions were nonetheless improper. "A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly." Rule 21-200 committee commentary. Simply put, our Code of Judicial Conduct prohibits a judge from using the authority of his or her office at any time to advance the interests of another.

{8} Rule 21-300(B)(10) forbids a judge from making a nonpublic comment about a proceeding impending before any court that might substantially interfere with a fair trial or hearing. Here, after listening to only Trujillo's side of the dispute, Ramirez apparently accepted Trujillo's story as true and subsequently contacted the Joneses. He identified himself as a judge familiar with the dispute and insisted on some action from them. His telephone message was as follows:

Hello, Lynne Jones, this is Judge Ramirez in Hatch. The reason for my call is a claim from David Trujillo in reference to Lynette Jones' residence here in Hatch for a clean-up. And he explained the situation to me. He says he received a check for partial payment and you put down final payment on it and we want to get this cleared up. So can you please call me at the police department here in

Hatch? Its area code 575-267-3021. Again, this is Municipal Judge Sabino Ramirez. I expect a call from you as soon as I can get it. I can get this thing over and done with and cleared out, so please give me a call. Thank you bye-bye.

{9} Ramirez should not have placed the call, even if he simply intended to encourage the parties to reach an agreement. It is not a judge's job to resolve disputes that are not before the court. A judge is appointed or elected to resolve matters properly before the court and only in compliance with rules of procedure. The procedural rules are designed to assure an orderly process to afford the parties a full and fair opportunity to present their case and obtain a result from a dispassionate judge. In the normal course of events, defendants in a contract dispute would be served with a summons and complaint, and would understand that they have an opportunity to tell their side of the story before a judge makes a decision. In this case, the telephone message can be interpreted as being from a judge who was already familiar with the facts of a case and who had already prejudged the matter. From the Joneses' perspective, Ramirez's impartiality is questionable at best.

{10} However, Ramirez's attempts at intervention did not stop with the phone call. Almost two weeks after leaving the message for the Joneses, Ramirez wrote them the following letter on Village of Hatch stationery, using the court name and his judicial title.

On September 29, 2008 I called your residence and left a message requesting that you call me back to make arrangements regarding the matter brought forth by David Trujillo in reference to working for you. Mr. Trujillo states that he did clean your property located at 204 Carr Street and I have seen pictures taken before the work was done and request that you come to an arrangement with Mr. Trujillo regarding full payment before the matter escalates. If we do not hear from you soon, there will be a civil suit against you requiring your appearance. If you could please call me regarding this matter as soon as possible, I can be reached at (575) 267-3021.

Even more than the phone message, this letter strongly suggests that Ramirez had already decided that Trujillo had not been paid what he was lawfully entitled to. Ramirez's actions and statements could very well have interfered with the Joneses' attempts at receiving a fair trial should the matter have become the subject of a lawsuit in any court with jurisdiction. For example, the Joneses may have felt foregone defending against Trujillo's claim, since a judge had already announced his belief that the Joneses had failed to pay Trujillo the amount to which he was legally entitled. The restrictions on judicial speech in Rule 21-300(B)(10) "are essential to the maintenance of the integrity, impartiality and independence of the judiciary." Rule 21-300 committee commentary. These restrictions must be strictly followed.

{11} Rule 21-500(A) provides that "[a] judge shall conduct all of the judge's extra-judicial activities so that they do not . . . cast doubt on the judge's capacity to act impartially as a judge [or] interfere with the proper performance of judicial duties[.]" Both Ramirez's phone call and his letter to the Joneses violate these principles. As explained above,

attempting to further one party's interests in reliance on the prestige of judicial office calls the impartiality of the judge into question, even if the matter is not before his or her court. Furthermore, attempts at resolving disputes outside the courtroom interfere with a judge's duty to promote the judiciary's independence and integrity. Ramirez's actions violated these rules as well.

{12} We acknowledge the difficulties facing municipal judges, who must engage in the rough-and-tumble of politics every four years while campaigning for elected office. See NMSA 1978, § 35-14-4(A) (1993) (requiring municipal judges to run for election every four years). We also recognize the pressures inherent in being a judge in a small community where most members of the community personally know the judge. Undoubtedly, local judges are pressured by family, friends, and acquaintances to help resolve private disputes. Despite these pressures, judges must resist the temptation to use their office to resolve these disputes, even if their motives are well-intentioned. The essence of judicial independence is fairness and impartiality. The rules that govern proceedings in open court are designed to assure the public that decisions are being made without even the appearance of fear or favor. The judiciary as a whole must strive to meet this higher standard of conduct. As this Court has stated, there is an "undeniable compelling state interest in promoting the reality and appearance of impartiality of our judiciary" *In re Vincent*, 2007-NMSC-056, ¶ 11, 143 N.M. 56, 172 P.3d 605. Ramirez invoked the prestige and authority of his judicial position in attempts to resolve a dispute outside the court system. We agree that such conduct violates the Code of Judicial Conduct.

FAILURE TO RECUSE

{13} Almost two weeks after Ramirez's letter, the Village of Hatch filed a nuisance action concerning the yard owned by the Joneses that Trujillo supposedly cleaned. The matter was assigned to Ramirez, who accepted the case and issued a summons to the Joneses. The parties have stipulated, and we agree, that Ramirez's failure to recuse himself from the nuisance action violated Rules 21-100, 21-200(A), 21-200(B), and 21-400(A). The focus of our reprimand is Rule 21-400.

{14} Rule 21-400 provides that a judge is "disqualified and shall recuse himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned," and provides that this occurs when the judge "has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding." Here, the Village's nuisance case against the Joneses involved the same property that was the subject of the Trujillo private dispute. Significantly, it involved a claim by the Village that the property was not properly cleaned and maintained. Ramirez had already gained knowledge of facts regarding the cleanliness of the property when he wrote to the Joneses advising them that he had seen photographs of the property and that Trujillo should be paid in full for his work. Rule 21-400 requires judges to recuse themselves when they have personal knowledge of disputed evidentiary facts concerning a matter pending before them. Rule 21-400(A)(1). This Ramirez failed to do.

{15} In addition, for many of the same reasons that Ramirez's impartiality could reasonably be questioned in the Jones-Trujillo dispute, his impartiality could likewise be suspect in the Village's nuisance action, also requiring him to recuse himself. See Rule 21-400(A)(1). It is difficult to discern how the Joneses could expect fair treatment in Ramirez's court when Ramirez had already decided a dispute involving similar issues against them without hearing their side of the story. Alternatively, if Ramirez had already concluded that Trujillo sufficiently cleaned the property, which could be inferred from his conclusion that the Joneses must pay Trujillo in full, the Village of Hatch might have reason to suspect that it would not receive impartial treatment. What is worse, the Village would not have reason to know of Ramirez's involvement with the property's cleanliness, since Ramirez's intervention in advancing Trujillo's interests was not a matter of public record. For all of these reasons, Ramirez was required by our Code of Judicial Conduct to recuse himself from the nuisance action. Finally, we agree that Ramirez's failure to recuse himself violated Rules 21-100, 21-200(A), and 21-200(B) because he did not maintain the independence and impartiality of the judiciary.

ISSUANCE OF IMPROPER SUMMONS

{16} The parties stipulate that the summons Ramirez issued in the Village's nuisance action against the Joneses did not comply with Rule 8-204(C) NMRA or to this Court's approved summons form, Rule 9-208 NMRA, since it was not signed by either Ramirez or his clerk and it did not contain a case number or the name of the prosecuting law enforcement officer. The parties have stipulated, and we agree, that the above-described conduct violated Rules 21-100, 21-200(A), 21-300(C)(1), and 21-300(C)(2). We need not dwell on the reality that a judge's failure to follow the court's own rules of procedure undermines the public confidence in the integrity of the judiciary. Rule 8-204(C) of the Rules of Procedure for the Municipal Courts specifies that a summons must be signed by the judge or the clerk, be directed to the defendant and contain, among other things, the docket number of the case and the name and address of the law enforcement entity filing the complaint. The parties have agreed that the summons that was issued did not comply with this rule. By issuing a summons that did not comply with this rule, Ramirez failed to "diligently discharge [his] administrative responsibilities . . . [and] maintain professional competence in judicial administration[.]" Rule 21-300(C)(1).

WILLFUL MISCONDUCT IN OFFICE

{17} Finally, our grant of the parties' stipulated petition requires us to briefly comment on whether Ramirez's actions in these three circumstances constitutes willful misconduct of office. Under Article VI, Section 32 of the New Mexico Constitution, "any justice, judge or magistrate of any court may be disciplined or removed for willful misconduct in office[.]" The Court has defined "willful misconduct in office" as "improper and wrong conduct of a judge acting in his official capacity done intentionally, knowingly, and generally, in bad faith." *In re Locatelli*, 2007-NMSC-029, ¶ 8, 141 N.M. 755, 161 P.3d 252 (per curiam). We agree with the parties that Ramirez's conduct constitutes willful misconduct in office. In this case, Ramirez used his judicial position and judicial

resources to attempt to resolve a private financial dispute. He did so intentionally, knowing that the case was not before him. He had private discussions with Trujillo and used judicial resources to advance Trujillo's private interests. Although we question whether mistakenly issuing an unsigned or otherwise incomplete subpoena on one occasion constitutes willful misconduct, Ramirez has stipulated that he willfully issued a summons that failed to comply with the rules. We accept this stipulation. He further stipulated that he willfully failed to recuse himself in a case about which he had personal knowledge. We accept this stipulation, particularly in light of the fact that Ramirez knew that the subject property of the nuisance claim was owned by the Joneses and that he had been embroiled in a private dispute over compensation related to cleaning the property. These facts support willful violation of the Code of Judicial Conduct.

RECOMMENDATIONS FOR DISCIPLINE

{18} The stipulated petition recommended the following discipline: a formal reprimand from the Court to be published in the New Mexico *Bar Bulletin*; completion of a six-month period of supervised probation and formal mentorship, the mentor to be appointed by this Court on the Commission's recommendation; a report on the progress and outcome of the mentorship to the Court and the Commission; and compliance with all terms of the stipulation agreement and consent to discipline. In determining the appropriate discipline for a member of the judiciary, we look at such factors as the nature of the misconduct and patterns of behavior. *Castellano*, 119 N.M. at 150, 889 P.2d at 185. The Court also considers "the seriousness of the transgression, the facts and circumstances that existed at the time 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." *In re Griego*, 2008-NMSC-020, ¶ 13, 143 N.M. 698, 181 P.3d 690 (per curiam) (internal quotation marks and citation omitted). While compromising the judiciary's integrity and appearance of impartiality is a serious offense, there was no finding by the Commission of a pattern of misconduct. The lack of additional disciplinary incidents in Ramirez's judicial career serves as a mitigating factor, along with the fact that the Commission was unable to find that Ramirez's actions in this matter were taken to benefit his family, friends, or himself.

{19} This is not to say, however, that his transgressions were not serious or do not merit attention by the Court. Ramirez invoked his judicial position, title, stationery, and prestige of office in attempts to resolve a dispute outside the court system. Compounding this error, Respondent attempted to resolve the dispute in Trujillo's favor without affording the Joneses an opportunity to tell their side of the story. While many municipal judges lack formal legal education, this does not excuse them from the responsibility to take an impartial role in cases that are, or may come, before them. As this Court stated in *In re Romero*, "[t]he conduct prescribed for judges and justices is more stringent than conduct generally imposed on other public officials." 100 N.M. 180, 183, 668 P.2d 296, 299 (1983).

{20} Under these circumstances, a six-month period of supervised probation and formal mentorship with another member of the judiciary will allow Ramirez to benefit from the

guidance and learn from the experience of another judge and will provide the oversight necessary to guarantee that the conduct at issue in this case is not repeated. We therefore agree that the stipulated disciplinary measures for this conduct are appropriate.

{21} Accordingly, we hereby order Ramirez to complete six months of supervised probation and a formal mentorship and to abide by all terms of the stipulation agreement and consent to discipline. We also order that the probation supervisor and mentor report to this Court on the progress of the probation and mentorship. Finally, we order that Ramirez receive a formal reprimand to be published in the *Bar Bulletin*. Thus, as a part of the discipline imposed in our order, we publish this formal reprimand.

{22} IT IS SO ORDERED.

EDWARD L. CHÁVEZ, Chief Justice

PATRICIO M. SERNA, Justice

PETRA JIMENEZ MAES, Justice

RICHARD C. BOSSON, Justice

CHARLES W. DANIELS, Justice