

ADVANCE OPINIONS

FROM THE NEW MEXICO SUPREME COURT AND COURT OF APPEALS

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From the New Mexico Supreme Court

INQUIRY CONCERNING A JUDGE
NO. 2010-026

IN THE MATTER OF RACHEL WALKER,
Metropolitan Court Judge, Bernalillo County, New Mexico

FORMAL REPRIMAND
No. 32,910 (filed: March 23, 2011)

RANDALL D. ROYBAL
ROBIN S. HAMMER
Albuquerque, New Mexico
for Judicial Standards Commission

KARI T. MORRISSEY
Albuquerque, New Mexico
for Respondent

PER CURIAM

This matter came before this Court by petition for discipline upon stipulation filed by the Judicial Standards Commission (Commission) concerning the Honorable Rachel Walker (Respondent), formerly a Metropolitan Court Judge in Bernalillo County, New Mexico. We accepted the findings and conclusions of the petition for discipline upon stipulation (petition) and ordered this formal reprimand and other recommended sanctions set forth in the petition.

FACTS

Respondent was a Metropolitan Court Judge in Bernalillo County, New Mexico, who lost her retention election in November 2010 and consequently left judicial office on December 31, 2010. The Commission's jurisdiction had attached pursuant to Judicial Standards Commission Rule 38 NMRA (2000).

The petition addresses two counts of misconduct that form the basis of the Commission's recommendation for discipline, both of which involve issues regarding Respondent's demeanor.

Respondent stipulated that on November 2, 2009, during a hearing in *State v. George Padilla*, DW-2317-09, she failed to be patient, dignified, and courteous. During the proceeding, Respondent held a defense attorney in direct contempt and raised her voice several times. Respondent yelled, "Shut up! Shut up!" Respondent called the defense attorney a liar and told the defendant that she questioned his attor-

ney's ability to represent him. Respondent referred to the defense attorney's clients as "poor and unfortunate" to have him as their attorney. On that same date, Respondent refused a request to recuse herself from hearing the defense attorney's cases.

On November 2, 2009, during a contempt hearing against the defense attorney, Respondent held the defense attorney's own counsel in direct contempt. Respondent refused to be patient, dignified, and courteous in this proceeding. Respondent raised her voice several times and challenged both attorneys several times to "call the Judicial Standards Commission" and report her conduct to their "buddies" at the Commission.

The parties stipulated that Respondent's conduct as set forth in these two counts violated multiple provisions of the Code and constituted willful misconduct in office. They also agreed that Respondent should receive a formal reprimand.

DISCUSSION

Respondent is subject to discipline pursuant to Article VI, Section 32 of the New Mexico Constitution, which authorizes the discipline or removal of a judge for a number of reasons, including willful misconduct in office. Before disciplining a judge, the Court must be satisfied that willful judicial misconduct has occurred. *In re Castellano*, 119 N.M. 140, 149, 889 P.2d 175, 184 (1995) (per curiam). "[Willful] misconduct in office is improper and wrong conduct of a judge acting in his official capacity done intentionally, knowingly, and, generally, in bad faith.

It is more than a mere error of judgment or an act of negligence." *In re Rodella*, 2008NMSC050, ¶ 9, 144 N.M. 617, 190 P.3d 338 (per curiam) (internal quotation marks and citation omitted). A clear and convincing evidence standard applies. *See In re Martinez*, 99 N.M. 198, 203, 656 P.2d 861, 866 (1982).

We agree with the Commission that Respondent's admitted conduct violated multiple provisions of the Code of Judicial Conduct and constitutes willful misconduct in office. In addition to the other disciplinary sanctions stipulated to by the parties and approved by this Court, we now issue this formal reprimand.

Improper Demeanor and Abuse of Contempt Power

Respondent repeatedly displayed improper demeanor with counsel and the defendant appearing before her in the courtroom. Particularly troubling was Respondent's conduct in *Padilla*, DW-2317-09, and the contempt hearing against defendant's counsel. Respondent failed to show the defendant, his attorney, and the attorney who represented the first defense attorney during the direct contempt proceeding, the patience and courtesy expected of a judge in the courtroom. Respondent's conduct clearly violated Rule 21300(A), (B)(2), (B)(3), (B)(4), (B)(5), (B)(7), and (B)(8) NMRA, requiring a judge to "maintain order and decorum in judicial proceedings" and "be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge's official capacity."

Most importantly, Respondent violated "the most basic tenet of judicial conduct—that a judge shall uphold the integrity and independence of the judiciary." *In re Garza*, 2007NMSC028, ¶ 20, 141 N.M. 831, 161 P.3d 876 (per curiam). Respondent's conduct in failing to be patient, dignified, and courteous, and in yelling at people in her courtroom, are actions that erode public confidence in the judiciary. *See* Rule 21100 NMRA (requiring a judge to establish, maintain, and enforce high standards of conduct to uphold the integrity and independence of the judiciary); Rule 21200 NMRA (requiring a judge to "avoid impropriety and the appearance of impropriety[,] . . . to respect and comply with the law . . . and act at all times in a

manner that promotes public confidence in the integrity and impartiality of the judiciary”). “A judiciary of integrity is one in which judges are known for their probity, fairness, honesty, uprightness and soundness of character.” Rule 21100 cmt. (West, Westlaw Aug. 31, 2004 amendments). As a judge, Respondent has a duty to uphold the integrity of the judiciary by being patient and respectful to those who come before her. See Rule 21300(B)(4) cmt. (requiring a judge to hear all proceedings fairly and with patience).

We have previously recognized that a judge is held to a higher standard than the average citizen. See *Vincent*, 2007NMSC056, ¶ 21 143 N.M. 56, 172 P.3d 605 (“[Judges] hold a unique position in society, and with that position comes the unique power and responsibility of administering justice. When a judge fails to recognize and properly exercise that

‘unique power and responsibility,’ that judge endangers our entire system of justice.” (internal quotation marks and internal citation omitted)). “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 21200(A) (emphasis added). Respondent should have considered how the public, counsel, and court staff might perceive her conduct on the bench and behaved appropriately. Respondent is hereby formally reprimanded for her unacceptable conduct.

**CONDITIONS FOR RESPONDENT
UPON A RETURN TO NEW
MEXICO JUDICIAL OFFICE**

If at any time in the future Respondent returns to New Mexico judicial office, Respondent shall complete a twelve-month supervised probation and formal mentorship. The Commission shall

recommend the probation supervisor or mentor for consideration and appointment by this Court. The probation supervisor or mentor shall report on the progress and outcome of the mentorship to this Court and to the Commission. Respondent shall also complete a course in ethics at the National Judicial College. The Commission shall recommend an appropriate course for consideration and approval by this Court. Respondent shall pay all costs, travel expenses, and tuition associated with attending and completing this course at the National Judicial College.

IT IS SO ORDERED.

CHARLES W. DANIELS,
Chief Justice

PATRICIO M. SERNA, Justice
PETRA JIMENEZ MAES,
Justice

RICHARD C. BOSSON, Justice
EDWARD L. CHÁVEZ,
Justice