

1 **I. BACKGROUND**

2 {3} This disciplinary proceeding arose out of a criminal case, Cause No. D-307-
3 CR-2018-00203, in which Judge Martin's daughter was the victim of an aggravated
4 assault by use of a firearm. The criminal case proceeded to a two-day jury trial
5 commencing on July 26, 2021. On the evening after the first day of trial, Judge
6 Martin had a telephone conversation with Assistant District Attorney (ADA) Samuel
7 Rosten. During that conversation, Judge Martin advised the ADA that he should use
8 the phrase "brandish a firearm" or something similar in the court's jury instructions
9 rather than asking the jury to find that the defendant "pointed a firearm" at Judge
10 Martin's daughter. The next day, ADA Rosten submitted an amended jury
11 instruction, for the court to consider, alleging that the defendant "brandished and/or
12 pointed a deadly weapon" at Judge Martin's daughter.

13 {4} The jury found the defendant guilty of aggravated assault by use of a deadly
14 weapon as charged in count I and a special verdict finding that a firearm was used
15 in the commission of count I.

16 {5} After the verdict, Judge Martin and his daughter met with the ADA to discuss
17 the case. During that meeting, Judge Martin admonished the ADA about whether or
18 not the defendant had been remanded into custody after the verdict.

1 {6} After the defendant was sentenced, an appeal was filed in the criminal case,
2 and this disciplinary proceeding followed.

3 {7} On July 20, 2022, the Commission filed a notice of formal proceedings against
4 Judge Martin. Upon completion of the investigation, the Commission and Judge
5 Martin entered into the Stipulation. As part of the Stipulation, Judge Martin admitted
6 to engaging in the following acts, in violation of the Judicial Standards Commission
7 Rules, as follows:

8 A. On or about July 26, 2021, during a telephone conversation with
9 Assistant District Attorney Samuel Rosten (“Mr. Rosten”), and after
10 reviewing the proposed jury instructions filed in the court’s electronic
11 filing system in Cause Number D-307-CR-2018-00203, a case in which
12 Judge Martin’s daughter was the alleged victim, Judge Martin advised
13 Mr. Rosten to use the term “brandished a firearm” in his jury
14 instructions rather than asking the jury to find the [d]efendant “pointed
15 a firearm” at the alleged victim, Judge Martin’s daughter.

16 B. On or about July 27, 2021, after the verdict in Cause Number D-307-
17 CR-2018-00203, Judge Martin engaged in a conversation with Mr.
18 Rosten and his co-counsel Assistant District Attorney Spencer Willson
19 (Mr. Willson) after they were informed that Judge Martin and his
20 daughter wanted to speak to them. Both Mr. Rosten and Mr. Willson
21 left the courtroom to speak with Judge Martin and his daughter in a
22 room down the hall from the courtroom. Before Mr. Rosten and Mr.
23 Willson arrived, [Judge Martin] and [his] family had been advised that
24 the defendant had been remanded to custody, but once Mr. Rosten and
25 Mr. Willson arrived, [Judge Martin] did admonish Messrs. Rosten and
26 Willson, “Good thing he was remanded, otherwise I would have told
27 you to go back in there and try again.”

1 C. On or about July 26-27, 2021 during the trial in Cause Number D-
2 307-CR-2018-00203, Judge Martin allowed his daughter, the alleged
3 victim and witness in the case, to use his chambers while waiting for
4 her opportunity to testify.

5 {8} Judge Martin agreed and admitted that his conduct violated the following
6 Rules of the Code of Judicial Conduct:

- 7 • Rule 21-101 NMRA (requiring compliance with the law).
- 8 • Rule 21-102 NMRA (promoting confidence in the judiciary).
- 9 • Rule 21-103 NMRA (avoiding abuse of the prestige of judicial
10 office).
- 11 • Rule 21-204(B) NMRA (prohibiting influence of family
12 relationships on judicial conduct).
- 13 • Rule 21-206 NMRA (ensuring the right to be heard).
- 14 • Rule 21-210 NMRA (regarding a judge's prohibition on making
15 statements on pending or impending cases).

16 Based upon these admitted violations, Judge Martin agreed to receive a public
17 censure to be published in the State Bar of New Mexico *Bar Bulletin*. For the reasons
18 discussed below, we issue this censure.

19 **II. DISCUSSION**

20 {9} Article VI, Section 32 of the New Mexico Constitution provides that “any
21 justice, judge or magistrate of any court may be disciplined or removed for willful

1 misconduct in office.” “Willful misconduct in office is improper and wrong conduct
2 of a judge acting in his official capacity done intentionally, knowingly, and,
3 generally in bad faith. It is more than a mere error of judgment or an act of
4 negligence.” *In re Schwartz*, 2011-NMSC-019, ¶ 12, 149 N.M. 721, 255 P.3d 299
5 (brackets, internal quotation marks, and citation omitted). In order to warrant
6 discipline, the evidence must establish proof that the violations of the Code of
7 Judicial Conduct were willful. *Id.* Willful conduct must be established by clear and
8 convincing evidence before the Court will impose discipline. *Id.* However, “[t]here
9 need not be clear and convincing evidence to support each and every [allegation or
10 fact]. Rather, we must be satisfied by clear and convincing evidence that there is
11 willful judicial misconduct which merits discipline.” *In re Castellano*, 1995-NMSC-
12 007, ¶ 37, 119 N.M. 140, 889 P.2d 175; *see also In re Schwartz*, 2011-NMSC-019,
13 ¶ 13.

14 {10} In this case, Judge Martin denies committing willful misconduct in office;
15 however, he agrees and stipulates that the Commission and this Court, looking at the
16 facts, evidence and totality of the circumstances, could find willful misconduct in
17 office and violations of the Code of Judicial Conduct in office, which provides
18 sufficient basis to impose discipline pursuant to Article VI, Section 32 of the New
19 Mexico Constitution. We agree that, under the circumstances of this case, Judge

1 Martin's conduct merits discipline, and for that reason, he should be formally
2 reprimanded by public censure.

3 {11} The preamble to the Code of Judicial Conduct states, "An independent, fair,
4 and impartial judiciary is indispensable to our system of justice." Rule 21-001
5 NMRA. To promote the public's trust and to maintain and enhance confidence in
6 the legal system, "[j]udges should maintain the dignity of judicial office at all times
7 and avoid both impropriety and the appearance of impropriety in their professional
8 and personal lives." *Id.* The principles of the Code of Judicial Conduct require a
9 judge to behave in a manner that promotes public confidence, in the judiciary, in all
10 matters, both public and private. *Id.* This responsibility includes avoiding both actual
11 impropriety and the appearance of impropriety, which would erode the public's
12 confidence in the legal system. *Id.* "The test for appearance of impropriety is whether
13 the conduct would create in reasonable minds a perception that the judge violated
14 [the Code of Judicial Conduct] or engaged in other conduct that reflects adversely
15 on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."
16 Rule 21-102 comm. cmt. 5.

17 {12} We recognize that when the family member of a judicial officer becomes
18 enmeshed in the legal system, it can be stressful for everyone involved. This is
19 especially true when the family member is the victim of a violent crime. The natural

1 impulse of parents is to provide comfort, reassurance, and protection for their
2 children. In this case, Judge Martin may have felt that he was acting in the best
3 interest of his daughter, however, judges, unlike other parents are held to a higher
4 standard. *See* Rule 21-001. Based upon his experience, Judge Martin recognized a
5 mistake of law in the ADA's proposed jury instructions. Judge Martin believed that
6 he was acting in his daughter's best interest by pointing out the mistake. Judge
7 Martin's actions created an appearance of impropriety, which should not be ignored.

8 {13} In regard to the conversation between Judge Martin and the ADA after the
9 verdict, we must again conclude that this creates an appearance of impropriety.
10 While we recognize that emotions may have been running high after the verdict, we
11 again must counsel the judiciary that judges are held to a higher standard. *See id.*
12 Due to the imbalance of power between a judge and a litigator, a judge must always
13 promote confidence in the judiciary. *See id.* Therefore, Judge Martin's admonitions
14 to the ADA created both an actual impropriety and an appearance of impropriety.

15 {14} Finally, with respect to the third allegation that Judge Martin allowed his
16 daughter, who was both the victim and the witness in the criminal case, to use his
17 chambers while waiting for her opportunity to testify, this also creates an appearance
18 of impropriety. The trial in the criminal case occurred during the COVID-19

1 pandemic, and pursuant to this Court's order,¹ the Third Judicial District courthouse
2 was under restrictions, which limited the public's access to the facilities. Therefore,
3 Judge Martin inappropriately allowed his daughter to remain in his chambers until
4 called to testify. Because of the limited public access to the court facilities, this may
5 not have created an actual appearance of impropriety, it did however create a
6 potential for an appearance of impropriety. Therefore, Judge Martin's conduct
7 cannot be condoned.

8 {15} Judge Martin denies that his actions created a willful violation of the Rules of
9 the Code of Judicial Conduct; however, he agrees that when an independent arbiter
10 of the facts uses the totality of the circumstances, his conduct could be construed as
11 willful misconduct in office. In imposing this level of discipline, this Court looks at
12 various factors including "the nature of the misconduct and patterns of
13 behavior[,] . . . the seriousness of the transgression, the facts and circumstances that
14 existed at the time of the transgression, the extent of any pattern of improper activity,
15 whether there have been previous violations, and the effect of the improper activity

¹NMSC Order No. 21-8500-015 (June 29, 2021),
[https://www.nmcourts.gov/wp-content/uploads/2021/06/Order-No_-21-8500-015-
and-Amended-PHE-Protocols-29-Jun-21.pdf](https://www.nmcourts.gov/wp-content/uploads/2021/06/Order-No_-21-8500-015-and-Amended-PHE-Protocols-29-Jun-21.pdf)

1 upon the judicial system or others.” *In re Schwartz*, 2011-NMSC-019, ¶ 25 (internal
2 quotation marks and citations omitted).

3 **III. CONCLUSION**

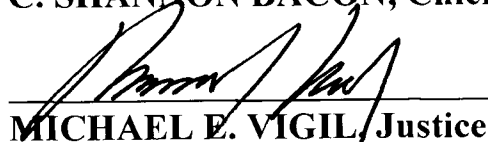
4 {16} Viewed through the lens of hindsight, Judge Martin recognizes the potential
5 for appearance of impropriety based upon his conduct; therefore, we approve the
6 Stipulation presented by the Commission and Judge Martin to impose a public
7 censure of Judge Martin and his conduct. We issue this censure not only to remind
8 judges of their responsibility to avoid the appearance of impropriety but also to
9 ensure the public that our legal system is committed to maintaining an independent,
10 fair, and impartial judiciary under the law.

11 {17} For the foregoing reasons, Respondent, Honorable James T. Martin is hereby
12 censured for his willful misconduct, and the Stipulation is accepted, adopted, and
13 confirmed.

14 {18} **IT IS SO ORDERED.**



15
16 **C. SHANNON BACON, Chief Justice**



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18 **MICHAEL E. VIGIL, Justice**



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20 **DAVID K. THOMSON, Justice**

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Julie J. Vargas

JULIE J. VARGAS, Justice

Briana H. Zamora

BRIANA H. ZAMORA, Justice