

1           **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 **Opinion Number:** \_\_\_\_\_

3

4 **Filing Date:** \_\_\_\_\_

5 **NO. 34,097**

6 **INQUIRY CONCERNING A JUDGE**

7 **NO. 2012-100**

8 **IN THE MATTER OF HON. JAMES NARANJO,**

9 **Magistrate Judge, County of Socorro, New Mexico**

10 Randall D. Roybal

11 Deborah L. Borio

12 Albuquerque, NM

13 for Judicial Standards Commission

14 Deschamps Law Firm, L.L.C.

15 Lee Deschamps

16 Socorro, NM

17 for Respondent

SUPREME COURT OF NEW MEXICO  
FILED

JUN 13 2013



1 **OPINION AND PUBLIC CENSURE**

2 **DANIELS, Justice.**

3 {1} This matter came before us on a petition to accept the stipulated agreement and  
4 consent to discipline between the Judicial Standards Commission and Respondent,  
5 the Honorable James Naranjo, a magistrate judge in Socorro, New Mexico. We  
6 issued an order granting the petition and imposing a ninety-day suspension with sixty  
7 days deferred, subject to the conditions set forth below. We now file this Opinion as  
8 a public censure under Rule 17-206(D) NMRA for publication in *New Mexico*  
9 *Appellate Reports* and in the *New Mexico Bar Bulletin*.

10 **INTRODUCTION**

11 {2} Article VI, Section 32 of the New Mexico Constitution, which created the  
12 Judicial Standards Commission, provides that “any justice, judge or magistrate of any  
13 court may be disciplined or removed for willful misconduct in office.” That  
14 constitutional provision vests this Court with the ultimate responsibility of reviewing  
15 recommendations of the Commission, determining whether a judge has committed  
16 willful misconduct, and imposing discipline that we find “just and proper.”

17 {3} Pursuant to this Court’s responsibility under Article VI, Section 3 of the New  
18 Mexico Constitution to exercise “superintending control over all inferior courts,” we  
19 have promulgated a Code of Judicial Conduct, Rules 21-100 to -406 NMRA, that

1 “establishes standards for the ethical conduct of judges and judicial candidates”  
2 requiring that judges “aspire at all times to conduct that ensures the greatest possible  
3 public confidence in their independence, impartiality, integrity, and competence.” *Id.*  
4 pmbl. (2)-(3). While violations of Code provisions are not automatic grounds for  
5 judicial discipline, they provide “some proof of what constitutes appropriate judicial  
6 conduct.” *In re Martinez*, 99 N.M. 198, 204, 656 P.2d 861, 867 (1982) (ordering  
7 suspension of a judge for willful misconduct in office).

8 {4} The Commission and Respondent have stipulated to the following facts.  
9 Respondent’s stepson, Albert Hernandez, was a party in a child-support enforcement  
10 proceeding assigned to Seventh Judicial District Court Judge Matthew Reynolds. In  
11 August 2012, after Mr. Hernandez was jailed for nonpayment of support,  
12 Respondent, who had no official role in the case, placed a telephone call to Judge  
13 Reynolds, stating that Mr. Hernandez was not a flight risk and requesting that Judge  
14 Reynolds reduce Mr. Hernandez’s bond or let him out of jail. As a result of the ex  
15 parte communication from Respondent, Judge Reynolds recused himself from Mr.  
16 Hernandez’s case.

17 {5} Upon learning of the incident, the Commission initiated a preliminary  
18 investigation and requested a written explanation from Respondent for the phone call.

1 Respondent explained in a letter that he placed the call “to advise Judge Reynolds  
2 that Albert Hernandez was not a flight risk and that [Respondent] would personally  
3 make sure he made his court date.” Respondent also stated that he recognized that  
4 his phone call created an appearance of impropriety and promised to comply with any  
5 remedial action taken by the Commission.

6 {6} After receiving Respondent’s letter, the Commission filed a notice of formal  
7 proceedings against Respondent, alleging in three counts that the phone call to Judge  
8 Reynolds was (1) an ex parte communication in Mr. Hernandez’s child-support  
9 enforcement case, (2) an abuse of the prestige of Respondent’s judicial office by  
10 attempting to gain favorable treatment for Mr. Hernandez, and (3) an abuse of the  
11 prestige of Respondent’s judicial office by vouching for the character of Mr.  
12 Hernandez. The Commission also alleged that each of the three counts violated  
13 specific provisions of the Code of Judicial Conduct and constituted willful  
14 misconduct in office.

15 {7} Respondent obtained counsel and answered the Commission’s notice,  
16 admitting to the conduct and the violations alleged by the Commission. He and the  
17 Commission then entered into the stipulation agreement and consent to discipline  
18 (Agreement) in which Respondent acknowledged that the telephone call to Judge

1 Reynolds amounted to willful misconduct and violated Rules 21-101 NMRA  
2 (requiring compliance with the law), 21-102 NMRA (promoting confidence in the  
3 judiciary), 21-103 NMRA (avoiding abuse of the prestige of judicial office), 21-  
4 204(B)-(C) NMRA (avoiding external influences on judicial conduct), 21-206(A)  
5 NMRA (ensuring the right to be heard), 21-209(A) NMRA (avoiding ex parte  
6 communications), 21-210(A) NMRA (prohibiting statements on pending and  
7 impending cases), and 21-303 NMRA (prohibiting service as a character witness).  
8 Respondent also agreed that his misconduct caused Judge Reynolds to disqualify  
9 himself from Mr. Hernandez's case.

10 {8} As stipulated discipline, Respondent agreed to (1) enroll in and successfully  
11 complete, at his own expense, the National Judicial College's online course, *Ethics*  
12 *and Judging: Reaching Higher Ground*, (2) receive a public censure, to be published  
13 in the *New Mexico Bar Bulletin*, (3) undergo formal mentorship with supervised  
14 probation for the remainder of his term in office, and (4) accept a suspension without  
15 pay for ninety days, with sixty days deferred on the condition that he successfully  
16 complete his probation.

17 {9} The Commission petitioned this Court for acceptance of the Agreement. We  
18 granted the petition and issued our order accepting the terms of the Agreement but

1 conditioning the deferral of sixty days of Respondent’s ninety-day suspension on his  
2 successful compliance with *all* of the terms of the Agreement, not just with the terms  
3 of his probation. *See* Rule 27-401(A)(3) NMRA (“The Supreme Court, in its  
4 discretion and under such conditions as it may specify, may . . . impose the discipline  
5 recommended by the commission or any other greater or lesser discipline that it  
6 deems appropriate under the circumstances . . .”). Publication of this Opinion  
7 constitutes the public censure component of Respondent’s discipline.

8 **DISCUSSION**

9 **A. Respondent’s Ex Parte Efforts to Obtain Favorable Treatment of His**  
10 **Stepson Violated the Code of Judicial Conduct.**

11 {10} Respondent’s conscious act of placing an ex parte telephone call to Judge  
12 Reynolds on behalf of Respondent’s stepson violated the following specific  
13 provisions of the Code of Judicial Conduct.

14 **1. External Influences on Judicial Conduct**

15 {11} Rule 21-204(C) provides that “[a] judge shall not convey or permit others to  
16 convey the impression that any person or organization is in a position to influence the  
17 judge,” and Rule 21-204(B) provides that “[a] judge shall not permit family, social,  
18 political, financial, or other interests or relationships to influence the judge’s judicial  
19 conduct or judgment.” The committee commentary to Rule 21-204 emphasizes that

1 its provisions are aimed not only at actual improper influences on judicial conduct but  
2 also at the creation of appearances of impropriety: “Confidence in the judiciary is  
3 eroded if judicial decision making is perceived to be subject to inappropriate outside  
4 influences.” See Arthur Garwin et al., *Annotated Model Code of Judicial Conduct*  
5 122 (2d ed. 2011) (“Not only is it misconduct for a judge to be influenced in her own  
6 decision making to advance the judge’s private interests or the interests of friends or  
7 family members, it is equally improper and a violation of this canon for a judge to  
8 attempt to influence others in the decision-making process to advance these  
9 relationships and interests.”). Respondent’s efforts to influence the assigned judge  
10 on behalf of his stepson therefore violated Rule 21-204(B) and (C).

11 {12} All judges must be acutely aware of the harm done to the integrity and  
12 reputation of the judiciary when a judge seeks preferential treatment for an  
13 acquaintance or relative. Our legal system is built on principles of fairness, justice,  
14 and equality, principles which are undermined when a judge attempts to obtain  
15 favorable judicial treatment for another. And when such an attempt is directed to  
16 another judge behind closed doors, the damage is magnified. It creates the  
17 misperception that our judicial system tolerates secret dealings and favoritism among  
18 those entrusted with the fair and impartial administration of justice.

1 {13} A citizen who is entrusted with the increased authority inherent in a judicial  
2 position also takes on special ethical obligations designed to ensure litigants and the  
3 public that judicial authority will not be abused. We have previously addressed the  
4 potential conflicts between a judge's personal relationships and the restrictions  
5 imposed by controlling standards of judicial ethics: "From the perspective of a  
6 parent, Respondent's attempts to assist his son during a time of trouble may be  
7 understandable. . . . Nevertheless, as a judge, Respondent is expected to regulate his  
8 behavior in a way that other parents are not." *In re Ramirez*, 2006-NMSC-021, ¶¶ 4,  
9 6-7, 15, 139 N.M. 529, 135 P.3d 230 (per curiam) (disciplining a judge who showed  
10 his court identification and verbally identified himself to police officers who were  
11 issuing citations to his son and his son's friends, used a volunteer bailiff to assist  
12 them in responding to their citations, and spoke to a judge assigned to the cases).

13 **2. Ex Parte Communication**

14 {14} Rule 21-209(A) prohibits a judge from initiating, permitting, or engaging in ex  
15 parte communications, and Rule 21-206(A) prohibits a judge from denying a party  
16 the right to be heard according to law. Judge Reynolds was the duly assigned  
17 presiding judge in the case involving Respondent's stepson and was obligated by law  
18 to avoid any participation in ex parte communications in that proceeding. *See In re*



1 *Larsen*, 616 A.2d 529, 559 (Pa. 1992) (per curiam) (holding that the presiding judge  
2 had “an obligation not to consider *ex parte* communications” from Justice Larsen).  
3 Judge Reynolds also had a duty to ensure that all of the parties in Mr. Hernandez’s  
4 case had the right to be heard. Judge Reynolds appropriately disqualified himself  
5 when he apparently recognized that his impartiality in Mr. Hernandez’s child-support  
6 enforcement proceeding might reasonably be questioned after the private  
7 conversation initiated by Respondent. *See* Rule 21-211 NMRA (“A judge shall  
8 disqualify himself or herself in any proceeding in which the judge’s impartiality  
9 might reasonably be questioned . . .”).

10 {15} Even though the provisions of Rules 21-209(A) and 21-206(A) technically  
11 apply directly to the assigned judge, they are important in understanding why  
12 Respondent’s call to Judge Reynolds constituted willful misconduct in office. “Ex  
13 parte communications are prohibited generally because they undermine the adversary  
14 system, threaten the fairness of a proceeding, and create an appearance of bias and  
15 impartiality.” *Garwin et al., supra*, at 176 (citing *In re Marek*, 609 N.E.2d 419, 420  
16 (Ind. 1993)); *see also* Rule 21-206 committee commentary ¶ 1 (“The right to be heard  
17 is an essential component of a fair and impartial system of justice. Substantive rights  
18 of litigants can be protected only if procedures protecting the right to be heard are

1 observed.”). And when the improper ex parte communication is initiated by a judge,  
2 whether presiding or otherwise, the effects are even more severe, violating the  
3 principles that lie at the foundation of public confidence in an impartial judiciary. *See*  
4 Rule 21-102 (“A judge shall act at all times in a manner that promotes public  
5 confidence in the independence, integrity, and impartiality of the judiciary and shall  
6 avoid impropriety and the appearance of impropriety.”).

7 {16} This case is no exception. Respondent should have been aware of the  
8 pernicious effects that his ex parte communication to Judge Reynolds could have on  
9 the lawful conduct of his stepson’s case and on the public perception of the judiciary.  
10 The matter of Mr. Hernandez’s bond or release from jail was for Judge Reynolds to  
11 decide, with public input from the parties and others as permitted by law and court  
12 rules. Respondent simply had no place communicating with Judge Reynolds about  
13 Mr. Hernandez’s case, particularly in a manner that deprived the parties of notice and  
14 an opportunity to respond to Respondent’s ex parte guarantee that Mr. Hernandez was  
15 not a flight risk. The call to Judge Reynolds not only created the appearance of  
16 impropriety, it was clearly prohibited by Rule 21-102.

17 **3. Abusing the Prestige of Judicial Office**

18 {17} The ex parte communication also violated Rule 21-103, which provides, “A

1 judge shall not abuse the prestige of judicial office to advance the personal or  
2 economic interests of the judge or others, or allow others to do so.” The committee  
3 commentary is clear that the rule encompasses precisely the type of conduct at issue  
4 in this matter: “It is improper for a judge to use or attempt to use his or her position  
5 to gain personal advantage or deferential treatment of any kind.” *Id.* committee  
6 commentary ¶ 1. Respondent’s judge-to-judge communication attempting to gain  
7 favorable treatment for his stepson was a clear violation of this rule and was willful  
8 misconduct in office. *See, e.g., In re Garza*, 2007-NMSC-028, ¶¶ 2, 4-5, 19, 141  
9 N.M. 831, 161 P.3d 876 (per curiam) (holding that a magistrate judge abused the  
10 prestige of his judicial office by attempting to influence other magistrate judges who  
11 were presiding over an acquaintance’s DWI case); *In re Maestas*, No. 27,348, ¶¶ 3,  
12 5 (N.M. Sup. Ct. March 5, 2002) (holding that a judge who attempted to obtain  
13 favored treatment from law enforcement officers for the judge’s friend committed  
14 willful misconduct in office); *see also Garwin et al., supra*, at 78 (“Rule [21-103]  
15 prohibits a judge from lending the prestige of judicial office to advance the personal  
16 or economic interests of others. To do so, or to convey that anyone is in a special  
17 position of influence, is to prostitute the office.”).

18 **4. Vouching for Character of a Person in a Legal Proceeding**

1 {18} Rule 21-303 provides, “A judge shall not testify as a character witness in a  
2 judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the  
3 character of a person in a legal proceeding, except when duly summoned.” With the  
4 adoption of this rule in January 2012, we expanded the former proscription against  
5 judicial character vouching, which previously consisted only of a textual ban on  
6 formal testimony: “A judge shall not testify voluntarily as a character witness.” Rule  
7 21-200(B) (1995). The current rule is taken from the American Bar Association’s  
8 Model Code of Judicial Conduct, which was amended in 2007 to include the language  
9 “or otherwise vouch for the character of a person in a legal proceeding.” *See* Model  
10 Code of Judicial Conduct Canon 3, R. 3.3 (2007), *available at*  
11 [http://www.americanbar.org/groups/professional\\_responsibility/resources/judicial](http://www.americanbar.org/groups/professional_responsibility/resources/judicial_ethics_regulation/mcjc.html)  
12 [\\_ethics\\_regulation/mcjc.html](http://www.americanbar.org/groups/professional_responsibility/resources/judicial_ethics_regulation/mcjc.html) (follow hyperlinks to “Model Code of Judicial Conduct,  
13 as revised February 2007,” and to “Text Comparison—2007 Model Code to 1990  
14 Code”). This language was added “in recognition of the fact that under oath is not  
15 the only mode in which judges might abuse the prestige of office when the character  
16 of a person is in issue in a legal proceeding.” Garwin et al., *supra*, at 352-53 (citing  
17 Charles G. Geyh & W. William Hodes, *Reporters’ Notes to the Model Code of*  
18 *Judicial Conduct* 60-61 (2009)).

1 {19} Both the letter and the spirit of Rule 21-303 prohibit the kind of assurances  
2 Respondent made to Judge Reynolds that he did not believe Mr. Hernandez would be  
3 a flight risk. Respondent candidly admitted that he offered this information “to  
4 advise Judge Reynolds that Albert Hernandez was not a flight risk.” Clearly,  
5 Respondent was vouching for the trustworthiness of his stepson in an attempt to  
6 influence Judge Reynolds’s judicial determination of the conditions of Mr.  
7 Hernandez’s potential release from jail. *See* Rule 5-401(C)(3)(a)-(b) NMRA  
8 (providing that a factor to be considered in determining conditions of release is “the  
9 history and characteristics of the person, including . . . the person’s character and . . .  
10 the person’s family ties”). Respondent’s vouching for his stepson as not being a  
11 flight risk in an ex parte conversation with the duly assigned judge was even more  
12 problematical than if Respondent violated Rule 21-303 by offering sworn character  
13 testimony in a public adversary proceeding because the opposing party in a hearing  
14 at least would have known of the vouching and been able to respond with cross-  
15 examination and countering testimony.

16 **5. Making a Statement Likely to Interfere with a Fair Hearing**

17 {20} The phone call also violated Rule 21-210(A), which provides, “A judge shall  
18 not make any public statement that might reasonably be expected to affect the

1 outcome or impair the fairness of a matter pending or impending in any court, or  
2 make any nonpublic statement that might substantially interfere with a fair trial or  
3 hearing.” Because Respondent’s nonpublic statements deprived any adverse party  
4 of an opportunity to respond and because the nonpublic statements were made from  
5 one judge to another, the statements had the potential not only to “substantially  
6 interfere” with the lawful resolution of the release issue in Mr. Hernandez’s case but  
7 to be outcome determinative.

8 **B. Respondent’s Conduct and Code of Judicial Conduct Violations**  
9 **Constituted Willful Misconduct in Office.**

10 (21) By both the terms of the stipulation offered by the Commission and  
11 Respondent and under our own caselaw, Defendant’s conduct and its resulting Code  
12 violations constituted willful misconduct in office. *See In re Gentry*, No. 28,986 ¶¶  
13 4, 6 (N.M. Sup. Ct. July 29, 2005) (per curiam) (holding that a metropolitan judge  
14 who initiated ex parte communications with a special commissioner and a district  
15 court judge to influence a child placement in a case involving a family member  
16 committed willful misconduct in office); *cf. In re Garza*, 2007-NMSC-028, ¶¶ 21, 23  
17 (holding that a magistrate judge who contacted another magistrate judge in seeking  
18 preferential treatment for an acquaintance committed willful misconduct in office).  
19 Respondent consciously made an impermissible judge-to-judge ex parte telephone

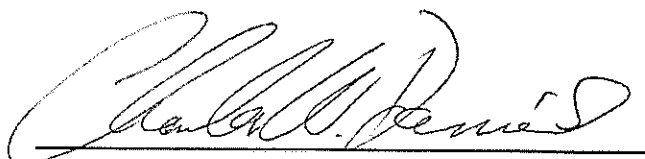
1 call to vouch for the character of and influence the assigned judge's official decision  
2 regarding Respondent's stepson and thereby committed willful misconduct in office.

3 {22} We therefore accept the stipulation of the parties and issue this Opinion and  
4 public censure, both as an assurance to those we serve and as a reminder to all  
5 members of the New Mexico judiciary that we cannot permit any behavior on the part  
6 of any of our judges that creates either the reality or an appearance of judicial  
7 favoritism.

8 **CONCLUSION**

9 {23} For the foregoing reasons, we publically censure Respondent for his  
10 misconduct and confirm our previous order accepting the stipulation of the parties  
11 and imposing the disciplinary sanctions summarized in this Opinion.

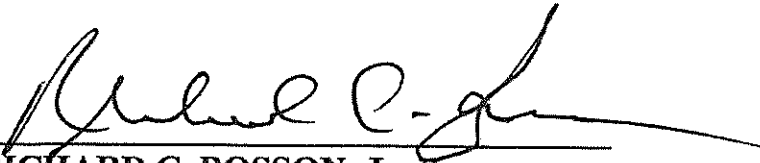
12 {24} **IT IS SO ORDERED.**

13   
14 **CHARLES W. DANIELS, Justice**

15 **WE CONCUR:**

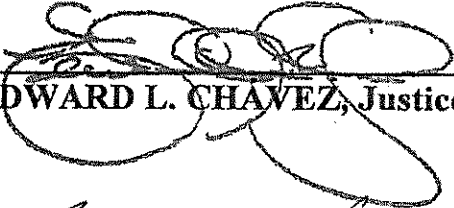
16   
17 **PETRA JIMENEZ MAES, Chief Justice**

1



2 **RICHARD C. BOSSON, Justice**

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4 **EDWARD L. CHAVEZ, Justice**

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6 **BARBARA J. VIGIL, Justice**