

From the New Mexico Supreme Court

No. 31,920

INQUIRY CONCERNING A JUDGE
NO. 2008094

IN THE MATTER OF JOSEPH GUILLORY,
Magistrate Court Judge, Doña Ana County, New Mexico

FORMAL REPRIMAND

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

JOSEPH GUILLORY
Las Cruces, New Mexico
for Respondent

PER CURIAM.

This matter came before this Court on a second petition for discipline upon stipulation filed by the Judicial Standards Commission (Commission) concerning the Honorable Joseph Guillory (Respondent), a magistrate judge in Doña Ana County, New Mexico. We denied the first petition for discipline upon stipulation after hearing oral argument and remanded the matter to the Commission for development of the record. In the stipulation and consent to discipline entered upon remand, the parties agreed that Respondent's conduct violated multiple provisions of the Code of Judicial Conduct (Code) and constituted willful misconduct in office, or persistent failure or inability to perform a judge's duties, or both. We accepted the findings and conclusions of the second petition for discipline upon stipulation (petition) and ordered this formal reprimand and other recommended sanctions set forth in the petition.

FACTS

The petition addresses five counts of misconduct that form the basis of the Commission's recommendation for discipline. The first count involves two separate issues regarding Respondent's demeanor: Respondent's intemperate language concerning the presiding judge of the magistrate court and Respondent's conduct and abuse of contempt power in two specific cases before him. The basis of the complaint for the first issue arose after circulation of a courtwide email from the court manager that deroga-

tory language would not be tolerated by any court staff member, including judges. In response to this email, Respondent advised the court manager that Respondent could say what he wanted. Then, on or about January 22, 2008, Respondent referred to the presiding judge in a condescending manner several times and voiced his discontent with the presiding judge to the magistrate court staff where members of the public could hear. Respondent also made condescending remarks about the presiding judge and the clerk's office to the court manager in reference to court calendaring and scheduling matters.

The second issue of the first count involves improper demeanor and abuse of contempt power in two separate matters before Respondent: *State v. Barela*, M14DR200701187 and M14MR200801067, and *State v. Amanti*, M14MR200702991 and M14MR200801069. On February 26, 2008, in *Barela*, M14DR200701187, Mr. Barela failed to appear for a pretrial conference. On March 3, 2008, a bench warrant was issued for Mr. Barela's arrest for failure to appear at the pretrial conference. The public defender filed a motion to quash the bench warrant stating that Mr. Barela had submitted a change of address on January 9, 2008, and arguing that Mr. Barela did not receive notice of the pretrial conference and that the failure to appear was not intentional. A hearing on the motion to quash the bench warrant was set for April 15, 2008.

During the hearing on April 15, 2008, Respondent improperly raised his voice at

Mr. Barela, banged his fists on the bench, argued with Mr. Barela, and then found him in direct contempt of court. Respondent asked Mr. Barela why he did not appear for his pretrial conference and Mr. Barela indicated he did not receive notice. Respondent replied, "I am sick and tired of the defendants lying to me. What, are you trying to play games with me?" When Mr. Barela tried to explain the situation, Respondent would not let him, told him to "sit down and shut up," and said he did not want to hear from him. When Mr. Barela again tried to explain his situation, Respondent slammed his fist on the bench and shouted, "I am giving you thirty days now; I am giving you sixty days now; I am giving you ninety days in jail, do you want me to go on?" Respondent denied the motion to quash the bench warrant, had Mr. Barela served with the bench warrant, and asked the officers to handcuff Mr. Barela and take him away. Mr. Barela spent two days in jail as a result of Respondent having the bench warrant executed. Respondent filed a criminal complaint against Mr. Barela for direct contempt, *Barela*, M14MR200801067, and recused himself from Mr. Barela's original case, *Barela*, M14DR200701187. The contempt case was ultimately dismissed with prejudice by another judge, after Mr. Barela submitted a letter of apology to Respondent.

Another example of Respondent's ill-advised use of contempt power is seen in *Amanti*, M14MR200702991. On March 31, 2008, during a pretrial conference in the case, Respondent entered a commitment order, ordering Mr. Amanti to report to the Doña Ana County Detention Center at 5:00 p.m. that day to serve five consecutive days for direct contempt of court. This order was faxed at 3:36 p.m. Respondent later signed a release order, releasing Mr. Amanti on his own recognizance at 4:54 p.m. Mr. Amanti spent a little over an hour in jail under the commitment order for direct contempt. Mr. Amanti's contempt case, *Amanti*, M14MR200801069, was ultimately disposed of by another judge.

The second count of misconduct involves Respondent's failure or inability to perform judicial duties. The petition sets forth three areas where Respondent failed, refused, or was unable to perform his judicial duties: Respondent's refusal to arraign defendants, Respondent's inability

to properly sentence individuals, and Respondent's failure to complete arraignment forms.

Respondent refused to arraign defendants in four specific cases: *State v. Salcido*, M14MR200801255; *State v. Ornelas*, M14MR200801011; *State v. Richards*, M14MR200600570; and *State v. Solis*, M14TR200102221. In each of these cases, the defendants had failed to appear on their court dates for various reasons, but had subsequently come into court to take care of their cases. On the days the defendants appeared, Respondent refused to arraign them, serving them with bench warrants instead. Upon Respondent's refusal to arraign the defendants, the matters were brought to the attention of other judges who ultimately stepped in to arraign the defendants.

Respondent was unable to properly sentence individuals in four specific cases: *State v. Pedraza*, M14MR200800771; *State v. Baca*, M14MR200800752; *State v. Chambers*, M14MR200702441; and *State v. Delgado*, M14MR200802063 and M14MR200800423. In *Pedraza*, M14MR200800771, Respondent convicted Mr. Pedraza of driving on a suspended license, despite the fact that Mr. Pedraza provided a certified clearance from the New Mexico Motor Vehicle Division (MVD) which indicated there was no suspension at the time of the citation. This conviction resulted in Mr. Pedraza receiving a revocation of his driver's license for one year.

In *Baca*, M14MR200800752, Respondent convicted Mr. Baca of driving on a suspended license. Respondent then sentenced Mr. Baca to DWI school, alcohol screening, and twentyfour hours of community service. The clerk had to advise Respondent that DWI school, alcohol screening, and the mandatory twentyfour hours of community service only apply to a DWI conviction.

In *Chambers*, M14MR200702441, Respondent convicted Mr. Chambers of driving on a suspended license, despite the fact Mr. Chambers provided proof of a clearance from MVD. Respondent sentenced him to three hundred sixtyfour days probation. This conviction resulted in the revocation of Mr. Chambers's driver's license for one year.

In *Delgado*, M14MR200802063 and M14MR200800423, Respondent demonstrated that he was not familiar with mandatory minimum sentences pursuant to NMSA 1978, Section 66539 (1993). Respondent's clerk advised him of the mandatory minimum sentences on Mon-

day, July 21, 2008. On Friday, July 25, 2008, Respondent sentenced Mr. Delgado incorrectly and then stated he had never been informed of the mandatory minimum sentences.

Respondent failed to complete arraignment forms in many cases. Approximately seventyfive to eighty percent of Respondent's files have arraignment sheets which are blank and only contain Respondent's signature and the bond amount, leaving the record unclear as to whether each defendant was actually advised of his or her rights. Examples of incomplete arraignment forms can be found in *State v. Lucero*, M14DR200800471; *State v. Sanchez*, M14MR200801555; *State v. Meza*, M14MR200701743; *State v. Madrid*, M14MR200801687; *State v. Montoya*, M14MR200700595; and *State v. Borunda*, M14MR200800429.

The third count involves Respondent's repeated engagement in *ex parte* communications. Respondent regularly engaged in *ex parte* communications with litigants. Respondent had repeated conversations with parties in cases, including during Respondent's smoking breaks where Respondent spoke and visited with litigants, officers, and bail bondsmen, discussing specific cases outside and in front of the courthouse. Examples of Respondent's *ex parte* communications are found in six specific cases: *State v. Mendoza*, M14TR200501311; *State v. Granger*, M14TR200805052; *State v. McNutt*, M14TR200710879; *State v. Francisco Castillo*, M14TR200710762; *State v. Delgado*, M14VR20070043; and *State v. Perez*, M14DR200700931 and M14TR200708539.

In *Mendoza*, M14TR200501311, Ms. Mendoza was a juvenile, whom Respondent sentenced to community service and fines and fees. On Ms. Mendoza's eighteenth birthday, Respondent had an *ex parte* conversation with Robert Hernandez, a purported bail bondsman, and Respondent, contrary to the magistrate court's protocol, converted the juvenile bench warrant to an adult bench warrant. The protocol in the Las Cruces Magistrate Court is that once a juvenile bench warrant is issued in a juvenile matter, the matter stays pending as such until the matter is brought before the judge, either by service of the juvenile bench warrant on the defendant or by motion of a party.

In *Granger*, M14TR200805052, Ms. Granger appeared at the clerk's window sometime during the week of June 16-20, 2008. Ms. Granger advised the clerk that

she wanted to see Respondent. The clerk advised Ms. Granger that Respondent was not scheduled to hear traffic matters or arraignments on that particular day or time. Ms. Granger was given Respondent's schedule. Ms. Granger returned on June 20, 2008, and once again asked for Respondent. As the magistrate judges are on rotation, Respondent was not the assigned arraignment judge that day. When the clerk informed Ms. Granger of this, Ms. Granger became upset with the clerk, and advised the clerk that she had just spoken with Respondent on the phone and Respondent had advised her to instruct the clerks to send her in to see him. Ms. Granger asked to speak with a supervisor. Ms. Granger proceeded to tell the court manager that Respondent had instructed her to specifically request him and he would take care of the matter.

In *McNutt*, M14TR200710879, Ms. McNutt's case was assigned to a judge other than Respondent. The week of February 18, 2008, Respondent brought the court manager a manila envelope with a letter from Ms. McNutt. Respondent advised the court manager that he or his wife had gone to a doctor's appointment, and that Ms. McNutt worked in that particular doctor's office and gave Respondent the file to send to the court manager. The court manager subsequently spoke with Ms. McNutt on the phone and Ms. McNutt told the court manager that Respondent told her that he could help her out on her case.

In *Castillo*, M14TR200710762, Mr. Castillo had an active bench warrant for failure to appear at arraignment. On April 21, 2007, Respondent had misdemeanor cases scheduled in the morning and afternoon. Mr. Castillo appeared at the window and stated that he had just spoken with Respondent, and Respondent had advised him to have the clerk pull the file and it would be seen by him.

In *Delgado*, M14VR20070043, Mr. Delgado failed to appear on a motion to quash a bench warrant. Respondent proceeded to sentence Mr. Delgado despite the fact that Mr. Delgado was absent, and then directed the clerk to continue the bench warrant. Supervisor Leticia Padilla advised Respondent of the error and advised the clerk that the judgment and sentence notes would need to be voided because a sentencing could not take place without the defendant being present.

In *Perez*, M14DR200700931 and M14TR200708539, one of Mr. Perez's cases, *Perez*, M14DR200700931, came before the court on February 28, 2008,

for a pretrial conference. At that hearing, Deputy Ernest Najera testified as to the citations he issued in that case and the criminal complaint that had been issued in that case. Despite the conference being about that specific case, Respondent brought up another of Mr. Perez's cases, *Perez*, M14TR200708539. This other case was not before the court, and the issuing officer, Deputy Ordonez, was not present to testify. Respondent discussed this other case with the defense attorney present for the original case, Steven Almanza, and Deputy Najera, and entered a notice of dismissal of complaint for *Perez*, M14TR200708539. The court manager advised Respondent that the order of dismissal was improvidently entered and that Respondent would now need to recuse himself, as he had participated in an *ex parte* communication in *Perez*, M14TR200708539.

The fourth count involves actions of Respondent which gave rise to an appearance of impropriety. Respondent regularly took short naps at his desk during the noon hour, within view of court staff and the public. On one occasion, Respondent fell asleep on the bench while three defendants were waiting for paperwork from his clerk. In an effort to wake Respondent, Respondent's clerk whispered loudly to him, "Judge," which ultimately woke him.

The fifth and final count addressed by the petition involves Respondent's improper involvement in *State v. Jose Castillo*, M14DR200800454. On September 11, 2008, during a jury trial in *Castillo*, M14DR200800454, a DWI case, Respondent felt that the police officer was having a difficult time presenting his case, so Respondent stepped off the bench and assisted the officer in presenting his case at the dry erase board. At one point, while the jury was outside the courtroom, but while the jurors were in sight and earshot, Respondent told the court manager, "This guy in here blew a .3." The Defendant was later found guilty on all charges.

The parties stipulated that Respondent's conduct as set forth in these five counts violated multiple provisions of the Code and constituted willful misconduct in office, or persistent failure or inability to perform a judge's duties, or both. They also agreed that Respondent should be suspended without pay for sixty days, receive a formal reprimand, and participate in a twelvemonth supervised probation and formal mentorship addressing judicial demeanor, temperament, appearance of impropriety, *ex parte* communications,

proper performance of judicial duties, arraignments, sentencing responsibilities, forms, disqualification, contempt cases, conflict of interest, and obligations and responsibilities under the Code.

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, or persistent failure or inability to perform a judge's duties, or both. 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, ¶ 31, 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) (per curiam).

We agree with the Commission that Respondent's admitted conduct violated multiple provisions of the Code and constitutes willful misconduct in office and persistent failure or inability to perform a judge's duties. 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 court staff, colleagues, and defendants appearing before him in the courtroom. Particularly troubling was Respondent's conduct in *Barela*, M14DR200701187 and M14MR200801067, and *Amanti*, M14MR200702991 and M14MR200801069. Respondent failed to show the defendants, Mr. Barela and Mr. Amanti, the patience and courtesy expected of a judge in the courtroom. Respondent's conduct clearly violated Rule 21300(B)(3) and (B)(4) 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 banging his fists on the bench and refusal to listen to Mr. Barela's explanation, 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(A) 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. Respondent, as a judge, has a duty to uphold the integrity of the judiciary by being patient and respectful to those who come before him. *See* Rule 21300(B)(4) cmt. (requiring a judge to hear all proceedings fairly and with patience).

In *Amanti*, M14MR200702991, Respondent's actions in ordering Mr. Amanti to jail for five days for contempt and then entering a release order an hour later, are not the type of actions that promote confidence in the judiciary. *See* Rules 21100 cmt. (stating that deference to the "rulings of courts depends on public confidence in the integrity and independence of judges"); Rule 21200(A) cmt. (noting that "public confidence is eroded by a judge's improper conduct"). *See also In re Vincent*, 2007NMSC056, ¶ 21, 143 N.M. 56, 172 P.3d 605 (per curiam) (stating that "[j]udges hold a unique position in society, and with that position comes the unique power and responsibility of administering justice" (alteration in original) (internal quotation marks and citation omitted)).

In addition to the defendants who have come before him in court, Respondent repeatedly exhibited improper demeanor towards court staff, and particularly to the presiding judge. Respondent admitted that he referred to the presiding judge in a condescending manner on several occasions and voiced his discontent with the presiding judge to the magistrate court staff in an area where members of the public could hear. He also admitted making condescending remarks about the presiding judge and clerk's office to the court manager regarding the court calendar. Respondent's improper demeanor is inexcusable. Respondent has a

duty to show courtesy, respect, and patience with the defendants who come before him in the courtroom and with other judges and court staff.

Failure or Inability to Perform Judicial Duties

Respondent admitted that on several occasions he refused to arraign defendants, he improperly sentenced individuals, and that he failed to complete arraignment forms. In *Salcido*, M14MR200801255; *Ornelas*, M14MR200801011; *Richards*, M14MR200600570; and *Solis*, M14TR200102221, Respondent improperly chose to order bench warrants, rather than arraign defendants, who had missed their court dates and then later came into court to take care of their cases. When a defendant fails to appear on his or her court date, a bench warrant may be issued. See Rule 6207 NMRA. The purpose of the bench warrant, however, is to secure the defendant's appearance before the court, not to bully or intimidate the defendant, as Respondent has done here. Respondent's refusal to arraign the defendants in these cases was improper.

In *Delgado*, M14MR200802063 and M14MR200800423, Respondent demonstrated that he was not familiar with the mandatory minimum sentences pursuant to NMSA 1978, Section 66539 (1993), and had to be advised of them by his clerk. In *Baca*, M14MR200800752, Respondent's clerk also had to advise Respondent that DWI school, alcohol screening, and the mandatory twentyfour hours of community service did not apply to a driving on suspended license charge not involving a DWI conviction.

It should go without saying that we are concerned when a judge does not perform the duties required of the position in an appropriate manner. "A judge shall perform the duties of office impartially and diligently." Rule 21300. In performance of those duties, a judge must hear and decide matters assigned to the judge, maintain professional competence in the law, and be prompt, efficient, and fair. See Rule 21300(B)(1), (2), (8). This equally applies to a judge's administrative duties. See Rule 21300(C)(1) (requiring a judge to "diligently discharge the judge's administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration and . . . cooperate with other judges and court officials in the administration of court business").

Clerks may provide assistance to judges when necessary, but it is a judge's

responsibility to know the law and be faithful to it. See Rule 21300(B)(2) (requiring a judge to be "faithful to the law and maintain professional competence in it"). When a judge does not properly perform the required duties of the position, the public's confidence in the judiciary is eroded. See Rule 21200(A) cmt. (warning that irresponsible or improper conduct erodes public confidence in the judiciary). Respondent's refusal to arraign defendants is unacceptable, as is Respondent's inability to properly sentence individuals or properly complete arraignment forms. These are essential duties of a judge's position and should be performed competently.

Ex Parte Communications

Respondent admitted that he regularly engaged in *ex parte* communications with litigants, parties, officers, and bail bondsmen. Respondent's conduct in discussing cases outside and in front of the courthouse with litigants, parties, officers, and bail bondsmen clearly violates Rule 21300(B)(7). Rule 21-300(B)(7) clearly states, in part, that "[a] judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding."

Multiple examples of Respondent's misconduct in this regard show that Respondent lacks an understanding of Rule 21300(B)(7). Respondent admitted to improperly discussing a juvenile defendant's bench warrant with a bail bondsman and taking actions inconsistent with magistrate court policy. Respondent admitted that he had *ex parte* communications with defendants, telling them to request Respondent when they came to the clerk's window, and that he would hear their matters. In *McNutt*, M14TR200710879, although defendant's case was before a different judge, Respondent accepted a file from the defendant to give to the court manager, telling the defendant that he could help her out on her case. In *Perez*, M14DR200700931 and M14TR200708539, Respondent engaged in *ex parte* communications about one of Mr. Perez's cases without the issuing officer for the case being present. Clearly, Respondent violated Rule 21300(B)(7), which requires a judge to "accord to every person who has a legal interest in a proceeding, . . . the right to be heard according to law."

A judge should ensure that all parties to a case, or their attorneys, are included in any communications the judge has regarding the case. Rule 21300(B)(7) cmt. Excep-

tions will only be made for "scheduling, administrative purposes or emergencies . . ." Rule 21300(B)(7)(a). Judges are required to be fair and impartial in their disposition of cases and *ex parte* communications not authorized by law are simply not fair to the party or attorney who is not privy to the communications. See Rule 21200(B); Rule 21300(B)(8). See also Rule 21100 cmt. (requiring judges to act without fear or favor). *Ex parte* communications threaten the integrity and independence of the judiciary and are contrary to our notions of justice. See Rule 21100 (requiring judges to uphold the integrity and independence of the judiciary). We will not tolerate such misconduct.

Creating an Appearance of Impropriety

Respondent admitted to regularly taking naps at his desk during the lunch hour within view of court staff and the public. He also admitted to falling asleep on the bench on one occasion while defendants were waiting for paperwork from his clerk. If the public sees a judge sleeping, particularly on the bench, not only is the public's confidence in the judge eroded, but the judge's performance in specific cases may be called into question. If a judge is sleeping in court, he is certainly not paying attention to what is happening in the courtroom, nor is he affording those before him the right to be heard, as is required by the Code. See Rule 21300(B)(3) (requiring a judge to "maintain order and decorum in judicial proceedings"); Rule 21300(B)(7) (requiring a judge to "accord to every person [with] a legal interest in a proceeding . . . the right to be heard"). Extrajudicial activities, including naps, should be conducted in such a manner as not to demean the judicial office or interfere with the performance of a judge's duties. See Rule 21500(A)(2), (3) NMRA.

Whether the public's view of Respondent sleeping actually caused people to question the judge's abilities or his actions in specific cases is not determinative. Pursuant to Rule 21200, "[a] judge shall avoid impropriety and the appearance of impropriety in all the judge's activities." "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." Rule 21200(A) cmt. Respondent's nap-taking in view of the public and on the bench could have created in reasonable minds a perception that Re-

spondent's ability to carry out his judicial responsibilities with integrity, impartiality, and competence was impaired.

As frequently recognized, Respondent, as a judge, is held to a higher standard than the average citizen. See *Vincent*, 2007NMSC056, ¶ 21 (“[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 and court staff might perceive his naps in his office and on the bench, and altered his conduct accordingly.

**Involvement in Castillo,
M14DR200800454**

Respondent admitted that during a jury trial in *Castillo*, M14DR200800454, he stepped off the bench and assisted the police officer who was having a difficult time presenting his case. Respondent also admitted that while the jury was outside the courtroom, but still within sight and earshot he told the court manager, “This guy in here blew a .3.” Clearly, Respondent violated several provisions of the Code with these

actions. See Rule 21100 (requiring a judge to uphold the integrity and independence of the judiciary); Rule 21200 (requiring the avoidance of impropriety and the appearance of impropriety); Rule 21200(B) (requiring a judge to remain impartial); Rule 21300(B)(2) (requiring a judge to “be faithful to the law and maintain professional competence in it”); Rule 21-300(B)(7) (requiring a judge to “accord to every person [with] a legal interest in a proceeding . . . the right to be heard” and prohibiting a judge from initiating, permitting, or considering *ex parte* communications); Rule 21-300(B)(8) (requiring a judge to “dispose of all judicial matters promptly, efficiently and fairly”); Rule 21-300(B)(10) (prohibiting a judge from making any “nonpublic comment that might substantially interfere with a fair trial or hearing”).

“Procedural due process requires a fair and impartial hearing before a trier of fact who is disinterested and free from any form of bias or predisposition regarding the outcome of the case.” *In re Griego*, 2008NMSC020, ¶ 19, 143 N.M. 698, 181 P.3d 690 (per curiam) (internal quotation marks and citation omitted). The public expects a fair and impartial judge. “[I]mpartial’ denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.” Rule 21001(D) NMRA. Respondent’s conduct in assisting the police officer during the jury trial

certainly could have caused the parties and jurors to believe that he was biased in favor of the state, and could have caused them to question whether the judge had an open mind when considering the issues in the case.

“The integrity and independence of judges depends [upon judges] acting without fear or favor.” Rule 21100 cmt. Judges must adhere to the Code to preserve the public’s confidence in the judiciary. *Id.* Respondent violated the Code when he assisted the officer with his case.

Respondent’s comment to the court manager regarding the defendant’s blood alcohol content was clearly improper as well. “A judge shall not, while a proceeding is pending or impending in any court, make any . . . nonpublic comment that might substantially interfere with a fair trial or hearing.” Rule 21300(B)(10). Respondent’s comment, made within earshot of the jurors, could have substantially interfered with the defendant’s fair trial and may have contributed to a guilty verdict. Respondent should have refrained from making any comments regarding the case.

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**