

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

No. 29,264

IN THE MATTER OF JAVIER LOZANO,  
Municipal Court Judge, Columbus, New Mexico

**ORIGINAL**

2:27pm 4-14-10 *EL*

INQUIRY CONCERNING A JUDGE  
No. 2009-025

FILED UNDER SEAL

**PETITION FOR DISCIPLINE UPON STIPULATION**

JUDICIAL STANDARDS COMMISSION  
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*Executive Director  
General Counsel*

*Hon. Javier Lozano,  
Respondent*

ELIZABETH A. GARCIA  
*Investigative Trial Counsel*

*Counsel for the Judicial Standards  
Commission, Petitioner*

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**PETITION FOR DISCIPLINE UPON STIPULATION**

1. Petitioner Judicial Standards Commission (“hereinafter Commission”), upon a majority vote of its members and pursuant to a stipulation between the parties, hereby files this *Petition for Discipline Upon Stipulation* under seal pursuant to Rule 27-104(B) NMRA.

2. The Commission and Respondent stipulate to the following discipline in this matter:

- A. **NINETY-DAY UNPAID SUSPENSION.** Respondent shall be suspended from his judicial office for ninety (90) days without pay. This suspension shall commence on the first day of the next

full pay period following the Supreme Court's approval of this stipulation agreement.

- B. **FORMAL REPRIMAND.** Respondent shall receive a written formal reprimand from the Supreme Court, to be published in the *Bar Bulletin*.
- C. **TWELVE-MONTH SUPERVISED PROBATION AND FORMAL MENTORSHIP IN JUDICIAL Demeanor, COURT ADMINISTRATION, JURISDICTION, AND RESPONSIBILITIES UNDER THE CODE OF JUDICIAL CONDUCT.** Respondent agrees to participate in a twelve-month supervised probation and formal mentorship following the suspension period outlined above concerning all substantive and procedural issues addressed in this stipulation agreement, including but not limited to, his obligations and responsibilities under the Code of Judicial Conduct and remedial training concerning proper judicial demeanor, court administration,

jurisdiction, and proper performance of judicial duties. The Judicial Standards Commission will recommend the probation supervisor/mentor for the Supreme Court's approval and appointment. The probation supervisor/mentor shall report on the progress and outcome of the mentorship to the Supreme Court and the Commission.

- D. **REIMBURSEMENT OF PER DIEM EXPENSES.** Within 15 days of issuance of the Supreme Court's disciplinary order in this matter, Respondent shall refund/pay the Village of Columbus \$260.00 for reimbursement of the per diem expenses that Respondent improperly received. Payment shall be by certified check made payable and hand-delivered to the Village of Columbus Treasurer. Respondent shall promptly file proof of this payment with the Supreme Court and the Judicial Standards Commission.

E. **TRAINING IN PUBLIC FINANCIAL PRACTICES AND PROCEDURES.**

Respondent agrees to attend and complete training by the Judicial Education Center, or another entity recommended by the Commission and approved by the Supreme Court, in Public Financial Practices and Procedures, including the submission of public vouchers. Respondent shall bear at his own expense all costs required to attend and complete this training, including travel, accommodations, meals and all other expenses incurred in relation to completing this requirement. Respondent shall promptly provide the Commission with proof of successful completion of this requirement.

F. **TRAINING CONCERNING SEXUAL HARASSMENT.**

Respondent agrees to attend and complete training by the Judicial Education Center, or another entity recommended by the Commission and approved by the Supreme Court, concerning sexual harassment. Respondent shall bear at his own expense all

costs required to attend and complete this training, including travel, accommodations, meals and all other expenses incurred in relation to completing this requirement. Respondent shall promptly provide the Commission with proof of successful completion of this requirement. Respondent shall abide by all terms of the *Stipulation Agreement and Consent to Discipline*.

G. Respondent and the Commission shall bear their own costs and expenses in this matter.

3. Jurisdiction is invoked pursuant to the Petitioner's power to recommend judicial discipline and the Supreme Court's power to discipline judges under N.M. Const. art. VI, § 32, as amended, and the Court's power of superintending control under N.M. Const. art. VI, § 3.

4. The factual record and the grounds for disciplining the Respondent are set forth completely in the *Stipulation Agreement and Consent to Discipline*, attached hereto as **Exhibit 1** and incorporated by reference herein. Following is a brief and plain statement of the allegations to which Respondent has admitted:

A. On December 17, 2008, Respondent certified and submitted a public voucher to the Village of Columbus claiming reimbursement for per diem expenses in the amount of \$260.00 for code enforcement training in Aztec, New Mexico, from December 22, 2008, through December 25, 2008. Respondent submitted the voucher prior to travelling to Aztec, New Mexico. Respondent knowingly submitted the per diem voucher with the intent that the voucher would be relied upon by the Village of Columbus to reimburse Respondent. Respondent was in fact paid per diem with public funds. Respondent received a per diem total amount of \$260.00 for purported training in Aztec, New Mexico, from December 22 through December 25, 2008.

There was no code enforcement training in Aztec, New Mexico, during the week of December 22-25, 2008. Judge Aldaz-Mills informed Respondent that neither she nor Officer Cooper could provide training because of Respondent's late contact and

the court's schedule during the holiday week. Respondent informed Judge Aldaz-Mills that he was coming anyway. At Respondent's request, Judge Aldaz-Mills made arrangements to leave a small packet of Aztec code enforcement materials (approximately 10 pages) available to Respondent for him to pick up in Aztec, New Mexico.

Respondent left Columbus, New Mexico, for Aztec, New Mexico, on December 23, 2008, at 4:00 a.m. arriving late that same afternoon. Respondent cannot account why he submitted a voucher for per diem for December 22, 2008, or why he never corrected the date to reflect his true departure date of December 23, 2008.

After picking up the small packet of code enforcement training information in Aztec, New Mexico, Respondent went to Durango, Colorado, for two days. Respondent returned to Columbus, New Mexico, on December 26, 2008. Judge Aldaz-



Mills affirms that no training was scheduled for December 22-25, 2008. Former Aztec Code Enforcement Officer Barry Cooper was on vacation for the week of December 22-25, 2008.

On December 26, 2008, Respondent advised Imelda Aguayo, the Village of Columbus Treasurer, that his code enforcement training had been cancelled due to unforeseen circumstances of bad weather.

B. Respondent's admitted conduct set forth in paragraph A violates Canons 21-100 NMRA 1995; 21-200(A) and (B) NMRA 1995; 21-300(C)(1) NMRA 2004; and 21-500(A)(1), (2), and (A)(4) NMRA 1995 of the Code of Judicial Conduct.

C. On February 18, 2009, Respondent conducted a hearing in *Village of Columbus v. Moreno*, Case No. 200900156, a case regarding a building permit. Respondent, Officer Rosemary Zamora, a code enforcement officer for the Village of Columbus, and Maria Moreno, the defendant, were present.

During the February 18, 2009, hearing, Respondent kept moving his chair closer to the parties during the hearing. Respondent moved his hands a lot during the hearing, and touched the defendant, possibly others, during the hearing. After Respondent had moved closer to the parties, both Officer Zamora and the defendant moved away from Respondent. Both Officer Zamora and the defendant felt uncomfortable by the Respondent's actions during the February 18, 2009 hearing.

- D. Respondent's admitted conduct set forth in paragraph C violates Canons 21-100 NMRA 1995; 21-200(A) and (B) NMRA 1995; and 21-300(B)(2), (B)(3) and (B)(4) NMRA 2004 of the Code of Judicial Conduct.

E. In *Village of Columbus v. Moreno*, Case No. 200900156, Respondent failed to conduct a trial within the one-hundred eighty two (182) day time period specified in NMRA 8-506 of the Rules of Procedure for the Municipal Courts. The court cannot extend the expired time period for commencing a trial.

There is no documentation in the Columbus Municipal Court evidencing that the *Moreno* file was properly adjudicated other than the contract payment schedule. At the October 7, 2009 hearing in the *Moreno* case, Respondent informed the defendant that the citation was never logged in the court computer. After the 182 day period when the citation was filed, the defendant pled guilty to a violation of no building permit, and was fined \$35.00 by the court.

F. Respondent's admitted conduct set forth in paragraph E violates Canons 21-100 NMRA 1995; 21-200(A) NMRA 1995; 21-300(C)(1) and (C)(2) NMRA 2004 of the New Mexico Code of Judicial Conduct.

5. The parties reached this recommendation after consideration of a variety of factors. There were several factors that the Commission took into consideration regarding this recommendation for discipline, which are fully described in paragraph E of the *Stipulation Agreement and Consent to Discipline (Exhibit 1)*. Aggravating factors include, but are not limited to: (1) The judicial misconduct involved is serious; (2) Respondent's misconduct involved improper submission of public financial documents, improper courtroom demeanor and conduct, and the exercise of jurisdiction in excess of the Rules of Procedure for the Municipal Court; and (3) Respondent has a history of discipline during his service as a judge, which is fully described in the *Stipulation Agreement and Consent to Discipline*.

Mitigating factors include, but are not limited to: (1) Respondent has accepted responsibility for his actions and has agreed to undergo training in the areas of

financial management and sexual harassment to address past problems and to ensure that such conduct will not take place in the future; and (2) Respondent affirms that he will comply with the Code of Judicial Conduct in the future.

Balancing these issues, the Commission has concluded that a ninety-day suspension, a year-long period of supervised probation along with remedial training, reimbursement of per diem costs and a formal reprimand is the appropriate discipline in light of the misconduct involved in this matter.

6. Respondent has agreed that his admitted conduct as set forth above constitutes willful misconduct in office and provides sufficient basis for the New Mexico Supreme Court to impose the stipulated discipline.

7. Petitioner also respectfully requests that upon this Petition being granted, the Court unseal the file in this matter pursuant to 27-104(B) NMRA (2009).

WHEREFORE, Petitioner Judicial Standards Commission respectfully requests that the Supreme Court accept its disciplinary recommendation, order discipline for the Respondent as set forth above, and unseal this matter.

Respectfully submitted,

JUDICIAL STANDARDS COMMISSION

  
RANDALL D. ROYBAL  
*Executive Director*  
*General Counsel*

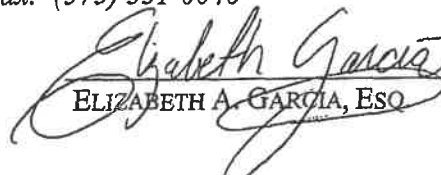
ELIZABETH A. GARCIA  
*Investigative Trial Counsel*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was faxed  
and mailed via first class mail on this 14<sup>th</sup> day of April, 2010, to the following:

*Hon. Javier Lozano*  
*Village of Columbus Municipal Court*  
*P.O. Box 350*  
*Columbus, NM 88029*  
*Fax: (575) 531-0046*

  
ELIZABETH A. GARCIA, ESQ