

IN RE ALDAZ-MILLS, S.Ct. No. 31,197 (Filed May 21, 2009)

**IN THE MATTER OF BARBARA ALDAZ-MILLS,
Municipal Court Judge, City of Aztec, New Mexico**

NO. 31,197

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

May 21, 2009, Filed

INQUIRY CONCERNING A JUDGE
NO. 2008-051

COUNSEL

James A. Noel, Albuquerque, NM, for Judicial Standards Commission

Titus & Murphy, Victor Titus, Esq., Farmington, NM, for Respondent

FORMAL REPRIMAND

PER CURIAM.

{1} This matter comes before the Court on a stipulated petition for discipline, which states that the Judicial Standards Commission (the Commission) and Judge Barbara Aldaz-Mills have entered into a stipulation agreement and consent to discipline. In the stipulation agreement, Judge Aldaz-Mills acknowledged that the Commission had sufficient evidence to establish willful misconduct in office. We granted the stipulated petition, and, in addition to the discipline imposed in our order, we publish this formal reprimand.

BACKGROUND

{2} The facts leading to discipline in this case, as set out in the stipulated petition for discipline, are as follows. On May 6, 2008, a bail enforcement agent requested a certified copy of the bond on a criminal defendant in an active case in Judge Aldaz-Mills' court. When the clerk refused the request, Judge Aldaz-Mills asked the agent why he wanted the document, and he responded that he was investigating a possible probation violation and that if a violation had occurred, he was going to revoke the defendant's bond and take him into custody. Shortly after the agent left, Judge Aldaz-Mills placed a phone call to the defendant, whom she had known for about ten years, asking him to call her. When the defendant returned her call, she warned him that the agent was on his way and might try to take him into custody. She also told him to try not to get arrested, and to come into her court the next day to straighten the matter out. When the

defendant appeared in her court the next day, Judge Aldaz- Mills told him she could not help him because the press had been calling her. After an investigation by the Commission, Respondent stipulated that the evidence was sufficient to prove she had violated the Code of Judicial Conduct and committed willful misconduct in office.

DISCUSSION

{3} Under Rule 27-401(A)(1) NMRA, in reviewing a petition for discipline, this Court may "accept, reject or modify any or all of the findings and conclusions of the commission," and we "are charged with independently evaluating the record for the presence or absence of clear and convincing evidence." *In re Castellano*, 119 N.M. 140, 149, 889 P.2d 175, 184 (1995) (per curiam). In addition, under Rule 27-401(A)(3), we may impose either the recommended discipline or any other greater or lesser discipline we deem to be appropriate.

{4} Article VI, Section 32 of the New Mexico Constitution provides that "any justice, judge or magistrate of any court may be disciplined or removed for willful misconduct in office." We have defined willful misconduct in office as "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 Locatelli*, 2007-NMSC-029, ¶ 8, 141 N.M. 755, 161 P.3d 252 (per curiam) (internal quotation marks and citation omitted). In imposing discipline, we must be satisfied that willful misconduct is proven by clear and convincing evidence. *Id.* ¶ 7. In this case, Judge Aldaz-Mills acknowledged that the Commission would have been able to establish by clear and convincing evidence that she had committed willful misconduct in office.

{5} While violations of the Code of Judicial Conduct do not control the imposition of discipline, they do provide evidence of misconduct. *Id.* ¶ 8. Judge Aldaz-Mills did not dispute that the Commission had sufficient clear and convincing evidence to establish that she had violated Rules 21-100 and 21-200 NMRA of the New Mexico Code of Judicial Conduct. These rules announce the overarching principles that govern a judge's conduct. Rule 21-100 requires a judge to "participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved." Rule 21-200(A) states that "[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." As the committee commentary to these rules explains, "[p]ublic confidence in the judiciary is eroded by irresponsible or improper conduct of judges." Rule 21-200, cmt. Similarly, the committee commentary to Rule 21-100 points out that "[d]eference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor." Both the rules and commentary emphasize that the rule of law is threatened when judges violate the public trust by failing to abide by laws to which they hold others accountable. We note that a judge does not have to be

convicted of a crime in order to violate this rule. See *generally Annotated Model Code of Judicial Conduct*, Canon 2, annot. at 38 (2004).

{6} We agree that the stipulated factual findings support the conclusion that Judge Aldaz-Mills violated Rules 21-100 and 21-200. Specifically, by intervening in the lawful investigation of a possible probation violation and by calling the defendant and warning him that the agent was on his way to possibly place the defendant in custody, Judge Aldaz-Mills failed to maintain the integrity and independence of the judiciary and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary. While there is no finding that Judge Aldaz-Mills knew that the defendant had violated the conditions of his probation, by telling him that the enforcement agent was on his way and that the defendant should "try not to get arrested" and to come to her court the following day to "straighten this out," she abandoned her role as an impartial fact finder, and her conduct thus undermined the principles of judicial integrity, impartiality, and independence that form the basis of our judicial system. See *In re Griego*, 2008-NMSC-020, ¶ 19, 143 N.M. 698, 181 P.3d 690 (per curiam); see also *In re Moore*, 626 N.W.2d 374, 388 (Mich. 2001) (disciplining a judge who "frequently has failed to distinguish his role as an impartial arbitrator with that of a *quasi* social worker and partisan advocate" (internal quotation marks omitted)).

{7} We also agree that the findings concerning Judge Aldaz-Mills' conduct—including findings stating that when the defendant showed up in her courtroom, she informed him she could not help him because the press had been calling her—would support an inference that her misconduct was willful. See *State v. Vigil*, 110 N.M. 254, 255, 794 P.2d 728, 729 (1990) (quoting *State v. Sparks*, 102 N.M. 317, 320, 694 P.2d 1382, 1385 (Ct. App. 1985) for the principle that intent can be inferred from the facts and circumstances of the case). We therefore agree that the findings support a conclusion that Judge Aldaz-Mills committed willful misconduct in office.

{8} The stipulated petition recommended the following discipline: a public reprimand; completion of a twelve-month supervised probation and formal mentorship, the mentor and supervisor to be appointed by this Court on the recommendation of the Commission; and compliance with all terms and conditions of the stipulated agreement. In imposing discipline on judges, this Court looks "at such factors as the nature of the misconduct and patterns of behavior." *In re Garza*, 2007-NMSC-028, ¶ 26, 141 N.M. 831, 161 P.3d 876 (per curiam). We also consider the factors set out in the recently revised *Model Code of Judicial Conduct*, "such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others." *In re Griego*, 2008-NMSC-020, ¶ 13 (quoting *Model Code of Judicial Conduct*, Scope ¶ 6 (2007)). While the transgression in this case is serious enough to warrant discipline, there is no evidence of a pattern of misconduct. Under these circumstances, a mentorship combined with supervised probation will allow the judge to benefit from the guidance and learn from the experience of another judge and will provide the oversight necessary to guarantee that

the conduct at issue in this case is not repeated. We therefore agree that the stipulated disciplinary measures for this conduct are appropriate.)

{9} In our December 30, 2008 order, we ordered Respondent to complete twelve months of supervised probation and a formal mentorship and to abide by all terms of the stipulation agreement and consent to discipline. We also ordered that the probation supervisor and mentor report to this Court on the progress of the probation and mentorship. Finally, we ordered that Respondent receive a formal reprimand to be published in the *Bar Bulletin*. Thus, as a part of the discipline imposed in our earlier order, we publish this formal reprimand.

{10} IT IS SO ORDERED.

EDWARD L. CHÁVEZ, Chief Justice

PATRICIO M. SERNA, Justice

PETRA JIMENEZ MAES, Justice

RICHARD C. BOSSON, Justice

CHARLES W. DANIELS, Justice