

IN RE GRIEGO, S.Ct. No. 30,203 (Filed June 13, 2007)

**IN THE MATTER OF J. WAYNE GRIEGO,
Metropolitan Court Judge, Bernalillo County, New Mexico**

NO. 30,203

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

June 13, 2007, Filed

INQUIRY CONCERNING A JUDGE
NO. 2005-051

COUNSEL

James A. Noel, Randall D. Roybal, Albuquerque, NM, for Judicial Standards
Commission

Timothy M. Padilla & Associates, P.C., Timothy Padilla, Albuquerque, NM, for
Respondent

FORMAL REPRIMAND

PER CURIAM.

{1} This matter comes before this Court on a stipulated petition for discipline, which states that the Judicial Standards Commission (the Commission) and Judge J. Wayne Griego, Respondent, have entered into a stipulation agreement and consent to discipline. In the stipulation agreement, the parties agree that by improperly delegating judicial duties to his secretary, Respondent violated several rules of the Code of Judicial Conduct and committed willful misconduct in office. We granted the stipulated petition, and, in addition to the discipline set forth in our earlier order, we publish this formal reprimand.

BACKGROUND

{2} The facts leading to discipline in this case, as set out in the stipulated petition, are straightforward. In April 2005, Respondent took a personal vacation to Las Vegas, Nevada. On Monday, April 25, 2005, Respondent knew that he would not be returning to Albuquerque until the afternoon. He then called his secretary, telling her his return was delayed and instructing her to handle his cases for him. His secretary did as she was asked and used Respondent's signature stamp to process his traffic docket. Respondent returned to Albuquerque at around 3:00 p.m. the same day. After the chief judge, the presiding judge, court staff, and the media learned of what had occurred,

Respondent reviewed and signed all the cases that his secretary had handled in his absence. After an investigation by the Commission, Respondent stipulated that he violated various provisions of the Code of Judicial Conduct, and that those violations constituted willful misconduct in office. At the presentment hearing to consider the approval of the stipulated agreement and consent to discipline, Respondent confirmed that he stipulated to the contents of the petition and apologized for his actions and the consequences of his actions.

DISCUSSION

{3} At the heart of this matter is Respondent's acknowledged delegation of his judicial duties to his secretary. In the stipulation agreement and consent to discipline, Respondent conceded that this conduct constituted willful misconduct in office. Under Article VI, Section 32 of the New Mexico Constitution, "any justice, judge or magistrate of any court may be disciplined or removed for willful misconduct in office." Respondent also acknowledged that his conduct violated several provisions of the Code of Judicial Conduct. See Rule 21-100 NMRA; Rule 21-200(A) NMRA; Rule 21-300(A), (B)(1), (B)(2), (B)(4), (B)(7), (B)(8), (C)(1), (C)(2) NMRA; Rule 21-500(A)(1)-(4) NMRA.

{4} The New Mexico Constitution vests the judicial power of the state in the senate when sitting as a court of impeachment, but, for all other purposes, the judicial power is vested in the courts. N.M. Const, art. VI, § 1. We agree with the Commission and Respondent that by delegating his constitutional duty to review cases to his assistant, Respondent violated the overarching principles of judicial ethics, articulated in Rules 21-100 and -200, that govern a judge's conduct. See Rule 21-100 ("A judge shall 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) ("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 commentary to Rule 21-100 makes clear, "[d]eference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges." Indeed, members of the public must be able to rely on judges to perform their judicial duties if they are to have confidence in the integrity of the judicial system. Similarly, Respondent's conduct violated Rule 21-200(A), which 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."

{5} The main focus of the petition, however, is on Respondent's violation of several provisions of Rule 21-300, setting forth the requirement that a judge "perform the duties of office impartially and diligently." The relevant paragraphs of Rule 21-300 address judicial duties in general (Rule 21-300(A)), a judge's adjudicative responsibilities (Rule 21-300(B)), and a judge's administrative responsibilities (Rule 21-300(C)). Respondent acknowledges that he violated the following rules: Rule 21-300(A), which states that "[t]he judicial duties of a judge take precedence over all the judge's other activities"; Rule 21-300(B)(1), which states that "[a] judge shall hear and decide matters assigned

to the judge except those in which disqualification is required"; Rule 21-300(B)(2), which states, in pertinent part, that "[a] judge shall be faithful to the law and maintain professional competence in it"; Rule 21-300(B)(4), which requires a judge to be patient with litigants; Rule 21-300(B)(7), which provides that those with a legal interest in a proceeding and their lawyers have "[a] right to be heard according to law"; Rule 21-300(B)(8), which requires a judge to "dispose of all judicial matters promptly, efficiently and fairly"; Rule 21-300(C)(1), which requires a judge to discharge his or her administrative responsibilities fairly, maintain professional competence, and cooperate with court officials; and Rule 21-300(C)(2), which requires a judge to instruct his or her staff on the correct way to handle administrative responsibilities and to require them to adhere to the same standards to which a judge is required to adhere.

{6} In discussing the requirements of Canon 3 of the Arizona Code of Judicial Conduct, the Arizona Supreme Court Judicial Ethics Advisory Committee stated: "The Code of Judicial Conduct does not demand that when judges take the oath of office, they cease to be people, spouses, or parents." Ariz. Judicial Ethics Advisory Op. 97-08, 3 (1997). Thus, the court noted that it is not a violation for a judge to leave the bench for a family emergency or to be late for work because a judge offered assistance at an accident. *Id.* However, a judge may violate this section "when extrajudicial pursuits detract from the performance of judicial duties." Annotated Model Code of Judicial Conduct Canon 3, annot. at 86 (2004) (citing N.Y. Advisory Comm. on Judicial Ethics, Op. 96-141, 2 (1996) (stating that a judge may not maintain a full-time teaching position at a local university, but may maintain a part-time position if it does not interfere with judicial duties)).

{7} If Respondent's failure to return to work on Monday morning was due to circumstances beyond his control, that, in itself, would not have violated the Code of Judicial Conduct. However, we agree that by delegating his constitutional duty to hear and review cases to his secretary, Respondent violated the Code of Judicial Conduct and committed willful misconduct in office. See *In re Perea*, 103 N.M. 617, 617, 711 P.2d 894, 894 (1986) (suspending a judge for failing to exercise his responsibilities as a magistrate judge by delegating the duty to perform marriages to a court clerk).

{8} Other jurisdictions have determined that permitting assistants to handle cases and sign orders violates provisions analogous to those in our Code of Judicial Conduct. See, e.g., *In re Lockwood*, 804 P.2d 738, 740-41 (Ariz. 1990) (determining that a justice of the peace violated Canon 3 of the Arizona Code of Judicial Conduct when he should have known that clerks routinely accepted guilty pleas from *pro se* defendants and signed the justice's name on the forms); *Miss. Judicial Performance Comm'n v. Cowart*, 566 So. 2d 1251, 1254 (Miss. 1990) (ruling that a judge violated Canons 1, 2A, 3A, 3A(4), 3(B)(1), and 3(B)(2) of the Mississippi Code of Judicial Conduct by allowing his clerks to enter not guilty dispositions, often without the judge's knowledge or a hearing); *Holm v. Smilowitz*, 840 P.2d 157, 165-67 (Utah Ct. App. 1992) (stating that the judge is unconstitutionally delegating the core functions of the judiciary when the judge delegates his authority to review cases and sign orders to an employee who is neither trained, elected, nor appointed to exercise that authority).

{9} Accordingly, we agree that Respondent violated Rule 21-300(B)(2) by allowing his assistant to handle his traffic docket and use his signature stamp. And, by not handling the litigants' cases himself, Respondent also violated Rule 21-300(B)(4). In addition, this conduct violated Rule 21-300(B)(7) and (8) because it deprived defendants of their right to be heard and did not dispose of matters fairly. Similarly, because Respondent did not diligently discharge his administrative responsibilities when he delegated his judicial duties to his secretary instead of informing other judges and court officials of his situation, he violated Rule 21-300(C)(1) and (2).

{10} In addition to the violations of Rule 21-300, Respondent acknowledged that his conduct violated Rule 21-500(A)(1)-(4), which requires a judge to conduct his extra-judicial activities in such a way that they do not cast doubt on the judge's capacity to act impartially, demean the office, interfere with the performance of judicial duties, or violate the judge's oath to uphold the laws and constitutions of New Mexico and the United States. In this case, by assigning responsibility for his cases to his secretary, Respondent's actions cast doubt on his ability to perform his judicial duties fairly or perform them at all, and this conduct demeaned the office and violated his oath to uphold the laws and constitutions.

{11} Respondent has acknowledged and apologized for his conduct, and we agree that the stipulated disciplinary measures for this conduct are appropriate. In our February 6, 2007, order, we ordered Respondent to pay a \$500.00 fine, complete six months of supervised probation and formal mentorship, and to abide by all terms of the stipulation agreement and consent to discipline. We also ordered that Respondent would receive a formal reprimand to be published in the *Bar Bulletin*. As a part of the discipline imposed in our earlier order, we publish this formal reprimand.

{12} IT IS SO ORDERED.

EDWARD L. CHÁVEZ, Chief Justice

PAMELA B. MINZNER, Justice

PATRICIO M. SERNA, Justice

PETRA JIMENEZ MAES, Justice

RICHARD C. BOSSON, Justice