

IN RE CHAPARRO, S.Ct. No. 27,923 (Filed June 22, 2005)

**IN THE MATTER OF SUSANA CHAPARRO,
Magistrate Judge, Doña Ana County, New Mexico**

NO. 27,923

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

June 22, 2005, Filed

INQUIRY CONCERNING A JUDGE
NO. 2003-82, consolidated for purposes of final
disposition with NOS. 2002-26 and 2002-43

COUNSEL

James A. Noel, Esq., Albuquerque, New Mexico, for Judicial Standards Commission

Ray Twohig, Esq., Albuquerque, New Mexico, for Respondent

FORMAL REPRIMAND

Per Curiam.

{1} This matter is before the Court on a Petition for Discipline filed by the Judicial Standards Commission (Commission) against Respondent, Magistrate Judge Susana Chaparro. This is the third disciplinary matter involving Respondent. The first two matters (Nos. 2002-26 & 2002-43) were consolidated and resulted in Respondent being formally reprimanded on April 15, 2003, with the requirement that she participate in a mentorship program. The formal reprimand was published in the New Mexico Bar Bulletin on May 8, 2003. The violations that gave rise to the April 15, 2003, formal reprimand arose from *ex parte* communications Respondent had with a judge presiding over a writ case involving Respondent, and from a controversy involving court interpreters. Important to our disposition of the present disciplinary matter is the fact that Respondent agreed to enter into a Plea and Stipulation Agreement regarding these two matters on February 7, 2003, the very day she was engaged in the conduct giving rise to the present disciplinary matter.

{2} The present disciplinary matter arises out of Respondent's involvement in her son's citation for speeding and no proof of insurance. The citation was ultimately dismissed on February 7, 2003, due to the officer's failure to appear. This dismissal took place despite the District Attorney entering an appearance in the case and the officer requesting a continuance of the trial due to a conflict created by his attendance at a mandatory training class for sheriff's officers. As illustrated by the findings of the Commission, from

the day after her son was cited for speeding to the date of the dismissal of the citation, Respondent directly involved herself in the criminal proceedings involving her son by contacting the sheriff to complain about how her son was allegedly mistreated, accessing her son's file through private requests to the clerk's office, calling the presiding judge's clerk to reschedule a hearing due to her son experiencing car trouble, and attending hearings with her son, where members of the public were present, including the scheduled trial where the citation was ultimately dismissed.

{3} Respondent does not contest the Commission's findings. The only issue before this Court is whether the findings support a conclusion that Respondent's conduct constituted willful misconduct in office. We are convinced that Respondent's conduct as described hereinafter in the Commission's findings did constitute willful misconduct in office. Based on the Respondent's history of misconduct, and after reviewing other Commission dispositions for similar conduct, we reject the Commission's recommended discipline and impose greater discipline than recommended as hereinafter set forth. See In re Sanchez, Vol. 38, No. 36, SBB13 (N.M. 1999); In re Perea, Vol. 38, No. 36, SBB 14 (N.M. 1999).

{4} We emphasize that our ultimate disposition was tempered by Commission finding number 29, that Respondent did not communicate directly with the presiding judge regarding her son's case prior to the scheduled trial date of February 7, 2003. This finding was made despite testimony by the presiding judge that the day before the scheduled trial, Respondent had talked to him regarding a pending request for a continuance from the sheriff in her son's case. Had the Commission found that Respondent had communicated with the presiding judge about her son's case prior to the scheduled trial, the discipline we hereinafter impose would have been greater. However, having read the entire record, we have chosen to accept all of the findings of the Commission, particularly since the findings are not contested.

{5} The Commission conducted a trial from February 7-9, 2005, pursuant to N.M. Const, art. VI, § 32, NMSA 1978, § 34-10-2.1 (enacted by Laws 1977), and the Commission Rules. The Commission heard testimony of twenty witnesses and considered and reviewed all exhibits admitted into evidence. Eight Commissioners participated in the hearing, deliberation, decision, and adoption of findings of fact, conclusions of law, and recommendation.

{6} The Commission issued findings of fact, conclusions of law, and recommendation for discipline on March 15, 2005. This Court hereby adopts the Commission's findings of fact as enumerated below:

1. Respondent, Honorable Susana Chaparro, was elected Magistrate Judge of Doña Ana County, New Mexico, in 1998 and was re-elected in 2002.
2. The notice of formal proceedings was issued and filed on January 5, 2004.

3. Respondent's unverified response to the notice of formal proceedings was filed on January 22, 2004. The response put each count at issue.
4. A first amended notice of formal proceedings was issued and filed on January 12, 2005.
5. Respondent's verified response to the amended notice of formal proceedings was filed on February 1, 2005. The response put each count at issue.
6. On the evening of August 29, 2002, Respondent's son, Michael Benavidez, was cited by a Doña Ana County Deputy Sheriff A. J. Rodriguez for speeding and for not having proof of insurance. The matter was styled State of New Mexico vs. Benavidez, Doña Ana County Magistrate Court Cause Number M-14-TR-200205837.
7. On August 30, 2002, Respondent contacted Doña Ana County Sheriff Juan Hernandez about her son's allegations that Deputy Sheriff Rodriguez mistreated him and his passengers and held them for an excessive period of time at the scene.
8. Sheriff Hernandez knew that Respondent was a sitting judge on the Doña Ana County Magistrate Court.
9. Sheriff Hernandez investigated the allegations of mistreatment and concluded that no mistreatment occurred.
10. The traffic stop by Deputy Sheriff Rodriguez was videotaped. The videotape depicts no mistreatment of defendant Benavidez.
11. At the request of Deputy Sheriff Rodriguez, the Third Judicial District Attorney through Assistant District Attorney Keythan Park filed an entry of appearance in the case on behalf of the State of New Mexico. The entry was filed stamped on September 19, 2002.
12. On November 7, 2002, Doña Ana County Magistrate Court received and file stamped a memorandum from the Third Judicial District Attorney's Office indicating that the District Attorney would not be entering an appearance in the matter of State v. Benavidez.
13. On December 20, 2002, Honorable Patrick Curran initiated a pretrial hearing in the matter of State v. Benavidez. Respondent was present in the courtroom with her son, defendant Benavidez, who appeared pro se for the pretrial hearing.

14. Respondent and Judge Curran were both sitting judges on the Doña Ana County Magistrate Court at the time Respondent was present in Judge Curran's courtroom with her son.

15. Judge Curran called the case and asked the parties to come forward. Because Deputy Sheriff Rodriguez was not present in the courtroom, Judge Curran indicated an intent to dismiss the case.

16. Deputy District Attorney Mike Wallace informed Judge Curran that he was from the District Attorney's Office and was appearing on behalf of the State at the hearing.

17. Judge Curran questioned the appearance based upon the November 7, 2002, memorandum. However, Judge Curran could not locate the memorandum in the Benavidez court file.

18. Deputy District Attorney Wallace contended that the memorandum was sent in error since his office previously had entered its appearance in the case on behalf of the State.

19. After this exchange, Respondent stepped forward and provided Judge Curran with a copy of the District Attorney's memorandum at issue. Respondent did not have the original of the court document in her possession.

20. Judge Curran reset the pretrial hearing for December 27, 2002.

21. Members of the public were present in the courtroom and observed Respondent's interaction with Judge Curran.

22. On December 27, 2002, on behalf of her son, Respondent called Judge Curran's clerk, Esther Baca (now known as Esther Molina), and asked Ms. Baca to inform Judge Curran that the "defendant's mother" called and requested a continuance for the pretrial hearing because her son was experiencing car trouble in Taos, New Mexico. Defendant Benavidez testified that he was stuck in Taos due to a snow storm.

23. Based on Respondent's communications with Ms. Baca, Judge Curran vacated the December 27, 2002, pretrial hearing and the matter was reset for trial on February 7, 2003.

24. Judge Curran retired from the bench effective December 31, 2002.

25. Honorable Reuben Galvan was elected in November 2002 and assumed Judge Curran's division and caseload on January 1, 2003, including the Benavidez case.

26. On January 29, 2003, Deputy Sheriff Rodriguez transmitted via facsimile a timely request for continuance of the trial of the Benavidez case set for February 7, 2003, because he would be attending mandatory training classes for his new position with the Bernalillo County Sheriff's Department.

27. On February 5, 2003, Respondent asked a court clerk, Leticia Padilla, to bring Respondent the court file for her son's case. Respondent testified that she wanted to review the file because she heard that a continuance had been requested.

28. Clerk Padilla retrieved the file from Judge Galvan's desk and gave it to Respondent as requested. Respondent reviewed the file and later returned it to Ms. Padilla for return to Judge Galvan's desk.

29. Prior to February 7, 2003, Respondent did not communicate directly with Judge Galvan about her son's case.

30. Prior to the hearing on February 7, 2003, Judge Galvan was aware of the continuance request by Deputy Sheriff Rodriguez.

31. On February 7, 2003, Respondent's son appeared for his trial before Judge Galvan. The District Attorney's Office was not present. Deputy Sheriff Rodriguez was not present.

32. Judge Galvan called out for the officer and waited. During the wait, Respondent came into Judge Galvan's courtroom and spoke with her son. Respondent then returned to her courtroom for a period of time before returning to Judge Galvan's courtroom to join her son.

33. While the Respondent was present in Judge Galvan's courtroom, Judge Galvan called the Benavidez case and dismissed it.

34. Respondent thanked Judge Galvan and then sought documentation for her son to take back to school to explain his tardiness or absence.

35. Respondent and Judge Galvan were both sitting judges on the Doña Ana County Magistrate Court at the time Respondent was present in Judge Galvan's courtroom with her son.

36. Members of the public were present in the courtroom and observed Respondent's interaction with Judge Galvan.

37. Respondent did not sit next to Judge Galvan on the bench at any time during the proceedings in her son's case.

{7} This Court hereby adopts the Commission's conclusions of law as enumerated below:

1. The Judicial Standards Commission has jurisdiction of the parties and the subject matter under N.M. Const., article VI, § 32, and Section 34-10-2.1.
2. As alleged in the first sentence of Count I and in Count III, Respondent, by a pattern of conduct and repeated interaction with court personnel, improperly involved herself in, and interfered with, the adjudication of the Magistrate Court matter involving her son, State v. Benavidez, Doña Ana County Magistrate Court Cause Number M-14-TR-200205837, and thereby gave the appearance of impropriety, gave the appearance that she was trying to influence the outcome of her son's case, and compromised the integrity, independence, and impartiality of the judiciary in violation of Canons 21-100 NMRA 1995 and 21-200(A) and (B) NMRA 1995 of the Code of Judicial Conduct.
3. Respondent's conduct was established by clear and convincing evidence and constituted willful misconduct in office.

{8} NOW, THEREFORE, IT IS ORDERED that Honorable Susana Chaparro is hereby disciplined as follows:

1. Respondent shall be suspended without pay for two weeks as soon as practicable beginning at a time selected by the Magistrate Division of the Administrative Office of the Courts. Thereafter, Respondent shall be suspended for six weeks, imposition of which shall be deferred on condition that Respondent successfully complete one year of supervised probation. Failure to satisfactorily complete the period of supervised probation shall result in the imposition of the full six-week deferred suspension without pay.
2. The Judicial Standards commission shall choose a supervising judge to supervise Respondent during the term of probation. Respondent shall meet with her supervising judge at the time(s) and place(s) selected by the supervising judge for counseling and assistance with the requirements of the Code of Judicial Conduct. The supervising judge shall file a report with this Court and the Judicial Standards Commission concerning the results of Respondent's probation.
3. This Formal Reprimand shall be published in the Bar Bulletin.
4. The Judicial Standards Commission's costs and expenses are hereby assessed against Respondent in the amount of \$5,000.00 to be paid by Respondent.

{9} IT IS SO ORDERED.

Chief Justice Richard C. Bosson

Justice Pamela B. Minzner

Justice Patricio M. Serna

Justice Petra Jimenez Maes

Justice Edward L. Chávez