

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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JUDICIAL DISCIPLINE
OF PENNSYLVANIA

2018 OCT 31 A 9 41

IN RE:

Michael R. Muth
Magisterial District Judge
Magisterial District 43-2-02
43rd Judicial District
Monroe County

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: No. 2 JD 17
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BEFORE: Honorable David J. Barton, P.J., Honorable David J. Shrager, Honorable Doris Carson Williams, J., Honorable Jeffrey P. Minehart, J., Honorable Michael J. Barrassé, J., Honorable Jazelle M. Jones, J., Honorable John H. Foradora, J., Honorable James C. Schwartzman, J.¹

OPINION BY JUDGE DORIS CARSON WILLIAMS

FILED: October 31, 2018

OPINION

Magisterial District Judge Michael R. Muth (Judge Muth) is before the Court of Judicial Discipline charged with eight counts of misconduct based on his actions in viewing images of naked and partially naked women while in his office and for having his judicial employees grade papers and make copies of handouts for classes he was teaching as side employment. Judge Muth and the Judicial Conduct Board (Board) entered into Joint Stipulations Pursuant to C.J.D.R.P No. 502(D)(2) which we adopt and are as follows:

1. Article V, §18 of the Constitution of the Commonwealth of Pennsylvania grants to the Board the authority to determine whether there is probable cause to file formal charges against a judicial officer in this Court, and thereafter, to prosecute the case in support of such charges in this Court.

2. From January 2006 until the present time, Judge Muth has served as the magisterial district judge of District Court 43-2-02.

3. As a judicial officer, Judge Muth was subject to all the duties and responsibilities imposed on him by the Constitution of the Commonwealth of Pennsylvania and the Rules Governing Standards of Conduct of Magisterial District Judges (R.G.S.C.M.D.J.) (both Old and New) adopted by the Supreme Court of Pennsylvania.

4. Based on a Confidential Request for Investigation at JCB File No. 2016-496, the Board investigated the instant matter.

¹ The Honorable James C. Schwartzman did not participate in this Decision.

5. The Board determined that there was probable cause to file formal charges against Judge Muth in this Court.

6. Some of the alleged judicial misconduct occurred prior to December 1, 2014 and therefore, the Old Rules Governing Standards of Conduct of Magisterial District Judges (R.G.S.C.M.D.J.) apply to those allegations of misconduct.

7. Some of the alleged judicial misconduct occurred after November 30, 2014 and therefore, the New R.G.S.C.M.D.J. apply to those allegations of misconduct.

8. During all times relevant to the formal charges against Judge Muth, he had a desktop computer in his judicial chambers which was his personal property (hereinafter referred to as his "personal computer").

9. During all times relevant to the formal charges against Judge Muth, his personal computer screen was positioned in the manner depicted in the diagram of his chambers which Judge Muth provided during his deposition on February 24, 2017.

10. During all times relevant to the formal charges against Judge Muth, his personal computer was not integrated into or part of the court computer system, nor was it connected to the internet.

11. During all times relevant to the formal charges against Judge Muth, his personal computer contained, among other things, some images of naked and partially naked women stored on it.

12. The images of naked and partially naked women were preloaded by Judge Muth onto his personal computer prior to the computer being installed in his judicial chambers.

13. Occasionally, between 8:30 a.m. and 4:30 p.m., on a weekday, when judicial staff were in the building, Judge Muth used his personal computer to view the preloaded images of naked and partially naked women on his personal computer screen.

14. At no time did Judge Muth receive or forward to others, images of naked and partially naked women via email, the internet or other means.

15. At times, when Judge Muth viewed the preloaded images of naked and partially naked women, the images were displayed in a slideshow format in which each image would be displayed for a couple of seconds and then the next image would appear, with this pattern repeating itself.

16. Whenever Judge Muth became aware that one of the clerks in District Court 43-2-02 entered his judicial chambers while he was viewing the preloaded images of naked and partially naked women on his personal computer screen, he would close the display in order to prevent the clerk from seeing the images.

17. To his personal knowledge, Judge Muth's conduct of viewing images of naked and partially naked adult females on his personal computer in his judicial chambers was not observed by any member of the public or any lawyers or parties appearing before him in Court.

18. No court personnel ever informed Judge Muth that they observed him viewing images of naked and partially naked adult females.

19. Following the December 19, 2016 issuance of the Notice of Full Investigation but before his deposition on February 24, 2017, Judge Muth copied images of naked and partially naked women stored on his personal computer at that time onto an electronic storage device, or drive, and gave the drive to his counsel.

20. During all times relevant to the formal charges against Judge Muth, he was employed as a part-time professor at East Stroudsburg University (ESU), located in East Stroudsburg, Pennsylvania.

21. During the fall semester of each academic year that he was employed by ESU, Judge Muth taught one or two classes.

22. During the spring semester of each academic year that he was employed by ESU, Judge Muth taught one class.

23. The number of students in each class taught by Judge Muth varied.

24. As a professor, Judge Muth administered two written examinations per semester to students enrolled in his classes.

25. The only examinations Judge Muth administered at ESU were objective in nature, meaning they consisted of true/false questions, multiple choice questions, and matching questions.

26. At various times between approximately 2006 and July 1, 2013, at the request of Judge Muth, Meredith Pelak-Rea, a clerk employed at that time in District Court 43-2-02, assisted him in determining the number of correct and incorrect answers on examinations Judge Muth administered to his ESU students.

27. When Ms. Pelak-Rea assisted Judge Muth in determining the number of correct and incorrect answers on his ESU examinations, she did so because of his request, with the caveat that she would do so when she was not occupied with district court matters.

28. At various times between July 1, 2013, and October 26, 2016, at the request of Judge Muth, Amy VanNorman, a clerk employed at that time in District Court 43-2-02, assisted him in determining the number of correct and incorrect answers on examinations Judge Muth administered to his ESU students.

29. When Ms. VanNorman assisted Judge Muth in determining the number of correct and incorrect answers on his ESU examinations, she did so because of his request, with the caveat that she would do so when she was not occupied with district court matters.

30. Judge Muth's use of his clerks to assist him with his teaching obligations was not subject to the knowledge of any members of the public or any lawyers or parties appearing before him in Court.

31. Monroe County supplies District Court 43-2-02 with a copying machine.

32. Monroe County is responsible for the costs associated with all maintenance and supplies, including ink, toner and paper, used in the operation of the copying machine.

33. As part of the curriculum for the classes Judge Muth taught at ESU, he occasionally provided copies of printed documents to his ESU students.

34. At various times between 2006 and April of 2016, Judge Muth requested the assistance of Meredith Pelak-Rea, a clerk employed at that time in District Court 43-2-02, in making copies of documents which he provided to his ESU students.

35. When Ms. Pelak-Rea assisted Judge Muth by making copies of documents for his ESU students, she did so because of his request, during regular office hours in the court facility, with the caveat that she do so when she was not occupied with district court matters.

36. At various times between 2007 through and including the ESU spring semester of 2016, Judge Muth requested the assistance of Kathy Goida, a clerk employed at that time in District Court 43-2-02, in making copies of documents which he provided to his ESU students.

37. When Ms. Goida assisted Judge Muth by making the copies of documents for his ESU students, she did so because of his request, during regular office hours in the court facility, with the caveat that she do so when she was not occupied with district court matters.

38. At various times between July 1, 2013, through and including the ESU spring semester of 2016, Judge Muth requested the assistance of Amy VanNorman, a clerk employed at that time in District Court 43-2-02, in making copies of documents which he provided to his ESU students.

39. When Ms. VanNorman assisted Judge Muth by making copies of documents for his ESU students, she did so because of his request, during regular office hours in the court facility, with the caveat that she do so when she was not occupied with district court matters.

40. The copies of documents for Judge Muth's ESU students made by Ms. VanNorman, Ms. Pelak-Rea, and Ms. Goida were made on the District Court 43-2-02 copying machine located in that District Court office during regular office hours.

41. Judge Muth's use of his clerks to make photocopies for his ESU students was not subject to the knowledge of any members of the public or any lawyers or parties appearing before him in Court.

42. Judge Muth personally purchased and supplied a carton of paper on which copies of documents for his ESU students were made by Ms. VanNorman, Ms. Pelak-Rea, and Ms. Goida.

Further Findings of Fact From the Trial

Additionally, a trial on the factually disputed matters still at issue beyond the stipulations was held before the Court on June 5, 2018. From the trial we make the following additional findings of fact:

43. On three separate occasions Kathy Goida, an employee of Judge Muth's office entered his chambers on court related matters where she observed images of naked women displayed on Judge Muth's personal computer. (N.T. 20:20 - 21:10)

44. In the fall or winter of 2013, Amy VanNorman, an employee of Judge Muth's office entered his chambers on court related business and saw a video on his personal computer of two women engaging in a sexual act. (N.T. 45-14-21, 46:21-24, 67:13-15)

45. On one occasion Merdith Pelak-Rea, an employee of Judge Muth's office entered his chambers on court related business and saw images of naked and partially naked women displayed on his personal computer. (N.T. 84:13-21)

Discussion

Our review of the record in this very fact specific case leads us to find Judge Muth in violation on several counts including Count 1 (Impropriety and the Appearance of Impropriety to be Avoided), Count 2 (Adjudicative Responsibilities - Courtesy to Others With Whom they Deal in Their Official Capacity,) and Count 4 (Judges Shall Not Use or Permit the Use of Court Premises for Any Other Occupation, Business, Profession or Gainful Employment) as well as Counts 6 and 8 requiring derivative liability for violations of Canons, Supreme Court Rules and UJS Policy Statements.

Counts 1 & 2 - Sexual Harassment

In Count 1, Judge Muth is accused of violating Rule 2A of the Old Rules Governing Standards of Conduct of Magisterial District Judges which, in part, states:

A. Magisterial district judges shall respect and comply with the law and shall conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Judge Muth had his own computer in his chambers on which he intermittently displayed provocative pictures of women for his own enjoyment. Judge Muth did not intentionally show these pictures to his office staff but on multiple occasions the staff did see them.

No judge behaving within the standards of normal propriety should view sexually provocative materials at work where his staff or others may inadvertently stumble across them. We accept that Judge Muth did not intentionally show the images to his staff but he did intentionally bring his own computer to work where he viewed those images for his own purposes. Doing so in a judicial office where his employees have every reason to be in and out of that office created a virtual certainty that sooner or later the employees working there would stumble across the images as happened here.

Next we consider whether Judge Muth's conduct violates the Unified Judicial System Policy against sexual harassment. The Supreme Court of Pennsylvania first promulgated the UJS Policy on January 1, 2008, and revisited it in November of 2013. The policy applies to judges, stating:

This policy prohibits all forms of discrimination and harassment in a Court Facility (defined as "Any building or office serving as the workplace for Personnel of the System and/or Related Staff; and any UJS-related building or office in which Court Users conduct business with the UJS"), and applies to the following:

Personnel of the System - defined in 42 Pa.C.S.A. §102 as "Judicial officers, personal staff, administrative staff, and central staff."

UJS Policy (underscore in original).

The UJS Policy prohibits discrimination and harassment and explicitly commands that judges adhere to the Policy stating that:

[s]uch discrimination and harassment constitute an abuse of authority that will not be tolerated by the UJS. Further such discrimination and harassment constitute misconduct, warranting appropriate disciplinary action. All judicial officers . . . shall ensure adherence to, and compliance with, this Policy.

The definition of harassment is clearly set forth in the UJS Policy and includes the following:

2. Prohibition Against Harassment

a. Sexual Harassment

Sexual harassment is sex discrimination. Equal Employment Opportunity Commission (EEOC) guidelines define sexual harassment as unwelcome sexual attention, sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature where:

.....

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Id.

The UJS Policy provides three examples of the different types of conduct which constitute sexual harassment and which are prohibited by the rule. The display of sexually suggestive pictures is specifically listed as one of three examples.

Sexual harassment may take different forms including, but not limited to the following examples.

.....

2. Non-Verbal: Display of sexually suggestive objects or pictures,

.....

Id.

Purposeful conduct by Judge Muth in bringing sexually provocative materials to his office violates the Unified Judicial System Policy against sexual harassment prohibiting the display of sexually suggestive pictures.

Judge Muth did not encourage his employees to view the pictures as occurred in ***In Re Berkheimer***, 877 A.2d 579 (Pa.Ct.Jud.Disc. 2005), aff'd 930 A.2d 1255 (Pa.Ct.Jud.Disc. 2007) but he did intentionally display them for himself in such a manner that it was virtually inevitable that court employees would eventually see them.

It would certainly be a more serious violation if Judge Muth intentionally caused his employees to view such images, but his conduct in viewing them where discovery was virtually inevitable also violates the Unified Judicial System Policy against sexual harassment.

Judge Muth's conduct is somewhat reminiscent of that described in ***In re Eakin***, 150 A.3d 1042 (Pa.Ct.Jud.Disc. 2016) where the improper material was not intended by the respondent jurist to be viewed outside of a small group of people but was eventually seen by the public. The scienter required for displaying such material is the intent to show it at all. That the audience became larger than intended does not affect liability, although that can be relevant to the sanction to be later imposed.

By his actions Judge Muth did not conduct himself in a manner that promotes public confidence in his integrity and impartiality.

Similarly, Judge Muth violated Rule 4C of the Old R.G.S.C.M.D.J. as alleged in Count 2. Rule 4C, in part, states:

C. Magisterial district judges shall be patient, dignified and courteous

.....

to others with whom they deal in their official capacity.

There is no question that Judge Muth's staff are supervised by him in his "official capacity." By repeatedly running a substantial risk of accidentally displaying sexually provocative material to his judicial staff, Judge Muth was extremely discourteous. Judge Muth is liable for violating Counts 1 and 2.

Count 4 - Business Pursuit at Judicial Office

Count 4 alleges a violation of Old R.G.S.C.M.D.J. No. 3B which states, in pertinent part: "Magisterial District Judges shall not use or permit the use of the premises established for the disposition of their magisterial business for any other occupation, business, profession or gainful pursuit."

Judge Muth was regularly employed as a part-time assistant professor at East Stroudsburg University for approximately twenty years. This side employment provided income to Judge Muth. Such side employment is, of course, permissible; it is only his use of his office staff and equipment to further his outside employment that gives rise to this allegation.

In ***In re Berkheimer***, 877 A.2d 579, former Judge Berkheimer developed a weekly practice of having his court staff review the local newspaper to determine if any of his constituents had been mentioned for an achievement of any type. If a constituent was mentioned, Berkheimer's staff was instructed to send a congratulatory note to the constituent. These notes were referred to as "Quickie Notes." *Id.* at 584. This Court determined that the purpose of the "Quickie Notes" was to "improve [*Berkheimer's*] prospects for re-election," a gainful pursuit within the meaning of Old R.G.S.C.M.D.J. 3B. By using his judicial office and employees in preparing and mailing the "Quickie Notes" former Judge Berkheimer violated Old Rule 3B. *Id.* at 595-96. *See also In re Berry*, 979 A.2d 991 (Pa.Ct.Jud.Disc. 2009) (prohibiting use of court facilities and time for profit-making activities.)

Judge Muth's conduct, presenting ESU related tasks to his court staff with the expectation and knowledge that the tasks were completed in the judicial office, is conduct similar to that described in the ***Berkheimer*** case. Additionally, through the testimony of staff members Goida, Van Norman, Pelak-Rea, and Judge Muth, the Board established that by directing his court staff to use the court copying machine and attendant supplies, to produce copies of documents and examinations for his ESU students, he was using the court premises in an improper manner. Although he did supply a considerable amount of paper, Judge Muth's conduct in using his judicial staff and facilities for an outside gainful pursuit was improper.

Judge Muth characterized the ESU-related tasks completed by his court staff on the court premises as "de minimus." This argument ignores the definitive determination by this Court in the ***Berkheimer*** case regarding its interpretation of Rule 3B and the Respondent's use of his court staff and premises to prepare and send "Quickie Notes."

There we held that the clear intention of the Supreme Court in promulgating this Rule was to ensure that "the premises established for the disposition of his magisterial business" was *limited to the disposition of his* magisterial business and not for any other business.

See Berkheimer at 596 (italics added).

Judge Muth points to Code of Judicial Conduct Canon 3.1(E) and the comments thereto, which state:

“. . . a judge shall not; (E) make use of court premises, staff, stationery, equipment, or other resources, **except for incidental use for activities that concern the law, the legal system, or the administration of justice**, or unless such additional use is permitted by law.” (Emphasis added).

Judge Muth contends that his conduct is impliedly permitted under Comment 1 to Rule 3.1(E) which is set forth below:

“To the extent that time permits, and judicial independence and impartiality are not comprised, judges are encouraged to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing **teaching**, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civil extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.” (Emphasis added).

See also Comment 2: “Participation in both law-related and other extrajudicial activities help integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.” (Emphasis added).

This is consistent with R.G.S.C.M.D.J. No. 2.1, Comment 3:

Although it is not a duty of judicial office unless prescribed by law, magisterial district judges are encouraged to participate in activities that promote public understanding of and confidence in the administration of justice.

“Incidental Use” is not defined in the Code but it clearly does not extend to the use of court facilities and employee time in profit-making activities. The receipt of wages for outside employment by Judge Muth makes this case entirely different from one where a judge photocopies handouts for a speech or continuing legal education course he or she is giving for free. Such conduct is of course permitted. Making profit, wages or currying political favor by using the office or employee is prohibited.

This Court recognizes that “de minimis” use of court equipment and employee time for personal, non-business, non-political matters of the judge or staff is permitted. Hypothetically, no one expects a judge or court employee to refuse to take a call from their child’s school nurse because it came in on a state telephone line. Some use of court facilities for personal interests or matters in accord with reasonable, commonly accepted standards

of general workplace behavior is allowed, however, profit making and political activities are banned from judicial offices.

Judge Muth is also derivatively liable on Counts 6 and 8 for the violations discussed above. Counts 6 and 8 recite that a violation of a UJS Policy or a Rule prescribed by the Supreme Court is a violation of Article V, §18(d)(1). The violations recited in this decision all, of course, are violations under Counts 6 and 8.

The Remaining Counts

We do not find by clear and convincing evidence that Judge Muth violated the remaining Counts, including Counts, 3, 5 and 7. Count 3, alleges a violation of Rule 5(A) of the old R.G.S.C.M.D.J. for failing to facilitate the performance of the administrative responsibilities of his staff. Count 5, requires that judicial activities take precedence over a judge's personal and extrajudicial activities. Neither violation was established here by clear and convincing evidence.

Similarly, Count 7, accusing Judge Muth of conduct which brings the judiciary into disrepute is not made out. While Judge Muth's conduct did violate several standards we don't find that it reflects on the judiciary at large or is so shocking or criminal as to merit a finding of bringing the judicial office into disrepute.

Conclusions of Law

1. At Count 1 the Board has established by clear and convincing evidence that Judge Muth violated Rule 2(A) of the Old R.G.S.C.M.D.J. in that he failed to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

2. At Count 1 the Board has established by clear and convincing evidence that Judge Muth violated Rule 2(A) of the Old R.G.S.C.M.D.J. in that he failed to respect and comply with the law by violating the Unified Judicial System Policy on Non-Discrimination and Equal Employment Opportunity, effective January 1, 2008 (revised November 2013).

3. At Count 2 the Board has established by clear and convincing evidence that Judge Muth violated Rule 4(C) of the R.G.S.C.M.D.J. in that he failed to be patient, dignified and courteous to others with whom he was dealing in his official capacity.

4. At Count 4 the Board has established by clear and convincing evidence that Judge Muth violated Rule 3(B) of the Old R.G.S.C.M.D.J. in that he improperly used, or permitted the use of the premises established for the disposition of his magisterial business for another occupation, business, profession or gainful pursuit.

5. At Count 6 the Board has established by clear and convincing evidence that Judge Muth violated Article V, §17(b) of the Constitution of the Commonwealth of Pennsylvania in that he violated rules or canons prescribed by the Supreme Court.

6. At Count 8 the Board has established by clear and convincing evidence that Judge Muth violated Article V, §18(d)(1) of the Constitution of the Commonwealth of Pennsylvania in that he violated a canon or rule prescribed by the Supreme Court.

7. The Board has failed to prove the remaining charges by clear and convincing evidence.

Foradora, J., dissents from this Opinion.

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: :
: :
Michael R. Muth : No. 2 JD 17
Magisterial District Judge :
Magisterial District 43-2-02 :
43rd Judicial District :
Monroe County :

ORDER OF COURT

AND NOW, this 31th day of October, 2018, based upon the Conclusions of Law set forth above, it is hereby ORDERED:

1. Pursuant to C.J.D.R.P. No. 503, the attached Opinion with Findings of Fact and Conclusions of Law be and is hereby filed, and shall be served on the Judicial Conduct Board and upon the Respondent;
2. Either party may file written objections to the Court's Conclusions of Law within ten (10) days of this Order. Said objections shall include the basis therefor and shall be served on the opposing party;
3. If objections are filed, the Court may schedule oral argument on the objections;
4. If objections are not filed within ten (10) days, the Findings of Fact and Conclusions of Law shall become final;
5. The Court will schedule a sanctions hearing by further Order.

PER CURIAM