

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: :
: :
Ann H. Lokuta :
Judge of the Court of Common Pleas : No. 3 JD 06
Eleventh Judicial District :
Luzerne County :

BEFORE: Honorable Stewart L. Kurtz, P.J.
Honorable John L. Musmanno, P.J.E.
Honorable Richard A. Sprague, P.J.E.
Honorable William H. Lamb, P.J.E.
Honorable Lawrence J. O'Toole
Honorable Kelley T.D. Streib
Honorable William D. Bucci

DISSENTING STATEMENT OF JUDGE STREIB FILED: January 4, 2010

I respectfully dissent from the majority opinion and find that Judge Lokuta's "claims in the nature of after-discovered evidence, arising from the recent revelations of corruption in Luzerne County" would in the interest of justice require a new sanction hearing.

The stench of corruption that was present in the Luzerne County Courthouse has permeated and infected these proceedings from the outset. Judge Ann Lokuta did not participate in the wide ranging corrupt practices engaged in by various Luzerne County judges, attorneys, a court administrator, and perhaps even a row officer that have been alleged by federal prosecutors. She nevertheless had to work with and among the parties to these nefarious activities, and function in this polluted culture and environment.

Judge Lokuta has to date been unable to demonstrate these circumstances. Her efforts to present evidence regarding concerted actions and the culture of corruption which flourished in the Luzerne County Courthouse have been thwarted at every turn by

evidentiary rulings (which seemed appropriate at the time), by an inability to explore exculpatory evidence which is under seal and unavailable to her, and now by this Court's declaration that the federal government's indictment of certain of the witnesses against Judge Lokuta and other courthouse insiders for the most base and deplorable forms of public corruption and breach of public trust does not give occasion to entertain evidence of how that tainted the disposition of the charges against her, as well as the propriety of the sanctions imposed.

While I certainly agree that some of the charges brought against Judge Lokuta have nothing to do with the alleged criminal conduct simultaneously taking place at the courthouse (such as her misuse of a judicial law clerk to perform personal services for her), and by no means condone that misbehavior on Judge Lokuta's part, the majority ignores the fact that there were many findings made by this Court upon which the unprecedented level of corruption would have bearing, which includes, but is not limited to, Section D of the majority opinion filed October 30, 2008, where testimony is recited regarding Judge Lokuta instructing her staff to have limited contact with other court personnel.

Based upon what we knew then, not what we know now after the federal criminal indictments and allegations of widespread corruption within the courthouse, it was believed that Judge Lokuta was "on a war footing, battle-ready for the warfare which she daily waged with the court departments and other judges, particularly the president judges of Luzerne County." In re Lokuta, 964 A.2d 988, 1063 (Pa.Ct.Jud.Disc. 2008). We observed then that "[s]he deliberately isolated herself and her staff from the rest of the courthouse and had standing orders that her staff was not to socialize, in or out of the

courthouse, with other courthouse employees . . . [n]otables included in this category were the prothonotary [who has since entered into a Stipulation of Compromise with federal prosecutors], the court administrator [presently the subject of a federal indictment], and President Judges Toole and Conahan [the latter of whom has been indicted by federal prosecutors and is reputed to be at the heart of most of the corruption within the County] In re Lokuta, supra.

Our criticism of Judge Lokuta for this "isolation" takes on a whole new meaning when placed within the context of the widespread corruption that now appears to have been taking place. Indeed, it is most ironic that Judge Lokuta would be criticized by this Court for isolating herself and her staff from the very people who have now been indicted for misusing their public office and position to commit crimes that strike at the heart of our judicial system. And, it is also most ironic that these same people are called by the Board to bear witness against Judge Lokuta, but yet she is precluded from presenting evidence regarding their far more serious misdeeds and criminal activities.

More importantly, however, I find Judge Lokuta's proffered evidence most pertinent to the sanctions imposed by this Court as a result of the charges brought against her by the Board. That evidence demonstrates that this was no ordinary judicial environment and no environment to which any judge should be exposed. That, to me, is a serious mitigating factor which does indeed militate in favor of an altered sanction in this case. Accordingly, I dissent from the majority's determination that the evidence proffered by Judge Lokuta does not meet the requirements of after-discovered evidence and would not, in any event, have affected the outcome of this case.

I also believe that the Supreme Court knows full well the requirements for after-discovered evidence and did not gratuitously use the phrase "**in the nature of** after-discovered evidence" (emphasis added) in remanding this case to us. That is, I do not believe that the Supreme Court was asking this Court to simply perform an analysis of the requirements that are needed for evidence to qualify as after-discovered, and that it had a broader scope in mind. As Rule 102 of the Pennsylvania Rules of Evidence instructs us, the purpose of evidentiary rules is "to secure fairness in administration . . . to the end that the truth may be ascertained and proceedings justly determined." I do not believe that these goals have been accomplished by this Court's ruling and believe that the sanctions that have been imposed on Judge Lokuta are unduly harsh and unwarranted under the circumstances of this case.

Judges Musmanno and O'Toole join this Dissenting Statement.