

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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

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

FILED BY PRESIDENT JUDGE DAVID J. BARTON

Filed: December 17, 2018

STATEMENT OF REASONS AND ORDER

Magisterial District Judge Michael R. Muth has filed objections to our determination of October 30, 2018, wherein we found Judge Muth had violated various provisions of the Rules Governing Standards of Conduct of Magisterial District Judges (R.G.S.C.M.D.J.) and the Constitution of Pennsylvania. Judge Muth contends that we erred in admitting into evidence at trial exhibits nos. 2, 3, and 4, introduced by the Judicial Conduct Board. He also alleges error in our conclusions that his conduct constituted violations of the R.G.S.C.M.D.J. and our Constitution.

I. Board Exhibits Nos. 2, 3, and 4

Judge Muth produced to the Board a number of photographs that he contended were “representative examples” of the photographs that he had stored on the personal computer in his judicial chambers. Judge Muth filed several motions in limine, including one to prohibit the introduction into evidence by the

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

Board of these photographs (Motion). The Motion alleged that the exhibits were not relevant, and further, if admitted, they would be prejudicial to Judge Muth.

Evidentiary rulings are committed to the trial court's discretion. ***Commonwealth v. Kennedy*, 959 A.2d 916, 923 (Pa. 2008); *Commonwealth v. Kendricks*, 30 A.3d 499, 503 (Pa. Super. 2011)**. An abuse of discretion is not merely an error of judgment, but "the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will, or partiality as shown by evidence of record." ***Commonwealth v. Weakley*, 972 A.2d 1182, 1189 (Pa. Super. 2009)**.

According to the testimony at trial, Judge Muth placed an older tower-style personal computer that belonged to him into his judicial chambers following the closure of his private law office. This computer was not connected to the internet. This was the computer upon which Judge Muth viewed the images giving rise to this case. (N.T. 118, 123; Mot. In Lim. To Preclude Photographs, ¶ 2, 3,).

In the Board's offer of proof at trial, counsel represented that the three exhibits at issue were substantially similar to the photographs that had just been described by the testifying witness. Further, the Board contended that the photographs were admissible under the case of ***Commonwealth v. Williams*, 58 A.3d 796 (Pa. Super. 2012)**, which permits the introduction of a substantially similar weapon that was suitable for the commission of the crime charged. The Board's witness, Kathy Goida, then testified that the images in Exhibits Nos. 2 and 3 were substantially similar to the images she had viewed on Judge Muth's computer. (N.T. 27, 28). No inquiry was made of Miss Goida as to whether Exhibit No. 4 was substantially similar to what she had observed.

Board witness Meredith Pelak-Rea testified that Exhibit No. 4 was substantially similar to the images she had occasion to view on Judge Muth's computer while in Judge Muth's chambers. (N.T. 89, 90). In each instance, at trial, Judge Muth timely objected to the introduction of these Board exhibits.

The principle expressed in *Williams* is sometimes termed the "similar weapon exception." It has long been our law that the Commonwealth, when seeking admission of a weapon into evidence, need not prove that the particular weapon was actually used in the commission of an offense. ***See Commonwealth v. Christine*, 125 A.3d 394 (Pa. 2015); Commonwealth v. Yount**, 314 A.2d 242, 249 (Pa. 1974). As our Supreme Court has noted, "[t]he only burden on the prosecution is to lay a foundation that would justify an inference by the finder of fact of the likelihood that the weapon was used in the commission of the crime." ***Christine*, 125 A.3d at 400 (quoting Commonwealth v. Thomas**, 561 A.2d 699 (Pa. 1989).

Here, Judge Muth himself provided these photographs, apparently from the inventory of images on his private computer kept in his judicial chambers. (N.T. 126). Judge Muth has also admitted that they were representative examples of the images that were seen by the witnesses. The witnesses identified the images as being substantially similar to those they had viewed *on Muth's computer* in his chambers.

In contrast to criminal cases where a victim's focus is sometimes drawn specifically to the instrumentality used by a perpetrator, such as a firearm, here the witnesses likely were repulsed from viewing the images in detail. Thus, even if the entire inventory of images had been produced, it is unlikely that a particular image, or set of images, might be identified following the almost momentary glances by a

witness before they intentionally averted their gaze. In addition, Judge Muth testified that he took steps to avoid having the images viewed by his staff when they entered his judicial chambers as rapidly as he, and the computer, could respond. We find that the exhibits are relevant, and that the Board has adequately justified the inference that the images represented in Board Exhibits Nos. 2, 3, and 4, could have been those viewed by the witnesses in the conduct giving rise to the instant violations.

Having adequately supported an inference that the images could have been the ones seen by the witnesses, their admission into evidence was not error. Moreover, and as we noted at trial, it is exclusively within our province to determine the weight of this evidence. (N.T. 25, 89-90). ***Commonwealth v. Diggs*, 949 A.2d 873, 877 (Pa. 2008); *Commonwealth v. Miller*, 664 A.2d 1310 (Pa. 1995)**. Further, given Judge Muth's testimony and stipulations that he was viewing images of naked and partially naked women (N.T. 117-118; Stips. Nos. 13, 14, 15, 16, 17, 18, and 19), and the testimony of three witnesses to this effect (F.F. Nos. 43, 44, and 45), we see no prejudice arising from the admission of these exhibits. In fact, the written descriptions of the images arguably suggested they were even more offensive than those presented at trial. Because prejudice requires a tendency to suggest a decision on an improper basis, ***Whistler Sportswear, Inc. v. Rillo*, 433 A.2d 40 (Pa. Super. 1981)**, the admission of these exhibits was not prejudicial to Judge Muth.

II. Counts 1 & 2 – Sexual Harassment

Next Judge Muth finds error in our determination that his conduct constitutes a violation of Old Rule 2A, and Old Rule 4C. Judge Muth maintains that in order to

find a violation of Old Rule 2A, we must find that a judge engaged in “illegal” or “criminal” conduct. Our jurisprudence, however, is to the contrary.

As we explained in ***In re Eakin*, 150 A.3d 1042, 1058-1059 (Pa.Ct.Jud.Disc. 2017)**, discussing Canon 2A of the old Rules of Judicial Conduct,² judicial independence “depends upon public confidence in the judicial system, which in turn requires judges to engage at all times in conduct that is and appears to be appropriate and unbiased.” ***Id.* (internal quotation marks omitted)**.

Old MDJ Rule 2A, in relevant part, states that judges “shall conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” **R.G.S.C.M.D.J. No. 2A, 42 Pa.C.S. (rescinded Dec. 1, 2014)**. In *Eakin*, we found the sending of sexually suggestive and ethnically insensitive emails constituted a violation of Canon 2A. Those acts were neither illegal, nor criminal. There we also noted that although the violations involved the appearance of impropriety, there was no allegation that any biases that might be inferred by the content of “sordid and disgusting emails” were reflected in Justice Eakin’s judicial decision-making. ***Id.* at 1060**. Evident in our decision there was the concern that a public perception of bias was created by engaging in the conduct. We have those same concerns here. Judge Muth may be called upon to decide various cases involving sexual conduct under Chapter 31 of our Crimes Code, and cases involving domestic violence where women are often victims.

² Rule 2A of the Code of Judicial Conduct in effect at the time provided that “Judges should respect and comply with the law and should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Pa. R. Jud. Cond. No. 2A (rescinded July 1, 2014), 42 Pa.C.S.

The suggestion of Judge Muth, that illegal or criminal conduct is required, more squarely addresses the initial phrase of Old Rule 2A, that judges “shall respect and comply with the law.” Judge Muth’s violation, however, is premised upon the language appearing after the conjunction of that phrase, the admonition that a judge “. . . shall conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” **R.G.S.C.M.D.J. No. 2A, 42 Pa.C.S. (rescinded Dec. 1, 2014).**

Predictably, our determination was that Judge Muth’s conduct did nothing to aid the public perception of integrity and impartiality of our judiciary. Rather, his actions were deleterious to this public perception. Viewing sexually provocative images on his personal computer *in his judicial chambers, during working hours*, where judicial staff members routinely enter and would be likely to view such images, constitutes a violation of Old Rule 2A. This finding is not predicated upon a conclusion that Judge Muth engaged in illegal or criminal conduct, and it does not need to be.

We also found this conduct to be a violation of Old Rule 4C, which required judges “to be patient, dignified, and courteous to . . . others with whom they deal in their official capacity.” **R.G.S.C.M.D.J. No. 4C, 42 Pa.C.S. (rescinded December 1, 2014).**

Here, Judge Muth’s objection is focused on testimony by three staff members that Judge Muth was patient, dignified, and courteous to them and other staff as well. (N.T. 36, 79, 103). This testimony, Judge Muth asserts, and the lack of other testimony to the contrary, means that there is no factual support for a finding of a violation of Old Rule 4C.

We disagree. Judge Muth's actions in causing these images to be viewed by staff members, even if inadvertent, were neither dignified nor courteous to his staff members. His attempts to minimize the images, and change the viewable screen to another display when staff members entered his judicial chambers, confirm this conclusion. As we have stated on a number of other occasions, conduct that was intended to be kept private often forms the basis for judicial misconduct. ***See e.g., Eakin, 125 A.3d at 1059, n. 7, citing In re Berry, 979 A.2d 991, 998-999 (Pa. Ct. Jud. Disc. 2009); In re Strock, 727 A.2d 653 (Pa. Ct. Jud. Disc. 1998); In re Dagher, 657 A.2d 1032 (Pa. Ct. Jud. Disc. 1995) (Decision on stipulated facts under C.J.D.R.P. No. 504 finding violation of Canon 2A).*** Despite his efforts to keep these images private, they became public when staff members entered Judge Muth's judicial chambers and observed them. The very fact that staff members contacted the Board to complain about this offensive behavior demonstrates that Judge Muth's actions were not viewed by them as courteous and dignified.

Thus, we see no error in our conclusion that Judge Muth's conduct also constitutes a violation of R.G.S.C.M.D.J. No. 4C.

III. UJS Policy Prohibiting Sexual Harassment

One part of our finding of a violation of Old Rule 2A involves the allegation that Judge Muth violated the Unified Judicial System's Policy Prohibiting Sexual Harassment (UJS Policy). Our October 30, 2018, decision noted that Judge Muth's actions did not appear to constitute intentional sexual discrimination. From this conclusion, Judge Muth posits that a violation of the UJS policy cannot be established without "an intent or purposeful engagement" by Judge Muth. Thus, Judge Muth maintains, our finding of a violation expands the plain definition of

sexual harassment set forth in the UJS Policy. Judge Muth also contends our finding that he “sexually harassed his female staff” is therefore without any basis.

Again, we disagree. Importantly, we note that our finding a violation of the UJS Policy does not mean, *a fortiori*, that Judge Muth “sexually harassed his female staff.”

Judge Muth’s display of these images in a manner where his judicial staff would occasionally encounter them leads us to the conclusion that Judge Muth had established an environment contrary to that mandated by the UJS Policy. We acknowledge that his actions were not purposefully directed to any particular employee or employees. But it was nonetheless substantially certain that the employees would encounter these images because he viewed them at times when their duties involved entering his judicial chambers.

As our October 30 opinion recited, the display of sexually suggestive pictures is among those examples listed in the UJS Policy’s definition of sexual harassment. Our decision in *Eakin*, even though it was not a case involving the UJS Policy, should leave no doubt whatsoever that displaying images of naked and partially naked persons anywhere in our publicly-funded judicial offices is inappropriate. We see little reason to expound on the logic that leads us, and, we think, nearly every private sector employer, to reach this conclusion.

IV. Use of Judicial Facilities for Outside Profit-Making Activities

Judge Muth’s final objection is to our finding that use of his publicly-funded judicial office provided for the disposition of judicial business, and his publicly-paid judicial staff, to perform duties connected to his outside employment, constituted a violation of Old Rule 3(B).

As recited in our October 30 decision, Judge Muth used his judicial staff to apply an answer key and determine the number of correct and incorrect answers to multiple choice mid-term and final examinations that he administered to students while he was an adjunct professor at East Stroudsburg University over a period of some years. He also had his judicial staff make copies, and provided one case of copy paper over a period of some years, to reimburse Monroe County for the usage of its copier.

Judge Muth argues that these tasks were performed by his staff only after their daily judicial duties were completed, required a minimal amount of staff time, and occurred only infrequently, perhaps two times per semester, per class. As such, he argues, his conduct constitutes merely a *de minimus* violation of Old Rule 3B. To support this conclusion, Judge Muth points to the language in Canon 1.3 that provides an exception for incidental use for activities that concern the law, the legal system, or the administration of justice.

We concluded that Judge Muth's use of public employees to perform these activities, and his use of Monroe County copiers, rises above that which we consider to be *de minimus*.

As Judge Muth notes in his objections, the Canons and Rules of Conduct for Magisterial District Judges encourage extra-judicial involvement in areas which concern the law, such as that which Judge Muth was doing. They do not countenance, however, the manner in which he was doing them. Hypothetically, if those actions were done while volunteering as a part of a Law Day or high school civics program, and while we discourage the use of county employees and county administrative resources to pursue such activities, it is unlikely we would have determined that they constituted an ethical violation. However, the factor which,

we think, tips the balance here is that Judge Muth was a compensated college professor using Monroe county resources to perform his professorial duties.

Certain considerations raised by Judge Muth in his objections are ones that we will consider at a sanction hearing. Thus, the fact that the subject that he was teaching was one that fostered better public understanding of the legal system, and that the loss to Monroe County was not large, relate to the gravity of the violation, not to whether the conduct constitutes the violation in the first place.

Foradora, J., concurs in this Statement of Reasons and Order.

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IN RE: :
 :
Michael R. Muth : No. 2 JD 2017
Magisterial District Judge :
Magisterial District 43-2-02 :
Monroe County :

ORDER OF COURT

AND NOW, this 17th day of December, 2018, upon consideration of Respondent's Objections pursuant to C.J.D.R.P. No. 503(B);

For the reasons set forth in the foregoing Statement of Reasons filed this date, the objections are OVERRULED, and this Court's Order of October 30, 2018 is AFFIRMED; and

A sanction hearing will be set by further order of court.

PER CURIAM