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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 :
43rd Judicial District :
Monroe County :

BEFORE: Honorable Doris Carson Williams, P.J., Honorable David J. Barton¹, P.J.E., 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.,² Honorable James J. Eisenhower, J.

PER CURIAM

FILED: *NOVEMBER 8, 2019*

OPINION AND ORDER

Former Magisterial District Judge Michael R. Muth (Respondent Muth) is before the Court for the determination of the appropriate sanction for his violations found in our Opinion of October 31, 2018. In that opinion we found violations in Respondent Muth’s conduct in viewing provocative images in his judicial chambers and in having his staff occasionally work on profit making activities for him at his judicial office during the work day.

Factors Considered on Sanction in Determining

In determining what sanction will be imposed for an ethical violation we are guided by the jurisprudence of our Supreme Court, and also from our prior decisions. We have adopted ten non-exclusive factors, sometimes called “Deming factors” from the original Washington State case where they were explicated that we consider in arriving at a sanction, ***In re Roca*, 151 A.3d 739, 741 (Pa.Ct.Jud.Disc. 2016), aff’d, 173 A.3d 1176 (Pa. 2017),**

¹ The Honorable David J. Barton files a Dissenting and Concurring Statement.

² The Honorable James C. Schwartzman did not participate in this Decision.

citing *In re Toczydlowski*, 853 A.2d 24 (Pa.Ct.Jud.Disc. 2004); *In re Deming*, 736 P.2d 639 (Wa. 1987). The ten factors and our analysis of each in this case are as follows:

1. Whether the misconduct is an isolated instance or evidenced a pattern of conduct: The conduct at issue here does involve several incidents of different types as set forth in the stipulations agreed to by counsel.

2. The nature extent and frequency of occurrence of the acts of misconduct: Respondent Muth viewed sexually oriented images in his office and his staff observed him doing so on several occasions over a twelve year period. Respondent Muth also caused his employees to grade tests and copy handouts several times a year in connection with a class he was paid to teach independent of his judicial duties.

3. Whether the conduct occurred in or out of the courtroom: The conduct occurred outside of the courtroom but was committed in Respondent Muth's judicial office.

4. Whether the misconduct occurred in the judge's official capacity: The misconduct at issue here was enabled by Respondent Muth's official position.

5. Whether the judge acknowledged or recognized that the acts occurred: Respondent Muth has unequivocally acknowledged his improper conduct.

6. Whether the judge has evidenced an effort to change or modify his conduct: Respondent Muth has voiced contrition over his misconduct and no incidents have been reported while this case was pending.

7. The length of service on the bench: Respondent Muth has served as a Magisterial District Judge for thirteen years.

8. Whether there have been prior complaints about the judge: No evidence was presented of any prior complaint against Respondent Muth.

9. The effect the misconduct has upon the integrity of and respect for the judiciary: While the Court did not find that Respondent Muth brought disrepute upon the judiciary his misconduct is obviously regrettable.

10. The extent to which the judge exploited his or her position to satisfy personal desires: Respondent Muth did engage in the misconduct for his own gratification and gain.

II. Discussion

At the Sanction Hearing Respondent Muth took responsibility for his misconduct. Respondent Muth presented considerable good character evidence and testimony about his positive community involvement over many years.

As stated in its prior opinion the Court finds that Respondent Muth did not intentionally display provocative images to his staff and that the private outside work he had his employees do for him was limited.

No prior cases decided by this Court are directly on point with the situation presented here. We do note two prior cases with some superficial similarities. In ***In re Singletary, 61 A.3d 402 (Pa.Ct.Jud.Disc. 2012)*** this Court considered the sanction for a traffic court judge who had deliberately displayed obscene photos of himself to an employee of a vendor working at his office. Singletary was removed from office.

Another tangentially applicable case is ***In re Berkheimer, 877 A.2d 579 (Pa.Ct.Jud.Disc. 2005)***. Berkheimer intentionally displayed pictures of naked women to his staff, used foul language with them and caused them, on a weekly basis, to review the local newspaper for positive references to his

constituents so he could congratulate them and gain their goodwill for his political ends. This conduct went on for years.

Berkhimer had a prior disciplinary offense for attempting to influence a police officer to lower a charge against a friend. He was removed from office. Berkhimer's conduct was much more extreme than that of Respondent Muth.

Both Singleary and Berkhimer involve repeated intentional displays of obscenity and the present case is not nearly as extreme.

The Sanction Here

Realizing we have no directly applicable precedent we look at the record in this case and, in view of all factors, do our best to find a just sanction. Accordingly, we set the sanction here to be a suspension without pay for forty-five (45) days commencing thirty days (30) from the date of this Opinion and Order, a fine of \$5,000 to be paid to the General Fund of the Commonwealth of Pennsylvania within one year and a one year period of probation to begin immediately. As a condition of probation Respondent Muth will undergo a psychological and psychosocial assessment by a licensed psychologist to determine the cognitive, behavioral and emotional motivation leading to the inappropriate sexualized behavior and treatment recommendations if any. If treatment is recommended it must be completed as a condition of probation. The parties to this case are to confer and within forty-five (45) days either issue a joint recommendation to the Court of the psychologist to be utilized or, if they cannot agree, their individual recommendations for such a psychologist.

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DISSENTING AND CONCURRING STATEMENT

FILED BY JUDGE DAVID J. BARTON, P.J.E.

FILED: *November 8, 2019*

I dissent in part and concur in part to the per curiam sanction opinion imposing the sanction of a forty five (45) day suspension without pay, a fine of \$5,000 (\$5,000) dollars, and a one year period of judicial probation during which the Respondent is ordered to submit to a "psychological and psychosocial assessment by a licensed psychologist to determine the cognitive, behavioral and treatment recommendations[,] if any."

I would impose the fine of \$5,000 (\$5,000) dollars, and issue a reprimand for the use of judicial resources for Judge Muth's college professorial duties. A forty five (45) day unpaid suspension is tantamount to a second fine of \$11,500 (\$11,500) dollars. I further dissent from a term of probation and the requirement for a psychological and psychosocial assessment.