

[J-80-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

IN RE: ALLAN CLIFFORD BERKHIMER, : No. 25 WAP 2005
DISTRICT JUSTICE IN AND FOR :
MAGISTERIAL DISTRICT 47-3-06 : Appeal from the final Order of the
CAMBRIA COUNTY : Pennsylvania Court of Judicial Discipline
: dated June 28, 2005 at No. 4 JD 2004.
:
: ARGUED: May 9, 2006

CONCURRING OPINION

MR. JUSTICE CASTILLE

DECIDED: AUGUST 20, 2007

I join the Majority Opinion in its entirety. I write separately, however, because I would also address the second charge lodged against appellant -- to wit, that he conducted an on-going campaign for re-election by instructing his employees to send congratulatory notes to constituents concerning their achievements -- in order to illustrate the appropriateness of the severe sanction of removal from office.

It is beyond purview that a Magisterial District Judge may not use his employees to conduct an on-going retention campaign on his behalf. In re Cicchetti, 743 A.2d 431 (Pa. 2000). In Cicchetti, this Court recognized that requiring court employees to participate in such activity undermines public confidence in the judiciary:

[W]e recognize that permitting court-appointed employees to participate in the retention election campaigns of judicial officers may create the appearance of impropriety. This Court has held that the prohibition against partisan political activity is to "maintain not only the independence, integrity and impartiality of the judicial system but also the appearance of these qualities." [In re] Dobson, 517 Pa. [19,] 29, 534 A.2d [460,] 465 [(1987)], citing, In re Prohibition of Political Activities by Court-Appointed Employees, 473 Pa. 554, 560, 375 A.2d 1257, 1259 (1977). We believe that this goal,

which is fundamental to public confidence in the judiciary, can best be met by extending the prohibition against political activity to judicial retention elections. Accordingly, court-appointed employees may no longer participate in judicial retention election campaigns.

Id. at 442.

Appellant does not contest that the purpose of having his staff glean opportunities to send congratulatory notes, and then actually sending the notes, was for the sole purpose of enhancing his likelihood of retention when his term expired several years later. Rule 15C of the Standards of Conduct of Magisterial District Judges permits a magisterial district judge to campaign on his own behalf or otherwise engage in the political process only in the year of his retention election. The necessity of reelection, combined with this restriction, undoubtedly leads to the temptation to engage in activities designed to garner votes in ways other than overt and timely campaigning. Nonetheless, such activity is clearly and rightly prohibited. Judicial officers should satisfy themselves with the knowledge that this salutary restriction is offset by the fact that a sitting district judge has the distinct advantage of incumbency. In violation of Rule 15C, appellant campaigned for retention throughout his term of office. Appellant's improper electioneering provides further support for the sanction of removal.