

[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.
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: ARGUED: May 9, 2006

CONCURRING OPINION

MR. JUSTICE BAER

DECIDED: AUGUST 20, 2007

I join the majority in its entirety. I agree that Appellant's conduct towards his staff involving the use of improper and offensive language warrants his removal from office. I write separately in response to the concurring opinion by Justice Castille, which addresses the second charge lodged against Appellant. This charge relates to Appellant's practice of sending congratulatory notes by mail to constituents who were mentioned in the local newspaper for an accomplishment. Justice Castille characterizes this practice as an on-going reelection campaign, and upon that premise correctly deems this activity improper. While I agree that the Court of Judicial Discipline's factual findings dictate such result, I feel compelled to write separately to state my view that other instances of community outreach, which are not for the sole purpose of electioneering, are entirely permissible and even laudable.

As the majority notes, Appellant, a Magisterial District Judge, instructed his staff to read local newspapers to look for constituents mentioned for their achievements. The staff

then prepared a congratulatory note, which included a photograph of Appellant in his robe and bore the court's address. Appellant testified that he had his staff send these notes because people appreciate being recognized for their achievements, and they advanced other civic activities in which he participated. N.T., 12/16/2004, at 411. Appellant's staff, however, testified that Appellant told them that the purpose of the congratulatory notes was to obtain votes. N.T., 12/16/2004, at 36, 101. The Court of Judicial Discipline credited the testimony of Appellant's staff and found that Appellant's testimony was not credible. Thus, the court found that the purpose of the congratulatory notes was solely to curry favor with electors in order to improve Appellant's prospects for reelection. Court of Judicial Discipline Op. at 28. The court further concluded that Appellant was prohibited from using his staff to send the congratulatory notes to constituents for the purpose of seeking votes for reelection pursuant to Rule 3B of the Rules Governing Standards of Conduct of District Justices, and that these actions warranted his removal from office.¹

We are constrained to defer to the court's factual finding in this case that Appellant's purpose in sending congratulatory notes was solely for furthering his reelection as opposed to a genuine desire to recognize civic achievements. See Commonwealth Dept. of Transportation v. O'Connell, 555 A.2d 873, 875 (Pa. 1989). I caution, however, that the conclusion reached in this case based upon such a finding should not be read as a blanket prohibition of the range of benign activities that judicial officers routinely engage in as public officials who sincerely desire to interact with the community for its betterment as well as that of the judiciary. Some of these activities, such as personally welcoming jurors beginning their service, thanking jurors, either personally or by letter, at the conclusion of

¹ Rule 3B of the Rules Governing Standards of Conduct of District Justices provides:

A district justice shall not use or permit the use of the premises established for the disposition of his magisterial business for any other occupation, business, profession or gainful pursuit.

their service, dropping notes of thanks or congratulations to individuals who achieve some significant success or milestone in our society, delivering remarks to community groups, accepting a small award, and the like, are entirely permissible so long as they are undertaken without ulterior motive, regardless of the potentiality of some ephemeral benefit that one might speculate could inure to a judge. Rather, I believe that we should encourage judicial officials to reach out to the public in a positive way, instead of creating a climate in which judges shun such activities for fear of judicial discipline.

Finally, I find it obvious that judicial misconduct should not be alleged against a judicial officer who uses his or her staff to assist in proper community outreach. To hold otherwise would be to ignore the reality that judicial officers are overwhelmingly busy, and require staff support for all administrative and clerical functions. In short, if the activity is appropriate for the judicial officer, it is altogether proper to use his or her staff in furtherance of the activity.

Mr. Justice Castille joins this concurring opinion.