

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

CONCURRING AND DISSENTING STATEMENT FILED: October 30, 2008
BY JUDGE STREIB

While I join in the majority of the Court's Opinion, I dissent from Sections I. and J. of the Majority Opinion. I did not find the witness Theodore Krohn to be credible. (While my fellow judges may have read the transcript of these proceedings, most were not present during the hearing to observe the witness or his testimony. Two of the three judges who were present found the witness to lack credibility on these two issues.) It is for the lack of credibility that I dissent on both issues.

However, regarding Section I., THE VIOLET O'BRIEN CASE, on the finding of a violation of Counts 2, 4 and 6, even if the statement allegedly made by Judge Lokuta to the effect that the law clerk was to "cut him a new asshole," referring to a party's attorney were proven, the statement is no more than an off-hand, albeit unprofessional, comment made privately to a member of her staff in a moment of anger. This statement alone does not prove by clear and convincing evidence that Judge Lokuta held a bias or prejudice which would prevent her from fairly adjudicating the case.

Judges are human, have human emotions, and may make comments amongst themselves or their staff about lawyers and litigants while nevertheless fairly deciding cases. The Majority Opinion imposes an unreasonable standard upon judges in their private communications with each other and their personal staff. It is not the stuff that either recusal or disciplinary actions are made of.¹

As to Section J., THE BONNER CASE, even if the statement alleged by the witness to the effect of the Respondent wanting to rule in favor of an influential family in the area were true, the Board did not charge the Respondent with a violation of the Code of Judicial Conduct in its Complaint, but raised the matter for the first time at trial. I, therefore, find the Board's assertion to be untimely and improper. Indeed, the Board itself offered this evidence not as a specific count, but rather to show a pattern of behavior. At the conclusion of all the Board's evidence, this supposed pattern was allegedly found, at best, in the two incidents described in Sections I. and J. of the Majority Opinion. I would find that the Board did not prove by clear and convincing evidence a pattern of behavior.

It is for these reasons alone that I dissent from the Court's Opinion.

O'Toole, J., joins this Concurring and Dissenting Statement.

¹ The case cited by the Majority Opinion, Hayslip v. Douglas, 440 So.2d 553 (Fla.App. 1981) in support of the conclusion that Canon 3C.(1)(a) is applicable to this case is not analogous to the instant factual situation. That case involved a public outburst in the courtroom in front of a party which clearly indicated to the party and all present in the courtroom, that there was, at minimum, an appearance which might lead a reasonable person to think there was a bias to such a degree that a fair hearing was impossible. There was no such public statement or conduct in this case. Therefore, I do not believe Canon 3C.(1)(a) is applicable, however, in a factual situation similar to the one in Hayslip, I concur with the rationale of the Majority Opinion.