

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

IN RE:

Michael R. Muth :  
Magisterial District Judge :  
Magisterial District 43-2-02 : 2 JD 2017  
43<sup>rd</sup> Judicial District :  
Monroe County :

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JUDICIAL DISCIPLINE  
OF PENNSYLVANIA

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**JUDICIAL CONDUCT BOARD'S REPLY TO  
RESPONDENT'S MOTION IN LIMINE TO PRECLUDE  
THE PHOTOGRAPHS**

AND NOW, this 20<sup>th</sup> day of February, 2018, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (Board) by undersigned counsel and files this Reply to Respondent's Motion In Limine to Preclude the Photographs.

1. **Denied as stated.** It is admitted that the Board indicated in its Pre-Trial Memorandum dated November 15, 2017, that it may introduce some, or all, of the 16 photographs of naked and partially naked adult females (photographs).
2. **Denied as stated.** It is admitted that during a deposition of Judge Muth on February 24, 2017, Judge Muth stated that when he learned of the Board's investigation regarding the photographs he "put them on a drive to give to counsel." (Transcript of deposition at page 61.) Thereafter, Judge Muth's counsel provided 13 of the photographs from the USB storage device to the Board with correspondence dated May 4, 2017; another three photographs were provided with correspondence dated June 7, 2017. The photographs provided to the Board, and listed in the Board's Pre-Trial Memorandum, were

characterized by Judge Muth's counsel as representative examples of the photographs that Judge Muth provided to him on the USB storage device.

3. **Admitted, in part and denied, in part.** It is **admitted** that Judge Muth's personal computer was not integrated into or part of the court computer system, nor was it connected to the internet. It is **denied** that Judge Muth viewed the photographs on rare occasion. Rather, he stipulated and testified during his February 24, 2017 deposition that occasionally, between 8:30 a.m. and 4:30 p.m., on a weekday, when judicial staff were in the building, he used his personal computer to view the preloaded images of naked and partially naked women on his personal computer screen. It is further denied that Judge Muth "was never aware of [viewing the photographs] when he was or could have been observed by anyone else in the office." Respondent's Motion In Limine to Preclude the Photographs, paragraph 3. No evidence has yet been presented to this Honorable Court to establish that fact. To the contrary, in his February 24, 2017 deposition, Judge Muth described the action he took if, while he was viewing the photographs, someone entered his office:

If someone would come into the room, I would always click it, exit out so that nobody would see anything. I never thought anybody saw anything.

February 24, 2017 deposition transcript, page 60.

4. **Denied.** This is a contested fact and strict proof thereof is demanded at the time of trial or hearing.

5. **Denied as stated.** By way of further answer, the Board has no knowledge or information concerning whether other persons may exist who observed Judge Muth's conduct "over a lengthy period encompassing many years." To the extent this paragraph is construed to set forth factual allegations, they are denied, and strict proof thereof is demanded at the time of trial or hearing.
6. **Admitted.**
7. **Admitted.**
8. **Denied as argument and improper conclusions of law for which no response is required.** By way of further answer, dependent upon the context and purpose for which the photographs are introduced, they may be relevant to the proceedings. Furthermore, members of the Court of Judicial Discipline are learned individuals capable of determining the proper weight to ascribe to such evidence.
9. **Denied as stated.** By way of further answer, by partial Stipulations of Fact Pursuant to C.J.D.R.P. No. 502(D)(2), Judge Muth has generally admitted viewing photographs of naked and partially naked women on his personal computer screen in his judicial chambers between 8:30 a.m. and 4:30 p.m., on a weekday, when judicial staff were in the building. He has not admitted viewing photographs depicting women in sexually explicit poses or a pornographic video of women engaging in sexual activity.

10. **Denied as argument and improper conclusions of law for which no response is required.** By way of further answer, the Pennsylvania Rules of Evidence are writings that speak for themselves, as is the cited Supreme Court of Pennsylvania case.
11. **Denied as argument and improper conclusions of law for which no response is required.** By way of further answer, Judge Muth's admitted possession and viewing of said photographs of naked and partially naked women on his personal computer, while in his judicial chambers on weekdays between 8:30 a.m. and 4:30 p.m., when judicial staff were in the building, is evidence having a tendency to make Judge Muth's charged conduct more probable than it would be without such evidence, and is of consequence to the Court's determination that such charged conduct occurred. By way of further answer, Judge Muth's possession of said photographs, which are substantially similar to those described by the witnesses, and during the same period of time as that described by the witnesses, clearly supports such witness testimony about Judge Muth's conduct and makes it more probable.
12. **Denied as stated and as argument and improper conclusions of law for which no response is required.** See Paragraph 9 above. By way of further answer, because Judge Muth is charged based on the nature of the photographic and video content of what he viewed on his personal computer, specifically that such material was sexually explicit and pornographic, said photographs also

constitute the best evidence of the content of photographs stored and viewed on his personal computer.

13. **Denied as stated and as argument and improper conclusions of law for which no response is required.** By way of further answer, the photographs, provided as representative examples of the photographs that Judge Muth copied from his personal computer to a USB storage device, are admissible if they tend to prove that Judge Muth had photographs similar to the ones which were viewed by the Board's witnesses. Any uncertainty that the photographs were the actual photographs seen by the witnesses goes to the weight of the evidence. *Commonwealth v. Williams*, 640 A.2d 1251 (Pa. 1994).
14. **Denied as argument and improper conclusions of law for which no response is required.** By way of further answer, Pa.R.E. 402 provides that "[a]ll relevant evidence is admissible, except as otherwise provided by law." A determination of admissibility depends on the particular content of the evidence and argument, and the context in which the party seeks to introduce it. A blanket exclusion of the evidence at this time would be premature.
15. **Denied as argument and improper conclusions of law for which no response is required.** See Paragraphs 11 and 13 above. By way of further answer, The Court is capable of applying evidentiary rules in determining relevancy and admissibility of any proffered evidence and, if admitted, ascribing to it the proper weight.

Likewise, the Court is capable of disregarding evidence it deems inadmissible.

16. **Denied as argument and improper conclusions of law for which no response is required.**

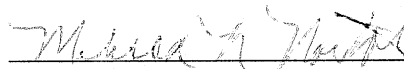
WHEREFORE, the Board, by and through Melissa L. Norton, Assistant Counsel, respectfully requests that this Honorable Court deny Respondent's Motion In Limine to Preclude the Photographs.

Respectfully submitted,

ROBERT A. GRACI  
*Chief Counsel*

DATE: February 20, 2018

By:



MELISSA L. NORTON  
*Assistant Counsel*

Pa. Supreme Court ID No. 46684

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**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Judicial Conduct Board of Pennsylvania

Signature:  \_\_\_\_\_

Name: Melissa L. Norton  
Assistant Counsel

Attorney No.: 46684

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**PROOF OF SERVICE**

In compliance with Rule 122(D) of the Court of Judicial Discipline Rules of Procedure, on or about February 20, 2018, a copy of the *Judicial Conduct Board's Reply to Respondent's Motion in Limine to Preclude the Photographs* was sent by First-Class Mail to Joel L. Frank, counsel to Magisterial District Judge Muth at the following address:

Joel L. Frank, Esquire  
Lamb McErlane PC  
Attorneys at Law  
P.O. Box 565  
24 East Market Street  
West Chester, PA 19382-3151

February 20, 2018

By:



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