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COURT OF JUDICIAL DISCIPLINE

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IN RE: :
Michael R. Muth :
Magisterial District Judge :
Magisterial District 43-2-02 : 2 JD 2017
43rd Judicial District :
Monroe County :
:

MAGISTERIAL DISTRICT JUSTICE
MICHAEL R. MUTH'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Magisterial District Justice Michael R. Muth, by and through his counsel Lamb McErlane, PC, submits the following Findings of Fact and Conclusions of Law in support of his request that the Complaint against him be dismissed:

I. FINDINGS OF FACT

A. BACKGROUND

1. Judge Muth started as a Magisterial District Judge in January 2006 and was subsequently reelected twice. (pg 110 – 6/5/18 trial transcript)
2. Judge Muth was a part-time public defender for Monroe County and held that position until he retired after the election to the bench. (pg 110 - 111 – 6/5/18 trial transcript)
3. Judge Muth worked in private practice doing primarily domestic relations work. (pg 111 – 6/5/18 trial transcript)
4. Judge Muth worked as the solicitor for the county mental health and mental retardation programs. He was also the solicitor for the county aging office dealing with their affairs and

guardianships. He held these positions over 15 years. (pg 111 – 6/5/18 trial transcript)

5. Judge Muth is married to Margaret and they have one child, Jacob, who is 12 years old. He has a daughter from a previous marriage. (pg 112 – 6/5/18 trial transcript)

6. Judge Muth served on the board of directors for a program called Youth Employment Services. (pg 112 – 6/5/18 trial transcript)

7. Judge Muth was on the board of directors for the Carbon, Monroe, Pike Drug & Alcohol Commission. (pg 113 – 6/5/18 trial transcript)

8. Judge Muth coached boys' baseball for about 15 years. He switched to girls softball which he coached for another 15 years. (pg 113-114 – 6/5/18 trial transcript)

9. Judge Muth also coached girls' basketball. He coached the Notre Dame Jr. High School team in East Stroudsburg. He also coached AAU basketball. (pg 114 – 6/5/18 trial transcript)

10. Judge Muth became involved with the Monroe County Bar Association's mock trial program. (pg 114 – 6/5/18 trial transcript)

11. Judge Muth was the editor of the Legal Reporter in Monroe County. Judge Muth has done mock trials in Monroe County and has coordinated that for years. (pg 153 – 6/5/18 trial transcript)

12. As a magisterial district judge, Judge Muth scheduled court three days a week, Tuesday, Wednesday and Thursday. Mondays were used for truancy conferences. He also performed weddings on Thursdays and Fridays. (pg 116 - 117 – 6/5/18 trial transcript)

13. Judge Muth's typical day started at 9 and most of the work he had scheduled was completed by noon to 1:00. (pg 117 – 6/5/18 trial transcript)

B. PHOTOGRAPHS

14. MDJ Muth believed that his computer screen was positioned in a manner so that only he could view it. (Paragraph 16, Answer and New Matter of MDJ Muth)

15. Kathy Goida worked for Magisterial District Justice Michael Muth as an advance district justice technician from 2006 until 2013 when she moved to a different court. (pg. 17-18 - 6/5/18 trial transcript)

16. While Kathy Goida was working for Judge Muth, she had on numerous occasions, entered his chambers. (pg.19 – 6/5/18 trial transcript)

17. Kathy Goida saw more than one computer on Judge Muth's desk. He had a desktop computer and a county-issued laptop. The desktop computer that Kathy Goida saw Judge Muth use was his personal equipment and Kathy Goida knew that because MDJ Muth brought it with him to the office. (pg 19-20 – 6/5/18 trial transcript)

18. There were only three different instances over seven years where Kathy Goida saw the subject images on Judge Muth's computer screen. (pg 21 – 6/5/18 trial transcript)

19. When Kathy Goida saw these images on Judge Muth's computer screen she did not say anything to MDJ Muth, she just turned around and went back to her desk. (pg 28 – 6/5/18 trial transcript)

20. Judge Muth would minimize the screen before Kathy Goida entered his chambers. (pg 29-30 – 6/5/18 trial transcript)

21. It was a matter of seconds in which Kathy Goida observed the subject photographs. (pg 33 – 6/5/18 trial transcript)

22. Once Kathy Goida was aware that Judge Muth viewed such photographs, she would announce herself in some fashion upon entering his office. After that, she never saw Judge Muth looking at any similar types of photographs. (pg 33-34 – 6/5/18 trial transcript)

23. Judge Muth never purposely showed Kathy Goida the subject photos and there were no such photos displayed for anyone's observation upon entering his chambers. (pg 34 – 6/5/18 trial transcript)

24. Kathy Goida didn't know if Judge Muth was aware that she saw the photos on Judge Muth's personal screen. Judge Muth did not make any movements that would suggest that he wanted her to see the pictures. (pg 35 – 6/5/18 trial transcript)

25. In the performance of her duties, Kathy Goida never had the occasion to use his personal computer. (pg 36 – 6/5/18 trial transcript)

26. After Kathy Goida saw Judge Muth viewing an image of a naked or partially naked woman on his personal computer for the first time, she did not report it to anybody. (pg 36 – 6/5/18 trial transcript)

27. After Kathy Goida saw the photos she did not asked to be reassigned or not to work with Judge Muth. (pg 37 – 6/5/18 trial transcript)

28. No one ever said anything to Kathy Goida concerning the photos. (pg 39 – 6/5/18 trial transcript)

29. Amy VanNorman works at District Court 43202 in Monroe County, Pennsylvania in Judge Michael Muth's court and was hired on July 1, 2013. (pg 43 – 6/5/18 trial transcript)

30. Amy VanNorman saw two desk top computers and one laptop computer in Judge Muth's chambers. (pg 44-45 – 6/5/18 trial transcript)

31. Amy VanNorman saw Judge Muth look at a subject photo one time in September/October 2013 on his personal computer. (pg 55 – 6/5/18 trial transcript)

32. Amy VanNorman did not hear any sound or noise coming from the computer. (pg 45 – 6/5/18 trial transcript)

33. After Amy VanNorman saw the image on Judge Muth's computer, she changed her behavior upon entering Judge Muth's chambers and she never witnessed him looking at images like that on his computer again. (pg 47 – 6/5/18 trial transcript)

34. On the occasion when Amy VanNorman went into Judge Muth's chambers and saw the photo, she did not knock or make any announcement upon entering. (pg 48 – 6/5/18 trial transcript)

35. Respondent's Exhibit 2 relatively accurately depicts the overall chambers and Judge Muth's office. (pg 56 – 6/5/18 trial transcript)

36. Amy VanNorman never had an occasion to be on the computer (right below the K) upon which she saw the image that one time. (pg 57 – 6/5/18 trial transcript)

37. When Judge Muth was facing his computer, his body would be in front of the computer screen, and the door through which Amy VanNorman would have entered would be way up to the left-hand side at the top of that room. (pg 58 – 6/5/18 trial transcript)

38. When Amy VanNorman saw the photo in October 2013 it was a very small thumbnail photo because it was minimized and in one corner of the screen. (pg 58-59 – 6/5/18 trial transcript)

39. Amy VanNorman did not know if Judge Muth heard her come into the room when she observed the photo that one time in 2013. (pg 59 – 6/5/18 trial transcript)

40. Amy VanNorman is aware that Judge Muth is hearing impaired and wears hearing aids. (pg 59 – 6/5/18 trial transcript)

41. Amy VanNorman only saw the minimized picture for five to ten seconds. She was there long enough to ask him a question and then go. (pg 60 – 6/5/18 trial transcript)

42. From the time Amy VanNorman first saw the photo through the present, five years later, she never saw anything else that would cause her any type of concern or consternation. (pg 60 – 6/5/18 trial transcript)

43. Judge Muth never purposefully showed Amy VanNorman any type of pornography photos or videos. (pg 62 – 6/5/18 trial transcript)

44. Judge Muth did not have any types of naked or partially naked displays in his office or chambers. (pg 62 – 6/5/18 trial transcript)

45. Amy VanNorman never observed Judge Muth's viewing of photos impacting his ability to carry on his judicial-related functions. (pg 64 – 6/5/18 trial transcript)

46. Meredith Pelak-Rea worked for Judge Muth for ten years from March 2, 2006 until the end of April 2016. (pg 82 – 6/5/18 trial transcript)

47. Meredith Pelak-Rea has contact with Judge Muth approximately twice a week in her current employment. (pg 82 – 6/5/18 trial transcript)

48. Meredith Pelak-Rea saw more than one computer in Judge Muth's chambers. He had two computers that were state or county issued and one personal computer. Judge Muth's personal computer had an older style monitor and a tower. Meredith Pelak-Rea believed Judge Muth owned the personal computer because he brought it with him when he became a judge. (pg 84 – 6/5/18 trial transcript)

49. Meredith Pelak-Rea saw an image of scantily clad women when she walked in to Judge Muth's office. Judge Muth was trying to minimize the screen quickly. She did not knock on the door before she entered. (pg 86 – 6/5/18 trial transcript)

50. After seeing the image, Meredith Pelak-Rea changed the way she approached Judge Muth's office. She would announce herself or make a lot of noise to let him know she was entering. (pg 87 – 6/5/18 trial transcript)

51. Meredith Pelak-Rea saw those images on Judge Muth's computer only one time sometime between 2006 and before 2013. After that occasion, she started announcing herself and it did not happen again. (pg 87 – 88 – 6/5/18 trial transcript)

52. Meredith Pelak-Rea never had an occasion to go on or use Judge Muth's personal computer. (pg 96 – 6/5/18 trial transcript)

53. The computer closest to the wall or window was Judge Muth's personal computer or the one down by the right corner on Exhibit 2. (pg 98 – 6/5/18 trial transcript)

54. On the one occasion where Meredith Pelak-Rea saw the images it was on Judge Muth's personal computer. (pg 98 – 6/5/18 trial transcript)

55. Meredith Pelak-Rea thinks Judge Muth's personal computer screen is 12 inches or 14 inches. (pg 98 - 99 – 6/5/18 trial transcript)

56. In the ten years Meredith Pelak-Rea worked for Judge Muth she only saw the images one time several years ago, even though she would go into Judge Muth's office almost daily. (pg 99 – 6/5/18 trial transcript)

57. Judge Muth did try to minimize his screen on that one occasion when Meredith Pelak-Rea came into his office and saw the image. Meredith Pelak-Rea did not say anything to Judge Muth about seeing that image on that one occasion. (pg 99 – 6/5/18 trial transcript)

58. After seeing that image on the one occasion, Meredith Pelak-Rea still felt comfortable around Judge Muth. (pg 100 – 6/5/18 trial transcript)

59. On that one occasion, Meredith Pelak-Rea viewed the image on the screen for five seconds. After this one occasion she never saw any other displays of any kind of naked or partially naked women anywhere else in the office of the chambers. (pg 100 – 6/5/18 trial transcript)

60. Meredith Pelak-Rea never asked to be reassigned or not to work with Judge Muth after she saw the photos on that one occasion. (pg 103 – 6/5/18 trial transcript)

61. Judge Muth was still able to timely complete his judicial-related functions despite looking at the subject photographs. (pg 104 – 6/5/18 trial transcript)

62. Meredith Pelak-Rea is not aware of any member of the general public, any party or lawyer practicing in front of Judge Muth being aware of Judge Muth's viewing of the subject photos. (pg 104 – 6/5/18 trial transcript)

63. The preloaded photographs were only viewed on Judge Muth's personal computer. (pg 118 – 6/5/18 trial transcript)

64. Judge Muth never used the internet and never sent or received from anyone such photos via e-mail. He never showed, sent or disseminated the subject photos. (pg 118 – 6/5/18 trial transcript)

65. Judge Muth was not aware that anyone was watching him or saw him viewing the subject photographs. (pg 118 - 119 – 6/5/18 trial transcript)

66. The first time Judge Muth became aware that anybody had actually seen the photos was when he received a complaint from the board. (pg 119 – 6/5/18 trial transcript)

67. Judge Muth never purposefully displayed the subject type of photos to anyone in his chambers or exposed another person to them at any time. (pg 119 – 6/5/18 trial transcript)

68. Judge Muth has impaired hearing. He wears two hearing aids, one in each ear, which he's had for about two and a half years. (pg 120 – 6/5/18 trial transcript)

69. Judge Muth does not wear his hearing aids all the time. He will wear them when he knows he has court, but he does not wear them on a daily basis. (pg 121 – 6/5/18 trial transcript)

70. Judge Muth's hearing impairment affects his ability to hear people entering into his office, especially if his back is turned. If his back was turned, he may not hear someone enter. (pg 121 – 6/5/18 trial transcript)

71. Viewing the photographs never impacted Judge Muth's judicial decision making process or his abilities in any fashion. (pg 121 – 6/5/18 trial transcript)

72. Viewing the photographs had nothing to do with Judge Muth's adjudicative responsibilities. (pg 121 – 6/5/18 trial transcript)

73. Viewing the photographs did not prevent Judge Muth from timely attending to his judicial-related duties. (pg 122 – 6/5/18 trial transcript)

74. Judge Muth never failed to prioritize his judicial-related responsibilities by virtue of looking at the subject photographs. (pg 122 – 6/5/18 trial transcript)

75. Viewing the photographs did not impact Judge Muth's integrity or impartiality as a jurist. (pg 122 – 6/5/18 trial transcript)

76. Viewing the photographs on the occasions that he did, did not impact the manner in which Judge Muth interacted with litigants, witnesses or lawyers that were in front of him. (pg 122 – 6/5/18 trial transcript)

77. None of the litigants, witnesses or lawyers that appeared in front of Judge Muth had the opportunity to view his personal computer. (pg 122 – 6/5/18 trial transcript)

78. No member the general public had the opportunity to view Judge Muth's personal computer. (pg 122 – 6/5/18 trial transcript)

79. None of the court staff had any reason to utilize Judge Muth's personal computer for the performance of court-related functions. (pg 122 – 6/5/18 trial transcript)

80. Judge Muth's personal computer screen is a normal sized computer screen. (pg 124 – 6/5/18 trial transcript)

81. The "X" in front of the computer on Exhibit 2 is where Judge Muth's was sitting. When Judge Muth is sitting in front of his personal computer his back would be somewhat to the door and his body for the most part would be covering at least part of the screen. (pg 124 – 125 – 6/5/18 trial transcript)

82. There were never any images of naked or partially naked women on Judge Muth's personal computer screen when he was not sitting directly in front of it. (pg 125 – 6/5/18 trial transcript)

83. Judge Muth never displayed depictions of naked or semi-naked women in any manner throughout the office or his chambers. (pg 125 – 6/5/18 trial transcript)

84. The first time Judge Muth became aware that anyone on the staff had observed the photos was when he received a notification from the conduct board. (pg 125 – 6/5/18 trial transcript)

85. Judge Muth never watched a video on his personal computer. (pg 126 – 6/5/18 trial transcript)

86. Judge Muth is certain that the only things on his personal computer were still photos. (pg 126 – 6/5/18 trial transcript)

87. Judge Muth does not recall having a conversation with someone while a picture of a naked or semi-naked woman was on his computer screen. (pg 127 – 6/5/18 trial transcript)

88. If there was an image of a naked or partially naked woman on Judge Muth's screen and he knew someone was coming into his office or starting to communicate with him, he would close it out or minimize it in an attempt to prevent anyone from seeing it. (pg 127 – 6/5/18 trial transcript)

89. Since receiving the notice from the Judicial Conduct Board Judge Muth has not viewed such images at work. (pg 128 – 6/5/18 trial transcript)

90. The court staff would rarely enter Judge Muth's office while he was there. If the court staff needed something they usually would ask him to come out to them. Documents that needed to be signed would be kept in a bin and he would go out to them a few times a day to see what's new, what's going on or what needed to be signed. (pg 128 – 6/5/18 trial transcript)

91. If someone would have brought to Judge Muth's attention the fact that they observed him viewing photos prior to receiving a letter from the board, he would have apologized to them and would have wiped the photos off. To have anyone view the photo for even a brief period of time is something Judge Muth would never intentionally do. (pg 129 – 6/5/18 trial transcript)

92. Judge Muth would not have retaliated against any person that brought the photos to his attention. (pg 129 – 6/5/18 trial transcript)

93. If Judge Muth was aware that someone was in his office while he was viewing the images, he would shut it down because he would not want anybody seeing them. (pg 145 – 6/5/18 trial transcript)

94. If Judge Muth was aware that someone was coming into his office while he was viewing the images, he would shut the computer down so they wouldn't see the pictures. (pg 145 – 6/5/18 trial transcript)

95. If Judge Muth heard a staff member calling out or even walking down the hallway when he was looking at these images, he would shut them down. (pg 145 – 6/5/18 trial transcript)

C. EAST STROUDSBURG UNIVERSITY

96. Melissa Barrera started working for Judge Muth in July of 2016 and worked for him a little over three months. (pg 74 – 6/5/18 trial transcript)

97. On occasion Judge Muth asked a clerk to make 40 copies for Judge Muth's class. (pg 31 – 6/5/18 trial transcript)

98. Kathy Goida never graded any examinations. (pg 32 – 6/5/18 trial transcript)

99. Kathy Goida never marked any of the East Stroudsburg exams and Judge Muth never asked her to participate in the marking of the exams. (pg 39 – 6/5/18 trial transcript)

100. Judge Muth never asked Kathy Goida to make photocopies of documents for his class at East Stroudsburg University. (pg 40 – 6/5/18 trial transcript)

101. There was an answer key for exams that Judge Muth would provide to clerks in the form of true/false or multiple choice in which the key was filled out so that they could correct the answers according to the key. (pg 49 – 6/5/18 trial transcript)

102. When the clerks had down time in the office Judge Muth would ask them to make copies of either exams or handouts for his classes. This was only done two times a semester, for a midterm and a final exam. (pg 50 – 6/5/18 trial transcript)

103. From July 2013 until the board complaint the clerks were asked to make copies of examinations twice a year, one for the fall semester and one for the spring semester. (pg 52 – 6/5/18 trial transcript)

104. The clerks would have to count the number of incorrect answers and write the total number of incorrect answers on the first page. (pg 54 – 6/5/18 trial transcript)

105. It took Amy VanNorman maybe ten minutes to do the requested photocopying. (pg 61 – 6/5/18 trial transcript)

106. When Judge Muth asked Amy VanNorman to do certain things related to East Stroudsburg she understood that all court-related duties were done first. The same was true for the grading of exams. (pg 61-62 – 6/5/18 trial transcript)

107. There was down time for Amy VanNorman and other clerks from doing judicial-related functions during the course of a given week. (pg 64 – 6/5/18 trial transcript)

108. Amy VanNorman was still able to get her court-related work done on time despite marking the exams and making photocopies. (pg 64 – 6/5/18 trial transcript)

109. Amy VanNorman never told Judge Muth that she didn't want to mark the exams or that she was uncomfortable making photocopies of the East Stroudsburg work. (pg 64 – 65 – 6/5/18 trial transcript)

110. For the semester there would be only around 100 total copies made. (pg 72 – 6/5/18 trial transcript)

111. Melissa Barrera knew Judge Muth was a professor at East Stroudsburg University. (pg 75 – 6/5/18 trial transcript)

112. Melissa Barrera, on her down time, offered/volunteered her assistance to Amy VanNorman in grading papers while Amy VanNorman was working on other court-related materials. Melissa Barrera was provided with a master key or answer key for an exam. (pg 76 – 6/5/18 trial transcript)

113. After Melissa Barrera completed her court-related obligations and in her down time, she evaluated the exams. (pg 77 – 78 – 6/5/18 trial transcript)

114. When Melissa Barrara would mark the exams, she would mark either correct or incorrect. There was no discretion involved. Judge Muth never asked her to participate in the grading of the exams. (pg 78 – 6/5/18 trial transcript)

115. It didn't take too long to mark the exams. Grading those exams in no manner impacted Melissa Barrara's timely performance of her judicial-related functions. (pg 80 – 6/5/18 trial transcript)

116. The clerks made copies of handouts and tests and marked the tests. They made about 50 copies of each handout. The tests were approximately four pages, two double sided copies. They did this twice a semester every semester. Judge Muth supplied the paper as he purchased a case of paper early on. (pg 91 – 93 – 6/5/18 trial transcript)

117. In the beginning, Judge Muth would bring the tests back to court and would specifically ask Meredith Pelak-Rea to mark the tests. As time went on, that was undertaken by Amy VanNorman and then Melissa Barrara would also help. (pg 94 – 6/5/18 trial transcript)

118. Meredith Pelak-Rea was still able to complete all her judicial-related functions despite making photocopies of the East Stroudsburg materials. (pg 101 – 6/5/18 trial transcript)

119. The photocopies took 15 minutes and it took about an hour to mark the exams. It was an hour twice a semester. The clerks didn't put a letter grade on the exams; they just counted the number of incorrect answers. The clerks still able to accomplish all judicial-related functions. (pg 101 - 102 – 6/5/18 trial transcript)

120. There was down time throughout the course of the day from the actual judicial-related functions. (pg 103 – 6/5/18 trial transcript)

121. During those down times that Meredith Pelak-Rea would turn her attention to the marking of the exams. (pg 103 – 6/5/18 trial transcript)

122. Meredith Pelak-Rea never told Judge Muth that she did not want to or was uncomfortable making copies of the East Stroudsburg materials. (pg 104 – 6/5/18 trial transcript)
123. Meredith Pelak-Rea never told Judge Muth that she was uncomfortable or preferred not to mark any of the exams. (pg 104 – 6/5/18 trial transcript)
124. The exams were typically 33 questions. (pg 130 – 6/5/18 trial transcript)
125. The number of students that took the course taught by Judge Muth was between 35 and 45. (pg 131 – 6/5/18 trial transcript)
126. An hour or less for each of the two semesters would be expended on marking the exams. (pg 131 – 6/5/18 trial transcript)
127. Judge Muth prepared the key to mark the exams. (pg 131 – 6/5/18 trial transcript)
128. Judge Muth asked the clerks to mark the exams with the specific caveat that they do so only after the court-related functions were completed. He didn't put a whole lot of thought into it when he asked them to do it. He used the same process as when he taught while in his private practice. (pg 132 – 6/5/18 trial transcript)
129. There was down time during the course of a week from the normal, required judicial-related functions. (pg 133 – 6/5/18 trial transcript)
130. There was never an occasion at any time where court-related work did not get done by staff or by clerks because they had to mark the exams. (pg 133 – 6/5/18 trial transcript)
131. No one ever expressed an unwillingness or displeasure to Judge Muth about marking the exams. If they had he would not have had them continue to do it. (pg 133 - 134 – 6/5/18 trial transcript)

132. Judge Muth's class was taught on a weekly basis with a midterm and final. Sometimes there would be handouts that were a page or two long. As the technology got better there were fewer and fewer handouts. In the last year Judge Muth taught the course he didn't use handouts anymore. (pg 134 - 135 – 6/5/18 trial transcript)

133. Initially, Judge Muth purchased one or two cartons of paper from Office Max. The banker box sized cartons have thousands of sheets of paper. (pg 135 – 6/5/18 trial transcript)

134. There were four times a year where Judge Muth asked the clerk to make photocopies of about 35 to 40 pages. (pg 136 – 6/5/18 trial transcript)

135. At East Stroudsburg University, MDJ Muth taught his students criminal process, procedural criminal law, and constitutional criminal law. (pg 135 – 6/5/18 trial transcript.)

136. After the charges hit the newspaper, Judge Muth was terminated from his position with East Stroudsburg University.

D. MDJ MUTH'S CHARACTER/REPUTATION

137. In the seven or so years Kathy Goida worked with Judge Muth, she considered him to be fair and even tempered. Kathy Goida also found Judge Muth to be patient, dignified, and courteous with the office staff as well as those appearing in front of him. (pg 36 – 6/5/18 trial transcript)

138. Kathy Goida did not believe Judge Muth viewing the photos impacted his ability to do his judicial related functions as a magisterial district court judge. (pg 37 – 6/5/18 trial transcript)

139. All Kathy Goida's judicial related tasks were timely performed and she believed Judge Muth timely completed all of his judicial related tasks. (pg 37-38 – 6/5/18 trial transcript)

140. Judge Muth was strict but was cordial with his staff. Judge Muth was a normal boss. (pg 55 – 6/5/18 trial transcript)

141. Amy VanNorman considers Judge Muth to be a good judge. He is fair, even tempered, patient, dignified and courteous to her and other office staff. (pg 63 – 6/5/18 trial transcript)

142. From October 2013 through today, Amy VanNorman never asked to be reassigned or not to work with Judge Muth. (pg 63 – 6/5/18 trial transcript)

143. Melissa Barrara's everyday interactions with Judge Muth were cordial. They had an amicable relationship. She never observed Judge Muth behaving in a way that was outside the norm or ordinary. Judge Muth was always professional with her and never acted inappropriately. (pg 79 – 6/5/18 trial transcript)

144. Meredith Pelak-Rea believed Judge Muth was a great boss. (pg 100 – 6/5/18 trial transcript)

145. Judge Muth attended Meredith Pelak-Rea's wedding. (pg 100 – 6/5/18 trial transcript)

146. Judge Muth came to the hospital when Meredith Pelak-Rea's son was born. (pg 100 – 6/5/18 trial transcript)

147. Meredith Pelak-Rea considers Judge Muth to be fair, even tempered, patient, dignified and courteous. She observed Judge Muth manifest these same traits with others within the office. (pg 103 – 6/5/18 trial transcript)

148. Brian Gaglione has been in Monroe County for almost 50 years. (pg 150 – 6/5/18 trial transcript)

149. Brian Gaglione has been an attorney since 1993. (pg 150 – 6/5/18 trial transcript)

150. Brian Gaglione has known Judge Muth professionally and personally for 37 years. He first knew him at the age of 13. (pg 150 – 6/5/18 trial transcript)

151. When Brian Gaglione first started in his profession, he saw Judge Muth daily. Judge Muth was the chief public defender and Brian Gaglione was an assistant public defender. Judge Muth gave him his first law job. He saw Judge Muth every single day for the first four years or so. He then went to the DA's office and he still saw Judge Muth daily. Today he sees Judge Muth once a week or every couple of weeks. (pg 151 – 6/5/18 trial transcript)

152. Brian Gaglione has appeared in front of Judge Muth many times, 40 or 50 times. (pg 151 – 6/5/18 trial transcript)

153. Brian Gaglione has had the opportunity to assess Judge Muth's capabilities and competence as a magisterial district judge and hands down Judge Muth is the best magistrate they have. Judge Muth goes out of his way to be fair to everybody that comes before him. Judge Muth takes the time to listen to every single participant and bends over backwards to make sure that everybody has their day in court. (pg 152 – 6/5/18 trial transcript)

154. Brian Gaglione has had the opportunity to assess Judge Muth's integrity and demeanor as a magisterial district judge and it is his opinion that it is above reproach. Judge Muth's professionalism, demeanor, and general attitude as a magistrate, is the best. Judge Muth is the best magistrate they have in Monroe County. (pg 152 - 153 – 6/5/18 trial transcript)

155. Brian Gaglione is aware of Judge Muth's reputation in the community and it is impeccable. He has talked to people about Judge Muth on more occasions than he can count. To a person everybody that he has ever spoken to has the same opinion. Over the years of knowing Judge Muth, Brian Gaglione is of the belief that he is a good man, a kind man, the type of person who would not do anything to harm anybody else deliberately. (pg 153 - 154 – 6/5/18 trial transcript)

156. Judge Muth's character is as solid as it gets. Brian Gaglione chooses his friends carefully, and he chooses to be friends with Judge Muth because he's a good guy. Judge Muth's character is above reproach. (pg 154 – 6/5/18 trial transcript)

157. Thomas Jones has resided in Monroe County since 1978. (pg 155 - 156 – 6/5/18 trial transcript)

158. Thomas Jones is a retired State Policeman. Judge Muth was the chief public defender for many years. Thomas Jones and MDJ Muth became very friendly adversaries and had a mutual respect for each other. (pg 156 – 6/5/18 trial transcript)

159. Thomas Jones has known Judge Muth since 1978. (pg 156 – 6/5/18 trial transcript)

160. Thomas Jones retired from the State Police in 1993. His interactions with Judge Muth were very frequent prior to 1993. Currently he sees Judge Muth three or four times a year. (pg 157 – 6/5/18 trial transcript)

161. Thomas Jones did have the opportunity over the many years that he has known Judge Muth to assess his integrity and demeanor and always referred to Judge Muth as a champion of the Defendant's rights. Judge Muth did his job and he did his job fairly. (pg 157 – 6/5/18 trial transcript)

162. Thomas Jones' opinion of Judge Muth's overall character is that he is a great guy. If his son were in trouble, he'd like to have Judge Muth representing him. (pg 158 – 6/5/18 trial transcript)

163. Janet Jackson is a deputy chief public defender in Northampton County and her law office is in Stroudsburg. She passed the bar in 1984 and is a full time lawyer. (pg 159 - 160 – 6/5/18 trial transcript)

164. Janet Jackson has known Judge Muth since 1985. The nature of their relationship is primarily professional but personal as well. (pg 161 – 6/5/18 trial transcript)

165. Janet Jackson appears in front of or interacts with Judge Muth approximately eight to ten times a year. (pg 162 – 6/5/18 trial transcript)

166. Over the last five years Janet Jackson appeared in front of Judge Muth more than 20 times. (pg 162 – 6/5/18 trial transcript)

167. Janet Jackson has had the opportunity to assess Judge Muth's capabilities and competence as a MD Justice and in her opinion Judge Muth is a great district justice. Judge Muth is very professional. Judge Muth's courtroom is well run and he treats everyone with dignity and respect. (pg 163 – 6/5/18 trial transcript)

168. Janet Jackson is aware of Judge Muth's reputation in the community and it is excellent. (pg 164 – 6/5/18 trial transcript)

169. Janet Jackson's opinion of Judge Muth's character is that it is impeccable. Judge Muth is a good man, a good husband and he has been an integral role model to her. She is a better lawyer because she started off as a lawyer with Judge Muth. Judge Muth is uniformly decent to everyone. (pg 165 – 6/5/18 trial transcript)

170. The Stipulation filed by the Parties on January 31, 2018 is incorporated herein by reference.

II. CONCLUSIONS OF LAW

1. Viewing the photographs never impacted Judge Muth's judicial decision making process or his abilities in any fashion. (pg 121 – 6/5/18 trial transcript)

2. Viewing the photographs had nothing to do with Judge Muth's adjudicative responsibilities. (pg 121 – 6/5/18 trial transcript)

3. Viewing the photographs did not prevent Judge Muth from timely attending to his judicial-related duties. (pg 122 – 6/5/18 trial transcript)

4. Judge Muth never failed to prioritize his judicial-related responsibilities by virtue of looking at the subject photographs. (pg 122 – 6/5/18 trial transcript)

5. Viewing the photographs did not impact Judge Muth's integrity or impartiality as a jurist. (pg 122 – 6/5/18 trial transcript)

6. Viewing the photographs on the limited occasions that he did, did not impact the manner in which Judge Muth interacted with litigants, witnesses or lawyers that appeared before him. (pg 122 – 6/5/18 trial transcript)

7. Where a Rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the magisterial district judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion. Moreover, it is not intended that disciplinary action would be appropriate for every violation of the Conduct Rules' provisions. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the intent of the magisterial district judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system. Preamble (6) to the R.G.S.C.M.D.J.

Count 1 –Rule 2A of the Old R.G.S.C.M.D.J

8. Rule 2A, titled “Impropriety and the Appearance of Impropriety to be Avoided,” provides:
Magisterial district judges shall respect and comply with the law and shall conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

9. In order for there to be a violation of Rule 2A, there must be “illegal” or “criminal” conduct, whether or not related to the judicial decision-making process. In re Carney, 79 A.3d 490 (Pa. 2013); see e.g. In re Ballentine, 121 A.3d 611 (Pa. Ct. Jud. Disc. 2015), aff'd, 132 A.3d 454 (Pa. 2016) (MDJ's failure to timely file individual income taxes in violation of federal and state law, and judge's continuing conduct in failing to file prior tax returns and remit collected sales tax violated Rule 2A); In re Shaner, 142 A.3d 1051 (Pa. Ct. Jud. Disc. 2016) (MDJ charged with criminal perjury and obstructing justice committed misconduct by dismissing a criminal complaint filed against the nephew of an assistant district attorney and by misleading Board in violation of Rule 2A); In re Kelly,

757 A.2d 456 (Pa. Ct. Jud. Disc. 2000) (MDJ requested favorable treatment for a friend from another magisterial district judge in connection with a traffic violation).

10. Mere indiscretions or offensive acts do not constitute a violation of Rule 2A. See e.g. In re Nakoski, 742 A.2d 260 (Pa. Ct. Jud. Disc. 1999), aff'd, 758 A.2d 1155 (Pa. 2000) (MDJ did not violate Rule 2A by answering “yes” to continuing education instructor's question as to whether it was unlawful or illegal to be a black man, and explaining response with apparent statement that “They're all in jail. They're the ones doing all the robberies and burglaries”); In re Brown, 907 A.2d 684 (Pa. Ct. Jud. Disc. 2006) (MDJ’s demeaning treatment of female employees, including the use of derogatory terms such as “PMS,” “senile,” and “dumb blond” and use of racially and ethnically insensitive and inappropriate terms in referring to minority members of the community and judge’s use of such terms in the presence of members of law enforcement did not violate Rule 2A).

11. MDJ Muth’s conduct was not unlawful, which is evidenced by the fact that he was not criminally charged after law enforcement authorities assessed the circumstances.

12. MDJ Muth did not display¹ any sexually suggestive pictures.

13. No clerks were subject to sexual harassment which requires an intent or purposeful engagement by the offending party. Hoy v. Angelone 456 Pa.Super. 596, (Pa. Super. 1997). As set forth herein, MDJ Muth at no time was even aware that any court personnel saw him viewing the subject photos.

14. There was no evidence whatsoever that MDJ Muth’s subject conduct impacted his integrity or impartiality as a jurist; to the contrary, the uncontroverted evidence is that it did not.

15. Accordingly, Count 1 should be dismissed.

¹ Display is defined as making “a prominent exhibition of something in a place where it can be easily be seen.”

Count 2 –Rule 4C of the Old R.G.S.C.M.D.J

16. Rule 4C, titled “Adjudicative Responsibilities,” provides:

Magisterial district judges shall be patient, dignified and courteous to litigants, witnesses, lawyers and others with whom they deal in their official capacity...

17. Rule 4C “deal[s] with conduct occurring while a district judge is engaged in the discharge of his or her adjudicative responsibilities.” In re Singletary, 61 A.3d 402, 408 (Pa. Ct. Jud. Disc. 2012). For example, In re Singletary, former Philadelphia Traffic Court Judge Singletary was charged with violating Rule 4C² for deliberately showing “F” (a 22-year old female cashier employed to collect PPA fees for booting, towing and impounding) two pictures of his erect penis on his phone while assigned to night court. Id. at 405. The cashier station is separate from the public but has a connecting door to Impoundment Court. Id. Judge Singletary was not adjudicating cases, was not wearing his judicial robe, and none of the events alleged in the Board’s Complaint involved hearings or trials or dealing with parties or counsel. Id. Importantly, Judge Singletary “was not interacting with members of the public.” Id.

Based on these facts, the CJD held, “However important (or however trivial) this tete-a-tete might have been in the lives of [Judge Singletary] and/or F, it did not occur in the course of Judge Singletary’s adjudicative responsibilities. Consequently, it is not a violation of Rule 4C.” Id. at 409; Cf. In re Zoller, 792 A.2d 34 (Pa. Ct. Jud. Disc. 2001) (MDJ’s use of profanity by judge while acting in his official capacity, in the presence of constables, defendant, and deputy sheriff, violated Rule 4C requiring judges to be patient, dignified and courteous with those he deals with in his official capacity); In re Brown, 907 A.2d at 689 (MDJ’s demeaning treatment of female employees, including the use of derogatory terms such as “that time of the month” and “dumb blond,” and frequently criticizing secretaries loudly and in the presence of third parties including law enforcement officers and members of the general public and on occasion “pounded his fists, slammed doors, threw files and other papers around the office and engaged in loud outbursts of anger” was conduct that “was neither patient, dignified nor courteous and thus constitute[d] a violation of Rule 4C.”).

² MDJ Singletary, similar to MDJ Muth, was also charged with violation Article V, Section 17(b) Section 18(d)(1) of the Pennsylvania Constitution.

18. The aforementioned cited cases are clearly distinguishable from the conduct of MDJ Muth. Similar to In re Singletary, at the time MDJ Muth's conduct was observed he was not adjudicating cases, and was not involved in hearing or trials or dealing with parties or counsel.

19. The uncontroverted evidence is that MDJ Muth was patient, dignified and courteous to litigants, witnesses and others with whom he dealt in his official capacity.

20. Accordingly, Count 2 should be dismissed.

Count 3 –Rule 5A of the Old R.G.S.C.M.D.J

21. Rule 5A, titled "Administrative Responsibilities," provides:

Magisterial district judges shall diligently discharge their administrative responsibilities, maintain competence in judicial administration and facilitate the performance of the administrative responsibilities of their staff and of other members of the judiciary and court officials.

22. MDJ's typically charged with violating Rule 5A have engaged in criminal activity, similar to the cases in which the Court found a violation of Rule 2A. See e.g. In re Strock, 727 A.2d 653 (Pa. Ct. Jud. Disc. 1998) (Judge's failure to deposit in designated bank account all of the cash, checks and money orders received in the district justice office each day, and use of those public funds to meet her personal financial obligations constitute a violation of Rule 5A because the "management of the fiscal affairs of the office of district justice is an administrative responsibility of that office"); In re Davis, 954 A.2d 118 (Pa. Ct. Jud. Disc. 2007) (MDJ's failure to properly supervise his constable, who with judge's knowledge, was running a separate court of his own that operated completely outside of the law and in many ways at variance with it, violated Rule 5A).

23. An example of failure to fulfill an MDJ's administrative responsibilities is found in, in In re Merlo, 58 A.3d 1 (Pa. 2012), wherein the Court determined that a MDJ's repeated failure to appear, failure to hold hearings in landlord/tenant cases where recovery of possession of real property was an issue, consistent lateness in appearing, unilaterally preparing and mailing notices of new hearing dates, personally advising attorneys and litigants that their hearings were continued, among other things, "interfered with, rather than facilitated, her staff's performance of their responsibilities" in

violation of Rule 5A. Id. at 7.

24. The charges which form the basis for Count 3 do not involve any criminal activity by MDJ Muth.

25. Moreover, MDJ Muth's request, not demand, that his clerks assist him with correcting exams or making copies for his ESU students was with the caveat that it be done only when all judicial related functions were completed and consequently did not interfere with any work to be done on behalf of the court system.

26. MDJ Muth's request did not cause any backlog of paperwork and did not cause MDJ Muth to fail to adjudicate matters in a timely and professional fashion. The uncontroverted evidence is that MDJ Muth diligently and timely discharged his administrative responsibilities and competently did so.

27. Accordingly, Count 3 should be dismissed.

Count 4 –Rule 3B of the Old R.G.S.C.M.D.J

28. Rule 3B, titled "Priority of Judicial Business," 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.

29. A violation of Rule 3B exists where a MDJ uses his position and court-appointed staff for "other gainful pursuit," such as by conducting a political campaign out of his magisterial office. In In re Berkheimer, 930 A.2d 1255 (Pa. 2007), the Supreme Court upheld the CJD's ruling that MDJ Berkheimer violated Rule 3B when he required his staff to send the notes as part of an ongoing re-election campaign, done solely to 'get votes.'" Id. at 1257.

30. The conduct of MDJ Muth does not rise to the level of misconduct in violation of Rule 3B.

31. To the extent that MDJ Muth had his Clerks use the court copying machine to make copies of documents for distribution to his ESU students, the amount of time and money expended to accomplish these tasks was de minimis and did not interfere with any judicial business.

32. Code of Judicial Conduct Canon 3.1(E) provides:

“... a judge shall not: (E) make use of court premises, staff, stationery, equipment, or other resources, **except for incidental** use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.” (Emphasis added).

See Comment 1: “To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, **teaching**, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.” (Emphasis added).

See also Comment 2: “Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.” (Emphasis added).

This is consistent with R.G.S.C.M.D.J. 2.1, *Comment 3:*

Although it is not a duty of judicial office unless prescribed by law, magisterial district judges are encouraged to participate in activities that promote public understanding of and confidence in the administration of justice. (Emphasis added).

33. To punish MDJ Muth for the “incidental use” of his staff and the de minimus time expanded for assisting him with his legal teaching of criminal process, procedural criminal law and constitutional criminal law to his students is inconsistent with encouraging MDJs to participate in teaching and activities that promote public understanding of and confidence in the law and legal system.

34. Accordingly, Count 4 should be dismissed.

Count 5 –Rule 2.1 of the New R.G.S.C.M.D.J

35. New Rule 2.1, titled “Giving Precedence to the Duties of Judicial Office,” provides:

The duties of judicial office, as prescribed by law, shall ordinarily take precedence over a magisterial district judge’s personal and extrajudicial activities.

36. MDJ Muth devoted the time necessary for the prompt and proper disposition of the business of his office, which was given priority over any other occupation, business, profession, pursuit or activity. His personal and extrajudicial activities were arranged so as not to interfere unreasonably with the diligent discharge of his magisterial district judge’s duties of office.

37. Magisterial district judges are encouraged to participate in activities that promote public understanding of and confidence in the administration of justice.

38. The evidence is uncontroverted that MDJ Muth and all court personnel under his supervision first attended to all court related business before devoting time to any extrajudicial activities, and that his staff’s de minimus participation in the extrajudicial activities did not impact their ability to timely complete all of their court business.

39. Accordingly, Count V should be dismissed.

Count 6 –Article V, § 17(b) of the PA Constitution

40. Article V, § 17(b) of the Pennsylvania Constitution, provides:

Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court. Justices of the peace [magisterial district judges] shall be governed by rules or canons which shall be prescribed by the Supreme Court.

41. If a MDJ's conduct does not constitute an "activity prohibited by law" or no violation of the Rules Governing Standards of Conduct of Magisterial District Judges is established, there can be no violation of Article V, § 17(b). See In re Nakoski, 742 A.2d at 268.

42. As previously established herein, MDJ Muth's conduct was not an activity prohibited by law nor did it violate any Rule Governing Standards of Magisterial District Judges.

43. Accordingly, Count VI should be dismissed.

Count 7 –Disrepute Clause of Article V, § 18(d)(1) of the PA Constitution

44. Article V, § 18(d)(1) of the Pennsylvania Constitution, provides:

A justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for ... conduct which ... brings the judicial office into disrepute, whether or not the conduct occurred while acting in a judicial capacity or is prohibited by law[.]

45. "In order to find that a judge has brought the judiciary into disrepute the evidence must establish: 1) the judicial officer has engaged in conduct so extreme that 2) it has resulted in bringing the judicial office into disrepute. Disrepute is established by proof that an act or series of acts by a judge result in a decline in the esteem of the public for the judicial office." In re Ballentine, 121 A.3d at 618 (citing In re Smith, 687 A.2d 1229, 1238 (Pa. Ct. Jud. Disc. 1996)). (Emphasis added)

46. Disrepute necessarily includes consideration of whether the public's perception of the judiciary as a whole has been affected by the alleged misconduct:

[T]he conduct of a judge which results in a decline in the public esteem for that judge, may not support the conclusion that the conduct has brought the judiciary as a whole into disrepute, absent a persuasive showing by the Board that the conduct is so extreme as to have brought the judicial office itself into disrepute.”

In re Carney, 79 A.3d at 501 (citing Berkhimer, 930 A.2d at 1258 (quoting In re Zupsic, 893 A.2d 875, 888 (Pa. Ct. Jud. Disc. 2005)); see also Merlo, 58 A.3d at 10 (difficulty is not in determining whether conduct is “bad” or “reprehensible,” but whether it makes judges collectively look bad) (emphasis original).

47. “Examples of conduct found to be “so extreme” as to bring the judiciary as a whole into disrepute include the use of vulgar and sexually charged language and frequent use of expletives directed at employees, Berkhimer, supra) (Emphasis added); persistent sexual advances towards a subordinate employee who repeatedly rejected the advances, In re Cicchetti, 697 A.2d 297, 310 (Pa. Ct. Jud. Disc. 1997); attempting to influence judicial outcomes, In re Zupsic, 893 A.2d 875 (Pa. Ct. Jud. Disc. 2005); provoking a fight at a golf outing, In re Hamilton, 932 A.2d 1030 (Pa. Ct. Jud. Disc. 2007); and parking at expired parking meters, but displaying parking tickets issued to others on the windshield in order to avoid paying for parking, In re Harrington, 877 A.2d 570, 575 (Pa. Ct. Jud. Disc. 2005).” In re Carney, 79 A.3d at 501.

48. Examples of conduct found not to have brought the judiciary as a whole into disrepute include In re Brown, 907 A.2D 684 (Pa. Ct. Jud. Disc. 2006) (MDJ who sexually harassed female employees and made racial statements over period of more than ten years not found to have brought his judicial office into disrepute); In re Dagher, 657 A.2d 1032 (Pa. Ct. Jud. Disc. 1995) (common pleas court judge who accepted football tickets from a person with a matter of financial interest pending before the judge, and unreasonably delayed deciding six cases did not bring judicial office into disrepute); In re Smith, 687 A.2d at 1239 (common pleas court judge's failure to render timely decisions in 61 pending cases did not bring judicial office into disrepute).

49. MDJ Muth's conduct of sparingly over many years viewing sexually related photographs on his personal computer while alone in his office, and thus not intentionally or knowingly displaying same to staff or members of the public, does not constitute conduct *so extreme* so as to bring the entire judicial office into disrepute.

50. Accordingly, Count 7 should be dismissed.

Count 8 –Article V, § 18(d)(1) of the PA Constitution Concerning a Rule Prescribed by the Supreme Court

51. The defenses and rationales giving rise to the dismissal of Count 7 also apply to Count 8. In addition, there has been no violation of the Unified Judicial System Policy on Non-Discrimination and Equal Employment Opportunity.

52. There was no discriminatory or harassing conduct by MDJ Muth.

53. Sexual harassment and sexual discrimination require a purposeful intent on the part of the actor toward the recipient. *Hoy v. Angelone* 456 Pa.Super. 596, (Pa. Super. 1997).

54. The photographs on MDJ Muth's personal computer were not on display and the uncontroverted evidence is that MDJ Muth intended to not have any Court personnel view the photographs.

55. Accordingly, Count 8 should also be dismissed.

WHEREFORE, the Judicial Conduct Board having failed to establish any violation by MDJ Muth of any old or new Pennsylvania Rules Governing Standards of Pennsylvania Conduct of Magisterial District Judges, Magisterial District Judge Michael Muth requests that the Complaint against him be dismissed.

Respectfully submitted,

LAMB McERLANE PC

Dated: 8/23/18

By:



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**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE: :
Michael R. Muth :
Magisterial District Judge :
Magisterial District 43-2-02 : 2 JD 2017
43rd Judicial District :
Monroe County :
:

CERTIFICATE OF SERVICE

This is to certify that complete copies of all papers contained in the foregoing *pleading* has been served upon the following persons, by the following means and on the date stated:

<u>Name</u>	<u>Means of Service</u>	<u>Date of Service</u>
Melissa L. Norton Assistant Counsel Pennsylvania Judicial Ctr 601 Commonwealth Avenue, Ste 3500 PO Box 62525 Harrisburg, PA 17106	Via Electronic Mail	August 23, 2018

LAMB McERLANE PC

Date: 8/23/18

BY: 

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