

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

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2015 DEC 16 P 2:21

IN RE:

J. Michael Eakin :  
Justice of the Supreme Court of : No. 13 JD 2015  
Pennsylvania :

**JUSTICE J. MICHAEL EAKIN'S ANSWER TO COMPLAINT  
WITH NEW MATTER**

AND NOW comes Justice J. Michael Eakin, by and through his counsel, William C. Costopoulos, Esquire, and Heidi F. Eakin, Esquire, COSTOPOULOS, FOSTER & FIELDS, and respectfully answers as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

**PART I. The Board's Investigation of Justice Eakin**

5. Admitted.
6. Admitted.

a. Admitted.

b. Admitted.

c. After reasonable investigation, Justice Eakin is without knowledge or information sufficient to form a belief as to the truth of the averment.

- d. After reasonable investigation, Justice Eakin is without knowledge or information

sufficient to form a belief as to the truth of the averment.

e. Admitted.

7. Admitted.

a. It is admitted that Justice Eakin and DAG Baxter had a long friendship and that he was hired by Justice Eakin when the latter was District Attorney.

8. Admitted.

a. Admitted.

9. It is admitted that he received "blast" emails from Terrance McGowan, Esquire.

a. It is admitted that Attorney McGowan is an acquaintance of Justice Eakin and went on one or two out-of-state fishing vacations with him and other individuals.

b. It is admitted that a personal Email account was set up, in part, as the result of the content of some of the personal Emails he was receiving and also to conduct personal and family business..

10. Denied as a conclusion of law which requires no response.

a. Admitted.

11. Admitted.

a. - c. Admitted.

12. - 34. Admitted.

35. - 37. The averments of these paragraphs are accepted as true.

38. Admitted.

39. Justice Eakin admits that the emails referenced in this paragraph of the Complaint were

received by his Email address. However, Justice Eakin does not admit that he necessarily opened all of the emails that were received at the address. Furthermore, the characterizations of the emails are denied, as are any alleged violations of the Judicial Canons and the Pennsylvania Constitution. The contents of the emails speak for themselves.

40. Admitted.

41. Admitted.

42. Admitted.

a. - d. Admitted.

43. - 49. Admitted.

## **PART II. The September 29, 2015 Complaint**

50. Admitted.

51. Admitted.

52. Admitted.

53. It is Admitted that Attorney General Kane made the statements as set forth in the Complaint. Justice Eakin does not admit or agree with the characterizations made by Attorney General Kane in such statements.

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54. Admitted.

55. Admitted that is what the letter states.

56. - 72. Admitted.

73. Accepted as true.

74. Accepted as true.

75. Accepted as true.

76. Accepted as true.

77. Accepted as true.

78. Justice Eakin admits that the emails referenced in this paragraph of the Complaint were personal Emails sent to a group of individuals. The characterizations of the emails are denied, as are any alleged violations of the Judicial Canons and the Pennsylvania Constitution. The contents of the emails speak for themselves.

79. Accepted as true.

80. Justice Eakin admits that the emails referenced in this paragraph of the Complaint were received by his Email address. However, Justice Eakin does not admit that he necessarily opened all of the emails that were received at the address. Furthermore, the characterizations of the emails are denied, as are any alleged violations of the Judicial Canons and the Pennsylvania Constitution. The contents of the emails speak for themselves.

81. Justice Eakin admits that the emails referenced in this paragraph of the Complaint were received by his Email address. However, Justice Eakin does not admit that he necessarily opened ~~all of the emails that were received at the address. Furthermore, the characterizations of the~~ emails are denied, as are any alleged violations of the Judicial Canons and the Pennsylvania Constitution. The contents of the emails speak for themselves.

82. Accepted as true.

83. Admitted.

84. Accepted as true.

- 85. Accepted as true.
- 86. Accepted as true.
- 87. Accepted as true.
- 88. Accepted as true but Justice Eakin denies that such probable cause existed.
- 89. Admitted.

### **PART III. CHARGES**

#### **COUNT 1:**

90. It is specifically denied that the allegations of the Judicial Conduct Board constitute a violation of Canon 2A of the Old Code.

91. Admitted.

92. It is admitted that Justice Eakin participated in the consideration of and decision in **In re Carney**, 79 A.3d 490 (Pa.2013). It is denied that Justice Eakin failed to conduct himself in a manner that promotes public confidence in the integrity and impartiality of the Judiciary. By way of further answer, these were Justice Eakin's private, personal email messages (both sent and received, whether opened or unopened) and were never intended by him to be made public.

~~Furthermore, Justice Eakin did not cause or foresee the dissemination of the foregoing private,~~  
personal emails. The dissemination was done by way of press conferences conducted by the Attorney General.

93. See response to paragraph 92 above.

94. Admitted.

95. Admitted.

96. See response to paragraph 92 above.

**COUNT 2:**

97. Denied.

98. Admitted.

99. It is denied that Justice Eakin acted in a manner that detracted from the dignity of his office. By way of further answer, these were Justice Eakin's private, personal email messages (both sent and received, whether opened or unopened) and were never intended by him to be made public. Furthermore, Justice Eakin did not cause or foresee the dissemination of the foregoing private, personal emails. The dissemination was done by way of press conferences conducted by the Attorney General.

**COUNT 3(a), (b):**

100. Denied.

101. Admitted.

102. Denied.

**COUNT 4:**

103. Denied.

104. Admitted.

105. Justice Eakin vehemently denies the averments set forth in this paragraph.

106. Justice Eakin vehemently denies the averments set forth in this paragraph.

WHEREFORE, Justice J. Michael Eakin, based on the foregoing response, respectfully requests that Your Honorable Court deny and dismiss the Board's Complaint.

### NEW MATTER

107. Though referenced heretofore, it is being set forth herein as new matter: The Emails attributed to Justice Michael Eakin which were disseminated to the public was an act not caused by Justice Michael Eakin. The causation of this dissemination was not reasonably foreseeable or imagined under the circumstances of this case. The dissemination was caused by others over whom Justice Michael Eakin had no control.

108. The media coverage of this dissemination speaks for itself.

109. The following is a matter of record:

a) the vast majority of the emails that Justice Eakin sent relate to social activities involving a small group, like planning a golf outing, or discussions about fantasy football and fishing trips.

b) none of the emails sent by Justice Eakin relate, refer to, discuss or even mention any cases before the court, any business of the court, or any matters involving the judiciary. Nor does Justice Eakin express personal views about legal or political matters.

c) none of the emails sent by Justice Eakin contained pornographic materials.

Justice Eakin forwarded a joke that featured a photo of a women changing her bikini top that revealed a view of her breasts, an email that would most likely not be characterized as pornographic according to contemporary community standards. It was sent to three members of the small group.

d) Justice Eakin received, not sent, many emails with nude women. He replied to the sender of some of these emails. On no occasion did we find an email that Justice Eakin

objected to receiving such emails.

e) In addition to such jokes, Justice Eakin sent several emails involving male banter about trips to strip clubs while on the annual golf outings. These conversations included inappropriate and chauvinistic statements. Justice Eakin also engaged in an exchange with Jeffrey Baxter containing inappropriate sexual innuendo about specific women known to both men.

110. Independent of the investigation and report of Judge Del Sole, the Judicial Conduct Board did a thorough and complete investigation and review of the September 28, 2015 and October 20, 2015 CD-ROMs. Many of the Justice Eakin emails were the same as those of a year ago.

111. The recent independent investigation of the Judicial Conduct Board in substance concurs with the factual findings of the October 30, 2015 Judge Del Sole report.

112. All of the emails provided on the September 28, 2015 and October 20, 2015 CD-ROMs confirms that none relate to, referred to, or mention any matters before the court, any business of the court or any aspect of the judiciary.

~~113. There are no requests for favors, influence, or any communication of a similar nature.~~

114. Most of the emails that Justice Eakin received were not individually addressed to him or were not directed to him alone. They were either blast emails forwarding impersonal materials such as jokes or were group emails involving his social circle.

115. The Honorable J. Michael Eakin was the District Attorney fo Cumberland



County from 1984 - 1995.

116. While District Attorney of Cumberland County, there was not a single prosecution that emanated from his office that was driven by, or tonally affected by color or gender. All prosecutions were based on the facts of the cases brought to his office.


117. The Honorable J. Michael Eakin was elected to the Superior Court of Pennsylvania in 1995 and served as a Superior Court Judge for six years.

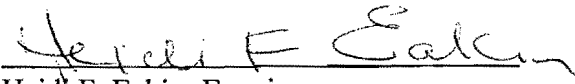
118. The Honorable J. Michael Eakin was elected to the Supreme Court of Pennsylvania in 2001 and is currently an active member of that Court.

119. Justice J. Michael Eakin's opinions were never driven by, reflective of, or tonally affected by color or gender. All opinions were based on the facts of the cases before him and the law.

WHEREFORE, Justice J. Michael Eakin, based on the foregoing response, respectfully requests that Your Honorable Court deny and dismiss the Board's Complaint.

RESPECTFULLY SUBMITTED:

  
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I.D. No. 22354

  
Heidi F. Eakin, Esquire  
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ATTORNEYS FOR JUSTICE J.  
MICHAEL EAKIN

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DATED: December 16, 2015.

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

IN RE:

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Justice of the Supreme Court of : No. 13 JD 2015  
Pennsylvania

**VERIFICATION**

The undersigned verifies that the foregoing matter is true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

RESPECTFULLY SUBMITTED:



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DATED: December 16, 2015.

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IN RE:

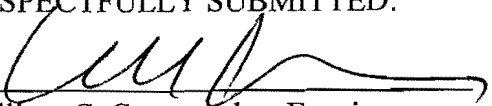
J. Michael Eakin :  
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**PROOF OF SERVICE**

In compliance with Rule 122(d) of the Court of Judicial Discipline Rules of Procedure, on December 16, 2015, a copy of *Justice J. Michael Eakin's Answer to Complaint with New Matter* was provided to Francis J. Puskas, II, Sr. Deputy Counsel, by personal service at the following address:

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Harrisburg, PA 17120-0901

RESPECTFULLY SUBMITTED:

  
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DATED: December 16, 2015.