

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 :
:

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**ANSWER AND NEW MATTER OF MDJ MICHAEL R. MUTH TO
JUDICIAL CONDUCT BOARD'S COMPLAINT**

Michael R. Muth ("MDJ Muth"), by and through his undersigned counsel, Lamb McErlane PC, hereby responds to the Complaint filed by the Judicial Conduct Board, in accordance with the numbered paragraphs thereof, as follows:

1. This is a conclusion of law to which no response is required. To the extent a response is deemed required, said allegation is admitted.
2. Admitted.
3. This is a conclusion of law to which no response is required. To the extent a response is deemed required, said allegation is admitted.
4. This is a conclusion of law to which no response is required. To the extent a response is deemed required, said allegation is admitted.
5. MDJ Muth is without information sufficient to form a belief as to the truth or accuracy of this averment.
6. MDJ Muth is without information sufficient to form a belief as to the truth or accuracy of this averment.

7. This is a conclusion of law to which no response is required. To the extent a response is deemed required, said allegation is admitted.

8. This is a conclusion of law to which no response is required. To the extent a response is deemed required, said allegation is admitted.

A. Viewing and Displaying Pornography in Court Offices

The answers contained in paragraphs 1 through 8 above are incorporated herein by reference as if the same were set forth herein at length.

9. MDJ Muth is without information sufficient to form a belief as to the truth or accuracy of this averment.

10. MDJ Muth is without information sufficient to form a belief as to the truth or accuracy of this averment.

11. MDJ Muth is without information sufficient to form a belief as to the truth or accuracy of this averment.

12. MDJ Muth is without information sufficient to form a belief as to the truth or accuracy of this averment.

13. MDJ Muth is without information sufficient to form a belief as to the truth or accuracy of this averment.

14. Denied. It is denied that MDJ Muth ever watched a video in his chambers the subject of which is set forth in paragraph 14.

15. Denied as stated. It is denied that MDJ Muth ever watched a video the subject of which is set forth in paragraph 14 nor was he ever aware that Clerk A or anyone else ever saw or viewed him viewing either photographs or videos as set forth in paragraph 14.

16. Denied. It is denied that MDJ Muth was viewing a video the subject of which is set forth in paragraph 14. It is further denied that the computer screen at issue was positioned so that any person walking into chambers could see what was on the monitor. To the contrary, MDJ Muth believed his computer screen was positioned in a manner so that only he could view it.

17. Denied as stated. MDJ Muth is unable to either affirm or denied that a specific clerk walked into his chambers at some point during the 7 ½ year period set forth in paragraph 17.

18. MDJ Muth is without information sufficient to form a belief as to the truth or accuracy of this averment.

19. MDJ Muth is without information sufficient to form a belief as to the truth or accuracy of this averment.

20. MDJ Muth is without information sufficient to form a belief as to the truth or accuracy of this averment.

21. MDJ Muth is without information sufficient to form a belief as to the truth or accuracy of this averment.

22. Denied as stated. MDJ Muth is unable to either admit or deny the allegations set forth as he was never aware that any individual viewed him viewing any photographs the subject of which are set forth in paragraph 21.

23. Denied as stated. MDJ Muth is unable to either admit or deny the allegations set forth as he was never aware that any individual viewed him viewing any photographs the subject of which are set forth in paragraph 23.

24. Denied as stated. MDJ Muth is unable to either affirm or deny that a specific clerk walked into his chambers at some point during the 4 year period set forth in paragraph 24.

25. MDJ Muth is without information sufficient to form a belief as to the truth or accuracy of this averment.

26. MDJ Muth is without information sufficient to form a belief as to the truth or accuracy of this averment.

27. MDJ Muth is without information sufficient to form a belief as to the truth or accuracy of this averment.

28. Denied as stated. MDJ Muth is unable to either admit or deny the allegations set forth as he was never aware that any individual viewed him viewing any photographs the subject of which are set forth in paragraph 28.

29. Denied as stated. MDJ Muth is unable to either admit or deny the allegations set forth as he was never aware that any individual viewed him viewing any photographs the subject of which are set forth in paragraph 29.

30. Denied as stated. To the contrary, at MDJ Muth's February 24, 2017 board deposition, he only confirmed that he on rare occasion viewed photographs of naked or partially naked women on his personal computer in his judicial chambers that was not hooked up the internet, but he was never aware of doing so when he was or could have been observed by anyone else in the office.

B. Utilizing Court Staff and Court Equipment for Non-Court Related Tasks

The answers contained in paragraphs 1 through 30 above are incorporated herein by reference as if the same were set forth herein at length.

31. Admitted.

32. Admitted.

33. Admitted.

34. Admitted.

35. Admitted.

36. Admitted.

37. Denied as stated. It is admitted only that MDJ Muth requested, not directed, clerks to assist him in determining the number of correct and incorrect answers on examinations by utilizing a key. Said request was made with a specific contingency that said assistance would be rendered only if and when there was no formal court business to attend to.

38. Denied as stated. It is admitted only that MDJ Muth requested, not directed, clerks to assist him in determining the number of correct and incorrect answers on examinations by utilizing a key. Said request was made with a specific contingency that said assistance would be rendered only if and when there was no formal court business to attend to.

39. Denied as stated. It is admitted only that MDJ Muth requested, not directed, clerks to assist him in determining the number of correct and incorrect answers on examinations by utilizing a key. Said request was made with a specific contingency that said assistance would be rendered only if and when there was no formal court business to attend to.

40. Admitted.

41. Denied as stated. The averment set forth in paragraph 41 is admitted with the caveat that MDJ Muth supplied most if not all of the required paper at his own expense for the photocopying affiliated with non-court related business.

42. Admitted.

43. Denied as stated. The averment set forth in paragraph 43 is admitted with the caveat that MDJ Muth supplied most if not all of the required paper at his own expense for the photocopying affiliated with non-court related business.

44. Denied as stated. The averment set forth in paragraph 44 is admitted with the caveat that MDJ Muth supplied most if not all of the required paper at his own expense for the photocopying affiliated with non-court related business.

45. Denied as stated. The averment set forth in paragraph 45 is admitted with the caveat that MDJ Muth supplied most if not all of the required paper at his own expense for the photocopying affiliated with non-court related business.

C. Charges

COUNT I
VIOLATION OF RULE 2a OF THE OLD R.G.S.C.M.D.J

The answers contained in paragraphs 1 through 45 above are incorporated herein by reference as if the same were set forth herein at length.

46. Denied as a conclusion of law to which no response is required. To the extent a response is deemed required, it was denied that MDJ Muth violated Rule 2(a) of the old R.G.S.C.M.D.J. None of the facts set forth in the Complaint give rise to a violation of Rule 2(a). None of the asserted conduct gives rise to a finding of non-compliance with the law nor was any member of the public aware of said activity so that its confidence in the integrity and impartiality of the judiciary would be impacted.

47. Denied as a conclusion of law to which no response is required. To the extent a response is deemed required, it was denied that MDJ Muth violated Rule 2(a) of the old R.G.S.C.M.D.J. None of the facts set forth in the Complaint give rise to a violation of Rule 2(a). None of the asserted conduct gives rise to a finding of non-compliance with the law nor was any member of the public aware of said activity so that its confidence in the integrity and impartiality of the judiciary would be impacted.

48. Denied as a conclusion of law to which no response is required. To the extent a response is deemed required, it was denied that MDJ Muth violated Rule 2(a) of the old R.G.S.C.M.D.J. None of the facts set forth in the Complaint give rise to a violation of Rule 2(a). None of the asserted conduct gives rise to a finding of non-compliance with the law nor was any member of the public aware of said activity so that its confidence in the integrity and impartiality of the judiciary would be impacted.

49. Denied as a conclusion of law to which no response is required. To the extent a response is deemed required, it was denied that MDJ Muth violated Rule 2(a) of the old R.G.S.C.M.D.J. None of the facts set forth in the Complaint give rise to a violation of Rule 2(a). None of the asserted conduct gives rise to a finding of non-compliance with the law nor was any member of the public aware of said activity so that its confidence in the integrity and impartiality of the judiciary would be impacted.

50. Denied as stated, as the UJS Supreme Court policy is a writing which speaks for itself and any characterization to the contrary is denied.

51. Denied as stated, as the UJS Supreme Court policy is a writing which speaks for itself and any characterization to the contrary is denied.

52. Denied as stated, as the UJS Supreme Court policy is a writing which speaks for itself and any characterization to the contrary is denied.

53. Denied as stated, as the UJS Supreme Court policy is a writing which speaks for itself and any characterization to the contrary is denied.

54. Denied as stated, as the UJS Supreme Court policy is a writing which speaks for itself and any characterization to the contrary is denied. By way of further response, it is denied that MDJ Muth displayed any sexually suggestive objects or pictures.

55. Denied as a conclusion of law to which no response is required. By way of further answer, it is denied that Clerks A, B and C were subject to sexual harassment, which requires an intent or purposeful engagement by the offending party. As previously set forth herein, MDJ Muth at no time was even aware that any court personnel viewed him viewing any video of a sexual content, the existence of which is denied, or any photographs depicting naked or partially naked women.

56. Denied as a conclusion of law to which no response is required. By way of further answer, it is denied that Clerks A, B and C were subject to sexual harassment, which requires an intent or purposeful engagement by the offending party. As previously set forth herein, MDJ Muth at no time was even aware that any court personnel viewed him viewing any video of a sexual content, the existence of which is denied, or any photographs depicting naked or partially naked women.

57. Denied as a conclusion of law to which no response is required. By way of further answer, it is denied that Clerks A, B and C were subject to sexual harassment, which requires an intent or purposeful engagement by the offending party. As previously set forth herein, MDJ Muth at no time was even aware that any court personnel viewed him viewing any video of a sexual content, the existence of which is denied, or any photographs depicting naked or partially naked women.

COUNT 2
VIOLATION OF RULE 4c OF THE OLD R.G.S.C.M.D.J

The answers contained in paragraphs 1 through 57 above are incorporated herein by reference as if the same were set forth herein at length.

58. Denied as a conclusion of law to which to no response is required. By way of further answer, it is denied that MDJ Muth violated old Rule 4(c) as at all times relevant hereto he was

patient, dignified and courtesy to those with whom he dealt. By way of further answer, at all times referenced in the Complaint, MDJ Muth was unaware that anyone viewed him watching his computer monitor viewing any video (the existence of which is denied) or photographs of naked or partially naked women.

59. Denied as a conclusion of law to which to no response is required. By way of further answer, it is denied that MDJ Muth violated old Rule 4(c) as at all times relevant hereto he was patient, dignified and courtesy to those with whom he dealt. By way of further answer, at all times referenced in the Complaint, MDJ Muth was unaware that anyone viewed him watching his computer monitor viewing any video (the existence of which is denied) or photographs of naked or partially naked women.

60. Denied as a conclusion of law to which to no response is required. By way of further answer, it is denied that MDJ Muth violated old Rule 4(c) as at all times relevant hereto he was patient, dignified and courtesy to those with whom he dealt. By way of further answer, at all times referenced in the Complaint, MDJ Muth was unaware that anyone viewed him watching his computer monitor viewing any video (the existence of which is denied) or photographs of naked or partially naked women.

61. Denied as a conclusion of law to which to no response is required. By way of further answer, it is denied that MDJ Muth violated old Rule 4(c) as at all times relevant hereto he was patient, dignified and courtesy to those with whom he dealt. By way of further answer, at all times referenced in the Complaint, MDJ Muth was unaware that anyone viewed him watching his computer monitor viewing any video (the existence of which is denied) or photographs of naked or partially naked women.

COUNT 3
VIOLATION OF RULE 5a OF THE OLD R.G.S.C.M.D.J

The answers contained in paragraphs 1 through 61 above are incorporated herein by reference as if the same were set forth herein at length.

62. Denied as a conclusion of to which no response is required. To the extent a response is deemed required, it is denied that MDJ Muth violated Rule 5(a) of the old R.G.S.C.M.D.J. By way of further answer, on the infrequent occasions that MDJ Muth requested, not directed, clerks to correct exams of students, it was done with the express caveat that all judicial related functions were completed and would not interfere with any work to be done on behalf of the court system.

63. Denied as a conclusion of to which no response is required. To the extent a response is deemed required, it is denied that MDJ Muth violated Rule 5(a) of the old R.G.S.C.M.D.J. By way of further answer, on the infrequent occasions that MDJ Muth requested, not directed, clerks to correct exams of students, it was done with the express caveat that all judicial related functions were completed and would not interfere with any work to be done on behalf of the court system.

64. Denied as a conclusion of to which no response is required. To the extent a response is deemed required, it is denied that MDJ Muth violated Rule 5(a) of the old R.G.S.C.M.D.J. By way of further answer, on the infrequent occasions that MDJ Muth requested, not directed, clerks to correct exams of students, it was done with the express caveat that all judicial related functions were completed and would not interfere with any work to be done on behalf of the court system.

65. Denied as a conclusion of to which no response is required. To the extent a response is deemed required, it is denied that MDJ Muth violated Rule 5(a) of the old R.G.S.C.M.D.J. By

way of further answer, on the infrequent occasions that MDJ Muth requested, not directed, clerks to correct exams of students, it was done with the express caveat that all judicial related functions were completed and would not interfere with any work to be done on behalf of the court system.

COUNT 4
VIOLATION OF RULE 3b OF THE OLD R.G.S.C.M.D.J

The answers contained in paragraphs 1 through 65 above are incorporated herein by reference as if the same were set forth herein at length.

66. Denied as a conclusion of law to which no response is required.

67. Admitted.

68. Denied as a conclusion of law to which no response is required. By way of further response, any use by MDJ Muth of court personnel occurred with the express caveat that all court related business had to be prioritized and completed. Moreover, the efforts of the court personnel to accomplish the tasks at issue constituted di minimus time.

69. Denied as a conclusion of law to which no response is required.

COUNT 5
VIOLATION OF RULE 2.1 OF THE NEW R.G.S.C.M.D.J

The answers contained in paragraphs 1 through 69 above are incorporated herein by reference as if the same were set forth herein at length.

70. Denied as a conclusion of law to which no response is required. To the extent a response is deemed required, it is denied that MDJ Muth violated new Rule 2.1 of the R.G.S.C.M.D.J. To the contrary, at all times relevant hereto, MDJ Muth did in fact give precedence to the duties of his judicial office.

71. Denied as a conclusion of law to which no response is required. To the extent a response is deemed required, it is denied that MDJ Muth violated new Rule 2.1 of the R.G.S.C.M.D.J. To the contrary, at all times relevant hereto, MDJ Muth did in fact give precedence to the duties of his judicial office.

72. Denied as a conclusion of law to which no response is required. To the extent a response is deemed required, it is denied that MDJ Muth violated new Rule 2.1 of the R.G.S.C.M.D.J. To the contrary, at all times relevant hereto, MDJ Muth did in fact give precedence to the duties of his judicial office. By way of further answer, as previously set forth herein, MDJ Muth requested, but did not direct, clerks to correct examinations of ESU's students only when there were no formal judicial duties or functions remaining outstanding to be performed by the clerks.

73. Denied as a conclusion of law to which no response is required. To the extent a response is deemed required, it is denied that MDJ Muth violated new Rule 2.1 of the R.G.S.C.M.D.J. To the contrary, at all times relevant hereto, MDJ Muth did in fact give precedence to the duties of his judicial office. By way of further answer, as previously set forth herein, MDJ Muth requested, but did not direct, clerks to make photocopies only when there were no formal judicial duties or functions remaining outstanding to be performed by the clerks.

74. Denied as a conclusion of law. To the extent a response is deemed required, said allegation is denied in that at all times relevant hereto, whether clerks were correcting examinations or making photocopies, it was always done with a specific caveat that all formal court related business had to first be completed.

COUNT 6
VIOLATION OF ARTICLE V, §17(b) OF THE
CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA

The answers contained in paragraphs 1 through 74 above are incorporated herein by reference as if the same were set forth herein at length.

75. Denied as a conclusion of law to which no response is required.

76. Admitted.

77. Denied as a conclusion of law to which no response is required. By way of further response, it is denied that MDJ Muth violated any old or new R.G.S.C.M.D.J.

78. Denied as a conclusion of law to which no response is required. By way of further response, it is denied that MDJ Muth violated any old or new R.G.S.C.M.D.J.

79. Denied as a conclusion of law to which no response is required. By way of further response, it is denied that MDJ Muth violated any old or new R.G.S.C.M.D.J.

80. Denied as a conclusion of law to which no response is required.

COUNT 7
VIOLATION OF DISREPUTE CLAUSE OF ARTICLE V, §18(d)(1) OF THE
CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA

The answers contained in paragraphs 1 through 80 above are incorporated herein by reference as if the same were set forth herein at length.

81. Denied as a conclusion of law to which no response is required. To the extent a response is deemed required, it is denied that MDJ Muth violated the disrepute clause of Article 5, Section 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania. By way of further answer, at all times relevant hereto, no member of the public or those participants in the judicial system appearing before MDJ Muth were aware of the conduct giving rise to the allegations set forth in the Complaint.

82. Admitted.

83. Denied as a conclusion of law to which no response is required. To the extent a response is deemed required, it is denied that MDJ Muth violated the disrepute clause of Article 5, Section 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania. By way of further answer, at all times relevant hereto, no member of the public or those participants in the judicial system appearing before MDJ Muth were aware of the conduct giving rise to the allegations set forth in the Complaint.

84. Denied as a conclusion of law to which no response is required. To the extent a response is deemed required, it is denied that MDJ Muth violated the disrepute clause of Article 5, Section 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania. By way of further answer, at all times relevant hereto, no member of the public or those participants in the judicial system appearing before MDJ Muth were aware of the conduct giving rise to the allegations set forth in the Complaint.

COUNT 8
VIOLATION OF ARTICLE V, §18(d)(1) OF THE
CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA
BY A VIOLATION OF A RULE PRESCRIBED BY THE SUPREME COURT

The answers contained in paragraphs 1 through 84 above are incorporated herein by reference as if the same were set forth herein at length.

85. Denied as a conclusion of law to which no response is required. To the extent a response is deemed required, it is denied for the reasons previously set forth herein that MDJ Muth violated a canon or rule prescribed by the Supreme Court.

86. Admitted.

87. Denied as a conclusion of law to which no response is required. To the extent a response is deemed required, it is denied for the reasons previously set forth herein that MDJ Muth violated a canon or rule prescribed by the Supreme Court.

88. Denied as a conclusion of law to which no response is required. To the extent a response is deemed required, it is denied for the reasons previously set forth herein that MDJ Muth violated a canon or rule prescribed by the Supreme Court.

WHEREFORE, Michael R. Muth, a Magisterial District Judge of Monroe County Pennsylvania, requests that the Court of Judicial Discipline find in his favor and that the Complaint against him be dismissed with prejudice.

NEW MATTER

1. Until receipt of JCB's letter, MDJ Muth was unaware that anyone had even seen him looking at any pornographic photos, and he thought the subject computer which he personally owned (it was not government property) was positioned in such a manner so that no one else could view what was on that screen, especially with MDJ Muth sitting in front of the computer screen.

2. MDJ Muth has no personal knowledge of what any of the clerks actually saw and no one previously brought their concerns to him or informed him of what they had seen.

3. MDJ Muth never viewed any pornographic videos.

4. MDJ Muth's viewing of pornographic photos always occurred on his personal computer which was not integrated into or part of the court system.

5. MDJ Muth's infrequent viewing of pornographic photos always occurred via pre-loaded pictures and not through the internet.

6. MDJ Muth never forwarded nor received any pornographic photos to or from others via email or otherwise.

7. MDJ Muth never purposefully showed any pornographic photos to another person.

8. MDJ Muth's viewing of pornographic photos never interfered with the timely performance of his judicial functions.

9. MDJ Muth on occasion requested court personnel to assist him to assess how many correct/incorrect answers students would get on a multiple choice objective tests administered by him in his role as a part-time assistant professor at East Stroudsburg University but never requested assistance from court personnel in conjunction with research papers.

10. MDJ Muth's requests to court personnel for assistance on East Stroudsburg University matters would never be prioritized over court business, there was frequently "down time" for such personnel and the time involved was relatively di minimus.

11. MDJ Muth requested, but did not require, the clerk's assistance and no one ever objected to performing those tasks; had they done so, he would never have again requested their assistance for that task.

12. While MDJ Muth's used the district court copier and attendant toner, he personally purchased the vast majority if not all of the paper on which the copies were made for his students.

13. MDJ Muth requested, but did not require, court personnel to assist in making copies of a three page article for dissemination to his students, and no such copies were made for the last three years.

14. With reference to the pornographic material, MDJ Muth's conduct was apparently only observed by three court personnel on five occasions over a lengthy, period encompassing many

years, but the alleged conduct was not observed by any member of the public or any lawyers or parties appearing before the Court.

15. While MDJ Muth is mortified that even the clerks viewed his activity, his integrity and impartiality as a jurist was not implicated.

16. MDJ Muth's use of his clerks to assist him with his teaching obligations was only done when there was no court business for them to otherwise attend to and was not subject to the knowledge of any members of the public or any lawyers or parties appearing before the Court.

17. MDJ Muth's use of clerks to make copies did not in any manner impact anyone's perception of his integrity and impartiality as a jurist and he personally directed his staff to always give priority to formal court business and obligations.

18. MDJ Muth apologizes for the subject conduct set forth in the Complaint, but he respectfully disagrees that such conduct necessarily violates the cited Rules and Canons set forth.

WHEREFORE, Michael R. Muth, a Magisterial District Judge of Monroe County Pennsylvania, requests that the Court of Judicial Discipline find in his favor and that the Complaint against him be dismissed with prejudice.

Respectfully submitted,

LAMB McERLANE PC

Date: August 1, 2017

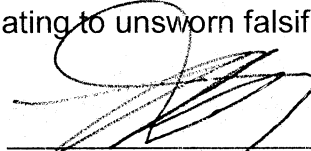
BY: 

Joel L. Frank – I.D. #46601
Lamb McErlane, PC
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Post Office Box 565
West Chester, PA 19381-0565
jfrank@lambmcerlane.com

VERIFICATION

I verify that the statements made herein are true and correct to the best of my knowledge, information, and belief. I understand that false statements are subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

DATED: 7-28-17



Michael R. Muth

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 Judicial Conduct Board Pennsylvania Judicial Ctr 601 Commonwealth Avenue, Ste 3500 PO Box 62525 Harrisburg, PA 17106	Via First Class Mail	August 1, 2017

LAMB McERLANE PC

Date: August 1, 2017

BY: 

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