

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

2016 FEB -1 P 4: 35

IN RE:

J. Michael Eakin
Justice of
The Supreme Court of Pennsylvania

.....

13 JD 2015

RECEIVED AND FILED
COURT OF JUDICIAL DISCIPLINE
OF THE COMMONWEALTH OF PENNSYLVANIA
2016 FEB 01 10:32 P 4: 24

STATUS REPORT REGARDING COURT SUBPOENA

AND NOW, this 1st day of February, 2016, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (the Board), by and through undersigned counsel, and files this Status Report regarding the subpoena issued by this Court to Kathleen G. Kane, Attorney General of the Commonwealth of Pennsylvania (AG Kane), and avers the following:

1. This Court is defined by Article V, § 18(b)(5) of the Pennsylvania Constitution as a "court of record, with all the attendant duties and powers appropriate to its function."
2. Among the attendant powers of courts of record is the power to compel the attendance of witnesses and the production of books, papers, documents and other physical evidence by subpoena and, if necessary, adjudge any contempt against that procedure.
3. This Court's power to compel the production of witnesses or evidence by subpoena is governed by Pennsylvania Court of Judicial Discipline Rule of Procedure 124, which states the following:
 - (A) The Court may compel by subpoena the attendance of witnesses and the production of books, papers, documents, and other physical evidence at a deposition, hearing or trial held pursuant to these rules.
 - (B) Upon the request of a party, the Clerk shall issue a

subpoena under the seal of the Court, signed by the Court but otherwise blank, substantially in the form prescribed by Pa.R.C.P. No. 234.6 or Pa.R.C.P. No. 234.8.

- (C) Subpoenas shall be served as provided in Rule 122.
 - (D) If a witness fails to comply with a subpoena, the [C]ourt may issue a bench warrant and if the failure to comply is willful may adjudge the witness to be in contempt.
4. On December 11, 2015, pursuant to this Court's Order of December 10, 2015, the Court issued a subpoena against AG Kane requiring her to "conduct a search for all e-mails that may be found, on Office of Attorney General servers or otherwise which touch, reflect or concern e-mails sent to or from any e-mail account associated with Justice Eakin which utilize government equipment, for the period of January 1, 2008, and continuing through the present time, on which the subject or substance of the communication was sexually explicit, misogynistic, ethnically insensitive, racist or homophobic material." A copy of the December 11, 2015 subpoena is attached hereto as Board Exhibit "A."
 5. On December 14, 2015, Board Investigator John C. "Jack" Harlacker, attempted physical service of this Court's subpoena upon AG Kane at the Office of Attorney General, located on the 16th Floor, Strawberry Square, Harrisburg, PA, on December 14, 2015.
 6. AG Kane's employees at the Office of Attorney General refused to accept physical service of the subpoena on December 14, 2015.
 7. On December 15, 2015, following a meeting with Salvatore Cognetti, Esquire, special counsel to this Court, and Justice Eakin's counsel, Board Counsel requested a new subpoena to issue against AG Kane requiring her to "conduct a search for all e-mails that may be found, on Office of Attorney General servers which touch, reflect, or concern e-mails sent to or from any e-mail account associated with Justice Eakin which utilize government equipment, for the period of January 1, 2008, and continuing through the present time, on which the subject or substance of the communication was sexually explicit, misogynistic, ethnically insensitive, racist or homophobic material."

8. On December 15, 2015, this Court issued a new subpoena against AG Kane. A copy of the December 15, 2015 subpoena is attached hereto as Board Exhibit "B."
9. On December 17, 2015, pursuant to Pennsylvania Court of Judicial Discipline Rule 122(F)(2)(i), the Board mailed the December 15, 2015 subpoena to AG Kane at her headquarters by certified mail.
10. On December 21, 2015, the Board received the signed return receipt card for the mailed December 15, 2015 subpoena.
11. The signed return receipt card indicated that the subpoena was received by AG Kane's headquarters on December 17, 2015. A copy of the signed return receipt card is attached hereto as Board Exhibit "C."
12. Though the subpoena was served in accordance with this Court's Rules and the compliance date of the subpoena has passed, AG Kane has not, to date, complied with or attempted to comply with the terms of the December 15, 2015 subpoena.
13. AG Kane's disregard of this Court's subpoena follows her inconsistent and capricious record of compliance with the Board's attempts to obtain all of the emails relevant to its investigation and to ensure the emails that it had obtained previously were, in fact, the complete set of emails in AG Kane's possession.

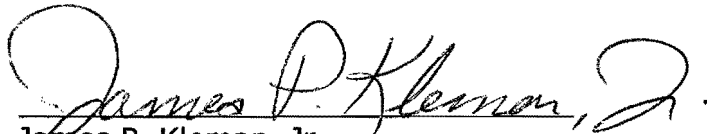
WHEREFORE, the Board files this status report regarding AG Kane's failure to comply with this Court's lawful subpoena, so that it may take any action it deems appropriate.

Respectfully submitted,

FRANCIS J. PUSKAS, II
Deputy Chief Counsel

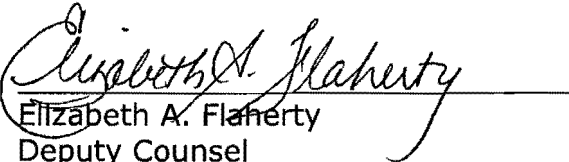
DATE: February 1, 2016

BY:



James P. Kleman, Jr.
Deputy Counsel
Pa. Supreme Court ID No. 87637

BY:



Elizabeth A. Flaherty
Deputy Counsel
Pa. Supreme Court ID No. 205575

Judicial Conduct Board
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 3500
P.O. Box 62525
Harrisburg, PA 17106
(717) 234-7911

**COURT OF JUDICIAL DISCIPLINE
COMMONWEALTH OF PENNSYLVANIA**

IN RE:

J. Michael Eakin : **Court of Judicial Discipline**
Justice of the Supreme Court : **Docket No. 13 JD 15**
of Pennsylvania :

SUBPOENA

TO: KATHLEEN G. KANE, ATTORNEY GENERAL OF PENNSYLVANIA

1. You are hereby ordered to follow the directions set forth in paragraph 2 and to cause the items described therein to be delivered to the Judicial Conduct Board, 601 Commonwealth Avenue, Suite 3500, Harrisburg, Pennsylvania, on or before 5:00 p.m. on January 10, 2016.

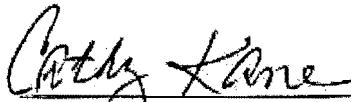
2. You are directed to diligently conduct a search for all e-mails that may be found, whether on Office of Attorney General servers or otherwise which touch, reflect or concern e-mails sent to or from any e-mail account associated with Justice Eakin which utilize government equipment, for the period of January 1, 2008, and continuing through the present time, on which the subject or substance of the communication was sexually explicit, misogynistic, ethnically insensitive, racist or homophobic material.

The Office of the Attorney General shall produce to the Judicial Conduct Board all such e-mails, in electronic form, with all associated metadata, not later than January 10, 2016, along with an Affidavit averring that the e-mails so produced represent all of the e-mails in your possession, custody or control, whether on Office of Attorney General servers or otherwise.

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 124(D) of the Pennsylvania Court of Judicial Discipline Rules of Procedure.

Issued by:

BY THE COURT:



Cathy Kane
Clerk of Court

Date:

Seal of the Court

CERTIFIED FROM THE RECORD

DEC 11 2015


Cathy Kane
Clerk of Court

No. _____

Court Subpoena

**COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA**

IN RE: _____

Court of Judicial Discipline of Pennsylvania
COMMONWEALTH OF PENNSYLVANIA, ss:

On the _____ day of _____, 19____, I, _____

served _____
(name of person served)

with the foregoing Subpoena by:

(Describe method of service):

I verify that the statements in this return of service are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating the unsworn falsification to authorities.

Date _____ (signature)

COPY

**COURT OF JUDICIAL DISCIPLINE
COMMONWEALTH OF PENNSYLVANIA**

IN RE:

J. Michael Eakin : **Court of Judicial Discipline**
Justice of the Supreme Court : **Docket No. 13 JD 15**
of Pennsylvania :

SUBPOENA

TO: KATHLEEN G. KANE, ATTORNEY GENERAL OF PENNSYLVANIA

1. You are hereby ordered to follow the directions set forth in paragraph 2 and to cause the items described therein to be delivered to the Judicial Conduct Board, 601 Commonwealth Avenue, Suite 3500, Harrisburg, Pennsylvania, on or before 5:00 p.m. on January 10, 2016.
2. You are directed to diligently conduct a search for all e-mails that may be found, on Office of Attorney General servers which touch, reflect or concern e-mails sent to or from any e-mail account associated with Justice Eakin which utilize government equipment, for the period of January 1, 2008, and continuing through the present time, on which the subject or substance of the communication was sexually explicit, misogynistic, ethnically insensitive, racist or homophobic material.

The Office of the Attorney General shall produce to the Judicial Conduct Board all such e-mails, in electronic form, with all associated metadata, not later than January 10, 2016, along with an Affidavit averring that the e-mails so produced represent all of the e-mails in your possession, custody or control, whether on Office of Attorney General servers or otherwise.

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 124(D) of the Pennsylvania Court of Judicial Discipline Rules of Procedure.

Issued by:

CERTIFIED FROM THE RECORD

DEC 15 2015

Date:

Cathy Kane
Clerk of Court

Seal of the Court

BY THE COURT:

Cathy Kane
Cathy Kane
Clerk of Court

7267 7145 5273 0450 0184

RE: 13JD2015

CERTIFIED MAIL

No. _____

Court Subpoena

COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

IN RE: _____

Court of Judicial Discipline of Pennsylvania
COMMONWEALTH OF PENNSYLVANIA, ss:

On the _____ day of _____, 19____, I, _____

served _____
(name of person served)

with the foregoing Subpoena by:

(Describe method of service):

I verify that the statements in this return of service are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating the unsworn falsification to authorities.

Date _____ (signature)

HARRISBURG PA 17120-0901
601 COMMONWEALTH AVE.
SUITE 3500
P.O. BOX 62525

4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	3. Service Type CERTIFIED
2. Article Number 7161 7145 5373 0450 0184	

COMPLETE THIS SECTION ON DELIVERY

A. Received By: (Please Print Clearly)

B. Signature: (Addressee or Agent)

C. Date of Delivery: DEC 17 2013

D. Addressee's Address (If Different From Address Used by Sender)

Secondary Address / Suite / Apt / Floor (Please Print Clearly)

Delivery Address

City State ZIP + 4 Code



7161 7145 5373 0450 0184

1. Article Addressed To:

ATTORNEY GENERAL KATHLEEN G. KANE
COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
STRAWBERRY SQUARE, 16TH FLOOR
HARRISBURG PA 17120

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

PS FORM 3811, JULY 1988
JESSICA CMF-088 800

RECEIVED
DEC 21 2015
JUDICIAL CONDUCT
BOARD

RETURN TO:

RE: 13JD2015
HARRISBURG PA 17120-0901
601 COMMONWEALTH AVE.
SUITE 3500
P.O. BOX 62525



**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

J. Michael Eakin
Justice of
The Supreme Court of Pennsylvania

:
:
:
:
:

13 JD 2015

PROOF OF SERVICE

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on December 4, 2015, a copy of the Board's Status Report was sent by first class mail, return receipt requested, to William C. Costopoulos, Esquire, and Heidi Eakin, Esquire, counsel for Justice Eakin, and AG Kane at the following addresses:

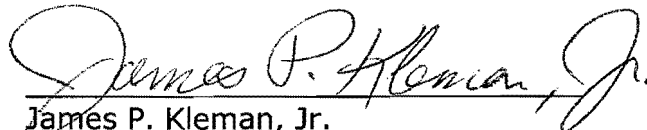
William C. Costopoulos, Esquire
Heidi F. Eakin, Esquire
Costopoulos, Foster & Fields
831 Market Street
Lemoyne, PA 17043

Attorney General Kathleen G. Kane
Commonwealth of Pennsylvania
Office of Attorney General
Strawberry Square, 16th Floor
Harrisburg, PA 17120

Respectfully submitted,

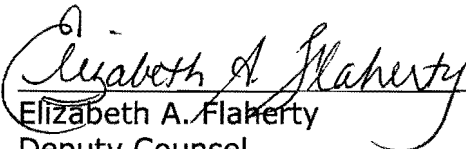
DATE: February 1, 2016

BY:



James P. Kleman, Jr.
Deputy Counsel

Pa. Supreme Court ID No. 87637

BY: 
Elizabeth A. Flaherty
Deputy Counsel
Pa. Supreme Court ID No. 205575

Judicial Conduct Board
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 3500
P.O. Box 62525
Harrisburg, PA 17106
(717) 234-7911