

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

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COURT OF  
JUDICIAL DISCIPLINE  
OF PENNSYLVANIA

2017 AUG 29 P 1:23

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

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**JUDICIAL OFFICER MICHAEL R. MUTH'S RESPONSE TO  
JUDICIAL CONDUCT BOARD'S PETITION FOR RELIEF  
TO STRIKE NEW MATTER**

Magisterial Justice Michael R. Muth, by and through his undersigned counsel, Lamb McErlane PC, hereby files this answer to Petition for Relief as follows:

1. Admitted.
2. Denied as stated. To the contrary, it is admitted only that via correspondence dated on or about July 5, 2017 the Judicial Conduct Board provided the Judicial Officer with documentation pertaining to the Complaint.
3. Denied as stated. To the contrary, it is admitted only that by correspondence dated July 24, 2017 the Judicial Conduct Board provided the Judicial Officer with some discoverable evidence pertaining to the Complaint.
4. Admitted.
5. Admitted.
6. Admitted.
7. Denied as stated as Rule 411(A) of the C.J.D.R.P speaks for itself.

8. Admitted. By way of further response, the filing of an Omnibus Motion as referenced within Rule 411(a) is discretionary, not mandatory.

9. Denied as stated as Rule 413 of the C.J.D.R.P. speaks for itself.

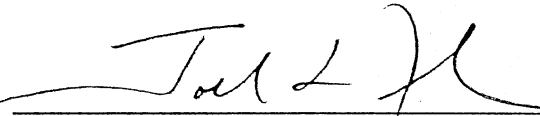
10. Denied. To the contrary, the Court of Judicial Discipline Rules of Procedure are silent on whether New Matter may be asserted as part of a Judicial Officer's Answer to a Board Complaint. However, Rule 413 states in relevant part that "no additional pleading will be accepted." *emphasis added*. By way of analogy, the Pennsylvania Rules of Civil Procedure and attendant case law unequivocally require that all Affirmative Defenses be asserted in a responsive pleading [as defined and allowed under Pa.R.C.P 1017] under the heading "New Matter", not as a separate pleading Pa.R.C.P. 1030. Consequently, the language contained within JCB Rule 413 that "no additional pleading will be accepted", is of no consequence since New Matter itself is not a separate or additional pleading. Lastly, in the matter of In re: Eakin, 150 A.3rd 1042 (Pa. Ct. Jud. Disc. 2016), former Supreme Court Justice Eakin filed an Answer to the Board's Complaint containing thirteen (13) paragraphs of New Matter under a separate heading and no Petition challenging the propriety of his assertion of New Matter was ever filed. The New Matter asserted by MDJ Muth is not a separate or additional pleading but rather is merely pled under a separate heading pursuant to a permissible responsive pleading under Rule 413.

11. Admitted.

WHEREFORE, Magisterial District Justice Michael R. Muth requests that this Honorable Court deny the Judicial Conduct Board's Petition for Relief to Strike his New Matter.

Respectfully submitted,  
**LAMB McERLANE PC**

Date: 8/28/17

BY:  \_\_\_\_\_

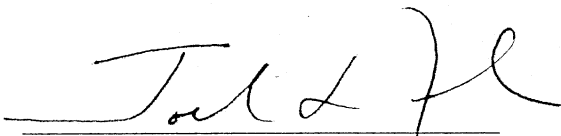
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VERIFICATION

I, Joel L. Frank, Esquire, do aver that I am counsel for and authorized to make this verification for the foregoing filing and verify that the statements set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_

8/28/17



Joel L. Frank, Esquire

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**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<br>Assistant Counsel<br>Judicial Conduct Board<br>Pennsylvania Judicial Ctr<br>601 Commonwealth Avenue, Ste 3500<br>PO Box 62525<br>Harrisburg, PA 17106 | Via First Class and<br>Electronic Mail | August 28, 2017        |

LAMB McERLANE PC

Date: August 28, 2017

BY: 

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