

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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2018 FEB 13 AM 11:37

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

AND NOW, this _____ day of _____, 2018, upon consideration of Magisterial District Judge Michael R. Muth's Motion in Limine to Preclude the Report of Interview of Brenda Murray, it is hereby ORDERED and DECREED that the Motion is GRANTED. It is further ORDERED that any evidence or testimony regarding Judge Muth's alleged actions when he was in private practice, and not a magisterial district justice, shall not be offered or admitted into evidence at the hearing of this matter.

BY: _____

**COMMONWEALTH OF PENNSYLVANIA
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**MAGISTERIAL DISTRICT JUSTICE MICHAEL R. MUTH'S
MOTION IN LIMINE TO PRECLUDE
REPORT OF INTERVIEW AND TESTIMONY OF BRENDA MURRAY**

Magisterial District Justice Michael R. Muth, by and through his undersigned counsel, Lamb McErlane PC, hereby files this Motion in Limine in anticipation of the hearing scheduled in the above captioned matter.

1. During the course of the investigation of this matter, Paul Fontanes, the Judicial Conduct Board's ("JCB") investigator, interviewed an adult individual named Brenda Murray.
2. The JCB produced a Report of Interview of Ms. Murray dated January 3, 2018.
3. According to the Report of Interview, Ms. Murray is Judge Zulick's secretary, a position she has held since he was elected 12 years ago. Prior to that, Ms. Murray was Judge Zulick's secretary at the law firm he owned with Magisterial District Justice Michael Muth.
4. The subject of Ms. Murray's interview related exclusively to an alleged incident, which purportedly took place while MDJ Muth was in private practice, at his law firm, before he was elected to the position of magisterial district judge.

5. The ultimate issue in this matter is whether MDJ Muth violated the Old and New Rules Governing Standards of Conduct of Magisterial District Judges in his capacity as a magisterial district judge.

6. Any alleged activity prior to MDJ Muth's election into office is entirely irrelevant to the present proceedings.

7. Pursuant to Pennsylvania Rule of Evidence 402, "[e]vidence that is not relevant is not admissible." It is well-settled in Pennsylvania that "[e]vidence which tends to establish some fact material to the case, or which tends to make a fact at issue more or less probable, is relevant." Pa. R.E. 401; *Commonwealth v. Scott*, 389 A.2d 79, 82 (Pa. 1978).

8. JCB's claims against MDJ Muth solely relate to his alleged conduct which purportedly took place during his tenure as a magisterial district judge and whether such conduct violates the established rules all magisterial district judges must follow.

9. Admission of the Report of Interview and any attendant testimony at the hearing will not make any fact regarding MDJ Muth's actions while holding the office of magisterial district judge more or less probable.

10. The introduction of the Report and attendant testimony could easily improperly prejudice the panel.

11. Thus, pursuant to Pa. R.E 402 the JCB must be precluded from introducing the Report of Interview, including any evidence or testimony related to the Report of Interview.

12. The JCB also must be precluded from introducing any evidence or testimony regarding MDJ Muth's actions prior to his election to the office of magisterial district judge.

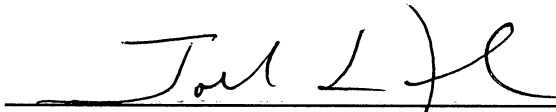
WHEREFORE, for the reasons set forth herein, Magisterial District Justice Michael R. Muth respectfully requests that the JCB be precluded from introducing the Report of Interview of

Brenda Murray, or any evidence or testimony at the hearing regarding Judge Muth's alleged actions when he was in private practice, and not a magisterial district judge.

Respectfully submitted,

LAMB McERLANE PC

Date: 2/12/18

BY: 

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CERTIFICATE OF SERVICE

This is to certify that complete copies of all papers contained in the foregoing *Motion In Limine* 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 Electronic & Regular Mail	February 12, 2018

LAMB McERLANE PC

Date: February 12, 2018

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