

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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OF PENNSYLVANIA

2018 FEB 13 AM 11:36

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 Photographs, it is hereby ORDERED and DECREED that the Motion is GRANTED. It is further ORDERED that the 16 Photographs produced in discovery shall not be offered or admitted into evidence at the hearing of this matter.

BY: _____

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**MAGISTERIAL DISTRICT JUSTICE
MICHAEL R. MUTH'S
MOTION IN LIMINE TO PRECLUDE THE PHOTOGRAPHS**

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. Pursuant to the Judicial Conduct Board's ("JCB") Pre-Trial Memorandum dated November 15, 2017, the JCB intends to introduce sixteen (16) photographs of naked and/or partially naked women at the hearing of this matter ("Photographs").

2. MDJ Muth produced the Photographs in the course of discovery only as representative examples of those photographs that were stored on his private computer.

3. MDJ Muth has verified that he, on rare occasion, viewed certain photographs of naked and/or partially naked women on his personal computer in his judicial chambers, that was not hooked up the internet and was not integrated into or part of the court system. When he on rare occasion reviewed the photographs, he was never aware of doing so when he was or could have been observed by anyone else in the office.

4. MDJ Muth at no time was even aware that any court personnel observed him viewing any of the photographs as he thought his personal computer 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.

5. MDJ Muth's conduct was apparently only observed by three court personnel on five occasions over a lengthy period encompassing many years.

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

7. The JCB has neither identified nor produced any evidence or testimony as to which, if any, of the Photographs the three court personnel allegedly viewed on MDJ Muth's personal computer.

8. Without identifying which of the Photographs the court personnel purportedly viewed, the Photographs the JCB seeks to introduce are irrelevant to the proceedings and prejudicial to MDJ Muth.

9. Further, MDJ Muth has admitted that he, on rare occasion, viewed photographs on his personal computer in his judicial chambers. As such, there is no factual dispute as to whether he viewed images of the type the Photographs generally portray.

10. 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).

11. Admission of the Photographs at the hearing will not make any fact more or less probable.

12. MDJ Muth admitted he viewed photographs of naked and/or partially naked women in his judicial chambers. Thus, admission of the actual Photographs is unnecessary to prove this fact since it already is undisputed.

13. Further, all 16 Photographs are irrelevant because the court personnel has not and cannot identify which Photograph(s) they allegedly viewed. Thus, admission of the Photographs will not make whether they viewed the Photographs more or less probable.

14. Pursuant to Pa. R.E. 403, “[t]he Court may exclude relevant evidence if its probative value is outweighed by a danger of ...: unfair prejudice ...”

15. The only purpose admission of the Photographs will serve is to prejudice the panel without any probative value.

16. Thus, pursuant to Pa. R.E 401, 402 and 403 the JCB must be precluded from introducing the Photographs and none of the Photographs should be admitted into evidence.

WHEREFORE, for the reasons set forth herein, Magisterial District Justice Michael R. Muth respectfully requests that the JCB be precluded from introducing and offering the 16 Photographs at the hearing.

Respectfully submitted,

LAMB McERLANE PC

Date: February 12, 2018

BY: 

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CERTIFICATE OF SERVICE

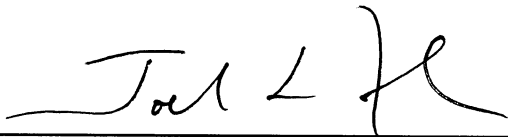
This is to certify that complete copies of all papers contained in the foregoing *Motion In Limine* has been served upon the following persons, by the following means and on the date stated:

<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 and Regular Mail	February 12, 2018

LAMB McERLANE PC

Date: February 12, 2018

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