

APR 12 2019

COMMONWEALTH OF PENNSYLVANIA
 COURT OF JUDICIAL DISCIPLINE COURT OF JUDICIAL DISCIPLINE
 OF PENNSYLVANIA

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

MAGISTERIAL DISTRICT JUSTICE
MICHAEL R. MUTH'S SANCTIONS MEMORANDUM

Magisterial District Justice Michael R. Muth, by and through his counsel Lamb McErlane, PC, submits this Sanctions Memorandum for the Court's consideration.

I. PROCEDURAL HISTORY

The Judicial Conduct Board ("JCB") filed its Complaint against Judge Muth on July 5, 2017, to which Judge Muth filed his Answer on August 2, 2017. The Pre-Trial conference was held on December 8, 2017. On January 31, 2018, Judge Muth and the JCB submitted their Joint Stipulations of Fact comprising 42 paragraphs. On October 31, 2018, this Court issued its Order and Opinion ("October 31st Opinion"). While the October 31st Opinion found that Judge Muth violated Counts 1, 2, and 4, and derivatively Counts 6 and 8, importantly the Court determined that Judge Muth did not violate Counts 3, 5 and 7, including significantly that Judge Muth did not by his conduct bring the judicial office into disrepute.

II. FINDINGS OF FACT

A. JUDGE MUTH'S BACKGROUND

1. Judge Muth started as a Magisterial District Judge in January 2006 and was subsequently reelected twice. (pg 110 – 6/5/18 trial transcript)

2. Judge Muth was the Chief Public Defender for Monroe County and held that position until his election to the bench. (pg 110 - 111 – 6/5/18 trial transcript)

3. Prior to becoming a Magisterial District Judge, Judge Muth worked in private practice doing primarily domestic relations work. (pg 111 – 6/5/18 trial transcript)

4. Judge Muth worked as the solicitor for the county mental health and mental retardation programs. He was also the solicitor for the county aging office dealing with their affairs and guardianships, holding these positions for over 15 years. (pg 111 – 6/5/18 trial transcript)

5. Judge Muth is married to his wife Margaret and they have one child, Jacob, who is 12 years old. He has a daughter from a previous marriage. (pg 112 – 6/5/18 trial transcript)

6. Judge Muth served on the board of directors for a program called Youth Employment Services. (pg 112 – 6/5/18 trial transcript)

7. Judge Muth was on the board of directors for the Carbon, Monroe and Pike Counties Drug & Alcohol Commission. (pg 113 – 6/5/18 trial transcript)

8. Judge Muth coached boys' baseball for about 15 years before switching to girls' softball which he coached for another 15 years. (pg 113-114 – 6/5/18 trial transcript)

9. Judge Muth also coached girls' basketball. He coached the Notre Dame Jr. High School team in East Stroudsburg as well as AAU basketball. (pg 114 – 6/5/18 trial transcript)

10. Judge Muth oversaw the Monroe County Bar Association's mock trial program. (pg 114 – 6/5/18 trial transcript)

11. Judge Muth was the editor of the Legal Reporter in Monroe County. Judge Muth has done mock trials in Monroe County and has coordinated that program for years. (pg 153 – 6/5/18 trial transcript)

B. PHOTOGRAPHS

12. The preloaded photographs were only viewed on Judge Muth's personal computer. (pg 118 – 6/5/18 trial transcript); CJD 10/31/18 Opinion, ¶ 8.

13. Judge Muth's personal computer was not integrated into, or part of, the court computer system, nor was it connected to the internet. (CJD 10/31/18 Opinion, ¶ 10)

14. Judge Muth never used the internet to view photos and never sent or received from anyone such photos via e-mail. He never showed, sent or disseminated the subject photos. (pg 118 – 6/5/18 trial transcript); CJD 10/31/18 Opinion, ¶ 14.

15. The images of naked and partially naked women were preloaded by Judge Muth onto his personal computer prior to the computer being installed in his judicial chambers. (CJD 10/31/18 Opinion, ¶ 12)

16. Judge Muth was not aware that anyone was watching him or saw him viewing the subject photographs. (pg 118 - 119 – 6/5/18 trial transcript)

17. Whenever Judge Muth became aware that one of the clerks in District Court 43-2-02 entered his judicial chambers while he was viewing the preloaded images on his personal computer screen, he would close the display in an effort to prevent the clerk from seeing the images. (pg 127 – 6/5/18 trial transcript); (CJD 10/31/18 Opinion, ¶ 16)

18. Judge Muth's conduct was not observed by any member of the public or any lawyers or parties appearing before him in Court. (CJD 10/31/18 Opinion, ¶ 17)

19. No court personnel ever informed Judge Muth that they observed him viewing images of naked and partially naked adult females. (CJD 10/31/18 Opinion, ¶ 18)

20. The first time Judge Muth became aware that anybody had actually seen the photos was when

he received the complaint from the Board. (pg 119 – 6/5/18 trial transcript)

21. Judge Muth never purposefully displayed the subject photos to anyone in his chambers or exposed another person to them at any time. (pg 119 – 6/5/18 trial transcript)

22. Judge Muth believed that his computer screen was positioned in a manner so that only he could view it. (Paragraph 16, Answer and New Matter of MDJ Muth)

23. Once a clerk started to announce herself in some fashion upon entering his office, the clerk never again saw Judge Muth looking at any similar types of photographs. (pg 33-34, 60 and 87-88 – 6/5/18 trial transcript)

24. In the performance of their duties, the Court clerks never had occasion to use Judge Muth's personal computer. (pg 36, 96 and 122 – 6/5/18 trial transcript)

25. Judge Muth never purposefully showed any clerk any type of pornographic photos or videos. (pg 62 – 6/5/18 trial transcript)

26. Judge Muth did not have any types of naked or partially naked displays in his office or chambers. (pg 62 – 6/5/18 trial transcript)

27. In the ten years one clerk worked for Judge Muth, she only saw the images one time several years ago, even though she would go into Judge Muth's office almost daily. (pg 99 – 6/5/18 trial transcript)

28. Judge Muth has impaired hearing. He wears two hearing aids, one in each ear, which he's had for about two and a half years. (pg 120 – 6/5/18 trial transcript)

29. Judge Muth's hearing impairment affects his ability to hear people entering into his office, especially if his back is turned. If his back was turned, he may not hear someone enter. (pg 121 – 6/5/18 trial transcript)

30. Viewing the photographs never impacted Judge Muth's judicial decision making process or his abilities in any fashion. (pg 121 – 6/5/18 trial transcript)

31. Viewing the photographs had nothing to do with Judge Muth's adjudicative responsibilities. (pg 121 – 6/5/18 trial transcript)

32. Viewing the photographs did not prevent Judge Muth from timely attending to his judicial-related duties. (pg 122 – 6/5/18 trial transcript)

33. Judge Muth never failed to prioritize his judicial-related responsibilities by virtue of looking at the subject photographs. (pg 122 – 6/5/18 trial transcript)

34. Viewing the photographs did not impact Judge Muth's integrity or impartiality as a jurist. (pg 122 – 6/5/18 trial transcript)

35. Viewing the photographs on the occasions that he did, did not impact the manner in which Judge Muth interacted with litigants, witnesses or lawyers that were in front of him. (pg 122 – 6/5/18 trial transcript)

36. There were never any images of naked or partially naked women on Judge Muth's personal computer screen when he was not sitting directly in front of it. (pg 125 – 6/5/18 trial transcript)

37. Judge Muth never displayed depictions of naked or semi-naked women in any manner throughout the office or his chambers. (pg 125 – 6/5/18 trial transcript)

38. Since receiving the notice from the Judicial Conduct Board, Judge Muth has not viewed such images at work. (pg 128 – 6/5/18 trial transcript)

39. If someone would have brought to Judge Muth's attention the fact that they observed him viewing photos prior to receiving a letter from the Board, he would have apologized to them and would have wiped the photos off. To have anyone view the photo for even a brief period of time is

something Judge Muth would never intentionally do. (pg 129 – 6/5/18 trial transcript)

C. EAST STROUDSBURG UNIVERSITY

40. When the clerks had down time in the office, Judge Muth would ask them to make copies of either exams or handouts for his classes. (pg 50 – 6/5/18 trial transcript); CJD 10/31/18 Opinion ¶ 37. This was only done two times a semester, for a midterm and a final exam. (pg 50 – 6/5/18 trial transcript); CJD 10/31/18 Opinion ¶ 24.

41. Judge Muth personally purchased and supplied a carton of paper on which copies of documents for his ESU students were made by the clerks. CJD 10/31/18 Opinion ¶ 42.

42. It took one clerk maybe ten minutes to do the requested photocopying. (pg 61 – 6/5/18 trial transcript)

43. When Judge Muth asked clerks to do certain things related to East Stroudsburg University, they understood that all court-related duties had to first be completed. The same was true for the grading of exams. (pg 61-62 – 6/5/18 trial transcript); CJD 10/31/18 Opinion ¶s 27, 29, 35 and 37.

44. There was down time for clerks from doing judicial-related functions during the course of a given week. (pg 64 – 6/5/18 trial transcript)

45. Clerks were still able to get court-related work done on time despite marking the exams and making photocopies. (pg 64, 77-78, 80 and 101-102 – 6/5/18 trial transcript)

46. An hour or less for each of the two semesters would be expended on marking the exams. (pg 131 – 6/5/18 trial transcript)

47. Judge Muth asked the clerks to mark the exams with the specific caveat that they do so only after the court-related functions were completed. He didn't put a whole lot of thought into it when he asked them to do it. He used the same process as when he taught while in his private practice. (pg

132 – 6/5/18 trial transcript)

48. There was down time during the course of a week from the normal, required judicial-related functions. (pg 133 – 6/5/18 trial transcript)

49. There was never an occasion at any time where court-related work did not get done by staff or by clerks because they had to mark the exams. (pg 133 – 6/5/18 trial transcript)

50. No one ever expressed an unwillingness or displeasure to Judge Muth about marking the exams. If they had he would not have had them continue to do it. (pg 133 - 134 – 6/5/18 trial transcript)

51. At East Stroudsburg University, Judge Muth taught his students criminal process, procedural criminal law, and constitutional criminal law. (pg 135 – 6/5/18 trial transcript.)

52. After the charges hit the newspaper, Judge Muth was terminated from his position with East Stroudsburg University. (pg 136 – 6/5/18 trial transcript)

D. JUDGE MUTH'S CHARACTER/REPUTATION

53. In the seven or so years Clerk Kathy Goida worked with Judge Muth, she considered him to be fair and even tempered. Kathy Goida also found Judge Muth to be patient, dignified, and courteous with the office staff as well as those appearing in front of him. (pg 36 – 6/5/18 trial transcript)

54. Kathy Goida did not believe Judge Muth viewing the photos impacted his ability to do his judicial related functions as a magisterial district court judge. (pg 37 – 6/5/18 trial transcript)

55. Judge Muth was strict but was cordial with his staff. Judge Muth was a normal boss. (pg 55 – 6/5/18 trial transcript)

56. Clerk Amy VanNorman considers Judge Muth to be a good judge. He is fair, even tempered, patient, dignified and courteous to her and other office staff. (pg 63 – 6/5/18 trial transcript)

57. Clerk Melissa Barrara's everyday interactions with Judge Muth were cordial. They had an amicable relationship. She never observed Judge Muth behaving in a way that was outside the norm or ordinary. Judge Muth was always professional with her and never acted inappropriately. (pg 79 – 6/5/18 trial transcript)

58. Clerk Meredith Pelak-Rea believed Judge Muth was a great boss. (pg 100 – 6/5/18 trial transcript)

59. Judge Muth attended Meredith Pelak-Rea's wedding. (pg 100 – 6/5/18 trial transcript)

60. Judge Muth came to the hospital when Meredith Pelak-Rea's son was born. (pg 100 – 6/5/18 trial transcript)

61. Meredith Pelak-Rea considers Judge Muth to be fair, even tempered, patient, dignified and courteous. She observed Judge Muth manifest these same traits with others within the office. (pg 103 – 6/5/18 trial transcript)

62. Brian Gaglione, Esquire has been in Monroe County for almost 50 years. (pg 150 – 6/5/18 trial transcript)

63. Brian Gaglione, Esquire has been an attorney since 1993. (pg 150 – 6/5/18 trial transcript)

64. Brian Gaglione, Esquire has known Judge Muth professionally and personally for 37 years. He first knew him at the age of 13. (pg 150 – 6/5/18 trial transcript)

65. When Brian Gaglione, Esquire first started in his profession, he saw Judge Muth daily. Judge Muth was the chief public defender and Brian Gaglione, Esquire was an assistant public defender. Judge Muth gave him his first law job. He saw Judge Muth every single day for the first four years or so. He then went to the DA's office and he still saw Judge Muth daily. Today he sees Judge Muth once a week or every couple of weeks. (pg 151 – 6/5/18 trial transcript)

66. Brian Gaglione, Esquire has appeared in front of Judge Muth many times, 40 or 50 times. (pg 151 – 6/5/18 trial transcript)

67. Brian Gaglione, Esquire has had the opportunity to assess Judge Muth's capabilities and competence as a magisterial district judge and hands down Judge Muth is the best magistrate they have. Judge Muth goes out of his way to be fair to everybody that comes before him. Judge Muth takes the time to listen to every single participant and bends over backwards to make sure that everybody has their day in court. (pg 152 – 6/5/18 trial transcript)

68. Brian Gaglione, Esquire has had the opportunity to assess Judge Muth's integrity and demeanor as a magisterial district judge and it is his opinion that it is above reproach. Judge Muth's professionalism, demeanor, and general attitude as a magistrate, is the best. Judge Muth is the best magistrate they have in Monroe County. (pg 152 - 153 – 6/5/18 trial transcript)

69. Brian Gaglione, Esquire is aware of Judge Muth's reputation in the community and it is impeccable. He has talked to people about Judge Muth on more occasions than he can count. To a person everybody that he has ever spoken to has the same opinion. Over the years of knowing Judge Muth, Brian Gaglione, Esquire is of the belief that he is a good man, a kind man, the type of person who would not do anything to harm anybody else deliberately. (pg 153 - 154 – 6/5/18 trial transcript)

70. Judge Muth's character is as solid as it gets. Brian Gaglione, Esquire chooses his friends carefully, and he chooses to be friends with Judge Muth because he's a good guy. Judge Muth's character is above reproach. (pg 154 – 6/5/18 trial transcript)

71. Thomas Jones has resided in Monroe County since 1978. (pg 155 - 156 – 6/5/18 trial transcript)

72. Thomas Jones is a retired State Policeman. Judge Muth was the chief public defender for many years. Thomas Jones and Judge Muth became very friendly adversaries and had a mutual respect for each other. (pg 156 – 6/5/18 trial transcript)

73. Thomas Jones has known Judge Muth since 1978. (pg 156 – 6/5/18 trial transcript)

74. Thomas Jones retired from the State Police in 1993. His interactions with Judge Muth were very frequent prior to 1993. Currently he sees Judge Muth three or four times a year. (pg 157 – 6/5/18 trial transcript)

75. Thomas Jones did have the opportunity over the many years that he has known Judge Muth to assess his integrity and demeanor and always referred to Judge Muth as a champion of the Defendant's rights. Judge Muth did his job and he did his job fairly. (pg 157 – 6/5/18 trial transcript)

76. Thomas Jones's opinion of Judge Muth's overall character is that he is a great guy. If his son were in trouble, he'd like to have Judge Muth representing him. (pg 158 – 6/5/18 trial transcript)

77. Janet Jackson, Esquire is a deputy chief public defender in Northampton County and her law office is in Stroudsburg. She passed the bar in 1984 and is a full time lawyer. (pg 159 - 160 – 6/5/18 trial transcript)

78. Janet Jackson, Esquire has known Judge Muth since 1985. The nature of their relationship is primarily professional but personal as well. (pg 161 – 6/5/18 trial transcript)

79. Janet Jackson, Esquire appears in front of or interacts with Judge Muth approximately eight to ten times a year. (pg 162 – 6/5/18 trial transcript)

80. Over the last five years Janet Jackson, Esquire appeared in front of Judge Muth more than 20 times. (pg 162 – 6/5/18 trial transcript)

81. Janet Jackson, Esquire has had the opportunity to assess Judge Muth's capabilities and competence as a MD Justice and in her opinion Judge Muth is a great district justice. Judge Muth is very professional. Judge Muth's courtroom is well run and he treats everyone with dignity and respect. (pg 163 – 6/5/18 trial transcript)

82. Janet Jackson, Esquire is aware of Judge Muth's reputation in the community and it is excellent. (pg 164 – 6/5/18 trial transcript)

83. Janet Jackson, Esquire's opinion of Judge Muth's character is that is it impeccable. Judge Muth is a good man, a good husband and he has been an integral role model to her. She is a better lawyer because she started off as a lawyer with Judge Muth. Judge Muth is uniformly decent to everyone. (pg 165 – 6/5/18 trial transcript)

III. LEGAL ANALYSIS

The CJD in its October 31, 2018 Opinion and December 17, 2018 Statement of Reasons and Order compares this matter to In re Eakin, 150 A.3d 1042 (Pa. Ct. Jud. Disc. 2016), and In re Berkheimer, 877 A.2d 579 (Pa. Ct. Jud. Disc. 2005). However, this case is clearly distinguishable for the reasons set forth herein.

A. In re Eakin

In Eakin, Supreme Court Justice Eakin used his government-supplied computer to receive and send emails containing nudity and inappropriate references to gender, race, sexual orientation and ethnicity, and specifically involving gender and ethnic stereotypes. The Court found three emails to be “strikingly egregious” in light of the fact that Justice Eakin was talking about his judicial employees in a sexually suggestive manner. Eakin, 150 A.3d at 1057. For example, Justice Eakin agreed to “slap [an employee's] ass” at a holiday party and, in a string of emails with his golfing group about a trip to Myrtle Beach, wrote: “...You guys sound like a bunch of women ... Jeezus, boys, is it a menstrual thing? ... New Judge [B.] will find [out] a judge has to go out of state to see boobs ... I've got a stake of fifty ones and a titty-deficit that needs cured,” and continued to converse in a sexually suggestive manner about two women known to the men and whom the women would be rooming with during their trip. Id. at 1057-58.

In reaching an appropriate sanction, the Supreme Court noted the following mitigating factors: (1) Justice Eakin's conduct was not criminal; (2) Justice Eakin's conduct did not prejudice the proper administration of justice; (3) Justice Eakin presented credible witnesses that his judicial opinions were not reflective of any of the biases express in any of the emails, but instead were decided in accordance with the facts and law; (4) that his longtime judicial service was otherwise exemplary; and (5) that he is a well-regarded jurist. Id. at 1061. In consideration of these factors, and despite "the Court's disgust with, and disapproval of, the sordid and offensive communications giving rise to this case," id. at 1060, the Court ordered Justice Eakin to pay a \$50,000 fine, of which the Court explicitly stated that in light of the Justice's retirement, "we see this sanction as tantamount to a six month suspension without pay." Id. at 1061 n.16.

Judge Muth's conduct in this matter is far less egregious than that of Justice Eakin. Judge Muth did not use a government-issued computer, email address or internet to view the subject images; he did not send or receive any emails containing the images; he did not intentionally display the images or intentionally involve any other person; he did not converse about the content of the images to anyone; he did not make any inappropriate references or stereotypes regarding gender, race, sexual orientation and ethnicity, or talk about his employees in a sexually suggestive manner.

B. In re Berkhimer

In Berkhimer, on approximately eight occasions, Magisterial District Judge Berkhimer summoned his female staff back to his office, without explanation, and stated words to the effect: "Come here and look at this." In re Berkhimer, 877 A.2d 579, 583 (Pa. Ct. Jud. Disc. 2005). On those occasions, Judge Berkhimer intentionally would show pictures of naked women to his female staff. Id. In one instance, Judge Berkhimer invited the women to look at an image that was evidence from a child pornography case before his court. Id. Judge Berkhimer "routinely, regularly, frequently,

often, used crude, coarse, vulgar, offensive and improper language, including frequent use of the F-word, in conversing with his female staff and others in the course of an ordinary day at the office.” Id. at 588. Several of his female staff members quit their jobs because of Judge Berkhimer’s vulgarity and inappropriateness. Id. at 587.

Judge Berkhimer also had his staff scour the local weekly newspaper to look for constituents mentioned for their achievements. Id. at 582, 584. His staff then prepared and sent congratulatory notes, called “Quickie Notes”, which included a photograph of Judge Berkhimer in his robe and bore the court’s address. Id. at 584. Judge Berkhimer admitted that the purpose of the notes was to get votes and had no relation to the court’s business. Id. at 591.

In affirming the CJD’s removal of Judge Berkhimer from office, the Supreme Court noted that “while [Judge Berkhimer] denied and minimized the allegations, the [CJD] found his denials unbelievable, and his minimizations to show a remarkable lack of taste and integrity.” In re Berkhimer, 930 A.2d 1255, 1257 (Pa. 2007). The Supreme Court further noted that Judge Berkhimer did not find his conduct “offensive, inappropriate or embarrassing”, or show any remorse for his conduct. Id. The Supreme Court concluded that because Judge Berkhimer’s offensive conduct was directed towards his female staff, and because “his staff had no choice but to endure his conduct ... it cannot be separated from his judicial position.” Id. at 1258.

None of the facts of Berkhimer pertaining to viewing of photographs are comparable to the facts of this case for the reasons set forth above. With regard to Judge Berkhimer’s frequent use of court-appointed staff to send congratulatory notes to constituents, the CJD concluded that conduct constituted “partisan political activity and violated the Supreme Court’s guidelines on unapproved political activities.” 877 A.2d at 596. Both the purpose of the use of office personnel, and the frequency thereof, in Berkhimer are clearly distinguishable from the relatively infrequent activities

of Judge Muth's office staff related to East Stroudsburg University ("ESU"). Judge Muth's incidental use of his staff and the minimal time expended to assist him with his legal teaching of criminal process, criminal procedure, and constitutional criminal law on only two occasions per semester is distinguishable from the weekly activity and the partisan political activity that occurred in Berkhimer.

IV. SANCTIONS STANDARD

In determining what sanction will be imposed for a violation of the MDJ Rules or Code of Judicial Conduct, ten primary factors are considered. In re Tidd, 181 A.3d 14 (2018).

"The CJD routinely considers ten non-exclusive factors in fashioning an appropriate sanction: (1) whether the conduct is an isolated event or part of a pattern of conduct; (2) the nature, extent, and frequency of the acts of misconduct; (3) whether the conduct occurred in or out of the courtroom; (4) whether the conduct occurred in the judge's official capacity or in her private life; (5) whether the judge has acknowledged or recognized that the acts occurred; (6) whether the judge has evidenced an effort to change or modify her conduct; (7) the judge's length of service on the bench; (8) whether there have been prior complaints about the judge; (9) the conduct's effect on the integrity of, and respect for, the judiciary; and (10) the extent to which the judge exploited her position to satisfy her personal desires." In re Angeles Roca First Judicial Dist. Phila. Cty., 173 A.3d 1176, 1183 (Pa. 2017) (relying on In re Roca, 151 A.3d 739, 742-43 (Pa. Ct. Jud. Disc. 2016)). While our Supreme Court has not specifically adopted a stare decisis standard for jurists, the Court does "employ[] stare decisis in every attorney discipline case to determine appropriate levels of discipline", explaining: "[t]he final discipline imposed [on an attorney] is determined on a case-by-case basis on the totality of facts presented. Nevertheless, despite the fact-intensive nature of the endeavor, we strive for consistency

so that similar misconduct is not punished in radically different ways.” In re Roca, 173 A.3d at 1209–10 (quoting Office of Disciplinary Counsel v. Cappuccio, 48 A.3d 1231, 1238 (Pa. 2012)).

V. PROPOSED MITIGATING FACTORS

The mitigating factors relied upon by the CJD, the ODC, and the Pennsylvania Supreme Court applicable to this case are:

1. Judge Muth has no prior record of misconduct in his over twelve years as a judge;
2. Judge Muth has no prior record of misconduct as an attorney;
3. Judge Muth has no criminal history;
4. Judge Muth’s conduct was not criminal;
5. Judge Muth has taken responsibility and expressed remorse for his conduct;
6. Judge Muth has engaged in extensive community service and has a positive reputation in the community;
7. During the disciplinary hearing, three character witnesses testified credibly and competently that Judge Muth is competent, dignified and courteous;
8. No evidence was presented to establish a lack of public confidence in the integrity and impartiality of Judge Muth;
9. Judge Muth voluntarily turned over the images to the JCB;
10. Judge Muth cooperated fully and completely with the JCB in its investigation;
11. Judge Muth cooperated fully and completely with the JBC by entering into the Joint Stipulation encompassing 42 paragraphs in which he admitted to, and took full responsibility for, his conduct;
12. Court personnel viewed the subject images only five times over 12 years;
13. The subject conduct occurred outside of the courtroom;

14. Judge Muth did not share his personal thoughts or comment on the images to anyone;
15. Judge Muth did not intentionally show or encourage his employees to view the images;
16. Judge Muth attempted to prevent his staff from seeing the images on each occasion he realized they were in his presence;
17. Judge Muth did not use government-issued equipment to view the images;
18. Judge Muth did not send the images to others;
19. None of Judge Muth's staff members again saw any images upon making Judge Muth aware of their entering his office;
20. All of Judge Muth's staff members who inadvertently viewed the photos continued to work with Judge Muth;
21. Each of the staff members did not request to be transferred after inadvertently viewing the images;
22. Judge Muth was an assistant professor at ESU who teaches criminal process, criminal procedure, and constitutional criminal law;
23. Through teaching, Judge Muth fosters a better public understanding of the legal system;
24. Judge Muth supplied paper for the copies made by his staff members;
25. Any financial loss to Monroe County was minimal;
26. Judge Muth requested his staff members to make copies and mark exams two times per semester only when there was no court-related work to be done;
27. Once the subject conduct was first brought to his attention, that conduct immediately and permanently ceased;

28. No aggravating circumstances exist.

VI. CONCLUSION AND RECOMMENDED DISCIPLINE

Judge Muth is mortified, embarrassed and apologetic that his conduct has come into question. He is thankful that the Court in its October 31st Opinion recognized that he “did not intentionally show the images to his staff”, and that the December 17, 2018 Statement of Reasons likewise acknowledged that his “actions did not appear to constitute intentional sexual discrimination” and “were not purposefully directed to any particular employee or employees.” Judge Muth is very appreciative that the Court determined that his conduct did not bring the judicial office into disrepute.


In light of the above, including but not limited to the multiple applicable mitigating factors, Judge Muth respectfully suggests that a Reprimand is the appropriate discipline.

Respectfully submitted,

LAMB McERLANE PC

Dated: 4/12/19

By:



Joel L. Frank
24 East Market Street
P.O. Box 565
West Chester, PA 19381-0565
(610) 430-8000

**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:

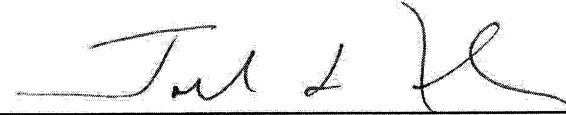
| <u>Name</u> | <u>Means of Service</u> | <u>Date of Service</u> |
|--|--------------------------------|-------------------------------|
| Melissa L. Norton Assistant Counsel Pennsylvania Judicial Ctr 601 Commonwealth Avenue, Ste 3500 PO Box 62525 Harrisburg, PA 17106 melissa.norton@jcbpa.org | Via Electronic Mail | April 12, 2019 |
| Joseph U. Metz, Esquire Pennsylvania Judicial Center 601 Commonwealth Avenue, Ste 5500 P.O. Box 62595 Harrisburg, PA 17106-2595 joseph.metz@pacourts.us | Via Electronic Mail | April 12, 2019 |
| Cathy Kane, Court Administrator Pennsylvania Judicial Center 601 Commonwealth Avenue, Ste 5500 P.O. Box 62595 Harrisburg, PA 17106-2595 cathy.kane@pacourts.us | Via Electronic Mail | April 12, 2019 |

LAMB McERLANE PC

Date:

4/12/19

BY:



Joel L. Frank – I.D. #46601

Lamb McErlane, PC

24 East Market Street

Post Office Box 565

West Chester, PA 19381-0565

jfrank@lambmcerlane.com