



Judicial Conduct Board
Commonwealth of Pennsylvania
Robert A. Graci, Chief Counsel
717-234-7911

Press Release

December 8, 2015

TO: Press

FROM: Francis J. Puskas II
Deputy Chief Counsel

SUBJECT: Investigation Regarding Justice J. Michael Eakin

Harrisburg. The Judicial Conduct Board today filed formal charges by Board Complaint in the Court of Judicial Discipline against Supreme Court Justice J. Michael Eakin. The Board Complaint alleges violations of the Code of Judicial Conduct and the Pennsylvania Constitution.

Under the Pennsylvania Constitution, Justice Eakin, as the subject of the charges, is presumed innocent in all proceedings before the Court of Judicial Discipline. The Board has the burden of proving the charges filed in the Court of Judicial Discipline by clear and convincing evidence.

In accordance with the rules which govern proceedings before the Court of Judicial Discipline, Justice Eakin has the right to respond to the charges, to obtain and inspect the evidence which forms the basis of the allegations, and to a public trial before the Court of Judicial Discipline.

Upon completion of the trial, if the Court determines that the charges have been proven by clear and convincing evidence, it will schedule a Sanctions Hearing to determine what sanction should be imposed. Possible sanctions include reprimand, suspension, or removal from office.

Board Complaint is attached.

Counsels:

Board: Francis J. Puskas II, Deputy Chief Counsel
James P. Kleman, Deputy Counsel
Elizabeth A. Flaherty, Deputy Counsel

Respondent: Heidi F. Eakin, Esquire
William C. Costopoulos, Esquire

Contact: Francis J. Puskas II, Deputy Chief Counsel

For more information about the Judicial Conduct Board, please visit our website at www.jcbpa.org.

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

J. Michael Eakin
Justice of
The Supreme Court of Pennsylvania

13 JD 2015

2015 DEC - 8 P 3:57
RECEIVED & FILED
COURT OF
JUDICIAL DISCIPLINE

IMPORTANT NOTICE

TO: J. Michael Eakin

You are hereby notified that the Pennsylvania Judicial Conduct Board determined that there is probable cause to file formal charges against you for conduct proscribed by Article V, §§17(b), 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania and Canons 2 and 5 of the 1974 Code of Judicial Conduct, as amended, for conduct alleged occurring prior to July 1, 2014. The Board's counsel will present the case in support of the charges before the Pennsylvania Court of Judicial Discipline.

You have an absolute right to be represented by a lawyer in all proceedings before the Court of Judicial Discipline. Your attorney should file an entry of appearance with the Court of Judicial Discipline in accordance with C.J.D.R.P. No. 110.

You are hereby notified, pursuant to C.J.D.R.P. No. 302(B), that should you elect to file an omnibus motion, that motion should be filed no later than 30 days after the service of this Complaint, in accordance with C.J.D.R.P. No. 411.

You are further hereby notified that within 30 days after the service of this Complaint, if no omnibus motion is filed, or within 20 days after the

dismissal of all or part of the omnibus motion, you may file an Answer admitting or denying the allegations contained in this Complaint in accordance with C.J.D.R.P. No. 413. Failure to file an Answer shall be deemed a denial of all factual allegations in the Complaint.

COMPLAINT

AND NOW, this 8th day of December, 2015, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (Board) and files this Board Complaint against the Honorable J. Michael Eakin, Justice of the Supreme Court of Pennsylvania. The Board alleges that Justice Eakin violated the Constitution of the Commonwealth of Pennsylvania, Article V, §§ 17(b), 18(d)(1) and the 1974 Code of Judicial Conduct (the Old Code), by virtue of his conduct, delineated specifically as follows:

1. Article V, § 18 of the Constitution of the Commonwealth of Pennsylvania grants to the Board the authority to determine whether there is probable cause to file formal charges against a judicial officer in this Court and, thereafter, to prosecute the case in support of such charges before this Court.
2. From approximately January 2, 2002, until the present, Justice Eakin served continuously as a duly elected Justice of the Supreme Court of Pennsylvania, with a principal office at 4720 Old Gettysburg Road, Ste. 405, Mechanicsburg, PA.
 - a. Prior to his service as a Justice of the Supreme Court, Justice Eakin served as a Judge of the Superior Court of Pennsylvania.
3. As a Justice of the Supreme Court, Justice Eakin was at all times relevant hereto, subject to all the duties and responsibilities imposed on him by the Constitution of the Commonwealth of Pennsylvania.
4. Until July 1, 2014, and during all times relevant hereto, Justice Eakin was subject to all the duties and responsibilities imposed on him by the Old Code of Judicial Conduct.

PART I. The Board's 2014 investigation of Justice Eakin:

5. During his tenure with the Pennsylvania Supreme Court, Justice Eakin was provided with Commonwealth-issued computer hardware and other electronic equipment capable of sending and receiving email.
6. Justice Eakin utilized this Commonwealth-issued computer equipment to send and receive email from a personal, *i.e.*, non-court provided, web-based email address, wap092001@yahoo.com (the "John Smith" email address).
 - a. This email address does not identify Justice Eakin by his name or judicial title.
 - b. This email address identified Justice Eakin as "John Smith."

- c. People who sent email to Justice Eakin at this email address knew that it was, in fact, Justice Eakin's personal email address.
 - d. People who received email from Justice Eakin from this email address knew that it was, in fact, Justice Eakin's personal email address.
 - e. Justice Eakin also has a court-provided public email address, "JusticeEakin@pacourts.us."
7. One of the persons who exchanged, *i.e.*, sent and received, emails with Justice Eakin at the "John Smith" email address was Jeffrey Baxter, Esquire, a Deputy Attorney General (DAG) employed by the Office of Attorney General (OAG) in the OAG's Pittsburgh field office.
- a. Justice Eakin and DAG Baxter had a long friendship, which started after Justice Eakin hired DAG Baxter as an assistant district attorney when Justice Eakin was the District Attorney of Cumberland County.
8. Over the years that he was a Supreme Court Justice, Justice Eakin, DAG Baxter, and a group of several other men went on golfing vacations together, played fantasy football, and were engaged in other social activities together (the golfing group).
- a. From 2008-2012, Justice Eakin used his "John Smith" email address to communicate with DAG Baxter and the other individuals who were part of the golfing group.
9. From approximately 2008-2012, Justice Eakin, together with a large number of other individuals (male and sometimes female), including persons employed by the OAG, received "blast" emails from Terrance McGowan, Esquire, a Harrisburg-area criminal defense attorney.
- a. Attorney McGowan is a friend of Justice Eakin and has been on one or two out-of-state fishing vacation with him.
 - b. Justice Eakin's personal email address had formerly identified him by his last name and title, but, as a result of the content of Attorney McGowan's emails, he changed his personal email address to wap092001@yahoo.com and listed his name at that address as "John Smith."
10. A number of the emails sent by Justice Eakin from his "John Smith" email address and received at that email address from the golfing group and Attorney McGowan between 2008 and 2012 included content that someone of reasonable sensitivities would find offensive.
- a. With the exception of the filing of or responding to petitions for allowance of appeal, all of which were denied by the Supreme

Court, neither Attorney McGowan nor any member of the golfing group who was an attorney appeared before Justice Eakin during the time that he exchanged emails with them.

11. The subject of the content of the emails sent from and received by Justice Eakin at his "John Smith" email address first arose in the context of the public controversy in October 2014 regarding the content of emails that had been exchanged between former Justice Seamus McCaffrey and members of the OAG's staff.
 - a. The controversy about the emails was generated as a result of the OAG's September 2014 internal investigation of OAG email traffic.
 - b. At approximately the same time as the investigation took place, it was revealed in media outlets that "top Pennsylvania jurists" were among those who received sexually-explicit emails.
 - c. Ultimately, former Justice McCaffery was identified as a sender and recipient of emails containing pornographic content.
12. On October 16, 2014, former Justice McCaffery called Justice Eakin on his mobile phone at approximately 8:20 a.m.
13. Former Justice McCaffery was extremely upset over the then-recent public statements of then-Chief Justice Ronald D. Castille relating to his conduct, including his sending and receiving of emails with sexually-explicit attachments.
14. Former Justice McCaffery told Justice Eakin that he was receiving communications from "people," whose identities he did not reveal, and that those people had in their possession inappropriate emails that involved Justice Eakin.
15. In making this allegation, former Justice McCaffery named DAG Baxter, who was also an addressee in the emails referred to by former Justice McCaffery, in order to convince Justice Eakin that the emails existed and that he (former Justice McCaffery) had personally seen them.
16. Regarding his then-public involvement in the sending and receiving of emails with sexual content in them, Justice McCaffery told Justice Eakin that he "was not going down alone."
17. Former Justice McCaffery told Justice Eakin that he "had to" cause former Chief Justice Castille to retract his media statements of the prior day, Wednesday, October 15, 2014, regarding former Justice McCaffery.
18. Former Justice McCaffery repeated to Justice Eakin that he had to cause former Chief Justice Castille to retract his media statements of the prior day and that former Justice McCaffery "needed an answer" by noon on Thursday, October 16, 2014, in order to prevent release to the media of the emails involving Justice Eakin's "John Smith" email account.

19. Justice Eakin told former Justice McCaffery that he would not attempt to sway former Chief Justice Castille or anyone else because of a threat or to avoid the consequences of Justice Eakin's past actions, however unpleasant that may turn out to be.
20. Justice Eakin told former Justice McCaffery that he (Justice Eakin) was not a "fixer," and Justice Eakin told former Justice McCaffery that the demand that he made was totally inappropriate.
21. After another verbal exchange, former Justice McCaffery repeated to Justice Eakin that he had until noon to get back to former Justice McCaffery with an answer regarding his demand.
22. Justice Eakin did not comply with former Justice McCaffery's demand, and he took no action to importune former Chief Justice Castille on behalf of former Justice McCaffery.
23. In the afternoon of October 16, 2014, after the expiration of the deadline that former Justice McCaffery had given to Justice Eakin to try to exert influence over former Chief Justice Castille, Justice Eakin learned that emails from his "John Smith" email address had been released to the media.
24. Justice Eakin reported the information recounted above at Paragraphs 12-23 to the Board by letter dated October 17, 2014, and released his letter to the Board to the media on the same date along with a Press Release.
25. Former Justice McCaffery responded to the statements made by Justice Eakin in his Press Release by issuing his own media statement on Friday, October 17, 2014.
26. Former Justice McCaffery's media statement essentially constituted his denial of Justice Eakin's recollection of the facts of their prior phone call.
27. Thereafter, in the evening of October 17, 2014, Justice Eakin issued a subsequent press release that responded to former Justice McCaffery's counter-allegations.
28. In Justice Eakin's second press release, he stated the following: "I have read [former] Justice McCaffery's self-victimizing explanation. I find it incomplete, and inaccurate in many details and specifics, but there is little to be gained by pointing out the inconsistencies or otherwise quarreling about the matter at this point. I stand completely behind my statements about the call, every word."
29. Based on Justice Eakin's October 17, 2014 self-report to the Board, the Board opened investigation no. 2014-647.
 - a. The Board later received a second request for investigation of Justice Eakin's email conduct from a private citizen. That request was opened as investigation no. 2014-650.

30. On that same day, pursuant to Article V, § 18(a)(8) of the Pennsylvania Constitution, the Board issued a prepared statement indicating that Justice Eakin had self-reported to the Board, confirming that an investigation was underway, and stating that Justice Eakin was then entitled to a full, fair, and confidential investigation of all of the facts of the matter and to a fair hearing without prejudgment.
32. Also on that same day, after receiving Justice Eakin's self-report, the Board's investigator interviewed Justice Eakin.
 - a. The Board's investigator conducted two further interviews of Justice Eakin.
 - b. The Board also authorized a notice of full investigation to Justice Eakin; the Board's counsel issued the notice of investigation to Justice Eakin.
 - c. Justice Eakin provided a timely written response to the notice.
33. On October 24, 2014, by personal service, the Board's counsel issued subpoena *duces tecum* no. 2014-048 to Attorney General Kathleen Kane (AG Kane) that ordered her to produce the following:
 - a. Printed copies of any and all emails and printed copies of any and all attachments to those emails (if same are capable of reproduction by printing) sent to or from any email address used by, or known to be used by, Justice J. Michael Eakin, including but not limited to, the email address wap092001@yahoo.com or identified as being sent or received from "John Smith," that were exchanged, forwarded, received or otherwise disseminated between the dates of January 1, 2008, and December 31, 2012,¹ between and among Justice J. Michael Eakin and any employee of the Pennsylvania Office of Attorney General, including former employees of the Pennsylvania Office of Attorney General whose employment has ended, including, but not limited to, any and all emails which contain pornographic images, sexually explicit, sexually suggestive or sexually-charged material, or racially-charged jokes, or other improper content, or are titled to indicate they contain such content, showing any and all senders, recipients, including, but not limited to direct recipients, Cc'd recipients or Bcc'd recipients, dates, content and any and all information relating thereto, including but not limited to, whether or not any email and its content were opened by the recipient.

¹ The Board's counsel selected the date range of January 1, 2008, to December 31, 2012, because those dates corresponded to the dates of the Jerry Sandusky criminal investigation and prosecution by the OAG. AG Kane's *post-hoc* investigation of the Jerry Sandusky criminal investigation led to her staff's discovery of questionable email exchanges by former Justice McCaffery, which led to the revelation of Justice Eakin's emails with OAG staff and the emails that he received from Attorney McGowan.

- b. Printed copies of the internet "header" information embedded within each of the emails described above, identifying the electronic email from which the header information was generated.
 - c. Electronic copies of any and all of the attachments to the emails described above (identifying the email to which they were attached), if same are not capable of being republished by printing without significant expense, e.g., video and audio file attachments.
34. Previously on October 9, 2014, in connection with another investigation, the Board's counsel, by personal service, issued subpoena *duces tecum* no. 2014-044 to AG Kane that ordered her to produce the following:
- a. Printed copies of any and all emails and printed copies of any and all attachments to those emails (if same are capable of reproduction by printing) sent to or from any email address used by, or known to be used by, any member of the Pennsylvania Judiciary [...] that were exchanged, forwarded, received or otherwise disseminated between the dates of January 1, 2008, and December 31, 2012, between and among any such jurist and any employee of the Pennsylvania Office of Attorney General, including former employees of the Pennsylvania Office of Attorney General whose employment has ended, including, but not limited to, any and all emails which contain pornographic images, sexually explicit, sexually suggestive or sexually-charged material, or other improper content, or are titled to indicate they contain such content, showing any and all senders, recipients, including, but not limited to direct recipients, Cc'd recipients or Bcc'd recipients, dates, content and any and all information relating thereto, including but not limited to, whether or not any email and its content were opened by the recipient.
 - b. Printed copies of the Internet "header" information embedded within each of the emails described above, identifying the electronic email from which the header information was generated.
 - c. Electronic copies of any and all of the attachments to the emails described above (identifying the email to which they were attached), if same are not capable of being republished by printing without significant expense, e.g., video and audio file attachments.
35. On November 4, 2014, OAG First Deputy Bruce Beemer (FD Beemer) contacted Board Chief Counsel Robert A. Graci and informed him that he had material for the Board's review.
36. The Board's investigator obtained the material provided by FD Beemer on November 4, 2014; because the Board's offices were closed that day for Election Day, the material received from FD Beemer was marked received on November 5, 2014, the following business day.

37. The material received by the Board on November 5, 2014, consisted of one disc containing 48 Microsoft Outlook files (the November 5, 2014 disc), which comprised four emails that were sent by Justice Eakin from his "John Smith" email address, and 44 emails (inclusive of several duplicates or responses) that were received by Justice Eakin at his "John Smith" email address; and printouts of the 48 emails contained on the disc.
- a. The emails received by Justice Eakin that were contained on the November 5, 2014 disc were sent to him partially by Attorney McGowan as part of his "blast" email practice and partially by members of the golfing group, including DAG Baxter.
38. In chronological order, the emails sent by Justice Eakin on the November 5, 2014 disc contained the following content:
- a. An email bearing the subject line "Why I failed 4th Grade," sent Monday, March 29, 2010.
 - i. The email contains a photograph of an elementary school teacher in the midst of a group of school-aged children at desks; the teacher is holding open a book bearing the words "Grammar 101." A word balloon from the teacher asks, "So – an abstract noun is something you can think of but not touch...Can you give me two examples..." A student responds "Your Tits!"
 - b. A thread of emails bearing the subject line "Personal Note." Justice Eakin did not send the email that initiated the thread, which contained a joke which included a series of pictures of women in increasing levels of undress, culminating in a picture of a topless woman in a hot tub. However, Justice Eakin sent three emails in the discussion that ensued following the joke, which referenced the attendance of the golfing group at a Myrtle Beach strip club.
39. The content of the emails received by Justice Eakin included photographs of nude or semi-nude women, video clips of comedic skits that had sexually-suggestive themes, and photographic slide shows of faux "motivational posters" and other pictures that contained nude or semi-nude women and jokes based on negative social and gender stereotypes. A description of the emails Justice Eakin received that are contained on the November 5, 2014 disc is as follows:
- a. An email bearing the subject line "FW: A little family fun...FW WHEN YOUR DAUGHTER WANTS TO GET HER EARS PIERCED", sent Thursday, April 8, 2010, at 4:53 p.m., by Attorney McGowan.
 - i. This email contains a video clip of a scene from a motion picture titled "Say It Isn't So" (R 2001), wherein a family eating dinner is discussing the

propriety of their daughter's ear piercings. In rage, she exposes her breasts and her pierced nipples.

- b. An email bearing the subject line "FW: Bank," sent Monday, May 11, 2009, at 11:39 a.m., by Attorney McGowan.
 - i. This email contains a clip of a comedy skit wherein a woman in line at a sperm bank is asked a question by a man, and, when she responds, she spits out what appears to be sperm in her mouth.
- c. An email bearing the subject line "FW: Beware of the Big Bad Wolf xxxx", sent Wednesday, July 29, 2009, at 12:13 p.m. by Attorney McGowan.
 - i. This email contains a cartoon video clip of Little Red Riding Hood, the Three Little Pigs, and the Big Bad Wolf engaging in sexual conversations.
 - ii. At the conclusion of the video, Little Red Riding Hood, nude, directs the Big Bad Wolf to "eat [her], just like the book says."
- d. An email bearing the subject line "FW: Friendship strings/a man's chain letter," sent Monday, February 9, 2009, at 9:10 a.m., sent by DAG Baxter.
 - i. This email contains a pictorial "chain letter" interspersed with photographs of women in sexually suggestive poses wearing g-string panties. There is one photograph in the montage of women sunbathing with exposed breasts.
- e. An email bearing the subject line "FW : FW (no subject)", sent Tuesday, February 24, 2009, at 3:50 p.m., by Attorney McGowan.
 - i. This email contains topless photographs of an extraordinarily large breasted African American woman.
 - ii. In the email thread, the woman is described as being in the Guinness Book of World Records for her 100Z size bra.
- f. A second email bearing the subject line "FW: Fw (No subject)," sent Friday, March 6, 2009, at 5:06 p.m., by Attorney McGowan.
 - i. This email contains a picture of a Volkswagen Beetle with a woman's pubis on the car's hood.

- ii. The email thread contends that the Beetle's female owner photographed her own pubis and somehow was able to put the picture on the car's hood.
- g. An email bearing the subject line "FW: Fwd Why women stay single..." sent on Wednesday, March 5, 2009, at 11:47 a.m., by Attorney McGowan.
 - i. This email contains montage of pictures of men in bizarre scantily-clad costumes.
- h. An email bearing the subject line "FW: Girls You Can't Take Anywhere," sent Saturday, December 4, 2010, at 1:31 p.m., by Attorney McGowan.
 - i. This email contains pictorial montage of women, fully clothed, generally making sexually suggestive poses in public with inanimate objects.
 - ii. In one photograph, a woman is shown sucking milk from a cow's udder.
- i. An email bearing the subject line "FW: Happy Ending!" sent Monday, May 10, 2010, at 4:07 p.m., by Attorney McGowan.
 - i. This email contains a clip joke clip where, after a man receives a massage from a female Asian masseuse in a bikini, she asks if he wants a "happy ending," impliedly, a sexual favor. He responds "yes," and balloons and clowns fill the room as if it was a birthday party.
- j. An email bearing the subject line "FW: How to tell when your house is infected with the swine flu" sent Friday, May 15, 2008, at 12:35 p.m., by Attorney McGowan.
 - i. This email contains a forwarded picture of an obese nude woman on all fours wearing a pig's snout, pig's ears, and a pig's tail.
- k. Two emails bearing the subject line "FW: Ladies toilet," sent Monday, February 23, 2009, at 2:01 p.m. and 2:03 p.m., respectively, by Attorney McGowan
 - i. These emails contain a video clip of a prank where a man, wearing a toilet costume scares two women attempting to use a public bathroom.
- l. An email bearing the subject line "FW: Mission Impossible" sent Tuesday, October 6, 2009, at 3:01 p.m., by Attorney McGowan.

- i. This email contains a video clip of an average-sized man engaging in sexual intercourse with a large woman, while the theme from "Mission Impossible" played in the background.
- m. An email bearing the subject line "FW: Morning Funnies" sent Wednesday, July 29, 2009, at 11:33 a.m., by Attorney McGowan.
 - i. This email contains a photographic slide show entitled "All men are the same," which contains pictures which generally show of small children ogling women's breasts and bodies. One photograph depicts a picture of a woman on a nude beach with a baby sitting next to her grabbing one of her nipples, and one photograph has a small child putting the breasts of an unclothed Barbie doll in his mouth.
- n. An email bearing the subject line "FW: Please Help !!" sent Wednesday, January 14, 2009, at 3:55 p.m., by Attorney McGowan.
 - i. This email contains a clip of a Comedy Central skit featuring Carmen Electra talking about a faux "charity" called "Tits for Tots."
- o. An email bearing the subject line "FW: Short golf story..." sent Tuesday, July 10, 2012, at 3:26 p.m., by Attorney McGowan
 - i. This email contains a joke about a golfer cheating on his wife and, impliedly, running her over with his golf cart.
- p. An email bearing the subject line "FW: the end of civilization" sent Friday, January 30, 2009, at 3:36 p.m., by Attorney McGowan.
 - i. This email contains a video clip of Eve walking around the Garden of Eden wherein she is greeted by an effeminate Adam.
- q. An email bearing the subject line "FW: THIS IS THE BEST HALLOWEEN COSTUME EVER" sent Wednesday, October 28, 2009, at 2:26 p.m., by Attorney McGowan.
 - i. This email contains the same video clip described above at paragraph 39(j)(i).
- r. An email bearing the subject line "FW: Too Old to Squat" sent Tuesday, June 7, 2011, at 11:09 a.m., by Attorney McGowan.

- i. This email contains a joke and a corresponding montage of photographs of men and women in various levels of undress.
- s. An email bearing the subject line "FW: UPS Man" sent Wednesday, October 20, 2010, at 1:15 p.m., by Attorney McGowan.
 - i. This email contains a video clip of a UPS man delivering a package to a woman's home. The woman, who jumped out of the shower still nude, is visible from behind. When she approaches the door, the UPS man opens the mail slot, looks in, and says "Hey curly, is your mom home?" The woman runs away.
- t. An email bearing the subject line "FW: VIBRATOR WARNING..." sent Monday, June 21, 2010, at 5:32 p.m., by Attorney McGowan.
 - i. This email contains a two-part pictorial joke; the first picture attempts to warn women against using a corn cob for a vibrator. The second picture is of a topless woman with her legs spread, with her genital area entirely covered by popcorn.
- u. An email bearing the subject line "FW: When Somebody Steals Your Kodak Moment" sent Tuesday, January 13, 2009, at 5:35 p.m., by Attorney McGowan.
 - i. This email contains a collage of pictures of people being "photobombed" in various ways. For example, in one picture, a couple is being married on a beach and, in the distance of the photograph, a topless woman is walking down the beach.
- v. An email bearing the subject line "Fwd: A REAL MAN'S CHAIN LETTER -XXX" sent Thursday, November 12, 2009, at 7:51 p.m., by B.M., a member of the golfing group.
 - i. This email contains a series of pictures of women in a wet t-shirt contest and two photos of a woman's breasts.
- w. An email bearing the subject line "FW: ANOTHER SELFISH SPORTS STAR" sent Wednesday, August 18, 2010, at 9:53 p.m., by B.M.
 - i. This email contains a picture of pro tennis player Simona Halep playing tennis, and a discussion about her 34 DD breasts and the difficulty that they cause her when playing tennis.

- ii. The email then states "WILL SOMEONE PLEASE TELL THIS KID THAT WINNING ISN'T EVERYTHING! THIS SELFISH SPOILED LITTLE BRAT SHOULDN'T BE SO CONSUMED WITH 'WINNING MAJOR TENNIS TOURNAMENTS'! WHAT ABOUT US...THE HARD-WORKING EVERYDAY FAN?"
- x. An email bearing the subject line "Fwd: Beer Temperature Tester," sent Tuesday, February 14, 2012, at 1:25 p.m., by B.M.
 - i. This email contains two pictures of a woman dipping her nipples into glasses of beer.
- y. An email bearing the subject line "Fwd: cup sizes tt#2," sent Monday, January 2, 2012, at 3:37 p.m., by B.M.
 - i. This email contains a joke interspersed with pictures of nude or semi-nude women of increasing breast size. The joke concludes with an over-sized golf tin cup.
 - ii. The joke asks, "WHICH OF THE FOUR CUP SIZES PICTURED BELOW EXCITES OLDER MEN THE MOST?"
- z. An email bearing the subject line "Fwd: Farewell to My Golf Friends," sent Sunday, December 19, 2010, at 5:36 p.m., by B.M.
 - i. This email contains a photographic slide show of pictures concluding with two pictures of nude or semi-nude women on bicycles.
 - ii. The joke indicates that the golfer has taken up a new hobby with new "Friends."
- aa. An email bearing the subject line "Fwd: Fw: Daily meds" sent on Friday, February 26, 2010, at 3:39 p.m., by B.M.
 - i. This email contains pictures of nude or semi-nude women in sexually suggestive poses.
- bb. An email bearing the subject line "Fwd: FW: Emailing: Male Antidepressants.wmv," sent Saturday, November 27, 2010, at 11:48 p.m., by B.M.
 - i. This email contains a video featuring shorter video clips of women's breasts' bouncing; some of the women in the clips expose their bare breasts.

- ii. While the clip plays, the song "Don't Worry, Be Happy" plays in the background.
- cc. An email bearing the subject line "Fwd: Fw: Hooter's 2th XX," sent Wednesday, May 12, 2010, at 8:06 p.m., by B.M.
 - i. This email contains a photographic slide show of nude women, who were apparently employed by Hooter's restaurant.
 - ii. The images appear to be scanned from *Playboy* magazine.
- dd. An email bearing the subject line "Fwd: FW: Priceless," sent Tuesday, June 8, 2010, at 8:06 p.m., by B.M.
 - i. This email contains a photograph and corresponding joke. The joke states "Admission to Six Flags....\$65.000; Popcorn and a soda at the refreshment stand.....\$9.00; Paint-on tattoo....\$7.00; a set of tits that can handle 5 G's on a roller coaster and still look firm. Priceless!"
 - ii. The picture is of two women exposing their breasts while riding a roller coaster.
- ee. An email bearing the subject line "Fwd: Fw: We stare because we care (it all makes sense to me!)," sent Wednesday, September 23, 2009, at 9:43 a.m., by B.M.
 - i. This email contains a number of photographs of nude women in sexually suggestive poses.
- ff. An email bearing the subject line "Fwd: FW: Will the dollar fall?" sent Thursday, February 25, 2010, at 9:21 p.m., by B.M.
 - i. This email is a picture of a nude woman with a 100 dollar bill between her buttocks.
- gg. An email bearing the subject line "Fwd: Greek Economy," sent Saturday, November 27, 2010, at 11:28 a.m., by B.M.
 - i. This email contains a joke and a picture of a woman sitting in a restaurant next to an ashtray; due to the angle of the camera shot, one of her bare breasts are visible in the picture.
 - ii. The joke says "There is no way in hell the Greeks will be able to control their economy and meet the terms of the bailout by the EEC and the IMF. They can't

even enforce their No Smoking regulations. The new law banned smoking in their eateries since 7/1/09. Look how many cigarettes are in the ashtray...In this restaurant...".

- hh. An email bearing the subject line "Fwd: How do YOU pronounce Oklahoma?" sent Thursday, April 22, 2010, at 1:23 p.m., by B.M.
 - i. This email contains a picture of a large-breasted young woman wearing a tight fitting Oklahoma t-shirt.
- ii. An email bearing the subject line "Fwd: MOTIVATIONAL POSTERS," sent Wednesday, February 15, 2012, at 1:21 p.m., by B.M.
 - i. This email contains a photographic picture slide show containing "motivational" or "demotivational" pictures with pictures of semi-nude or topless women in them.
 - ii. The majority contain sexually-suggestive themes or jokes based on gender or sexual orientation.
 - iii. One picture of an apparently nude woman sitting on a bed has the following text: "Dear Abby, I'm an 18 year-old virgin in Arkansas. Are my brothers gay?"
 - iv. Another picture depicts what appears to be a feminist protest in front of a Hooters restaurant; the text of the picture states "SEXISM - Only ugly bitches complain about it."
- jj. An email bearing the subject line "Fwd: Neck exercises sent to me by a doctor - great 4 poker players too," sent Sunday, January 29, 2012, at 1:34 p.m., by B.M.
 - i. This email contains photographs of nude or semi-nude women at odd angles that require the viewer to stretch their neck to see the picture in its intended fashion.
- kk. An email bearing the subject line "Fwd: Personal Note," sent Sunday, December 18, 2011, at 8:02 p.m., by B.M.
 - i. This email contains a joke which included a series of pictures of women in increasing levels of undress, culminating in a picture of a topless woman in a hot tub.
 - ii. Justice Eakin responded to this email, as set forth above at Paragraph 38(b).

- ii. An email bearing the subject line "Fwd: protect your nose from the sun," sent Monday, August 2, 2010, at 8:55 p.m., by B.M.
 - i. This email contains a picture of a man and a woman in the ocean; the man is kissing the woman's stomach and his nose is in a shadow caused by her breasts.
 - mm. Three emails bearing the subject line " Re: FW How to tell when your house is infected with the swine flu" sent Friday, May 15, 2009 at 1:04 p.m. by B.P., 1:42 p.m., by J.E., and 1:50 p.m. by E.S., respectively.
 - i. These emails were sent to Justice Eakin and the other recipients of Attorney McGowan's "swine flu" email by the aforementioned persons.
 - ii. Justice Eakin did not respond to the email.
 - nn. An email bearing the subject line "Re: Neck exercises sent to me by a doctor," sent Sunday, Sunday, January 29, 2012, by C.S., another member of Justice Eakin's golfing group.
 - i. This email was sent to Justice Eakin and the other recipients of the "Neck exercises" email noted above at Paragraph 39(ii).
 - ii. Justice Eakin did not author a response to the email.
 - oo. Other than what is described above at paragraph 38(b), there were no emails contained on the November 5, 2014 disc that suggested that Justice Eakin replied or responded to any of the emails sent to him by others that contained nude or semi-nude women, video clips of comedic skits that had sexually-suggestive themes, and photographic slide shows of faux "motivational posters" and other pictures that contained nude or semi-nude women and jokes based on negative social and gender stereotypes that were contained on the November 5, 2014 disc.
- 40. On November 20, 2014, the Board's counsel received an email from FD Beemer providing access to an "electronic vault" of emails stored on the OAG's servers.
- 41. This "electronic vault" contained emails exchanged among the then-Justices of the Supreme Court and OAG personnel from the Justices' official "pacourts.us" email addresses.
- 42. Pertaining to Justice Eakin, the "electronic vault" contained 415 Microsoft Outlook files that constituted emails that were exchanged among Justice Eakin at

Justice.Eakin@pacourts.us, his official court-provided email address, and OAG staff.

- a. The emails sent and received by Justice Eakin with OAG staff at Justice.Eakin@pacourts.us were either proper professional communications or limited social exchanges that did not contain content that a person of reasonable sensibilities would find offensive.
- b. The only emails that Justice Eakin received at JusticeEakin@pacourts.us that contained content that a person of reasonable sensibilities would find offensive were some "blast" emails that were sent to him and others, including OAG staff, by former Justice McCaffery.
- c. In chronological order, these emails, sent by Justice McCaffery to Justice Eakin and others, were as follows:
 - i. An email sent on December 11, 2008, bearing the subject line "FW: Fwd(3) Did I read it right???" This email contains signs or billboards with typographical errors, bizarre or offensive messages.
 - a. One sign advertises Southern Comfort liquor and states "Liquid panty remover."
 - b. Another sign states "Pasadena High – School Tarts Mon. – 9 A.M."
 - ii. An email sent on January 27, 2009, bearing the subject line "FW: FW: Foreign Commercials" sent on January 27, 2009. This email contains video clips of several foreign commercials. One of these commercials depicts a man sitting in a bar, who is approached by a seductively-dressed woman. When she attempts to sit down next to the man, he pulls the chair away from her to retrieve the bag of snacks that was on the chair. She then falls to the ground.
 - iii. An email sent on April 20, 2009, bearing the subject line "FW: Fw: Best Husband (UNCLASSIFIED)." This email contains a picture slide show of men, supposedly husbands, watching women, supposedly their wives, do strenuous physical activity without assisting.
 - iv. An email sent on April 28, 2009, bearing the subject line "FW: Fw: Can you be fooled???" This email contains pictures of Thai transsexual women and asks

the viewer to guess whether the pictured transsexual women "a girl or a guy." In fact, all of the transsexual women pictured were born male.

- v. An email sent on September 21, 2009, bearing the subject line "FW: The People at Wal-Mart." This email contains pictures of people at Wal-Mart with outlandish dress or appearance.
- vi. An email sent on December 3, 2009, bearing the subject line "FW: Tiger." This email contains a picture of Tiger Woods and his former wife, who is holding a golf club. Tiger Wood's face is Photoshopped to indicate that his wife beat him with the golf club.
- vii. An email sent on December 15, 2009, bearing the subject line "FW: Recruiting...Navy style." This email contains a video clip suggesting that potential recruits should consider the United States Navy because it is "co-ed" and that, consequently, they could "get laid." The clip contains photographs of women in American flag bikinis and an image of a man and a woman in a shower together, but there are no pictures of bare female breasts, buttocks, male or female genitals, or pornographic content.
- viii. An email sent on December 24, 2009, bearing the subject line "Fw: I DIDN'T KNOW YOU COULD DANCE." This email contains a clip of a man doing a strip tease for a woman; when he strips down to his underwear, a brown stain is visible on the underwear, and the woman laughs.
- ix. An email sent on January 28, 2010, bearing the subject line "FW: Fwd: The Border." This email contains the following statement:

LET ME SEE IF I GOT THIS RIGHT..

IF YOU CROSS THE NORTH KOREAN BORDER ILLEGALLY YOU GET 12 YEARS HARD LABOR.

IF YOU CROSS THE IRANIAN BORDER ILLEGALLY YOU ARE DETAINED INDEFINITELY.

IF YOU CROSS THE AFGHAN BORDER ILLEGALLY, YOU GET SHOT..

IF YOU CROSS THE SAUDI ARABIAN BORDER ILLEGALLY YOU WILL BE JAILED..

IF YOU CROSS THE CHINESE BORDER ILLEGALLY
YOU MAY NEVER BE HEARD FROM AGAIN.

IF YOU CROSS THE VENEZUELAN BORDER ILLEGALLY
YOU WILL BE BRANDED A SPY AND YOUR FATE WILL
BE SEALED.

IF YOU CROSS THE CUBAN BORDER ILLEGALLY YOU
WILL BE THROWN INTO POLITICAL PRISON TO ROT.

IF YOU CROSS THE U.S. BORDER ILLEGALLY, YOU
GET

- *A JOB,
- *A DRIVERS LICENSE,
- *SOCIAL SECURITY CARD,
- *WELFARE
- *FOOD STAMPS,
- *CREDIT CARDS,
- *SUBSIDIZED RENT OR A LOAN TO BUY A HOUSE,
- *FREE EDUCATION,
- *FREE HEALTH CARE,
- *A LOBBYIST IN WASHINGTON
- *BILLIONS OF DOLLARS WORTH OF PUBLIC
DOCUMENTS PRINTED IN YOUR LANGUAGE
- *THE RIGHT TO CARRY YOUR COUNTRY'S FLAG
WHILE YOU PROTEST THAT YOU DON'T GET ENOUGH
RESPECT
- *AND YOU CAN VOTE REPUBLICAN or DEMOCRATIC.

I JUST WANTED TO MAKE SURE I HAD A FIRM GRASP
ON THE SITUATION...

- x. An email sent on March 18, 2010 bearing the
subject line FW: Canadian signs They tell it like it
is." This email contains pictures of billboards and
signs allegedly posted in Canada.
 - a. One sign allegedly from the American
Kennel Club states "It's all about the
bitches."
 - b. Another sign allegedly advertised the
then-new 2003 BMW Z3 Roadster
stating "For when you can't get laid on
your looks and charm alone."
- d. None of the "blast" emails sent by Justice McCaffery that were
received by Justice Eakin contained nudity or pornography.

- e. Justice Eakin received the aforementioned emails more than four years before the complaints against him at 2014-647 and 2014-650 were opened by the Board in October 2014.
- 43. The "electronic vault" access provided to Board staff on November 20, 2014, did not contain any emails from Justice Eakin's "John Smith" account.
- 44. Other than the 415 Justice.Eakin@pacourts.us emails that were contained in the "electronic vault" and the 48 emails that were contained on the November 5, 2014 disc, the Board was not provided with any other emails exchanged among Justice Eakin and OAG staff, despite the existence of subpoenas 2014-044 and 2014-048.
- 45. Based on the lack of production of any other emails exchanged among Justice Eakin and OAG staff, Board staff concluded that it was in possession of all of the emails exchanged among Justice Eakin and OAG staff that involved the material requested by subpoenas 2014-044 and 2014-048, *i.e.*, any and all emails which contained pornographic images, sexually explicit, sexually suggestive or sexually-charged material, or racially-charged jokes, or other improper content, or are titled to indicate they contain such content between the dates of January 1, 2008, and December 31, 2012.
- 46. Board counsel presented the Eakin matter to the Board at its December 8, 2014 meeting, and the Board voted to dismiss complaints 2014-647 and 2014-650 which were then pending against Justice Eakin.
- 47. Board counsel informed Justice Eakin of the Board's decision to dismiss the complaints by letter on December 17, 2014.
- 48. Two days after Board counsel informed Justice Eakin of the Board's dismissal of complaint nos. 2014-647 and 2014-650, Attorney Robert Byer, special counsel to the Supreme Court, issued an independent report to the Supreme Court regarding the nature of the emails exchanged among the then-Justices of the Supreme Court and OAG staff.
- 49. Attorney Byer found Justice Eakin's emails to be unremarkable.

PART II. The September 28, 2015 Complaint:

- 50. Despite the Board's prior subpoenas, OAG did not inform the Board of its possession of any emails from Justice Eakin's "John Smith" email address beyond the 48 Outlook files received by the Board on November 5, 2014, and did not provide them to the Board until September 28, 2015.
- 51. On September 21, 2015, AG Kane's license to practice law in this Commonwealth was suspended by the Supreme Court on a temporary emergency basis, stemming from criminal charges pending against her currently.

52. All five currently sitting Justices, including Justice Eakin, voted to suspend AG Kane's law license on an emergency temporary basis.
53. In the wake of the entry of the Supreme Court's suspension order, AG Kane stated that she "instructed [her] office to engage in a comprehensive review of all emails sitting on [OAG] servers to fully comply with [Right to Know Law requests made by media outlets]," and she claimed that "Our preliminary review has generated emails of government officials, including law enforcement officials and judges, heretofore unknown to us. These emails will be fully released either as public documents defined by the Commonwealth Court, or at my discretion."
- a. Shortly thereafter, AG Kane, on her own or through staff, stated that Justice Eakin had sent and received "racial, misogynistic pornography" on state computers.
 - b. AG Kane also claimed that she provided 1,500 emails sent or received by Justice Eakin to the Board as support for her assertion.
54. Thereafter, for the first time since November 2014, AG Kane sent a letter and enclosed disc, with the words "John Smith" written on the disc on September 28, 2015, to the Honorable Jayne Duncan, Chair of the Board, carbon copied to Chief Justice Thomas G. Saylor of the Supreme Court of Pennsylvania.
55. AG Kane's letter stated, in pertinent part, the following:

Pursuant to an inquiry from the Philadelphia Daily News on Friday, September 11, 2015, concerning any emails on [OAG] servers sent or received by Supreme Court Justice [J.] Michael Eakin using an email address user name of

"John Smith" from a yahoo email account, my office began to retrieve said emails.

A review of these emails indicates that they may trigger Rule 8.3(b) of the Rules of Professional Conduct which states: "A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judges [sic] fitness for office shall inform the appropriate authority." As noted, this Rule is a "shall" and makes the disclosure imperative rather than discretionary.

While it is not within the authority of the executive branch to make the final determination, a review indicates these emails may violate Rule 1.2 of the Code of Judicial conduct which provides: "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." In addition [sic] these emails may violate Rule 3.1(c) of the Code of Judicial Conduct which states, in part: "Judges shall regulate their

extrajudicial activities to minimize the risk of conflict with their judicial duties and to comply with all provisions of this canon. However a judge shall not...(C) participate in activities that would reasonably appear to undermine the judge's independence, integrity, and impartiality."

56. When opened on a computer, the disc enclosed with AG Kane's letter contained a general file folder entitled "John Smith;" the "John Smith" file folder contained two first-level subfolders entitled "2008-2012" and "2012-present."
57. Both the "2008-2012" and "2012-present" first-level subfolders contained two second-level subfolders entitled "From wap092001" and "To wap092001."
58. The second-level subfolders "From wap092001" contained Outlook files representing emails sent by Justice Eakin from his "John Smith" email address for the time period that was used as the title of the second-level file folder, *i.e.*, 2008-2012 and 2012-Present.²
59. The second-level subfolders "To wap092001" contained Outlook files representing emails received by Justice Eakin at his "John Smith" email address for the time period that was used as the title of the second-level file folder, *i.e.*, 2008-2012 and 2012-Present.
60. The "From wap092001" second-level subfolder in the "2008-2012" subfolder on the September 28, 2015 disc contained 120 Outlook files representing 120 emails sent by Justice Eakin at his "John Smith" email address for the relevant time period.
61. The "To wap092001" second-level subfolder in the "2008-2012" subfolder on the September 28, 2014 disc contained 642 Outlook files representing 642 emails received by Justice Eakin at his "John Smith" email address for the relevant time period.
62. The "From wap092001" second-level subfolder in the "2012-Present" subfolder on the September 28, 2015 disc contained 37 Outlook files representing 37 emails sent by Justice Eakin at his "John Smith" email address for the relevant time period.
63. The "To wap092001" second-level subfolder in the "2012-Present" subfolder on the September 28, 2014 disc contained 144 Outlook files representing 144 emails received by Justice Eakin at his "John Smith" email address for the relevant time period.
64. The grand total of all Outlook files on the September 28, 2015 disc was 943 files, or 157 emails sent by Justice Eakin, and 786 emails received by Justice Eakin.

² The designation "2012-Present" on the disc is a misnomer; the latest emails on the discs were sent or received in 2014.

65. After the Board received AG Kane's letter and the enclosed disc, Board counsel opened investigation no. 2015-601 into Justice Eakin's conduct of sending and receiving the emails in question.
66. When the September 28, 2015 disc was received, Board staff conducted a file-by-file review of the Outlook files on the disc.
67. Based on their review, Board staff concluded that the September 28, 2015 disc contained emails that had not been seen by any Board staff member during the 2014 investigation of Justice Eakin.
68. Board staff thereafter attempted to gain access to the "electronic vault" to determine if the unseen emails had been made available for viewing by OAG staff at a point in time after the Board had made its decision to dismiss the 2014 investigation.
69. After their preliminary review of the contents of the September 28, 2015 disc, Board staff could not gain access to the "electronic vault" to cross-reference the emails on the September 28, 2015 disc with the emails viewed previously in 2014.
70. Board staff obtained renewed access to the "electronic vault" of emails on OAG servers on October 8, 2015.
71. The contents of the "electronic vault" available to the Board on October 8, 2015, remained limited to the emails exchanged among the 2014 composition of Pennsylvania Supreme Court Justices from their "pacourts.us" email addresses and OAG staff; there were no emails from Justice Eakin's "John Smith" email address available to the Board in the "electronic vault" on October 8, 2015, or at any point thereafter.
72. On October 9, 2015, after the discrepancy in the 2014 emails received by the Board and the 2015 emails received by the Board came to light (both before the Board and in the public), Board counsel issued subpoena no. 2015-019 to the AG Kane ordering her to produce the following by October 16, 2015:
 - a. Printed copies of all emails and printed copies of any attachments to those emails (if same are capable of reproduction by printing) sent to, received from, exchanged, forwarded or otherwise disseminated from any email address used by or known to be used by any current or former member of the Pennsylvania Judiciary, including, but not limited to, Justice J. Michael Eakin, that were sent to, received from, exchanged, forwarded, or otherwise disseminated between and among these jurists and any current or former employee of the Office of Attorney General (OAG), between the dates of January 1, 2008 and the present, which contain any of the following: pornographic images; sexually-charged or sexually-suggestive material; material that has been described publicly by the Attorney General as "misogynistic;" material that has been described publicly by the Attorney General as "racist" or "racial;"

material that is offensive to currently and commonly-held notions of decency; or other improper content, or are titled to indicate that they contain such content, showing any and all senders, recipients, including but not limited to direct recipients, Cc'd recipients or Bcc'd recipients, dates, contents, and any and all information relating thereto, whether or not the email and its content were opened by the recipient.

- b. Electronic copies of any and all of the emails and the attachments to the emails described above (identifying the email to which they are attached).
73. Purportedly to coordinate compliance with the subpoena, OAG Chief of Staff Jonathan A. Duecker attempted to call Chief Counsel Robert A. Graci between October 9, 2015 and October 15, 2015.
74. Chief Counsel Graci was unwilling to speak with Mr. Duecker regarding AG Kane's compliance with the subpoena because Mr. Duecker does not have a license to practice law in this Commonwealth.
75. Thereafter, on October 15, 2015, Mr. Duecker sent a letter to Chief Counsel Graci with two discs, the first disc contained a single file entitled "PA_Supreme_Court_Review_10-14-2015.pst," and a copy of the November 5, 2014 disc containing the 48 Outlook files previously viewed by the Board staff in the 2014 investigation; the second disc also contained 48 PDF files of the text (and some embedded attachments) of the 48 Outlook files.
- a. Also included with the letter and two discs were four reams of printed emails titled as follows: (1) "December 5, 2008 – December 29, 2008 Non-Sexual Forwards;" (2) "December 30, 2008 – January 16, 2009 Non-Sexual Forwards;" (3) "January 16, 2009 – February 6, 2009 Non-Sexual Forwards;" and (4) "2008-2012 Potential Duplicates Non-Sexual Forwards."
76. When opened with an "Outlook viewer" program, the "PA_Supreme_Court_Review_10-14-2015.pst" file contained two first-level file folders entitled "2008-2012 emails" and "2013-2014 emails."
77. When opened, the two-first level file folders contained two second level folders entitled "Non-sexual Forwards" and "Sexual Forwards."
- a. The "2008-2012 emails" first-level file folder also had a third-level file folder entitled "Potential Duplicates."
78. Contained on the September 28, 2015 disc or the "PA_Supreme_Court_Review_10-14-2014.pst" file are emails that were sent by Justice Eakin to the golfing group, either to individuals in the group or as a group, during the time period of 2008-2012 and 2012-2014 from his "John Smith" email address; a number of these emails contained subject matter that

involved nudity, gender stereotypes, and ethnic stereotypes; these emails are as follows:

- a. An email bearing the subject line "Advice from a retired sympathetic husband," sent Friday, February 2, 2012, at 8:54 am.
 - i. This email is a "joke" type email about a retired husband named "Ron" who recounts treating his wife in a sexist fashion while making it seem like he was doing her a favor. The punchline of the joke concludes with an "editor's note" about "Ron" being found with a "golf club jammed up his rear end."
- b. An email bearing the subject line "Environmental Spill," sent Monday, May 10, 2010, at 10:28 a.m.
 - i. This email contains text that states the following: "Subject: Slut Bus Crashes Causing Major Slut Spill...As if they didn't have enough problems....There is nothing worse than California slut!" Attached to the email is a file entitled "Slut_Bus_Crashes_Causing_Major_Slut_Spill.wmv" which is a satirical video production by the Onion.com about a busload of "sluts" crashing in California. The video contains images of suggestively dressed, and one bare-breasted, women in compromising, sexually-suggestive activity.
- c. An email bearing the subject line "Re: Environmental Spill," sent Monday, May 10, 2010, at 10:46 a.m.
 - i. This email contains text that constituted Justice Eakin's response to a comment made by DAG Baxter regarding the "Slut Bus" video mentioned above at Paragraph 81(b).
 - ii. Justice Eakin's response was as follows: "As [G.S.] once remarked.. 'Ah, the smell of tittle powder in the morning."
- d. An email bearing the subject line "For your edification," sent Wednesday, June 1, 2011 at 10:20 a.m.
 - i. This email contains text that states the following: "How the word Boob was invented[,]" which is followed by a pictorial joke using the letters of the word "boob" to imply views of a woman's breasts from different directions, *i.e.*, "B- top view," and the like.

- e. An email bearing the subject line "Fw (no subject)," sent Monday, January 30, 2012, at 10:41 a.m.
- i. This email contains text that states the following: "This is how a bacon cheeseburger is made. It was sent to me by my doctor so I know it is true. Don't bother checking Snopes." Following the text is a picture of a pig attempting to mount a cow lying in a field.
- f. An email bearing the subject line "Fw: Arnold's misunderstanding" sent Tuesday, June 7, 2011, at 10:58 a.m.
- i. This email contains the following text: "It's too bad Arnold Schwarzenegger had this little misunderstanding because English isn't his native language. He told Maria that their housekeeper wanted a raise. Maria said, 'Screw her.' Any simple-minded, semi-literate Austrian could have made the same mistake."
- g. An email bearing the subject line "Fw: MAY ALL YOUR DAYS START THIS WELL," sent Tuesday, July 6, 2010, at 1:24 p.m.
- i. This email contains the following text: "My suggestion for about the only way Julie the Cruise Director could improve the Myrtle trip....." Following the text is a picture of an older man riding his bike towards the camera, smiling, and a shirtless woman walking away from the camera. At the bottom of the picture is the caption "Some Days - they just start better than others."
- h. An email bearing the subject line "Marital advice," sent Tuesday, July 6, 2010, at 1:20 p.m.
- i. This email contains text that states the following: "A woman goes to the doctor, beaten black and blue.
- Doctor: 'What happened?'
- Woman: 'Doctor, I don't know what to do.
- Every time my husband comes home drunk he beats me to a pulp.
- Doctor: 'I have a real good medicine for that. When your husband comes home drunk, just take a glass of sweet tea and start swishing it in your mouth. Just

swish and swish but don't swallow until he goes to bed and is asleep.'

Two weeks later the woman comes back to the doctor looking fresh and reborn.

Woman: 'Doctor that was a brilliant idea! Every time by husband came home drunk, I swished that sweat tea. I swished and swished, and he didn't touch me!'

Doctor: 'You see how much keeping your mouth shut helps?'

- i. An email bearing the subject line "Re: Holiday Party," sent Thursday, December 17, 2009, at 9:15 a.m.
 - i. This email constitutes a response by Justice Eakin to DAG Baxter's initiating email regarding his inability to attend Justice Eakin's annual Holiday Party. At the close of DAG Baxter's message, he asks Justice Eakin to "Slap Stoney's ass for me and wish him a Merry Christmas. Lubba's too if he shows up. And, well, Janey's too and let me know how it was. Maybe next year we won't have the conflict and I can slap hers for myself."
 - ii. Justice Eakin responded, in part, "Will do."
- j. Two emails bearing the subject line "Re: [L.] getting married," sent Monday, 12/28/2009, at 1:49 p.m. and 2:44 p.m., respectively.
 - i. These emails constitute a sexually-suggestive thread/conversation between Justice Eakin and DAG Baxter about a woman who they both know that was employed by Justice Eakin at the time of the email thread/conversation.
- k. Six emails bearing the subject line "Re: Myrtle next year![,] " sent Thursday, June 18, 2009, between 8:45 a.m. and 10:21 a.m.
 - i. These emails constitute a thread/discussion between Justice Eakin and his golfing group.
 - ii. Points in the thread/discussion became sexually suggestive; at one point in the exchange, Justice Eakin wrote the following: "Being on the road- I just got this exchange - you guys sound like a bunch of women, worrying about offending and being misunderstood and falling all over each other thanking everyone and getting misty eyed! Jeezus,

boys, is it a menstrual [sic] thing? The next thing we'll be splitting the check at Finn McCool[']s 'now you had the BLT and an iced tea, so you owe....' Snap the hell out of it!!! Everybody's great, everybody's in – Bax, get the money up front and all of the rest of us will go. New Judge [B.] will find [out] a judge has to go out of state to see boobs. New Dad [S.] will go unless he knocks Momma up again. [S.] can spend an extra hour in the OR and pay for all of us!! I'm in. I've got a stake of fifty ones and a titty-deficit that needs cured."

- iii. A sexually-suggestive thread/discussion continued between Justice Eakin and DAG Baxter regarding two women known to both men.
- l. Three emails bearing the subject line "Re: Personal Note," sent Monday, December 19, 2011, at 1:24 Thursday, December 22, 2011, at 9:07 a.m., p.m., and Tuesday, December 27, 2011, at 11:48 a.m..
 - i. These emails constitute a thread/discussion between Justice Eakin and his golfing group that was initiated with an attempted joke containing several embedded pictures of partially nude or scantily-clad women.
 - ii. This email thread was referred to above at Paragraphs 38(b) and 39(kk), and was contained in part on the November 5, 2014 disc.
- m. An email bearing the subject line "The complete list (so far)," sent Friday, December 4, 2009, at 9:48 a.m.
 - i. This email constituted a list of off-color jokes regarding Tiger Woods' failed marriage
 - ii. One of the jokes was "Given Tiger's racial heritage, can we call this a Black Thai affair?"
- n. An email bearing no subject line, sent Monday, April 20, 2009, at 3:04 p.m.
 - i. This email constituted an off color joke regarding President Barack Obama.
 - ii. The joke states "In honor of the 44th President of the United States, Baskin-Robbins Ice Cream has introduced a new flavor, "Barocky Road[.] Barocky Road is a blend of half Vanilla, half Chocolate, and surrounded by Nuts and Flakes. The Vanilla portion

of the mix is not openly advertised and usually denied as an ingredient. The Nuts and Flakes are all very bitter and hard to swallow. The cost is \$100.00 per scoop. When purchased it will be presented to you in a large, beautiful cone, but then the Ice Cream is taken away and given to the person in line behind you. Thus[,] you are left with an empty wallet, no change, holding an empty cone, with no hope of getting any Ice Cream."

- o. An email bearing the subject line "Re: I need your advice," sent Monday, December 23, 2013, at 9:50 a.m.
 - i. This email is part of a thread/discussion initiated by an email from one of Justice Eakin's golfing group containing pictures of a large-breasted woman in tight fitting clothing doing yoga exercises in a field; the joke asks, "I need your advice – Should the grass be cut?"
 - ii. Justice Eakin responded to the joke.
- p. An email bearing the subject line, "Warning do NOT take your girl to the Phillies game this weekend," sent Monday, May 21, 2012, at 9:56 a.m.
 - i. This email contains a link to a YouTube.com video, which is apparently a satirical video of a montage of men claiming that former Phillies' baseball player Pat Burrell had sexual intercourse with their girlfriends. The video contains "bleeped out" profanity, but no nudity.
- q. An email bearing the subject line, "Query: did Fioravanti get a partnership cut," sent Monday, July 26, 2013, at 12:48 p.m.
 - i. This email reprints an article that reported that an attorney named Knight (first name not stated) of the Bucks County law firm Fioravanti & Knight was suspended by the Pennsylvania Supreme Court for one year because he received oral sex from a woman in exchange for legal services in a DUI case.
- r. An email bearing the subject line "Why I failed 4th Grade," sent Monday, March 29, 2010.
 - i. The email is the same email mentioned at Paragraph 38(a) above.

79. With the exception of the emails listed above at Paragraphs 78(l) and 78(r), the emails listed above at Paragraph 78 were not contained on the November 5, 2014 disc.
80. Contained on the September 28, 2015 disc or the "PA_Supreme_Court_Review_10-14-2014.pst" file were emails received by Justice Eakin at his "John Smith" email from members of the golfing group during the time period of 2008-2012 and 2012-2014.
- a. A number of the emails received by Justice Eakin from the golfing group contained pictures of nude women; sexually-suggestive themes; gender stereotypes; homophobic content; socioeconomic stereotypes; violence towards women; racial humor; ethnically-based humor; and stereotypes of religious groups. These emails contain material including, but not limited to, the following:
- i. A video clip entitled "What have we done" of a black woman speaking to the camera about Barack Obama's election and saying that, because of that, black people won't have to "pay bills." She later bemoans the fact that black people will "have to get jobs" and will, consequently, no longer get a government assistance check. This clip was forwarded by DAG Baxter, and it was not included in the November 5, 2014 disc.
- ii. A picture of a large-breasted professional tennis player named Simona Halep, who is described as wanting breast reduction surgery to help her tennis game. The subject line of the email is "FW: a Sad Day for Tennis." There is no nudity. This email was noted above at Paragraph 39(w). This email was forwarded by Attorney McGowan, and it was also forwarded to Justice Eakin by B.M. The email from Attorney McGowan was not included on the November 5, 2014 disc, although the picture was included in a different email from B.M.
- iii. A video clip consisting of an audio track of a prank phone call played on the "Bob and Tom Show," wherein a telemarketer is told by the pranker that the person who was called by the telemarketer was killed and the police were investigating the murder scene. This clip contains some profanity. The email was forwarded by C.S. of the golfing group and it was not included in the November 5, 2014 disc.
- iv. A series of pictures and text with the subject line "FW: Black is In!" showing pictures of notable black celebrities, including President Obama, highlighting

their accomplishments, and concluding with a picture of Michael Jackson, which stated "...Michael Jackson must be kicking himself." This email was sent by DAG Baxter to Justice Eakin and others. It was not included in the November 5, 2014 disc.

- v. A video clip of a woman throwing out a "cheap pair of Kmart earrings" on Christmas morning to find that her husband has actually purchased a new Cadillac SUV for her. When she gets in the Cadillac and starts it, it explodes. The video concludes with the words "Merry Christmas, Bitch." This email was forwarded by DAG Baxter, and it was not included in the November 5, 2014 disc.
- vi. A joke wherein the punchline is a man's name representing the things he enjoys the most, i.e., "B.J. Titsengolf." This joke was forwarded by C.S. to Justice Eakin, and it was not included in the November 5, 2014 disc.
- vii. A video clip containing an audio track of a man prank calling a cable company about a new gay and lesbian channel. The audio contains profanity and jokes portraying a negative view of gays and lesbians based on stereotypes. This email was forwarded to Justice Eakin by DAG Baxter. It was not included in the November 5, 2014 disc.
- viii. A video clip in German about Nintendo Wii games which women "should" play, including games that simulate cooking and performing oral sex on men. This email was forwarded by DAG Baxter to Justice Eakin, and it was not included on the November 5, 2014 disc.
- ix. A series of nude or semi-nude photographs of women entitled "Friendship strings," which is a reference to the g-string panties worn by some of the women in the pictures. This email was mentioned above at Paragraph 39(d). This email was forwarded to Justice Eakin by DAG Baxter. This email, or some part of the thread that it generated, was included on the November 5, 2014 disc.
- x. A forwarded joke saying "It was once said that a black man would be president when 'pigs fly.' Indeed, 100 days into Obama's presidency... 'swine flu'!!!" This email was forwarded to Justice Eakin by

DAG Baxter. It was not included on the November 5, 2014 disc.

- xi. A joke entitled "golf panties" about couples of Swedish, Irish, and Scottish origin golfing when the wind reveals that the women of the group are not wearing underwear. Upon seeing that his wife is not wearing underwear, the Scotsman offers his wife a comb and tells her to "tidy" up. This email was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc.
- xii. A joke entitled "Man Rules." This lists a number of "rules" for women to follow when dealing with men. These rules are evidently based on gender stereotypes such as "Christopher Columbus didn't need directions and neither do we!" This email was sent by C.S. to Justice Eakin. It was not included on the November 5, 2014 disc.
- xiii. A joke video clip with a puppet Osama Bin Laden threatening to kill Santa Claus. This email was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc.
- xiv. A comedy routine by a woman named "Mrs. Hughes," who jokes about her husband and her family life. This email was sent by DAG Baxter to Justice Eakin. It was not included in the November 5, 2014 disc.
- xv. A series of "demotivational" posters entitled "New Motivational posters." The jokes are geared toward animals, parenting, female breasts, and Asian accents. This email was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc.
- xvi. An email entitled a "prayer for dad" with a picture of a young girl praying, with the text "Dear God, please send clothes for all the ladies on Daddy's computer. Amen." This email was sent by C.S. to Justice Eakin. It was not included on the November 5, 2014 disc.
- xvii. A series of jokes entitled "rotten but funny," which include jokes about race, gender, and ethnicity. This series of jokes was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc.

- xviii. A joke about an environmentalist woman having to slide down a tree in haste. When she goes to the doctor and asked what took him so long to tend to her wounds, the doctor says "Well, I had to get permits from the Environmental Protection agency, the Forest Service, Fish and Wildlife Commission and the Bureau of Land Management before I could remove old-growth timber from a recreational area. I'm sorry, but due to Obamacare, they turned me down." The joke was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc.
- xix. A picture of a woman using her nipples as "beer temperature" testers. This email was sent by B.M. to Justice Eakin. This email was noted above at Paragraph 39(x). It was included on the November 5, 2014 disc.
- xx. A series of pictures entitled a "Real man's Chain Letter" featuring pictures of women in a wet t-shirt contest and a topless woman. This email was sent to Justice Eakin by B.M., his golfing friend. This email was noted above at Paragraph 39(v). It was included on the November 5, 2014 disc.
- xxi. A joke email regarding a woman's vagina which states, that "the best engine in the world is the vagina. It can be started with one finger. It is self-lubricating. It takes any size piston. And it changes its own oil every four weeks. It is only a pity that the management system is so fucking temperamental." This email was sent by B.M. to Justice Eakin. There are no nude pictures. This email was not included on the November 5, 2014 disc.
- xxii. A picture of bare breasted women of increasing breast size entitled "Cup sizes." The last picture is of an oversized golf tee, and the email asks "Which cup size excites older men the most?" This email was noted above at Paragraph 39(y) sent by B.M. to Justice Eakin. It was included on the November 5, 2014 disc.
- xxiii. A slide show called "Farewell to my Golf Friends," which includes pictures of bare breasted women and pictures of their buttocks. This email was noted above at Paragraph 39(z). This email was sent by B.M. to Justice Eakin. It was included on the November 5, 2014 disc.

- xxiv. A slide show called "Daily meds" which contains pictures of nude or semi-nude women evidently scanned from Playboy magazine. This email was sent by B.M. to Justice Eakin. This email was noted above at Paragraph 39(aa). It was included on the November 5, 2014 disc.
- xxv. A slide show called "Daily meds" which contains pictures of nude or semi-nude women evidently scanned from Playboy magazine. This email was sent by B.M. to Justice Eakin. This email was noted above at Paragraph 39(aa). It was included on the November 5, 2014 disc.
- xxvi. A video clip of both clothed and bare female breasts bouncing while the song "Don't Worry, Be Happy" plays. This email was noted above at Paragraph 39(bb). This email was sent by B.M. to Justice Eakin. It was included on the November 5, 2014 disc.
- xxvii. A picture of a large breasted woman holding a can of beer between her bare breasts, with the warning, "Don't do this to a can of beer, it will get warm and explode." This email was sent to Justice Eakin by B.M.. It was not included on the November 5, 2014 disc.
- xxviii. A picture entitled "Priceless" of two women riding a roller coaster with their breasts exposed. This email was noted above at Paragraph 39 (dd). It was sent to Justice Eakin by B.M. It was included on the November 5, 2014 disc.
- xxix. A video clip of a man farting in his car after he leaves his girlfriend's apartment; she runs to the car to give him one final kiss, and she discovers that he farted in the car. This email was sent to Justice Eakin by DAG Baxter. It was not included on the November 5, 2014 disc.
- xxx. A series of pictures of bare breasted women entitled "We stare because we care." This email was sent by B.M. to Justice Eakin. This email was noted above at Paragraph 39(ee). It was included on the November 5, 2014 disc.
- xxxi. A picture entitled "Will the Dollar Fall," of a dollar bill squeezed between a woman's buttocks. This email was noted above at Paragraph (ff). It was

sent by B.M. to Justice Eakin. It was included on the November 5, 2014 disc.

xxxii. A joke about a little girl receiving a ticket from a mounted policeman for a safety violation while riding her new bike that Santa brought her. The girl asks, "Did Santa bring you that horse?" The policeman said "Yes." The little girl responds, "Tell Santa for next year that the dick goes beneath the horse, not on top of it." There is also a picture of a little girl giving the finger to whoever took her picture. This email was sent by B.M. to Justice Eakin. It was not included on the November 5, 2014 disc.

xxxiii. A picture of a woman with an exposed breast sitting at a dinner table entitled "Fwd: Greek economy." The joke with the picture asks how many cigarettes were in an ashtray next to her. This email was noted above at Paragraph 39(gg). It was sent to Justice Eakin by B.M.. It was included on the November 5, 2014 disc.

xxxiv. A series of "Motivational Posters" or "demotivational posters." This email was noted above at Paragraph 39(ii). One picture asks, "Dear Abby, I'm an 18 year-old virgin in Arkansas. Are my brothers gay?" This email was sent to Justice Eakin by B.M.. It was included on the November 5, 2014 disc.

xxxv. A series of nude pictures entitled "Neck exercises sent to me by a doctor." This email was noted above at Paragraph 39(nn). The position of the photographs requires the viewer to bend their neck to see them properly. This email was sent to Justice Eakin by B.M.. It was included on the November 5, 2014 disc.

xxxvi. A series of pictures of bare breasts called "Protect your nose from the sun." The pictures are of a man kissing the stomach of a woman in a bikini, while the two swam in the ocean. This email was noted above at Paragraph 39(ii). It was sent to Justice Eakin by B.M.. It was included on the November 5, 2014 disc.

xxxvii. A joke called the "Water Miracle." This joke is the same as the "sweet tea" joke, but in this instance, the woman is told by the doctor to swish water in her

mouth. This email was sent to Justice Eakin by B.M.. It was not included on the November 5, 2014 disc.

xxxviii. A joke about robot golf caddies. According to the joke, the silver color of the robot caddies blinded the other golfers, and the golfer using the robot asks, "Why didn't you paint them black?" The man in the golf shop said, "We did. Then four of 'em didn't show for work, two filed for welfare, one of them robbed the pro shop, and the other thinks he's the President." This email was sent by DAG Baxter to Justice Eakin. It was not included in the November 5, 2014 disc.

xxxix. A joke about "hand jobs." This email was sent by DAG Baxter to Justice Eakin. This email was not included in the November 5, 2014 disc.

xl. A repeat emailing of the "May all Your Days Start this Well" email described above at Paragraph 78(g). This email was sent to Justice Eakin by B.M.. It was not included on the November 5, 2014 disc.

xli. A photograph/joke combination about a "homeless golfer." The joke says, "I'm reaching out on behalf of a friend of mine who needs some help who wishes to remain anonymous. His wife told him to go out and get some of those pills that would help him get an erection. When he came back, he handed her diet pills. ANYWAY, he's looking for a place to live. Can you help him?" This email was sent to Justice Eakin by DAG Baxter, it was not included in the November 5, 2014 disc.

xlii. A link to a YouTube video clip of the "Key and Peele" show on Comedy Central, wherein a black inner-city teacher substitutes in a predominantly white middle-class school district and mispronounces all of the students' names. For example, the teacher pronounces "Aaron" as "A-A-ron." This email was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc.

xliii. An email thread containing a message from DAG Baxter to, presumably, Justice Eakin and his golfing friends, which contains the statement, "While most of us are shoveling a foot of snow from our driveways, I thought now would be a good time to bring thoughts of warmth, golf, and tittles your way!" This message

was forwarded to Justice Eakin by DAG Baxter. It was not included on the November 5, 2014 disc.

xliv. A series of pictures of a large breasted woman, fully clothed, doing yoga poses. There is a joke with these pictures asks whether the grass the woman is posing on needs to be cut. This email was noted above at Paragraph 78(o). This email was sent to Justice Eakin by B.M.. Justice Eakin saw the email because he responded to it. It was not included on the November 5, 2014 disc.

xlv. A picture of a nude woman driving a convertible BMW. There is a joke about the car's "airbags" functioning, but not its air conditioning. This email was sent to Justice Eakin by B.M.. It was not included on the November 5, 2014 disc.

81. Contained on the September 28, 2015 disc or the "PA_Supreme_Court_Review_10-14-2014.pst" file were emails received by Justice Eakin at his "John Smith" email from Attorney McGowan in his "blast emails," during the time period of 2008-2012 and 2012-2014.

a. A number of the emails received by Justice Eakin from Attorney McGowan contained pictures of nude women; sexually-suggestive themes; gender stereotypes; homophobic content; socioeconomic stereotypes; violence towards women; racial humor; ethnically-based humor; and stereotypes of religious groups. These emails contain material including, but not limited to, the following:

i. A "demotivational picture" entitled "Guys Night Out - there is no way that this could end poorly, with a picture of Ben Roethlisberger and Tiger Woods. The humor is obviously due to the accusations women made against them. This picture was forwarded by Attorney McGowan. This was not included in the November 5, 2014 disc.

ii. A video clip of a beer commercial where a man is seen furiously brushing his teeth and swishing mouthwash, the clip says "earlier..." and cuts to a group of friends drinking. One says, "Can I have another light beer?" The man who was seen brushing his teeth says, "If this is light beer, I'll suck Bill's co-" and his statement is interrupted with the advertisement for Big Rock Beer Company. This clip was forwarded by Attorney McGowan. This was not included in the November 5, 2014 disc.

- iii. A video clip of a scene from the motion picture "Say It Isn't So," showing the sister of one of the main characters defiantly showing off her pierced nipples to her family. This email was noted above at Paragraphs 38-39. This clip was forwarded by Attorney McGowan, and it was included in the November 5, 2014 disc.
- iv. A video clip of a car commercial for Mercedes Benz highlighting two unfaithful couples; the tagline of the commercial is "at least there's one thing you can rely on." This email was forwarded by Attorney McGowan, and it was not included in the November 5, 2014 disc.
- v. A video clip entitled "The craziest white man ever," which appears to be a satirical video of a white man picking up Hispanic individuals at a Home Depot and offering them work at his home, but he ends up taking them to the Immigration and Customs Enforcement office. In the video, the man uses racial and ethnic slurs such as "beaner" and "wetback." This video was forwarded to Justice Eakin by Attorney McGowan and it was not included in the November 5, 2014 disc.
- vi. A joke about a man taking a woman out to eat at an expensive restaurant, where the woman eats a lot of expensive items on the menu. The man asks, "Does your mother feed you like this when you eat at home?" The woman responds, "No, but my mother is not expecting a blow job." This email was forwarded by Attorney McGowan. It was not included in the November 5, 2014 disc.
- vii. A series of pictures of strange looking and strangely-attired people getting married entitled "the people of Walmart weddings." This email was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc.
- viii. A "demotivational" poster of a young girl smiling eerily at the camera while a house in the background of the shot burns. The tagline says "Girl Scouts - Maybe next time you'll buy the fucking cookies." This email was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc.
- ix. A series of pictures entitled "girls you can't take anywhere." This series of pictures are of women,

fully clothed, generally engaged in sexually-suggestive poses with statues, signs, and other inanimate objects. This email was noted above at Paragraph 39(h). This email was sent to Justice Eakin by Attorney McGowan. It was included on the November 5, 2014 disc.

- x. A video clip called "Happy Ending Massage." This email was noted above at Paragraph 39 (i). This video clip is a joke clip where, after a man receives a massage from a female Asian masseuse in a bikini, she asks if he wants a "happy ending," impliedly, a sexual favor. He responds "yes," and balloons and clowns fill the room as if it was a birthday party. This email was sent by Attorney McGowan to Justice Eakin. It was included on the November 5, 2014 disc.
- xi. A picture entitled "If she hasn't yet, she will soon..." The picture is a shot of a woman squatting to relieve herself in the African veldt with a lioness stalking her (at the same time) in the background of the photo. This email was sent by Attorney McGowan. It was not included on the November 5, 2014 disc.
- xii. A joke entitled "Instant spark," which implies that a man tasered a "beautiful woman" who he saw in a park and then raped her. This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc.
- xiii. A joke picture of a baby doll in traditional Islamic garb. The punchline of the joke is "Nobody knows what the hell it says 'cause no one's got the balls to pull the cord!" This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc.
- xiv. A joke entitled "Leroy's Hearing Problem," wherein "Leroy" asks a Preacher to pray for help with his hearing, the preacher prays and asks how his hearing is, and Leroy says, "I don't know, Reverend, it ain't till next Wednesday." This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc.
- xv. A joke about a "magic green hat" that cleared out an emergency room. The hat was a U.S. Customs and Border Patrol hat, implying that the emergency room was full of illegal immigrants. This email was sent by

Attorney McGowan. It was not on the November 5, 2014 disc.

- xvi. A joke about a woman golfer who fails at golfing and kills a man. The woman says, "I guess all those fucking lessons I took over the winter didn't help." One of the men in the all-male crowd observing responded "Well, there you have it. You should have taken golf lessons instead!" This email was sent by Attorney McGowan. It was not included in the November 5, 2014 disc.
- xvii. A joke about a marriage counselor who asks a couple what they both have in common. The husband responds, "Well, for starters, neither one of us sucks dick." This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc.
- xviii. A joke entitled "Men Should Never Do Advice Columns." In the joke, a woman writes a male advice column writer with a story of her broken down car and how it led her to discover that her husband was cheating. The advice column writer responds with advice as to why her car broke down. This email was sent by Attorney McGowan. It was not included on the November 5, 2014 disc.
- xix. A joke entitled "mother of all," where two Muslim women reminisce about their children. At the close of the joke, one woman says "they blow up so fast, don't they?" This email was sent by Attorney McGowan. It was not included on the November 5, 2014 disc.
- xx. A video clip of a man who takes his new girlfriend fishing on his Nitro speed fishing boat, who ejects her from the boat after she complains. The girlfriend does not die. This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc.
- xxi. A series of pictures entitled "Prom Night at Camden High School." The pictures are predominantly of black students in prom attire that would generally be considered unusual. This email was sent by Attorney McGowan. It was not included on the November 5, 2014 disc.

- xxii. A video clip of a dog pulling a chicken into its dog house and mounting the chicken. The clip is entitled "Roethlisberger's dog." This email is an evident reference to the rape allegations against Ben Roethlisberger. The email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc.
- xxiii. A video clip of a man lying on the couch watching TV, who has a remote controlled refrigerator. He sends the remote controlled fridge to his girlfriend, and asks her to get him a beer. The tagline is "When your lady friend can't get to the fridge, get the fridge to your lady friend." This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc.
- xxiv. A series of pictures entitled "New Female Wal-Martians." These pictures are mainly of obese women in ill-fitting clothing in Wal-Mart. This email was sent by Attorney McGowan to Justice Eakin. This email was not included on the November 5, 2014 disc.
- xxv. A video clip of a UPS man delivering a package to a woman's home. The woman, who is nude, is visible from behind. When she approaches the door, the UPS man opens the mail slot and says "Hey curly, is your mom home?" The woman runs away. This email was noted above at Paragraph 39(s). The email was sent by Attorney McGowan to Justice Eakin. It was included on the November 5, 2014 disc.
- xxvi. A two-picture series entitled "Vibrator warning." The first picture attempts to warn women against using a corn cob for a vibrator. The second picture is of a topless woman with her legs spread, with her genital area entirely covered by popcorn. This email was noted above at Paragraph 39(t). This email was sent by Attorney McGowan to Justice Eakin. It was included on the November 5, 2014 disc.
- xxviii. A joke video entitled "Mohammed Brand Condoms," which indicates that jihadists should wear the condoms so they do not have to worry about the sexual pasts of their goats. This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc.
- xxiv. A joke picture of the "Home Alone" movie poster. In it, the robber's face behind Macaulay Culkin is

replaced with a smiling Jerry Sandusky. This email was sent by C.K.P., an email contact of Attorney McGowan, to Attorney McGowan, Justice Eakin, and a number of other recipients. It was not included on the November 5, 2014 disc.

- xxv. An email with the phrase "Jerry Sandusky as Santa Claus with a crying baby boy on his lap..." This email was sent by J.M.C, an email contact of Attorney McGowan, to Attorney McGowan, Justice Eakin, and a number of other recipients. It was not included on the November 5, 2014 disc.
- xxvi. A series of pictures purporting to be Houston Oilers player Mike Comrie proposing to his girlfriend. The last picture appears, from behind, to be Comrie's girlfriend performing oral sex on him, although the viewer cannot see anything other than her head in his lap. The series is called "How to propose to your girlfriend – as demonstrated by Oilers' Mike Comrie." This email was sent to Justice Eakin, Attorney McGowan, and a number of other recipients by P.T., an email contact of Attorney McGowan. This picture was not included on the November 5, 2014 disc.
- xxvii. A picture of an obese nude woman wearing a pig costume entitled "How to tell if your house is infected with the swine flu.". The email was noted above at Paragraphs 39(j) and 39(mm). The email was sent by E.S., an email contact of Attorney McGowan, to Attorney McGowan, Justice Eakin, and a number of other recipients. This email was included on the November 5, 2014 disc.
- xxviii. A joke entitled "sex in the shower." The joke states that, "in a survey 86% of inner city residents (almost all of whom are registered democrats) said that they have enjoyed sex in the shower. The other 14% said that they have not been to prison yet." This joke was sent to Justice Eakin, Attorney McGowan and many other recipients by P.T.. It was not included on the November 5, 2014 disc.
- xxix. A two-picture series of pictures entitled "for a dreary day," which are of a wrecked golf cart and a large breasted woman in a bikini top. This email was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc.

- xxx. A two-picture series entitled "Difference between Ravens/SF fans;" the first picture is of a woman in a Ravens' football jersey exposing her breasts to the camera. The second picture is two male San Francisco fans in a bar kissing each other. This email was sent to Justice Eakin by Attorney McGowan. It was not part of the November 5, 2014 disc.
- xxxi. A photograph/joke combination entitled "Wife's First Hunt;" the picture is of a woman hunting in a hat with antlers on it. The joke describes the hat as the "first timer's lucky hat." The obvious implication is that the husband wanted the wife to get shot by mistake because of the hat. This email was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc.
- xxxii. A photograph/joke combination that is entitled "Howard was always slow!" The picture is of a nude woman, on a couch, with a skeleton between her legs, apparently performing oral sex on her. There is a word balloon that says "Come on Howard, you're taking forever!" This email was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc.
- xxxiii. A link to a YouTube video entitled "Kodak Moment" or "How Not To Instagram." The video is of two women in a swamp. One of the women was taking "selfies" of herself by the water when she is eaten by an alligator or a crocodile. This link was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc.
- xxxiv. A picture slide show entitled "Morning Funnies" or "All men are the same," which shows pictures of small children ogling women's breasts. One photograph has a picture of a woman on a nude beach with a baby sitting next to her grabbing one of her nipples, and one photograph has a small child putting the breasts of an unclothed Barbie doll in his mouth. This email was noted above at Paragraph 39(m). It was sent to Justice Eakin by Attorney McGowan. It was included on the November 5, 2014 disc.

- 82. After receiving the aforementioned emails on October 15, 2015, Board counsel sought to achieve written confirmation from the OAG that it, in fact, had all of the emails pertaining to Justice Eakin from his "John Smith" email address.

83. Board counsel deposed Justice Eakin at its offices on October 20, 2015.
 - a. Immediately prior to the start of the deposition, Justice Eakin, on his own and through counsel, waived his right to receive a Notice of Full Investigation.
84. Board staff obtained written confirmation from the OAG IT Department that it had all of the emails pertaining to Justice Eakin's "John Smith" email address and his "pacourts.us" email address on November 10, 2015.
85. Board staff also received from the OAG a 32 GB thumb drive that contained all of the emails from Justice Eakin's "John Smith" email address that were present on OAG servers, which were sent or received from 2008 to 2014.
86. The emails contained on the 32 GB thumb drive mirrored the aforementioned emails recounted at Paragraphs 38, 39, 42, 78, 80, and 81 in both subject matter and content, and included all emails noted above at those paragraphs, respectively.
87. Based on the Board's field investigation and the email review conducted by Deputy Counsel James P. Kleman, Jr., Deputy Counsel Elizabeth Flaherty, and Deputy Chief Counsel Francis J. Puskas II, counsel recommended to the Board that this Board Complaint be filed against Justice Eakin for his email activity.
88. The Board found that probable cause existed to conclude that Justice Eakin violated Canons 2A, 5A, and Article V, §§ 17(b) and 18(d)(1) by virtue of his email conduct at its December 2015 meeting.
89. On December 7, 2015, the Board directed the filing of this Board Complaint against Justice Eakin.
 - a. At the time of the Board's decision, Chief Counsel Graci was recused from involvement in the investigation of Justice Eakin and physically removed himself from the Board's discussions and deliberations and did not participate in any fashion in presenting the matter to the Board.
 - b. At the time of the Board's decision, Member Dooley was recused from involvement in the investigation of Justice Eakin and physically removed himself from the Board's discussions and deliberations and did not participate in voting on a final disposition of the matter.
 - c. At the time of the Board's decision, Chair Duncan was recused from involvement in the investigation of Justice Eakin and physically removed herself from the Board's discussions and deliberations and did not participate in voting on a final disposition of the matter.

PART III. CHARGES³

COUNT 1:

90. By virtue of some or all of the facts alleged above at Parts I and II, Justice Eakin violated Canon 2A of the Old Code.
91. Canon 2 provided, in pertinent part, the following:
- Judges should avoid impropriety and the appearance of impropriety in all their activities:
- A. Judges should respect and comply with the law and should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.
92. During his tenure on the Pennsylvania Supreme Court, Justice Eakin participated in the consideration of and decision in ***In re Carney***, 79 A.3d (Pa. 2013) which provided prospective notice to all judges that his or her conduct is subject to discipline under Canon 2A whether or not the conduct implicates the judicial decision-making process.⁹² By his pre- and post-*Carney* pattern of conduct of sending and receiving emails from 2008-2014 containing the aforementioned content, *i.e.*, pictures of nude women; sexually-suggestive themes; gender stereotypes; homophobic content; socioeconomic stereotypes; violence towards women; race and/or ethnicity; and stereotypes of religious groups, Justice Eakin failed to conduct himself in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.
93. By his pre- and post-***Carney*** pattern of conduct of sending and receiving the emails as set in this Complaint, Justice Eakin engaged in conduct that gives the appearance of impropriety.

³ The Board has not charged a violation of Canon 1 of the Old Code because, under the law extant at the time Justice Eakin sent and received the emails in this complaint, Canon 1 was not able to be charged as a discrete violation of the Old Code. ***See, e.g., In re Cicchetti***, 743 A.2d 431, 441 (Pa. 2000) (explaining that Canon 1 is a "statement of purpose and rule of construction rather than a separate rule of conduct.") *overruled in part on other grounds by In re Carney*, 79 A.3d 490, 507 (Pa. 2013). Concomitantly, and at the risk of stating the obvious, the Board charged violations of the Old Code in this complaint because Justice Eakin had (and continues to have) a due process right to notice of the types of conduct prohibited for judges at the time the alleged prohibited conduct occurred. ***See Carney***, 79 A.3d at 508 (citations omitted). Because the New Code was not in force when the conduct occurred that is alleged in this complaint, it would constitute a violation of due process to charge Justice Eakin with violations of the New Code for conduct that occurred while the Old Code was in force. ***See, e.g., Id.*** (discussing federal Constitutional prohibition on *ex post facto* law) (citation omitted).

94. By his position as a justice of Pennsylvania Supreme Court, and since January 11, 2013, as liaison to the Courts of the First Judicial District, Justice Eakin is responsible for the supervision and enforcement of anti-discrimination laws as set forth in the Unified Judicial System of Pennsylvania Policy on Non-Discrimination and Equal Employment Opportunity, which applies to judicial system personnel and related staff as well those who use the court system, including "attorneys, applicants for employment, litigants, witnesses, jurors and court volunteers."

95. The Introductory statement of Unified Judicial System of Pennsylvania Policy on Non-Judicial Discrimination and Equal Employment Opportunity provides:

The Supreme Court of Pennsylvania declares that it is the policy of the UJS to ensure that all individuals having business with the UJS are treated in a dignified, civil, respectful and non-discriminatory manner.

96. By his conduct of sending and receiving the emails, as set forth in this Complaint, to and from other Pennsylvania judges and attorneys, particularly defense counsel and employees of the Office of Attorney General, Justice Eakin failed to demonstrate respect for the mission of the Unified Judicial System of Pennsylvania Policy on Non-Discrimination and Equal Employment Opportunity, despite his authority to supervise and enforce the Policy by virtue of his positions as Justice and liaison to the First Judicial District.

WHEREFORE, Justice J. Michael Eakin is subject to sanction by this Honorable Court.

COUNT 2:

97. By virtue of some or all of the facts alleged above at Parts I and II, Justice Eakin violated Canon 5A of the Old Code.

98. Canon 5 stated, in pertinent part, the following:

Judges should regulate their extra-judicial activities to minimize the risk of conflict with their judicial duties

A. Avocational activities. Judges may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of their office or interfere with the performance of their judicial duties.

99. By sending and receiving emails from 2008-2014 containing the aforementioned content, *i.e.*, pictures of nude women; sexually-suggestive themes; gender stereotypes; homophobic content; socioeconomic stereotypes; violence towards women; race and/or ethnicity; and stereotypes of religious groups, Justice Eakin has acted in a manner that detracted from the dignity of his office.

WHEREFORE, Justice J. Michael Eakin is subject to sanction by this Honorable Court.

COUNT 3(a), (b):

100. By virtue of some or all of the facts alleged above at Counts 1 and 2, Justice Eakin violated Article V, § 17(b) of the Pennsylvania Constitution.

101. Article V, § 17(b) states, in pertinent part, the following:

Justices and Judges shall not...violate any canon of legal or judicial ethics prescribed by the Supreme Court.

102. Justice Eakin's violations of Canon 2A and Canon 5A of the Old Code constitute separate automatic, derivative violations of Article V, § 17(b) of the Pennsylvania Constitution.

WHEREFORE, Justice J. Michael Eakin is subject to sanction by this Honorable Court.

COUNT 4

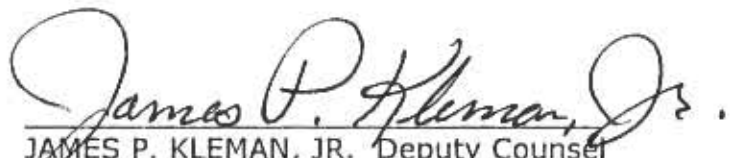
103. By virtue of some or all of the facts alleged above at Parts I and II, Justice Eakin violated Article V, §18(d)(1) of the Pennsylvania Constitution.
104. Article V, § 18(d)(1) states, in pertinent part, the following:
- A justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for...conduct which...brings the judicial office into disrepute, whether or not the conduct occurred while acting in a judicial capacity or is prohibited by law[.]
105. Justice Eakin possessed the requisite *mens rea* for a finding of disrepute because he *knowingly* engaged in the sending and receiving of the emails set forth in this Complaint; *intentionally* changed his email address as a means of protecting his identity as a Justice of the Pennsylvania Supreme Court while continuing to engage in the ongoing email exchange; and, after notice in *Carney* that off-bench conduct was subject to discipline, *recklessly* continued to engage in the pattern of sending and receiving the emails that a person of reasonable sensitivity would find objectionable.
106. By sending and receiving emails from 2008-2014 containing the aforementioned content, *i.e.*, attempted humor based upon pictures of nude women; sexually-suggestive themes; gender stereotypes; homophobic content; socioeconomic stereotypes; violence towards women; race and/or ethnicity; and stereotypes of religious groups, Justice Eakin engaged in conduct so extreme that it brought the judicial office into disrepute.


Respectfully submitted,

FRANCIS J. PUSKAS, II, Deputy Chief Counsel

DATE: December 8, 2015

BY:


JAMES P. KLEMAN, JR. Deputy Counsel
Pa. Supreme Court ID No. 87637


ELIZABETH A. FLAHERTY, Deputy Counsel
Pa. Supreme Court ID No. 205575

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

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

J. Michael Eakin
Justice of
The Supreme Court of Pennsylvania

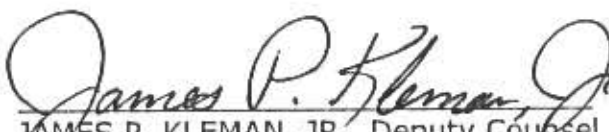
13 JD 2015

VERIFICATION

We, James P. Kleman, Jr., and Elizabeth A. Flaherty, Deputy Counsel to the Judicial Conduct Board, verify that the Judicial Conduct Board found probable cause to file the formal charges contained in this Board Complaint. We understand that the statements made in this Board Complaint are subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

Respectfully submitted,

DATE: December 8, 2015


JAMES P. KLEMAN, JR. Deputy Counsel
Pa. Supreme Court ID No. 87637


ELIZABETH A. FLAHERTY, Deputy Counsel
Pa. Supreme Court ID No. 205575

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

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

J. Michael Eakin
Justice of
The Supreme Court of Pennsylvania

:
:
:
:
:

13 JD 2015

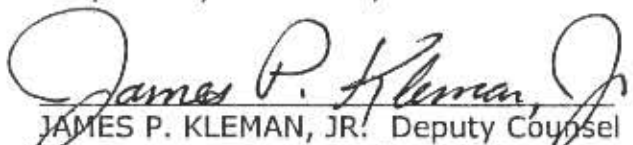
PROOF OF SERVICE


In compliance with Rule 122(d) of the Court of Judicial Discipline Rules of Procedure, on December 8, 2015, a copy of this Board Complaint was provided to Justice Eakin's counsel, William C. Costopoulos, Esquire, and Heidi Eakin, Esquire, who agreed to accept service of this Board Complaint, by personal service at the following address:

William C. Costopoulos, Esquire
Heidi Eakin, Esquire
Costopoulos, Foster & Fields
831 Market Street
Lemoyne, PA 17043-02222

Respectfully submitted,

DATE: December 8, 2015


JAMES P. KLEMAN, JR. Deputy Counsel
Pa. Supreme Court ID No. 87637


ELIZABETH A. FLAHERTY, Deputy Counsel
Pa. Supreme Court ID No. 205575
Judicial Conduct Board
601 Commonwealth Avenue, Ste. 3500
P.O. Box 62525
Harrisburg, PA 17106
(717) 234-7911