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COURT OF JUDICIAL DISCIPLINE
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COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Andrew T. LeFever, Esq. :
Magisterial District Judge :
Magisterial District 02-2-04 : 7 JD 2020
2nd Judicial District :
Lancaster County :

**MAGISTERIAL DISTRICT JUDGE ANDREW T. LEFEVER'S PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW**

NOW COMES Magisterial District Judge Andrew T. LeFever, Respondent herein, by and through his counsel, Robert A. Graci, Esquire, and Saxton & Stump, LLC, and files his Proposed Findings of Fact and Conclusions of Law, as follows:

I. INTRODUCTION

As demonstrated during Trial, the Judicial Conduct Board has failed to establish, by clear and convincing evidence, that Judge LeFever violated the Rules at issue. Indeed, critically absent from this case is the intent required for a violation - intent, scienter, or bad faith on behalf of Judge LeFever to commit violations of the Rules. Rather, the record clearly demonstrates that Judge LeFever conducted himself in a manner believed to be well within the confines of the Rules. That belief was premised upon the Commonwealth Court's interpretation and application of the proscriptions of Rule 4.1(A)(1), specifically *In re Nomination Petition of Denick*, 729 A.2d 168 (Pa. Cmwlth. 1999), *McMenamin v. Tartaglione*, 590 A.2d 802, 810 (Pa. Cmwlth. 1991), and their progeny. These interpretations stood for the reasonable belief that one does not become a judicial candidate until nominating petitions are filed. *See In re Nomination Petition for Leonard*, 2017 Pa. Commw. Unpub. LEXIS 536, *6 (Pa. Cmwlth. 2017) (explaining that "[u]ntil nomination petitions are filed, an individual is only a potential candidate, who may or may or may not

successfully meet the criteria for nomination.”). Consistent with these cases, Judge LeFever believed that the Commonwealth Court’s precedent was the guiding interpretation of the Rules with which he had to comply. President Judge Reinaker of the Lancaster County Court of Common Pleas similarly concluded that *Denick* and its progeny were controlling for election purposes and appropriately followed them in denying the challenge to Judge LeFever’s nominating petitions.

While these decisions, including Judge Reinaker’s, are not binding upon this Honorable Court when interpreting and applying the Rules Governing Standards of Conduct of Magisterial District Judges, they are persuasive and are offered for consideration in that Judge LeFever relied upon *Denick* for his understanding of the law applicable at the time he made his decision to run for magisterial district judge and to comply with the rule regarding when he had to resign as a member of his local political committee.¹ This reliance was neither unfounded nor unreasonable. At the very least, his reliance upon *Denick* exemplifies the understandable confusion surrounding when an individual becomes a “judicial candidate” for the purposes of the Rules Governing Standards of Conduct of Magisterial District Judges. If this Honorable Court determines that *Denick* and its progeny are indeed mistaken and a misapplication of the Rules for the purposes of this Court’s jurisprudence, Judge LeFever should not be the individual who bears the brunt of that determination. As established by the record, Judge LeFever merely relied upon, in good faith, what

¹ To be clear, the decisions of the Commonwealth Court, including single-judge opinions in Election Code challenges, are binding precedent for Election Code cases. *See* Pa.R.A.P. 126(c)(1). For other purposes, they are persuasive. *See* Pa.R.A.P. 126(c)(2). This Court is not bound by the pronouncements in these cases when interpreting and applying the Rules Governing Standards of Conduct of Magisterial District Judges for judicial disciplinary purposes. However, Judge Reinaker’s decision, which went unappealed, on the challenges to then-candidate LeFever’s nominating petitions, finally and correctly, under binding Commonwealth Court authority, determined that he was properly on the ballot. This Court is powerless to affect that decision rendered under the Election Code. It is not before this Court for review.

was believed to be controlling precedent interpreting the applicable rules, as other attorneys and judges had in the past.²

As further addressed below, Judge LeFever followed the Commonwealth Court's determinations to inform his conduct and attempts to comply with the Rules Governing Standards of Conduct of Magisterial District Judges. He did so in good faith and with the intent to follow the Rules Governing Standards of Conduct of Magisterial District Judges. In light of this, the Judicial Conduct Board failed to carry its burden and judgment in favor of Judge LeFever is proper.

II. PROPOSED FINDINGS OF FACT

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 in this Court. *See* Joint Stipulations of Fact (hereafter "JSF"), ¶ 1.

2. From January 2, 2020, to the present, Respondent has served continuously as a Magisterial District Judge in Magisterial District 02-2-04, Lancaster County, Pennsylvania. *See* JSF ¶ 2.

² For the reasons set forth in Section D of the Prehearing Memorandum filed on behalf of Judge LeFever, which is incorporated herein by reference as though set forth in full, *see* Prehearing Memorandum, Section D, pp. 24-27, this Court should take the opportunity prospectively to clarify the application of Canon 4 and the definition of "Judicial candidate" under the Rules and conclude that *Denick* and its progeny do not properly interpret the Rules or apply the definition of "Judicial candidate" contained therein for judicial disciplinary purposes. Prospective application of this ruling is appropriate as Judge LeFever's conduct was not a violation of Rule 4.1(A)(1) as interpreted and applied in *Denick* and *Leonard* at the time he engaged in the alleged conduct. *See In re Carney*, 79 A.3d 490, 507-508 (Pa. 2103) (applying new interpretation prospectively only and not to respondent judge whose case was then before the Court).

3. Respondent graduated from Law School at Mississippi College in Jackson, Mississippi and is a member of the Pennsylvania Bar having been admitted in 2014. *See* Trial Transcript, pp. 63:18-64:6.

4. Respondent was an Assistant District Attorney in the Lancaster County District Attorney's Office from 2014 until he was elected to the bench. *Id.* at p. 64:8-19.

5. In his position as an Assistant District Attorney, Respondent specialized in prosecutions of domestic violence and sexual assault matters. *Id.* at pp. 64:20-65:6.

6. During his time practicing as an attorney, Respondent was never subject to any professional discipline. *Id.* at p. 65:12-14.

7. Based on a Confidential Request for Investigation at Judicial Conduct Board File No. 2019-669, the Board investigated the instant matter. *See* JSF ¶ 3.

8. As a result of its investigation, and pursuant to Article V, § 18(a)(7) of the Constitution of the Commonwealth of Pennsylvania, the Board determined that there was probable cause to file formal charges against Respondent in this Court. *See* JSF ¶ 4.

9. Respondent was appointed as a Committee Person in the Lancaster City Democratic Committee (LCDC) to represent the City of Lancaster's 6th Ward's 5th Precinct on July 12, 2018. *See* JSF ¶ 5.

10. In the process of deciding to seek the office of magisterial district judge during 2018 or early 2019, Respondent reviewed the Rules Governing Standards of Conduct of Magisterial District Judges (hereafter, "RGSCMDJ" or "Rules"). *Id.* at pp. 72:17-73:1; JSF ¶¶ 13, 14.

11. The website at www.lancastercitydemocrats.com is the official website of the LCDC. *See* JSF ¶ 6.

12. The LCDC website at www.lancastercitydemocrats.com/about states:

Democratic Committee members are your friends, your colleagues, and your neighbors.

These elected officials promote our most sacred civic duties: voting and being involved in our government. They work to inform their neighbors about upcoming elections, provide information about candidates and issues, and represent the Democratic Party at their polling place on election days.

Committee People are elected by registered Democrats from the voting district (precinct) where they live for terms of four years. Vacancies may be filled by appointment by the Chair of the Lancaster County Democratic Committee.

See JSF ¶ 7.

13. The LCDC website at www.lancastercitydemocrats.com/about states that the LCDC’s “mission is to build a strong Democratic community, to recruit and elect strong Democratic candidates, and to advance the principles of the Democratic Party within the City of Lancaster, Pennsylvania.” See JSF ¶ 8.

14. The “Terminology” section of the Rules defines “political organization” as being:

A political party or group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office, excluding a judicial candidate’s campaign committee created as authorized by these Conduct Rules.

Rules, Terminology (2014). See JSF ¶ 9.

15. On January 27, 2019, Respondent posted a message on the public Facebook page titled “Andrew LeFever for Magisterial District Judge” stating:

Hello Facebook community! I’m honored to formally announce my candidacy for Magisterial District Judge. Why am I running? Because the people of Lancaster are owed a fair, impartial justice system. The role of the District Judge is to be an arbiter and protector of the citizens and their rights. Based upon my years of experience in the criminal justice system as a practicing attorney, I

believe I am well-suited to serve in that role. Thank you for your support!

See JSF ¶ 10; Trial Transcript, p. 74:16-21.

16. The “Application” section of the Rules Governing Standards of Conduct of Magisterial District Judges (Rules) (2014) states, “Canon 4 applies to all judicial candidates.” See JSF ¶ 11.

17. The “Terminology” section of the Rules defines “judicial candidate” as being:

Any person, including a sitting magisterial district judge, who is seeking appointment or election to judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the appointment or election authority, or where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for appointment or election to office.

Rules, Terminology (2014). See JSF ¶ 12.

18. Canon 4, Rule 4.1(A)(1) of the Rules (2014) states the following:

Canon 4, Rule 4.1. Political and Campaign Activities of Magisterial District Judges and Judicial Candidates in General

(A) Except as permitted by Rules 4.2, 4.3, and 4.4, a judicial candidate shall not:

(1) Act as a leader in, or hold an office in, a political organization.

See JSF ¶ 13.

19. In the process of deciding to seek the office of magisterial district judge during 2018 or early 2019, Respondent reviewed the definition of “judicial candidate” as defined under the RGSCMDJ. See JSF ¶ 14.

20. In the process of deciding to seek the office of Magisterial District Judge during 2018 or early 2019, Respondent reviewed the definition of “political organization” in the Rules. *See* JSF ¶ 15.

21. In the process of deciding to seek the office of magisterial district judge during 2018 or early 2019, Respondent understood that the LCDC was a “political organization” as defined under the RGSCMDJ. *See* Trial Transcript, pp. 73:13-74:2.

22. In the process of deciding to seek the office of Magisterial District Judge during 2018 or early 2019, Respondent reviewed Canon 4, Rule 4.1(A)(1) of the Rules. *See* JSF ¶ 16.

23. In the process of deciding to seek the office of magisterial district judge during 2018 or early 2019, Judge LeFever reviewed Rule 4.1(A)(1) and understood that he could not be a judicial candidate and a LCDC Committee person at the same time. *Id.* at p. 74:3-15.

24. In the process of deciding to seek the office of magisterial district judge during 2018 or early 2019, Respondent reviewed the case of *In re Nomination Petition of Denick*, 729 A.2d 168 (Pa. Cmwlth. 1999), when deciding when he had to resign as Committee Person in the LCDC in order to comply with the Rules. *See* JSF ¶ 17.

25. In the process of deciding to seek the office of magisterial district judge during 2018 or early 2019, Respondent reviewed the case of *McMenamin v. Tartaglione*, 590 A.2d 802 (Pa. Cmwlth. 1991), when deciding when he had to resign as Committee Person in the LCDC in order to comply with the Rules. *See* JSF ¶ 18.

26. Respondent reviewed *In re Nomination Petition of Denick*, 729 A.2d 168 (Pa. Cmwlth. 1999), and *McMenamin v. Tartaglione*, 590 A.2d 802 (Pa. Cmwlth. 1991), because he was trying to be thorough and make sure he was compliant with the Rules. *See* Trial Transcript, pp. 88:18-89:16.

27. After reviewing *In re Nomination Petition of Denick*, 729 A.2d 168 (Pa. Cmwlth. 1999), and *McMenamin v. Tartaglione*, 590 A.2d 802 (Pa. Cmwlth. 1991), Respondent believed that, in accordance with those precedential opinions, a person does not become a judicial candidate until the filing of the Nomination Petitions, and in order to be compliant with the Rules he would have to resign from the LCDC before filing his Nomination Petitions. *Id.* at pp. 160:12-161:17.

28. Throughout this time, it was Respondent's intent to comply with the Rules. *See* Trial Transcript, pp. 89:17-90:9, 162:11-163:10.

29. Respondent served as a Committee Person in the LCDC for the City of Lancaster's 6th Ward's 5th Precinct from July 12, 2018 until March 11, 2019. *See* JSF ¶ 19; Trial Transcript, pp. 71:15-72:16.

30. Respondent's public Facebook page "Andrew LeFever for Magisterial District Judge" was routinely updated with posts concerning his campaign activities from January 27, 2019 through March 12, 2019. *See* JSF ¶ 20.

31. On February 11, 2019, Respondent attended an LCDC meeting as a Committee Person for the City of Lancaster's 6th Ward's 5th Precinct; the purpose of the meeting was to determine which judicial and non-judicial candidates would receive the LCDC's endorsement. *See* JSF ¶ 21; Trial Transcript, pp. 75:22-76:7.

32. At the February 11, 2019 LCDC meeting, Committee Persons representing the 2nd and 6th Wards of the City of Lancaster met to vote on their endorsement for the office of Magisterial District Judge in Magisterial District 02-2-04. *See* JSF ¶ 22.

33. At the February 11, 2019 meeting, the offices being considered for endorsement were for city council, school director, and judicial candidates. *See* Trial Transcript, p. 76:8-13.

34. During Respondent's March 12, 2020 deposition given as part of the Judicial Conduct Board's investigation leading to the Board Complaint in this matter, he testified that as a LCDC Committee Person during the February 11, 2019 LCDC meeting, he voted for the LCDC to endorse candidates for Lancaster City Council and for five candidates for school director. *See* Additional Joint Stipulations of Fact (hereafter "AJSF") ¶¶ 61, 62.

35. At the September 14, 2021 trial, Respondent had no independent recollection of casting votes to endorse candidates for Lancaster City Council and for school director, and was unsure of the accuracy of his previous deposition testimony. *See* Trial Transcript, pp. 78:2-80:13.

36. Respondent does not believe he ever actively endorsed any candidate for Lancaster City Council or for school director, as he made it a point to be very careful in what his actions were during that time because he did not want to run afoul of the Rules. *Id.* at pp. 80:19-81:13.

37. Lauren Edgell was present at the February 11, 2019 public LCDC meeting and it was stipulated that, if called, she would testify that Respondent did not vote to endorse candidates for either school director or Lancaster City Council. *See* AJSF ¶ 63.

38. Alan Silverman was present at the February 11, 2019 public LCDC meeting and it was stipulated that, if called, he would testify that he does not remember if Respondent voted to endorse a candidate for either school director or Lancaster City Council. *See* AJSF ¶ 64.

39. Lauren Slessor was present at the February 11, 2019 public LCDC meeting and it was stipulated that, if called, she would testify that she cannot recall whether Respondent voted to endorse candidates for either school director or Lancaster City Council. *See* AJSF ¶ 65.

40. Any actions taken by Respondent at the February 11, 2019 meeting were in his capacity as an LCDC Committee Person. *See* Trial Transcript, p. 80:14-18.

41. At the February 11, 2019 public LCDC meeting Respondent, as a committee person, voted for the LCDC to endorse him for the office of Magisterial District Judge in Magisterial District 02-2-04. *See JSF ¶ 23.*

42. Respondent voted for the LCDC to endorse him for the office of Magisterial District Judge in Magisterial District 02-2-04 in the presence of one of his opposing candidates for the office of Magisterial District Judge in Magisterial District 02-2-04, who was also seeking the endorsement of the LCDC. *See JSF ¶ 24.*

43. At the February 11, 2019 public LCDC meeting, Respondent received a unanimous vote for LCDC's endorsement of him for the office of Magisterial District Judge in Magisterial District 02-2-04. *See JSF ¶ 25; Trial Transcript, p. 84:1-4.*

44. Respondent did not exert any pressure on other members of the LCDC to vote to endorse him for Magisterial District Judge or to not endorse other candidates. *See Trial Transcript p. 83:12-25.*

45. On February 12, 2019, an article appeared in LNP (Lancaster Newspapers) reporting LCDC's February 11, 2019 endorsement of Respondent for the office of Magisterial District Judge. *See JSF ¶ 26.*

46. On February 11, 2019, Respondent established his campaign committee "LANCASTER FOR LEFEVER." *See JSF ¶ 27.*

47. On January 5, 2019, prior to the establishment of his campaign committee LANCASTER FOR LEFEVER, Respondent made an expenditure for a logo design for his campaign for the office of Magisterial District Judge. *See JSF ¶ 28.*

48. On January 22, 2019, prior to the establishment of his campaign committee LANCASTER FOR LEFEVER, Respondent made an expenditure for photographs for his campaign for the office of Magisterial District Judge. *See JSF ¶ 29.*

49. On February 21, 2019, LANCASTER FOR LEFEVER classified Respondent's January 22, 2019 expenditure for photographs as an in-kind contribution. *See JSF ¶ 30.*

50. On February 13, 2019, Respondent made a \$100 contribution to his campaign committee. *See JSF ¶ 31.*

51. On February 13, 2019, LANCASTER FOR LEFEVER deposited \$100 in its account at Fulton Bank. *See JSF ¶ 32.*

52. On February 13, 2019, LANCASTER FOR LEFEVER made an expenditure at Fulton Bank for checks. *See JSF ¶ 33.*

53. On February 17, 2019, Respondent made an expenditure for campaign buttons for his campaign for the office of Magisterial District Judge. *See JSF ¶ 34.*

54. On February 21, 2019, LANCASTER FOR LEFEVER classified Respondent's February 17, 2019 expenditure for campaign buttons as an in-kind contribution. *See JSF ¶ 35.*

55. On February 23, 2019, LANCASTER FOR LEFEVER received a monetary contribution. *See JSF ¶ 36.*

56. On February 23, 2019, LANCASTER FOR LEFEVER received an in-kind contribution for campaign event invitations. *See JSF ¶ 37.*

57. On February 28, 2019, LANCASTER FOR LEFEVER received a monetary contribution. *See JSF ¶ 38.*

58. On March 1, 2019, after the establishment of his campaign committee LANCASTER FOR LEFEVER, Respondent made an expenditure for campaign literature on behalf of his campaign for the office of Magisterial District Judge. *See JSF ¶ 39.*

59. On March 6, 2019, LANCASTER FOR LEFEVER made an expenditure at Molly's Pub for a campaign event. *See JSF ¶ 40.*

60. On March 7, 2019, LANCASTER FOR LEFEVER received two monetary contributions. *See JSF ¶ 41.*

61. On March 10, 2019, LANCASTER FOR LEFEVER received a monetary contribution. *See JSF ¶ 42.*

62. All of the above receipts and expenditures are reflected on the campaign finance reports filed by LANCASTER FOR LEFEVER that have been admitted into evidence as Judicial Conduct Board Exhibit # 11.

63. Respondent never personally solicited or received campaign contributions for to do so would be a violation of the Rules. *See Trial Transcript, pp. 85:23-86:11.*

64. Respondent received the Lancaster County Democratic Committee endorsement for the office of Magisterial District Judge in Magisterial District 02-2-04 on February 23, 2019. *See JSF ¶ 43.*

65. From February 23, 2019 through March 11, 2019, Respondent and his circulators, including other members of the LCDC and an endorsed candidate for Lancaster City Council, obtained signatures of voters on his Republican and Democratic Nomination Petitions. *See JSF ¶¶ 44-46; Trial Transcript, p. 86:13-25.*

66. At no time did Respondent circulate any Nominating Petitions for any other endorsed candidate, either for the City Council or the school board, because he believed circulating

Petitions of other candidates would be tantamount to endorsement and he did not want to run afoul of the Rules. *See* Trial Transcript, pp. 87:1-88:3.

67. On March 10, 2019, Respondent, under oath, signed and had notarized Candidate's Affidavits for the Democratic and Republican nominating petitions circulated in the City of Lancaster's 2nd and 6th Wards from February 23, 2019 through March 10, 2019 stating that he is eligible to hold the office of Magisterial District Judge in Magisterial District 02-2-04. *See* JSF ¶ 47.

68. Respondent believed he was eligible to hold the office of Magisterial District Judge in Magisterial District 02-2-04 when he executed the Affidavit because by the time he would be filing the nominating petitions with the Elections office he would no longer be a Committee Person. *See* Trial Transcript, p. 94:2-94:13.

69. Respondent attended a campaign event at Molly's Pub and Carry Out on March 6, 2019 where there were other persons seeking nomination for non-judicial office, but he did not personally endorse or support any of those non-judicial candidates for public office. *See* JSF ¶¶ 48, 49; Trial Transcript, p. 88:4-17.

70. On March 11, 2019, Respondent participated in a public LCDC meeting as a Committee Person for the City of Lancaster's 6th Ward's 5th Precinct; at the end of this meeting, Judge LeFever resigned his position as a Committee Person. *See* JSF ¶¶ 50, 51; Judicial Conduct Board Exhibit # 8.

71. Respondent selected March 11, 2019 to resign from his position as a Committee Person of the LCDC based on his understanding of the case *In re Nomination Petition of Denick*, 729 A.2d 168 (Pa. Cmwlth. 1999), the Rules, and his desire to be in compliance with the Rules. *See* Trial Transcript, p. 92:7-24.

72. Canon 4, Rule 4.2(B)(3) states: A judicial candidate may publicly speak on behalf of, or publicly oppose or speak in opposition to, candidates for the same judicial office for which he or she is a judicial candidate, or publicly endorse or speak on behalf of candidates for any other elective judicial office appearing on the same ballot as the magisterial district judge candidate. *See JSF ¶ 52.*

73. Canon 4, Rule 4.2(B)(4) states: A judicial candidate may attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for non-judicial public office. *See JSF ¶ 53.*

74. Canon 4, Rule 4.2(B)(5) states: A judicial candidate may seek, accept, or use endorsements from any person or organization, including a political organization or political party. *See JSF ¶ 54.*

75. Canon 4, Rule 4.2(B)(6) states: A judicial candidate may contribute to a political organization, including a political party or candidate for non-judicial public office. *See JSF ¶ 55.*

76. Canon 4, Rule 4.2(B)(7) states: A judicial candidate may identify himself or herself as a member or candidate of a political organization or party. *See JSF ¶ 56.*

77. On March 12, 2019, Respondent filed his Republican and Democratic Nominating Petitions with the Lancaster County Board of Elections. *See JSF ¶ 57.*

78. On March 19, 2019, a petition to set aside Respondent's nominating petitions was filed in the Lancaster Court of Common Pleas by one of his opposing candidates. *See Board's Trial Exhibits #12-15.*

79. During the March 21, 2019 hearing on the challenge to Respondent's nominating petitions, it was stipulated that the only issue before the Court was whether Respondent was an

LCDC Committee Person when he became a candidate for the office of Magisterial District Judge. *See* Judicial Conduct Board Exhibit # 15, p. 2:18-22.

80. At the March 21, 2019 hearing on the challenge to Respondent's nominating petitions, President Judge Reinaker ruled that Respondent "officially became a candidate for the Office of Magisterial District Judge at the point that he filed his nominating petitions on March 12, 2019." *Id.* at 4:5-8.

81. Judge Reinaker was quoted by the LPN Lancaster Newspaper, stating that "[i]n my opinion, [Respondent] became a candidate when he filed nominating petitions." *See* Judicial Conduct Board Exhibit # 16. *See, also*, Judicial Conduct Board Exhibit # 15, p. 5:9-10.

82. Judge Reinaker's ruling was not appealed by the challenging party.

83. On May 21, 2019, Respondent won the Democratic primary election for the position of Magisterial District Judge in Magisterial District 02-2-04. *See* JSF ¶ 58.

84. Respondent won the municipal election for the office of Magisterial Judge in Magisterial District 02-2-04 on November 5, 2019 and began his term on January 2, 2020. *See* JSF ¶¶ 59, 60.

85. Respondent intended to comply with the Rules that apply to candidates for Magisterial District Judges. *See* Trial Transcript, pp. 95:12-96:1.

86. Respondent testified that he has spent his career trying to do a good job and follow the rules, something that is important to him both as a person and as a Judge. *See* Trial Transcript, pp. 96:13-17, 164:24-165:9.

87. At no time during his tenure as a LCDC committee person did Respondent know that occupying the position prior to resigning and filing his nominating petitions might be a violation of the Rules.

88. On Respondent's behalf, three letters were submitted to the Court without objection to attest to Judge LeFever's outstanding reputation for honesty and integrity. *See* Respondent's Exhibits 1-3; Trial Transcript, p. 169:5-11.

89. Jared L. Hinsey, Esquire is acquainted with Respondent from his time at the Lancaster County District Attorney's Office. *See* Respondent's Exhibit 1, p. 1. He attested that he knew Respondent to be of outstanding moral character and to be a truthful, honest, trustworthy, peaceful and law-abiding person. *Id.* Attorney Hinsey went on to state that Respondent was remorseful and forthright when discussing the subject charges with him, even going so far as to explain in detail how his conduct could result in the charges when Attorney Hinsey did not understand. *Id.* at p. 2. Attorney Hinsey believes that Respondent's explanation of his conduct and the repercussions therefrom show that he understands fully what he did wrong and knows that he must pay closer attention to the laws and rules of conduct. *Id.*

90. Patricia K. Spotts, Esquire has known Respondent for approximately seven years, first in his capacity as a prosecutor in Lancaster County and then as a Magisterial District Judge. *See* Respondent's Exhibit 2. As a defense attorney, Attorney Spotts admires Respondent's sense of justice, integrity, and knowledge of the law. *Id.* Attorney Spotts wrote that she and Respondent discussed the subject misconduct charges, and that Respondent regrets that he acted in error prior to his election. *Id.* Attorney Spotts further noted that Respondent has been completely forthcoming with her in discussing his actions and that none of his actions have changed her opinion of Respondent, or others that know him. *Id.*

91. Joseph P. McMahon, Esquire has known Respondent through interactions in criminal court for approximately seven years. *See* Respondent's Exhibit 3. He knows Respondent to be of outstanding moral character and to be an honest and principled attorney. *Id.* Among those

in the community who know Respondent, his reputation as an honest, law abiding person and as a thoughtful, conscientious, and fair lawyer and judge is excellent. *Id.* As a defense attorney, Attorney McMahon had the opportunity to be on the opposite side of cases during Respondent's tenure as an assistant district attorney. *Id.* Respondent treated Attorney McMahon and his colleagues with respect and had a refreshingly fair-minded approach to his job. *Id.* Respondent informed Attorney McMahon of these charges, yet Attorney McMahon's views on Respondent do not change – holding him in the highest regard. *Id.* He wrote that Respondent was forthright when discussing the charges and has expressed remorse for his conduct. *Id.*

92. Respondent testified credibly in his own defense.

93. Being subject to misconduct allegations has impacted Respondent both personally and professionally and has caused him to feel ashamed and remorseful. *See* Trial Transcript p. 96:4-22; Respondent's Exhibits 1-3.

94. Respondent, as early as his Board deposition, acknowledged that he made a mistake in his reading and understanding of the definition of "judicial candidate." *See* Trial Transcript p. 164:5-23. Respondent has recognized his error in relying upon *Denick*. *Id.* at p. 104:10-24.

95. In hindsight, Respondent testified that he wished he would have sought guidance from his superiors at the Lancaster District Attorney's Office and ethics attorneys regarding when he should have resigned his LCDC position. *Id.* at pp. 158:25-160:2.

III. DISCUSSION

A. Judge LeFever Intended and Attempted to Comply with Rule 4.1(A)(1) Regarding the Timing of His Resignation as a Member of the Lancaster City Democratic Committee.

Rule 4.1, titled "Political and Campaign Activities of Magisterial District Judges and Judicial Candidates in General," states in relevant part:

(A) Except as permitted by Rules 4.2, 4.3, and 4.4, a magisterial district judge or a judicial candidate shall not:

(1) act as a leader in, or hold an office in, a political organization

....

RGSCMDJ, Rule 4.1(A)(1).

The Rules define “Judicial candidate” as:

Judicial candidate--Any person, including a sitting magisterial district judge, who is seeking appointment or election to judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the appointment or election authority, or where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for appointment or election to office.

RGSCMDJ, Terminology “Judicial candidate.”

The Judicial Conduct Board (“Board”) asks this Court to find Judge LeFever in violation of this Rule because Judge LeFever was mistaken in his view of the law regarding when an individual becomes a judicial candidate for the purposes of Rule 4.1(A)(1). However, as set forth fully in Judge LeFever’s previous filings, a finding of intent is absolutely critical to the prosecution of the alleged violations. Discussed *infra*, the record is absent of any evidence establishing the required intent, and the Board has failed to establish the same by clear and convincing evidence. Indeed, in order to establish any violation of the Rules, the Board must prove the element of scienter of the respondent judge. *In re Whittaker*, 948 A.2d 279 (Pa. Ct. Jud. Disc. 2008); *In Re Crahalla*, 747 A.2d 960 (Pa.Ct.Jud.Disc. 2000). As this Court has previously explained when dismissing alleged violations for lack of requisite intent:

This is a hoary jurisprudential distinction which is not hard to understand, and [we] would require some degree of *mens rea* [defined in footnote 13 “[a]s an element of criminal responsibility; a guilty mind; a guilty or wrongful purpose; a criminal intent”]

before finding a violation of this rule. *In this case there was no “guilty mind” or “wrongful purpose” -- no mens rea whatsoever -- as demonstrated by Respondent’s immediate resignation as Dinner Chairman [or as a fire truck driver] upon being advised that serving in that capacity was a possible violation of a Rule of Conduct.*

Whittaker, supra, at 296 (emphasis added).

By way of brief summary, *Whittaker* involved a claim that Judge Whittaker violated then existing Rule 15A, now Rule 3.10(C), which stated “Magisterial district judges shall not hold another office or position of profit in the government of the United States, the Commonwealth or any political subdivision thereof, except in the armed services of the United States or the Commonwealth.” Judge Whittaker was alleged to have violated this rule because he was employed as a part-time fire truck driver for a local township while occupying his position as a magistrate judge. When he was notified of the alleged violation, Judge Whittaker immediately resigned from his position with the fire company. *Id.* at 285 and 296. During its review, the Court found that “[a]t no time during his employment with the Newport Township Fire Department did [Judge Whittaker] know that the employment might be a violation of a Rule Governing Standards of Conduct of Magisterial District Judges or any ethical standard; and at no time during his employment with the Newport Township Fire Department did [Judge Whittaker] have any consciousness that it might be a violation of Rule 15A of the Rules Governing Standards of Conduct of Magisterial District Judges.” *Id.* The Court went on to reject the Board’s position that violations of the Rules were akin to offenses that did not require intent or mental state. *Id.* at 298.

The *Whittaker* Court extensively quoted and compared the underlying matter with a prior decision to dismiss claims, *In Re Crahalla*, 747 A.2d 960 (Pa.Ct.Jud.Disc. 2000), which the Court found to be “on all fours” with Judge Whittaker’s case. *Whittaker, supra*, at 296. In *Crahalla*, the magisterial district judge was charged with a violation of old Rule 11, a prior iteration of Rule

3.7(b)(2), which provided that “[m]agisterial district judges shall not solicit funds for any educational, religious, charitable, fraternal or civic organization” Judge Crahalla was accused of soliciting funds on behalf of the Boy Scouts, an activity that the members of the Court supporting dismissal found to be “inherently good” rather than “inherently bad” or “inherently evil.” *Whittaker, supra*, at 296. Judge Whittaker’s employment as a fire truck driver for his township was likewise found to be “not an inherently evil act.” *Id.* The *Whittaker* Court characterized the activities at issue in the two cases as “*malum prohibitum*” and not “*malum in se.*” *Id.* at 296 and n. 12 and 13 (defining those terms).

In deciding that violation of the Rules required an element of intent or mental state, the Court in *Whittaker* set forth the following important considerations, *inter alia*:

The legislative purpose of discouraging the conduct prescribed by the rules at issue “is not thwarted by requiring the element of scienter to constitute a violation of the rule” *Id.* at 298.³

The penalties for any violation of the Rules “are not ‘relatively small’ ranging, as they do, from reprimand to removal from office.” *Id.*

Different from a public welfare offense “where the effect of a conviction on the reputation of the offender is negligible, the injury to the reputation of a judicial officer ‘disciplined’ by this Court cannot be overassessed.” *Id.*

Applying these considerations to the case at bar, it is axiomatic that an element of scienter is to be established for a finding that Judge LeFever violated the Rules. Two of the charges against

³ Here, the Court noted that the judges in *Crahalla* and *Whittaker* immediately self-corrected their errant activities after the potential violations were brought to their attention. *Whittaker*, at 298. Similarly, then-candidate LeFever fully complied with the Rules after he resigned as a member of the LCDC and filed his nominating petitions as that is when he reasonably believed he became a “judicial candidate” subject to the Rules. There is no allegation that he committed any violation after he resigned and filed his nominating petitions. Moreover, Judge LeFever, as early as his Board deposition, acknowledged that he made a mistake in his reading and understanding of the definition of “judicial candidate.” See Trial Transcript p. 164:5-23. Judge LeFever has recognized his error in relying upon *Denick, Id.* at p. 104:10-24.

Judge LeFever derive from Rules with language similar to the violations charged in *Whittaker* and *Crahalla*. Rule 4.1(A)(1) and Rule 4.1(A)(3) both contain language that a judge “shall not” engage in particular campaign-related conduct. Akin to *Whittaker* and *Crahalla*, the purpose of discouraging the conduct prescribed by those rules is not thwarted by requiring the element of scienter to constitute a violation.

Further, the penalties that may be imposed upon Judge LeFever should violations be found are not relatively small, ranging from reprimand to removal. Given the gravitas accompanying a potential sanction as severe as public reprimand, let alone possible removal, the damage to Judge LeFever’s reputation if such discipline is imposed is potentially overwhelming and cannot be overassessed.

Presently, the Board has offered no evidence to suggest that Judge LeFever intended to circumvent or violate the rules. Rather, upon reviewing the record, there is no question that Judge LeFever was mindful of the rules, and intended at all times to be in compliance with them. *See* Trial Transcript, pp. 89:17-90:9, 95:12-96:1, 162:11-163:10. This desire to do good work and follow rules was a maxim that Judge LeFever subscribed to and considered a principle of importance as both a person and as a judge. *Id.* at pp. 96:13-17, 164:24-165:9. Prior to his decision to run, Judge LeFever reviewed the Rules, as well as *In re Nomination Petition of Denick* in order to ensure he operated in accordance with those rules and decisional caselaw. *See* Trial Transcript, pp. 72:17-73:1; JSF ¶¶ 14-18. He did so in good faith because he understood that he could not be both a judicial candidate and an LCDC Committee person simultaneously. *Id.* at p. 74:3-15. In reaching the determination as to when he must resign from the LCDC in accordance with the rules, Judge LeFever relied on *Denick* and *Tartaglione*, which held that one does not become a judicial candidate until the filing of the nominating petitions. *Id.* at pp. 92:7-24, 160:12-161:17.

Such reliance on *Denick* and *Tartaglione* was reasonable under the circumstances. Indeed, following *Denick*, the single-judge Commonwealth Court opinion *In re Nomination Petition for Leonard*, 2017 Pa. Commw. Unpub. LEXIS 536 (Pa. Cmwlth. 2017) encapsulates a nearly identical circumstance, and signifies the same rationale employed by both Judge LeFever and President Judge Reinaker. In *Leonard*, the court refused to strike the candidate's name from the ballot because the person was not a candidate when she circulated nominating petitions for magisterial district judge and because she resigned as party committee person before filing her nominating petitions and so did not violate Rule 4.1(A)(1) of the Rules. In rejecting this challenge to the nominating petitions, the Commonwealth Court explained:

Objectors misstate the law when they assert that an individual circulating nomination petitions is a "judicial candidate" under Rule 4.1(A)(1) who may not also hold an office. To the contrary, an individual becomes a candidate for office upon filing the nomination petitions. Blank v. Berks Cnty. Bd. of Elections, 873 A.2d 817, 819 (Pa. Cmwlth. 2005) (construing prior district justice rule; affirming trial court's "assessment [that] Candidates were entitled to file their nomination petitions while holding other elected office. ... [Only] if Candidates prevail, they would be required ... to resign their other elected positions."); Denick; see also McMenamain v. Tartaglione, 139 Pa. Commw. 269, 590 A.2d 802 (Pa. Cmwlth. 1991). Our Supreme Court explained the legally significant date in determining whether nomination petitions should be stricken is not the date electors sign the petitions, but rather the date the petitions were filed "since, quite logically, if one is unable to obtain a sufficient number of signatures[,] he might never bother to file the nomination petitions at all." Id. at 810 (citing Mayer v. Hemphill, 411 Pa. 1, 190 A.2d 444 (Pa. 1963)). Addressing when one becomes a candidate, the Mayer Court "opined that one becomes a candidate if he or she has filed nomination papers or publicly announced his [or her] candidacy for office." Id. (emphasis added).

... Until nomination petitions are filed, an individual is only a potential candidate, who may or may not successfully meet the criteria for nomination.

Applicable law holds that a judicial candidate violates Rule 4.1(A)(1) if she has not resigned her office as of the time of filing. Denick; [Tarpey v.] Mossesso [sic], 2015 Pa. Commw. Lexis 959 (Pa. Cmwlth. 2015)](affirming trial court order sustaining objections to preclude candidate who held office when he filed his nomination petitions from being placed on the ballot). Stated differently, candidates are not permitted to hold other party offices at the time of filing their nomination petitions.

Leonard, supra, at 5-6 (emphasis in first sentence and last paragraph added; other emphasis in original; footnote omitted). Like the candidate in *Leonard*, Judge LeFever's interpretation and application of *Denick* allowed him, and others in a similar position, to reasonably conclude that compliance with Rule 4.1(A)(1) could be had if he resigned his committee person's position before filing his nominating petitions. While *Leonard* said that the *Mayer* Court "opined that one becomes a candidate if he or she has *filed* nomination papers or publicly announced his [or her] candidacy for office," emphasizing the word "filed" in its opinion and not again returning to the concept of "publicly announcing" a candidacy, it concluded this portion of the opinion before turning to the date of the candidate's resignation as a committee person by explaining that "[a]pplicable law holds that a judicial candidate violates Rule 4.1(A)(1) if she has not resigned her office as of the time of filing." For this point which is at issue here, it cited *Denick* and *Tarpey v. Mossesso*. So it was not unreasonable for Judge LeFever to reach the same conclusion in deciding when he had to resign as a committee person.

Moreover, as was the case in *Whittaker*, there is no evidence to suggest that Judge LeFever, at any time during his tenure as a LCDC committee person, knew that occupying the position prior to resigning and filing his nominating petitions might be a violation of the Rules. Stated differently, Judge LeFever did not know that his actions could have constituted a violation of the Rules. Rather, at all times Judge LeFever believed that he was actually in compliance with the Rules. Further, Judge LeFever's purportedly violative conduct cannot be characterized as "inherently bad or evil." The political process, which every Judge in Pennsylvania must participate in, is a keystone of our democracy and the Pennsylvania Constitution. Service to a local political committee is the base of such process, and dutifully representing constituents of the community while attempting to comply

with what was reasonably believed to be guiding principles of the Rules can certainly not be characterized as “evil.”

The evidence is clear that Judge LeFever conducted himself in what he believed to be a manner in compliance with the Rules. He relied on what he understood to be guiding decisions from *Denick* and *Tartaglione* and did not stray from their holdings.⁴ He resigned his LCDC position prior to filing his nominating petitions, and refrained from actions and conduct he thought were violations of the rules concerning candidates of magisterial district justices. There is no evidence that Judge LeFever acted with ill intent, wrongful purpose, or any other manner inconsistent with a good faith attempt to follow the Rules. The same holds true even if his attempts to follow the Rules were based on mistaken interpretations of decisional law.

In light of the above, it would be inappropriate to find Judge LeFever in violation of this Rule, or to punish him for what is a well-founded mistake. As noted at paragraph [5] of the Preamble to the Rules, the Rules “are rules of reason that should be applied consistently with constitutional requirements, statutes, other court rules, and *decisional law*, and with due regard for all relevant circumstances.” RGSCMDJ, Preamble [5] (emphasis added). Judge LeFever’s conduct in resigning on March 11, 2019, before he filed his nominating petitions the following day was consistent with the only decisional law of the Commonwealth regarding conduct governed by Rule 4.1(A)(1). Moreover, “*it is not intended that disciplinary action would be appropriate for every*

⁴ As explained above, subsequent opinions relying upon and applying *Denick* and *Tartaglione* are consistent with Judge LeFever’s own interpretation and application of those cases. *See Hanratty v. Litman*, 2015 Pa. Commw. LEXIS 958 (Pa. Cmwlth. 2015) (striking candidate from ballot due to a Rule 4.1(A)(1) violation by failing to resign from position as a committee person prior to filing the nominating petition); *Tarpey v. Mosesso*, 2015 Pa. Commw. LEXIS 959 (Pa. Cmwlth. 2015) (same); *In re Nomination Petition for Leonard*, 2017 Pa. Commw. Unpub. LEXIS 536 (Pa. Cmwlth. 2017) (refusing to strike the candidate from the ballot because she did not violate Rule 4.1(A)(1); the person was not a candidate when she circulated nominating petitions for magisterial district judge; and she resigned as party committee person before filing her nominating petitions).

violation of the Conduct Rules' provisions. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the intent of the magisterial district judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system." RGSCMDJ, Preamble [6] (emphasis added). The Board has failed to present any evidence that would establish the requisite intent element. Accordingly, the Court should find that the Board has failed to prove that Judge LeFever violated Rule 4.1(A)(1) by clear and convincing evidence.

B. Judge LeFever Intended and Attempted to Comply with Rule 4.1(A)(3) Regarding the Timing of His Resignation as a Member of the Lancaster City Democratic Committee.

Akin to the charge under Rule 4.1(A)(1), this charge is contingent on the timing of Judge LeFever's resignation as a member of the LCDC. As such, the above discussion concerning Rule 4.1(A)(1) is incorporated herein by reference as it relates to the timing of his resignation and his intent and attempt to comply with the law consistent with the decisional law of the Commonwealth Court interpreting and applying Rule 4.1(A)(1). Rule 4.1(A)(3) provides that "a magisterial district judge or a judicial candidate shall not . . . publicly endorse or publicly oppose a candidate for any public office." RGSCMDJ, Rule 4.1(A)(3).

Beyond the reasons set forth above, the evidence of the record establishes that Judge LeFever did not publicly endorse or oppose any candidates for any public office and that the Board failed to establish its burden of proof. The charge asserted against Judge LeFever alleges that he voted for the endorsement of non-judicial candidates during the February 11, 2019 LCDC meeting. During that meeting, the non-judicial offices considered for endorsement included positions on the city council and school director. Initially, Judge LeFever testified at a March 12, 2020 deposition that, as an LCDC committee person he voted to endorse candidates for the Lancaster City Council

and for school director. *See* AJSF ¶¶ 61, 62. However, at the September 14, 2021 trial, Judge LeFever had no independent recollection of casting such votes, and questioned the accuracy of his previous deposition testimony. *See* Trial Transcript, pp. 78:2-80:13.⁵ Judge LeFever does not believe he ever endorsed a candidate for Lancaster City Council or for school director, as he made it a point to be cautious in such actions in order to be in compliance with the Rules. *Id.* at pp. 80:19-81:13. Furthermore, the record reflects that individuals in attendance during the February 11, 2019 meeting recalled that either Judge LeFever did not vote to endorse non-judicial candidates or could not recall Judge LeFever voting to endorse non-judicial candidates.⁶ Moreover, the Board has not presented any definitive proof of any votes for non-judicial candidates, such as meeting minutes reflecting any votes by Judge LeFever. The evidence in toto is insufficient to carry the Board's burden by clear and convincing evidence, that Judge LeFever cast votes to endorse non-judicial candidates. As this Court has previously recognized, the Pennsylvania Supreme Court has explained that for evidence to be clear and convincing

[t]he witnesses must be found to be credible, that the facts to which they testify are distinctly remembered and the details thereof narrated exactly and in due order, and that their testimony is so clear, direct, weighty, and convincing as to enable the [trier of fact] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.... It is not necessary that the evidence be uncontradicted

⁵ The Court may take judicial notice of the fact that Judge LeFever noted the potential inaccuracy of his prior deposition testimony when he filed his sworn answer to the Board Complaint. There he said: "Judge LeFever has previously testified during a deposition taken by Board Counsel that he voted for the LCDC to endorse non-judicial candidates for the positions of School Director and Lancaster City Counsel [sic]. Upon further reflection, he is now not sure of the accuracy of that response. Accordingly, this averment is denied and strict proof thereof is demanded at time of trial." Answer to Judicial Conduct Board Complaint, p. 4, ¶ 11. *See* Pa.R.E. 201 (court may take judicial notice of materials on its docket).

⁶ Lauren Edgell was present at the February 11, 2019 meeting and would testify that Judge LeFever did not vote to endorse candidate for either school director or Lancaster City Council. *See* AJSF ¶ 63. Similarly, Alen Silverman and Lauren Slessor were present at the February 11, 2019 meeting and would testify that they do not recall Judge LeFever making any such votes. *See* AJSF ¶¶ 64, 65.

provided it “carries a clear conviction to the mind” or “carries a clear conviction of its truth.”

In re Whittaker, supra at 286 (citing, *In re Adoption of J.J.*, 515 A.2d 883, 886 (Pa. 1986)). Accordingly, the Board has failed to meet its burden and thus a violation of Rule 4.1(A)(3) cannot be sustained.

Also, should this Court find that the Board met the heavy burden of clear and convincing evidence, the actions taken by Judge LeFever at the February 11, 2019 meeting were in his capacity as a LCDC committee person, not as a judicial candidate. See JSF ¶ 21 (“Respondent participated in a public LCDC meeting *as a Committee Person*”); ¶ 23 (“Respondent, *as a Committee Person*, voted for the LCDC to endorse him for the office of Magisterial District Judge”); see also, AJSF ¶ 61 (“At his March 12, 2020 deposition before Board counsel, Respondent testified that, *as a LCDC Committee Person* at the February 11, 2019 public LCDC meeting, he believed that he voted for the LCDC to endorse the five candidates for school director”); and ¶ 62 (“At his March 12, 2020 deposition before Board counsel, Respondent testified that, *as a LCDC Committee Person* at the February 11, 2019 public LCDC meeting, he voted for the LCDC to endorse candidates for Lancaster City Council”). Because he did not participate in the meeting in the capacity as a judicial candidate, Judge LeFever cannot be found to have cast votes, if any, in violation of the Rule. Additionally, however mistaken he may have been, Judge LeFever reasonably believed that he was not a judicial candidate yet during the February 11, 2019 meeting based on his understanding of and reliance on *Denick* and *Tartaglione*. Judge LeFever’s interpretation was not unreasonable and should not form the basis of finding a violation or any discipline.

Finally, as set forth in the Prehearing Memorandum filed on behalf of Judge LeFever, one must wonder if the public endorsements proscribed by Rule 4.1(A)(3) encompass a committee person casting a vote in his or her capacity as a committee person rather than a specific action by an identified person urging others to vote for a candidate. *See* Prehearing Memorandum, p. 14 (“When one thinks of that type of public endorsement one envisions a specific person writing a letter on his or her stationery or a person appearing in a newspaper, television, website, radio or other type of campaign advertisement urging the reader, viewer or listener to vote for a specific person.”). If the rule is designed to reach the latter, it does not cover the actions of then-Committee Person LeFever regardless of whether he was a candidate for judicial office.

For these reasons, including Judge LeFever’s lack of intent as discussed in section III A *supra*, the Court should find that the Board has failed to prove that Judge LeFever violated Rule 4.1(A)(3) by clear and convincing evidence.

C. Judge LeFever Intended and Attempted to Comply with Rule 4.2(A)(1).

In pertinent part, Rule 4.2(A)(1) provides “[a] judicial candidate in a public election shall . . . act at all times in a manner consisted with the independence, integrity, and impartiality of the judiciary.” RGSCMDJ, Rule 4.2(A)(1). Comment [1] to Rule 4.1 provides additional clarity to the application of Rule 4.2(A)(1), recognizing the role contested, partisan elections and politics play in magisterial district judge elections in Pennsylvania:

Even when subject to public election, a magisterial district judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a magisterial district judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, magisterial district judges and judicial candidates must, to the extent reasonably possible, be free and appear to be free from political influence and political pressure.

RGSCMDJ, Rule 4.1, Comment [1].

The Board asserts a violation of this Rule on the basis that Judge LeFever voted for himself to receive the LCDC endorsement for the position of magisterial district judge and did so in the presence of another candidate for that position who was attending the LCDC meeting. JSF, ¶ 24. This alleged violation fails for the reasons that follow.

First, similar to the charges under Rule 4.1, this alleged violation hinges on whether Judge LeFever was a “judicial candidate” when he cast his vote. As discussed above, Judge LeFever intended and attempted to comply with the Rules as he understood them, in reasonable reliance on and in accordance with *Denick* and *Tartaglione*. Therefore, the arguments set forth in the preceding sections are incorporated herein as though set forth fully.

Second, the prescriptions of Rule 4.2(A)(1) are not inclusive of the conduct at issue. Its broad language can hardly be described as “narrowly tailored.” Different from Rule 4.1(A)(3) which prohibits magisterial district judges and judicial candidates from endorsing candidates for public office, it cannot be reasonably said that the language of Rule 4.2(A)(1) put Judge LeFever or anyone on notice that casting a vote as a member of a political organization for the organization to endorse the committee member for office violated this rule.⁷

Further, given the level of political activity that Rule 4.2 allows a judicial candidate to engage in,⁸ it is hard to imagine that the casting of a vote for one’s own endorsement (or for the

⁷ The Board has conceded that Rule 4.2(A)(1) “does not prescribe or prohibit defined Conduct.” Memorandum in Support of the Judicial Conduct Board’s Request for the Court to Reconsider Its Decision to Deny Its Motion in *Limine*, p. 4.

⁸ Consistent with Rule 4.2(B), a judicial candidate may engage in the following political activity, including partisan political activity: (1) establish a campaign committee, Rule 4.2(B)(1); (2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature, Rule 4.2(B)(2); (3) publicly endorse or speak on behalf of, or publicly oppose or speak in opposition to, candidates for the same judicial office for

endorsements of non-judicial candidates to the extent that they are still considered under this 4.2(A)(1) charge) is not acting “at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary.”⁹ Given this level of permissible political activity by judicial candidates, it is incomprehensible that a judicial candidate’s vote for himself as a member of a political committee at an endorsement meeting of the political committee acts in a manner inconsistent with the independence, integrity, and impartiality of the judiciary in violation of Rule 4.2(A)(1).

Despite the Board’s attempt to infer that Judge LeFever used his position in the LCDC to influence the LCDC endorsement, the record reflects that Judge LeFever did no such thing. Judge LeFever had been a member of the LCDC for a mere seven months before the February 11, 2019 meeting. *See* JSF ¶ 5. His endorsement was the result of a unanimous vote of the LCDC. *Id.* at ¶ 25. His vote for his own endorsement was inconsequential. There is no indication that any LCDC committee member was pressured, politically or otherwise, to vote for Judge LeFever or against

which he or she is a judicial candidate, or publicly endorse or speak on behalf of candidates for any other elective judicial office appearing on the same ballot, Rule 4.2(B)(3); (4) *attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office*, Rule 4.2(B)(4); (5) *seek, accept, or use endorsements from any person or organization*, Rule 4.2(B)(5); (6) *contribute to a political organization or candidate for public office*, Rule 4.2(B)(6); and (7) *identify himself or herself as a member or candidate of a political organization*, Rule 4.2(B)(7). Rule 4.2(B)(1)-(7)(emphasis added).

⁹ The Comments to Rule 4.2(B) elucidate its provisions. They explain “Paragraphs (B) and (C) *permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1.*” Rule 4.2, Comment [1] (emphasis added). “*In public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot.*” Rule 4.2, Comment [3](emphasis added). “*Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.*” Rule 4.2, Comment [4](emphasis added). This type of activity does not equate to the judicial candidate being subject to influence or pressure of the political organization or party.

anyone else seeking the endorsement. Judge LeFever's unequivocal testimony was that he did not exert any pressure on other members of the LCDC to vote to endorse him for Magisterial District Judge or to not endorse other candidates. *See* Trial Transcript p. 83:12-25. Like the rest of this testimony, this testimony by Judge LeFever was credible. His act of casting a vote in his capacity as a member of the LCDC for his own endorsement did not undermine public confidence in Judge LeFever's independence, integrity and impartiality.

Further, the Comments to Rule 4.1 show that the Board misinterprets the Rules it wants this Court to apply to Judge LeFever. Comment [3] to Rule 4.1 explains: "Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates *are perceived to be subject to political influence*. Although magisterial district judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations." Rule 4.1, Comment [3] (emphasis added). The Board suggests that Committee Person LeFever was exerting political influence or pressure not that he would be perceived as being subject to political influence by his vote as a committee person. *See* Judicial Conduct Board's Statement of Its Case Against Magisterial District Judge Andrew T. LeFever, pp. 12-13.

Judge LeFever understands that the proscriptions of Canon 4 apply to magisterial district judges and judicial candidates. *See, e.g.*, RGSCMDJ, Application [4], Rules 4.1 and 4.2, and Rule 4.1, Comment [2] ("[w]hen a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct"). However, Comment (4) to Rule 4.1 explains its purpose, stating:

Paragraphs (A)(2) and (A)(3)¹⁰ *prohibit magisterial district judges* from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office,

¹⁰ As discussed at length above, Judge LeFever is charged with a violation of Rule 4.1(A)(3).

respectively, *to prevent them from abusing the prestige of judicial office to advance the interests of others.* See Rule 1.3.

RGSCMDJ, Rule 4.1, Comment [4]. (emphasis added). This explanation is important in that it shows that it is intended to prevent sitting judges from abusing the prestige of judicial office. In contrast, judicial candidates are unable to abuse the prestige of judicial office that they do not hold. This was Judge LeFever's status at the time of his alleged violations.

Like his other activities in the months leading up to his resignation as a member of the LCDC on March 11, 2019, he only acted in the various ways to which he has stipulated because of his view, based on his research, that he was not yet a "judicial candidate" subject to the proscriptions and limitations of the Rules. That view was in error under the terms of the Rules, but it was an error made in good faith as set forth above. He never intended to violate the Rules as demonstrated by his resignation as a committee person at the time he thought it was required under the decisional law of the Commonwealth and was consistent with that law.

Based on the foregoing, the Board has failed to substantiate a violation under this Rule. Accordingly, the Court should find that the Board has failed to prove that Judge LeFever violated Rule 4.2(A)(1) by clear and convincing evidence.¹¹

¹¹ In the alternative, should the Court determine that Judge LeFever's actions constitute violations of Rules 4.1(1)(1), 4.1(a)(3) and 4.2(a)(1) or any of them, it should nevertheless determine that the infractions are de minimis as set forth in Judge LeFever's Answer to Judicial Conduct Board Complaint, *see* Answer to Judicial Conduct Board Complaint ¶¶ 30, 39 and 44, pp. 12, 15 and 17, and dismiss the Complaint against him. *See, e.g.*, 18 Pa.C.S. § 312 (relating to de minimis infractions); *Commonwealth v. Hoffman*, 714 A.2d 443, 446 (Pa.Super. 1998)(section 312 removes petty infractions and applies where no harm occurred to a victim or society). *See also* RGSCMDJ, Preamble [6] ("it is not intended that disciplinary action would be appropriate for every violation of the Conduct Rules' provisions"); and *In re Carney*, 79 A.3d 490, 507 n.13 (Pa. 2013) (suggesting there may be minor criminal infractions where the invocation of the disciplinary process and the imposition of sanctions is unwarranted). No one was harmed by Judge LeFever's actions. Society certainly was not. His alleged violations are petty, at best. The disciplinary process should not have been invoked here and the imposition of sanctions is clearly unwarranted under the circumstances.

IV. CONCLUSIONS OF LAW

1. For purposes of the interpretation and application of the Rules Governing Standards of Conduct of Magisterial District Judges and imposition of discipline thereon, *In re Nomination Petition of Denick*, 729 A.2d 168 (Pa. Cmwlth. 1999), and its progeny, including *Tarpey v. Mosesso*, 2015 Pa. Commw. Unpub. LEXIS 959 (Pa. Cmwlth. 2015), *Hanratty v. Litman*, 2015 Pa. Commw. Unpub. LEXIS 958 (Pa. Cmwlth. 2015), and *In re Nominating Petition for Leonard*, 2017 Pa. Commw. Unpub. LEXIS 536 (Pa. Cmwlth. 2017), are not binding upon this Court and do not properly interpret the Rules and, in particular, do not properly apply the definition of “Judicial candidate” as set forth in the Terminology section of the Rules. This interpretation of the Rules shall apply prospectively and shall not apply to Magisterial District Judge LeFever, Respondent herein.

2. At Count 1, the Board has failed to establish by clear and convincing evidence that Judge LeFever violated Canon 4, Rule 4.1(A)(1) in that, Judge LeFever did not have the requisite intent required to find a violation of this Rule and that Judge LeFever’s interpretation and belief that he was not a judicial candidate until he filed his nominating petitions was reasonable and proper under the circumstances.

3. At Count 2, the Board has failed to establish by clear and convincing evidence that Judge LeFever violated Canon 4, Rule 4.1(A)(3) in that, Judge LeFever did not have the requisite intent required to find a violation of this Rule and the evidence of the record shows that Judge LeFever did not vote to endorse non-judicial candidates.

4. At Count 3, the Board has failed to establish by clear and convincing evidence that Judge LeFever violated Canon 4, Rule 4.2(A)(1) in that, Judge LeFever did not have the requisite

intent required to find a violation of this Rule and the Rule does not encompass the conduct alleged to have violated the same.

5. At Count 4, the Board has failed to establish by clear and convincing evidence that Judge LeFever violated Article V, § 17(b) of the Pennsylvania Constitution for the reasons set forth above as the Board has failed to establish violations of Rules 4.1(A)(1), 4.1(A)(3), and 4.2(A)(1) upon which any derivative violation of this constitutional provision could be based.

Respectfully submitted,



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Date: November 12, 2021

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Andrew T. LeFever, Esquire :
Magisterial District Judge : 7 JD 2020
Magisterial District 02-2-04 :
2nd Judicial District :
Lancaster County :

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records and Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing of confidential information and documents differently than non-confidential information and documents.

Submitted by: Counsel for Andrew T. LeFever



Name: Robert A. Graci, Esquire

Attorney ID Number: 26722

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PROOF OF SERVICE

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on the date below a copy of the Proposed Findings of Facts and Conclusions of Law of Judge LeFever was mailed and emailed to Colby J. Miller, Judicial Conduct Board Deputy Counsel, at the following addresses:

Colby J. Miller, Deputy Counsel
Judicial Conduct Board
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 3500
P.O. Box 62525
Harrisburg, PA 17106

and

Colby.Miller@jcbpa.org

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robert A. Graci", written in dark ink on a light background.

Robert A. Graci, Esquire
Supreme Court ID No. 26722
Saxton & Stump, LLC
4250 Crums Mill Road
Harrisburg, Pa 17112
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Cell: 717-585-3684
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rag@saxtonstump.com

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