

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE RECEIVED AND FILED

FEB 24 2022

IN RE:

COURT OF JUDICIAL DISCIPLINE  
OF PENNSYLVANIA

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

**RESPONDENT'S OBJECTIONS TO OPINION AND ORDER OF THE  
COURT OF JUDICIAL DISCIPLINE**

Now comes Respondent, the Honorable Andrew T. LeFever, Magisterial District Judge, by and through his counsel, Robert A. Graci, Esquire, and Saxton & Stump, and, pursuant to C.J.D.R.P. 503(B), files these objections to the Findings of Fact and Conclusions of Law contained in the Opinion and Order issued by this Court in the above-captioned matter on February 14, 2022, as follows:

**I. Objections**

1. The Court erred as a matter of law when it concluded that Respondent violated Rules 4.1(A)(1) and 4.2(A)(1) of the Rules Governing the Standards of Conduct of Magisterial District Judges when the Board failed to establish the *mens rea* required for a violation of the Rules by this Court's unanimous opinion in *In re Whittaker*, 948 A.2d 279 (Pa.Ct.Jud.Disc. 2008). See Opinion and Order, Discussion, pp. 20-23, 26-27, Conclusions of Law, ¶¶ 1 and 3, p. 30.

2. The Court erred as a matter of law in concluding that Rule 4.2(A)(1) of the Rules Governing the Standards of Conduct of Magisterial District Judges has any application to Respondent's actions in voting as a member of the Lancaster City Democratic Committee to endorse his candidacy for the position of Magisterial District Judge. *See* Opinion and Order, Discussion, pp. 26-27, Conclusion of Law, ¶ 3, p. 30.

3. The Court erred in concluding that the Commonwealth Court's decision in the case of *In re Nomination Petition of Denick*, 729 A.2d 168 (Pa.Cmwlth. 1999), was unhelpful to Respondent as it predates Rule 4.1 of the Code of Judicial Conduct, *see* Opinion and Order, Discussion, p. 27, and in failing to consider *In re Nomination Petition of Leonard*, 167 A.2d 300 (Pa.Cmwlth. 2017), in assessing the reasonableness of Respondent's belief that he was not a candidate under the Rules Governing the Standards of Conduct of Magisterial District Judges until he filed his nominating petitions on March 12, 2019.

4. The Court erred as a matter of fact in citing Judicial Conduct Board (Board) Exhibit 5 as support for its Finding of Fact at paragraph 41 of its Opinion and Order. *See* Opinion and Order, Findings of Fact, ¶ 41, p. 9.

5. The Court erred as a matter of law when it failed to dismiss the alleged violations of Rule 4.1(A)(1) and 4.2(A)(1) as *de minimis* infractions.

## II. Argument in Support of Objections

1. **The Court erred as a matter of law when it concluded that Respondent violated Rules 4.1(A)(1) and 4.2(A)(1) of the Rules Governing the Standards of Conduct of Magisterial District Judges when the Judicial Conduct Board failed to establish the *mens rea* required for a violation of the Rules by this Court's unanimous opinion in *In re Whittaker*, 948 A.2d 279 (Pa.Ct.Jud.Disc. 2008).**

Before the trial in this matter, the Board filed a motion in limine to preclude Judge LeFever from offering his proffered testimony that he intended to comply with the Rules Governing Standards of Conduct of Magisterial District Judges. *See* Motions in Limine and Memorandum of Law filed August 20, 2021, ¶¶ 1-15, pp. 1-3. Judge LeFever responded to this motion and, by Order filed September 9, 2021, the Court denied the motion. Thereafter the Board sought reconsideration of that portion of the Court's order denying its motion in limine as it related to Judge LeFever's own testimony regarding his intent to comply with the Rules. Again, Judge LeFever, through counsel, responded to the reconsideration motion and filed a memorandum in opposition to that request. At the start of the trial on September 14, 2021, the Court denied the request that it reconsider its prior Order. N.T., September 14, 2021, at 9:12-19. Despite the litigation surrounding this issue, the Court made no reference to or finding regarding the Board's obligation to prove Judge LeFever's mental state or *mens rea* in finding that he violated two of the provisions of the Rules with which he was charged. This was error.

The Board's prosecution of Judge LeFever results from his mistaken 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 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.<sup>1</sup>

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<sup>1</sup> 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, 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 *In re Nomination Petition of Denick*, 729 A.2d 168 (Pa.Cmwlth. 1999). *Id.* at p. 104:10-24. Judge LeFever’s reasonable reliance on *Denick* is discussed *infra* at Argument 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. One of the violations in which the Court found that Judge LeFever engaged derives from a Rule with language similar to the violations charged in *Whittaker* and *Crahalla*. Rule 4.1(A)(1) contains 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 that rule is not thwarted by requiring the element of scienter to constitute a violation.

Further, the penalties that may assessed to 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 over assessed.

The Board 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 compliant 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* (as described at Argument 3, *infra*) in order to ensure he operated in accordance with those rules and decisional caselaw. *See* Trial Transcript, pp. 72:17-73:1; Joint Stipulation of Facts 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*, 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.

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 in which every Judge in



Pennsylvania must participate in order to be elected 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 in *Denick* and *McMenamin v. Tartaglione*, 590 A.2d 168 (Pa.Cmwlt. 1991), and did not stray from their holdings as discussed below. *See* Argument 3, *infra*. 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 is erroneous to find Judge LeFever in violation of either Rule 4.1(A)(1) or 4.2(A)(1), 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). Similar to the charges under Rule 4.1, his alleged violation of Rule 4.2(A)(a) hinges on whether Judge LeFever was a “judicial candidate” when he cast his vote.

As discussed below, 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*. See Argument 3, *infra*. Therefore, the arguments set forth below are incorporated herein as though fully set forth.

Moreover, “*it is not intended that disciplinary action would be appropriate for every 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 and this count should be dismissed. 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.

When the Board sought reconsideration of the denial of its motion in limine, the Board sought to eliminate this hurdle to its prosecution of Judge LeFever by asking this Court to reexamine and overrule *Whittaker*. See Memorandum in Support of the Judicial Conduct Board's Request for the Court to Reconsider Its Decision to Deny Its Motion in Limine (Memorandum in Support), pp. 5-15. In doing so, the Board challenged the *Whittaker* Court's analysis of the important considerations identified in *Whittaker* as supporting its conclusion. *Whittaker, supra*, at 298-302. As noted above and as set forth in Judge LeFever's previously filed Memorandum of Law in Opposition to the Judicial Conduct Board's Motion for the Court to Reconsider Its Decision to Deny Its Motion In Limine, pp. 7-12, and as addressed by the Board, Memorandum in Support, pp. 12-14, those considerations include, *inter alia*:

1. 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 ... ." *Whittaker*, at 298.
2. The penalties for any violation of the Rules "are not 'relatively small' ranging, as they do, from reprimand to removal from office." *Id.*

3. 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.*

The Board seriously downplayed the importance or validity of these considerations. It disagreed with the conclusion of *Whittaker* that the legislative purpose of the Rules is not thwarted by a scienter requirement saying that such a requirement frustrates the purpose of the rules by referring to “the Supreme Court’s well delineated intent to promulgate rules to regulate judicial conduct so that the independence, integrity, and impartiality of the judiciary can be maintained” because “permitting a judge will go free from discipline for plainly violating known prescriptions [*sic*] and prohibitions would certainly frustrate that purpose.” Memorandum in Support, pp. 12-13. In jumping to this conclusion, the Board fails to recognize the Supreme Court’s admonition that a judge’s intent is important to the disciplinary process. In seeking reconsideration, the Board made no mention<sup>2</sup> of Section [6] of the Preamble which states, in pertinent part:

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<sup>2</sup> In its previously filed Memorandum of Judicial Conduct Board Regarding Motion in Limine to Exclude Testimony From Respondent Related to His Intent to Comply With the Rules Governing Standard of Conduct of Magisterial District Judges, the Board took the crabbed view that a judge’s intent is only relevant for purposes of determining sanction. *Id.*, at 8. As explained above in text, the intent of the judge is relevant throughout the disciplinary process starting with the Board’s receipt of a complaint. That is the import of the conjunctive “and” separating the

[I]t is not intended that disciplinary action would be appropriate for every 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.

Rules, *Preamble* [6] (emphasis added). To this add that the Supreme Court has explained, in an appeal from a decision by this Court, that “[t]he discipline of a judicial officer is a process which begins the moment a complaint is received by the [Judicial Conduct B]oard.” *In re Hasay*, 686 A.2d 809, 817 (Pa. 1996). This means that the Board is obligated to consider a magisterial judge’s intent during the investigative stage of the disciplinary process even before proceedings are commenced in this Court. The purpose of the Rules cannot be thwarted or frustrated by following them as the Supreme Court intended as expressed in the words chosen by the Court. They should not be conveniently ignored by the agency charged with investigating allegations of judicial misconduct and pursuing alleged violations in this Court.

Regarding the second consideration, the Board takes the view that a sanction in a particular case may be slight or even non-existent, particularly if the infraction

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phrases “[w]hether disciplinary action is appropriate, *and* the degree of discipline to be imposed” in the above quoted Comment.

is *de minimis*. Memo in Support, p. 13.<sup>3</sup> That view simply misses the mark. If only a slight sanction could be imposed for any violation, the Board's argument might have some appeal. However, once any violation is determined to have been established by the Board by clear and convincing evidence, the Court has its full panoply of sanctions available to it, including the severest of sanctions, removal. See *In re Roca*, 2016 Pa. Jud. Disc. LEXIS 55, 28 (Pa.Ct.Jud.Disc. 2016), quoting *In re Eagen*, 814 A.2d 304, 306-07 (Pa.Ct.Jud.Disc. 2002). That is different from strict liability offenses like traffic violations which always have relatively low penalties and to which the Board has likened Rules violations.

Lastly, the Board downplays the seriousness of the effect of a found violation on a judge's reputation, arguing it depends on the severity of the sanction imposed. Memo in Support, p. 14. That simply is not true. Any discipline tarnishes a judge's reputation to some extent. Reputation is protected under the Pennsylvania Constitution. Pa. Const., Art. I, ¶ 1. As this Court understood in *Whittaker*, "the injury to the reputation of a judicial officer 'disciplined' by this Court cannot be overassessed." *Id.* at 298.

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<sup>3</sup> Though the Board argues that Judge LeFever's conduct is not *de minimis*, see Memo in Support, p. 13 n. 5, Judge LeFever has asserted a contrary view. See Answer to Judicial Conduct Board Complaint, ¶¶ 30, 39 and 44, pp. 12, 15 and 17. That the Court erred in failing to dismiss the charges against Judge LeFever as *de minimis* is addressed at Argument 5, *infra*.

Despite extensive briefing on the necessity and admissibility of evidence regarding Judge LeFever's intent to comply with the Rules, the Court made no mention of this prerequisite to a finding of a violation. This was error and, in the absence of evidence of an intent to violate the Rules with which he is charged, like the violation under Rule 4.1(A)(3) for which the Court found the evidence insufficient to support a violation, these violations should be deemed to be not sufficiently proven.

2. **The Court erred as a matter of law in concluding that Rule 4.2(A)(1) of the Rules Governing the Standards of Conduct of Magisterial District Judges has any application to Respondent's actions in voting as a member of the Lancaster City Democratic Committee to endorse his candidacy for the position of Magisterial District Judge.**

The proscriptions of Rule 4.2(A)(1) do not include of the conduct at issue here, to wit: a judicial candidate's voting as a member of a political committee along with other committee members to endorse his own candidacy. Its broad language can hardly be described as "narrowly tailored restrictions upon the political and campaign activities of all magisterial district judges and judicial candidates." Rule 4.1, Comment [1].<sup>4</sup> Different from Rule 4.1(A)(3) which

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<sup>4</sup> This Comment applies to all of Canon 4 as reflected in the Comment's language: "This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all magisterial district judges and judicial candidates, taking into account the various methods of selecting magisterial district judges." Rule 4.1, Comment [1].

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. Indeed, the Board has previously 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. Additionally, the Board has conceded that but for the violation alleged violation of Rule 4.1(A)(1), “the additional violation of Rule 4.2(A)(1) would not have occurred.” Judicial Conduct Board’s Proposed Findings of Fact and Conclusions of Law, pp. 26-27.

Further, given the level of political activity that a judicial candidate is allowed to engage in under Rule 4 it is hard to imagine that the casting of a vote for one’s own endorsement is not acting “at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary.” 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 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). 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).

The Comments to Rule 4.2 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.

Contrary to the Court’s determination that Judge LeFever used his position in the LCDC to influence the LCDC endorsement, Opinion and Order, Discussion, pp. 26-27, 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* Joint Stipulation of Fact 5. His endorsement was the result of a unanimous vote of the LCDC. *See* Joint Stipulation of Fact ¶ 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 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 Court misinterprets the Rules applied 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). In language seemingly derived from the Board's Proposed Findings of Fact and Conclusions of Law, the Court suggests that then-Committee Person LeFever was exerting political influence or pressure to secure his endorsement by the LCDC, not that he would be perceived as being subject to political influence by his vote as a committee person. *See* Judicial Conduct Board's Proposed Findings of Fact and Conclusions of Law, pp. 26-27; and *compare* Opinion and Order, Discussion, pp.26-27. Just like the Board, the Court states, without citation to any authority, "As a judicial candidate, Respondent was obligated to act in the best interests of the judiciary. Respondent's use of his position in the LCDC for his personal benefit as a judicial candidate is incompatible with the values of independence, integrity and impartiality he was obligated to uphold." Opinion and

Order, Discussion, p. 26. *See also* Judicial Conduct Board's Proposed Findings of Fact and Conclusions of Law, p. 26 (same quoted language).

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 as Judge LeFever has admitted, but it was an error made in good faith. 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 Court erred in concluding that Rule 4.2(A)(1) applied to Judge LeFever's conduct and that he violated that provision of the Rules. 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.

- 3. The Court erred in concluding that the Commonwealth Court's decision in the case of *In re Nomination Petition of Denick*, 729 A.2d 168 (Pa.Cmwlth. 1999), was unhelpful to Respondent as it predates Rule 4.1 of the Code of Judicial Conduct and in failing to consider *In re Nomination Petition of Leonard*, 167 A.2d 300 (Pa.Cmwlth. 2017), in assessing the reasonableness of Respondent's belief that he was not a candidate under the Rules Governing the Standards of Conduct of Magisterial District Judges until he filed his nominating petitions on March 12, 2019.**

To be sure, The Commonwealth Court’s election code decision in *In re Nomination Petition of Denick*, 729 A.2d 168 (Pa.Cmwlth. 1999), was decided before the Supreme Court rewrote the Rules Governing Standards of Conduct of Magisterial District Judges in 2014. However, that case was among only a few decisions issued by 2018 and early 2019 when Judge LeFever was considering running for Magisterial District Judge that addressed the timing of the required resignation of a person holding office in a political party like the LCDC in order to comply with the applicable Rules. *Denick* relied on the provisions found in the pre-2014 Rules to determine that the candidate in that case was not eligible to run because he “at the very least” filed his nominating petitions before he resigned as a committee person. The Rule then in effect provided, in pertinent part: “Magisterial district judges or a candidate for such office shall not ... hold office in a political party or political organization ... .” Rules Governing Standards of Conduct of Magisterial District Judges, Rule 15B(2)(a) (in effect before December 1, 2014); *Denick, supra*, at 170 (“The rules governing standards of conduct of District Justices state that ‘[a] district justice *or a candidate* for such office shall not: hold office in a political party or political organization or publicly endorse candidates for political office.’ Pa. R.D.J. No 15B(1) [*sic*].” (emphasis in original)).” The Rule that Judge LeFever is found to have violated states, in pertinent part: “(A) Except as permitted by Rules 4.2, 4.3, and 4.4, a magisterial district judge or a judicial

candidate shall not ... act as a leader in, or hold an office in, a political organization ... ." RGSCMDJ, Rule 4.1(A)(1).<sup>5</sup>

While *Denick* was an Election Code case, it ruled that the candidate was not entitled to file nominating petitions because he violated the above-referenced Rule of Conduct. *Denick, supra*, at 170 ("Since he held an office with the Democratic Party at this point, *he was not entitled to file a nominating petition for the office of District Justice, as per the rules governing candidates for the office of District Justice.*") (emphasis added). Such a case would certainly provide guidance for any person in Judge LeFever's position. More importantly, subsequent cases support the reasonableness of Judge LeFever's reliance on *Denick* when deciding when he had to resign his political position before becoming a candidate for Magisterial District Judge.

Following *Denick*, the single-judge Commonwealth Court opinion *In re Nomination Petition for Leonard*, 2017 Pa. Commw. Unpub. LEXIS 536 (Pa. Cmwlth. 2017), encapsulates circumstances nearly identical to those presented here, and employs the same rationale employed by Judge LeFever. 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

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<sup>5</sup> The second clause of the prior rule prohibiting publicly endorsing candidates for political office is now found at Rule 4.1(A)(3).

judge and because she resigned as party committee person before filing her nominating petitions. Accordingly, she did not violate Rule 4.1(A)(1) of the Rules which by then had replaced the version of the Rule cited in and relied upon in *Denick*. 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). While Judge LeFever did not consult *Leonard* in deciding when he had to resign before becoming a candidate, 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." *Leonard, supra*, at 6 (emphasis added). For this point which is at issue here, it cited *Denick* and *Tarpey v. Mossesso. Leonard, supra*, at 6.

So it was not unreasonable for Judge LeFever to reach the same conclusion in deciding when he had to resign as a committee person. This is particularly so when one understands that both *Denick* and *Leonard* considered whether the



candidate for Magisterial District Judge violated a rule of conduct for candidates, concluding in *Denick* that there was a violation and in *Leonard* that there was not because the candidate resigned after submitting nominating petitions in *Denick* and before in *Leonard*. *Leonard* specifically referred to “applicable law” which “holds that a judicial candidate violates Rule 4.1(A)(1) if she has not resigned her office as of the time of filing.” So while *Denick* and *Leonard* are Election Code cases, both relied on and applied essentially the same provision of the Rules Governing Standards of Conduct of Magisterial District Judges in reaching their respective results. So to say that *Denick* predated Rule 4.1 and is unhelpful to Judge LeFever’s case is in error. *Denick* and Judge LeFever’s reasonable reliance on its pronouncement as supported by *Leonard* should be weighed in determining that he acted in good faith and not with the requisite intent to violate Rule 4.1(A)(1) as is required for a finding of a violation of the Rules.

**4. The Court erred as a matter of fact in citing Board Exhibit 5 as support for its Finding of Fact at paragraph 41 of its Opinion and Order.**

The conclusion of fact made by the Court at paragraph 41 is supported by the evidence adduced during the trial of this case on September 14, 2021 or the Joint Stipulations of Fact submitted by the parties and accepted by the Court. However, Board Exhibit 5 does not support the factual conclusion made at paragraph 41.

Board Exhibit 5 is the minutes of the February 11, 2019 Lancaster City Democratic Committee (LCDC) Endorsement Convention. While it shows that Sharon Watson Frias was in attendance at the Endorsement Convention held by the LCDC, it does not reflect anything regarding the endorsement of Judge LeFever for the position of Magisterial District Judge. There are no minutes of the meeting that resulted in the endorsement of Judge LeFever. There is nothing in Board Exhibit 5 showing who was present when the committee persons involved in that endorsement vote cast their ballots. There is nothing in Board Exhibit 5 regarding who was seeking that endorsement.

To be sure, Sharon Watson Frias was seeking the committee's endorsement and she was present when the vote for the endorsement was cast. Judge LeFever, as a committee person, cast a vote for his own endorsement. Those facts were stipulated to by Judge LeFever and are embodied in Joint Stipulation of Fact 24 which states: "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." Joint Stipulations of Fact 24, p. 5.

This objection is lodged because paragraph 41 of the Court's Findings of Fact improperly discounts the fact that the information regarding Judge LeFever's

opponent and her presence during the endorsement vote was provided, by stipulation and testimony, by Judge LeFever. *See* Joint Stipulations of Fact 24, p. 5; and N.T., September 14, 2021, at 134:19-135:15. Rather than recognizing that the greatest amount of information supporting the charges against Judge LeFever was provided by either his testimony or the stipulation into which he willingly and voluntarily entered, the Court relied verbatim on a summary contained in the Proposed Findings of Fact and Conclusions of Law submitted for consideration by the Board. *See* Judicial Conduct Board's Proposed Findings of Fact and Conclusions of Law, ¶ 46, pp. 8-9. It is hoped that by this objection, Judge LeFever will be given credit for the substantial cooperation he provided during this process.

**5. The Court erred as a matter of law when it failed to dismiss the alleged violations of Rule 4.1(A)(1) and 4.2(A)(1) as *de minimis* infractions.**

As noted above, the Board argues that Judge LeFever's conduct is not *de minimis*. *See* Memorandum in Support of the Judicial Conduct Board's Request for the Court to Reconsider Its Decision to Deny Its Motion in Limine, p. 13 n. 5. Judge LeFever, on the other hand, has asserted a contrary view. Since filing his answer to the Board's Complaint in this Court, Judge LeFever has asserted that the charges against him are *de minimis* and should not form the basis for any misconduct charge and do not warrant any sanction by this Court. *See* Answer to Judicial Conduct Board Complaint, ¶¶ 30, 39 and 44, pp. 12, 15 and 17.

Though addressed in the alternative in Judge LeFever's Proposed Findings of Fact and Conclusions of Law, see Magisterial District Judge Andrew T. LeFever's Proposed Findings of Fact and Conclusions of Law, p. 32 n.11, the Court failed to address Judge LeFever's contention that the charges against him are *de minimis*.

In the Commonwealth's jurisprudence, section 312 of the Crimes Code removes petty infractions from the reach of the criminal law. 18 Pa.C.S. ¶ 312; *Commonwealth v. Hoffman*, 714 A.2d 443, 446 (Pa.Super. 1998)(section 312 removes petty infractions and applies where there no harm occurred to the victim or society). Consistent with this view, the Preamble to the Rules Governing Standards of Conduct of Magisterial District Judges provides that "it is not intended that disciplinary action would be appropriate for every violation of the Conduct Rules' provisions." RGSCMDJ, Preamble [6]. The Supreme Court has suggested that there may be even minor *criminal* infractions committed by a judge subject to the Rules where the invocation of the disciplinary process and the imposition of sanctions is unwarranted. *See In re Carney*, 79 A3d 490, 507 n. 13 (Pa. 2013).


The matters before the Court are of that ilk. Judge LeFever is not accused of anything that comes close to criminal conduct. If the Court's conclusions on the two violations that it found were sustained by the Board's high burden of proof,

Judge LeFever committed *malum prohibitum* offenses. No one was harmed by his actions. Society clearly was not. His violations are petty, at best. The disciplinary process should not have been invoked here and the imposition of any sanction is clearly unwarranted under the circumstances. Accordingly, the violations against Judge LeFever under Rules 4.1(A)(1) and 4.2(A)(1) should be dismissed as *de minimis*.

### **III. Conclusion**

For the foregoing reasons, Judge LeFever's Objections to the Court's Opinion and Order of February 14, 2022 should be sustained, the relief requested should be granted and the charges against Judge LeFever should be dismissed for the Board's failure to sustain its burden of proof or in the alternative, the charges should be dismissed as *de minimis*.

Respectfully submitted,



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Harrisburg, Pa 17112

Attorney for Andrew T. LeFever  
Magisterial District Judge

Date: February 24, 2022

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

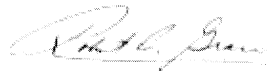
IN RE:

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

**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	:	

**PROOF OF SERVICE**

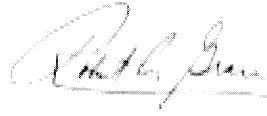
In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on the date below a copy of Respondent's Objections to Opinion and Order of the Court of Judicial Discipline was mailed and emailed to Colby J. Miller, Judicial Conduct Board Deputy Counsel, at the following addresses:

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,



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Date: February 24, 2022