

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

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OF PENNSYLVANIA**

SEP - 3 2021

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IN RE:

Judge Andrew T. LeFever	:	
Magisterial District Judge	:	
Magisterial District 02-2-04	:	7 JD 2020
2 <sup>nd</sup> Judicial District	:	
Lancaster County	:	

**JUDICIAL CONDUCT BOARD’S STATEMENT OF ITS CASE AGAINST  
MAGISTERIAL DISTRICT JUDGE ANDREW T. LEFEVER**

AND NOW, this 3rd day of September, 2021, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (Board) by and through undersigned counsel, presenting this statement of its case against Magisterial District Judge Andrew LeFever (Respondent), which alleges multiple violations of the Rules Governing Standards of Conduct of Magisterial District Judges (Rules) that occurred during Respondent’s successful campaign for judicial office.

**Respondent’s Violation of Canon 4, Rule 4.1(A)(1)**

On July 12, 2018, Lancaster County Democratic Committee Chairperson, JoAnn Hentz, appointed Respondent to fill the vacant position of Committee Person in the Lancaster City Democratic Committee (LCDC) to represent the City of Lancaster’s 5<sup>th</sup> Precinct of the 6<sup>th</sup> Ward. Respondent served as an LCDC Committee Person until his resignation on March 11, 2019.

In 2018 or early 2019, Respondent reviewed the definitions of “judicial candidate” and “political organization” in the Rules. Respondent also reviewed Canon 4, Rule 4.1(A)(1) of the Rules. From his review of the definitions, Respondent, a licensed attorney, knew or should have known that an individual becomes a judicial

candidate when he or she makes a public announcement of candidacy or engages in the solicitation and/or acceptance of support.

On January 27, 2019, during his tenure of service as an LCDC Committee Person, Respondent made a public announcement of his candidacy for the position of Magisterial District Judge on his campaign Facebook page "Andrew LeFever for Magisterial District Judge". In his public announcement of candidacy, Respondent stated:

*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!*

Respondent violated Canon 4, Rule 4.1(A)(1) of the Rules upon making a public announcement of his candidacy for judicial office while simultaneously serving as an LCDC Committee Person.

Canon 4, Rule 4.1(A)(1) prohibits "judicial candidates" from "act[ing] as a leader in, or hold[ing] office in, a political organization. Because there is no applicable exception in Rules 4.2,<sup>1</sup> 4.3, and 4.4 for his conduct, the prohibition Rule 4.1(A)(1) placed on Respondent, stated using the term "shall not", was obligatory and

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<sup>1</sup> While Rule 4.2(B)(7) provides that a judicial candidate "may . . . identify himself or herself as a member or candidate of a political organization", this provision does not act as an exception to the prohibition against a judicial candidate acting as a leader, or holding office in, a political organization. General membership in a political organization does not equate to a more specific leadership or office holding position within the political organization. For example, judicial candidates may be, and often are, members of a political party, a classic example of a political organization. However, only relatively few members of a political party act as leaders in, or hold office in, the political party. Rule 4.1(A)(1) prohibits judicial candidates from acting in these influential and prominent roles within a political party, while Rule 4.2(B)(7) permits a judicial candidate's general membership in the same political party.

absolute.<sup>2</sup> Respondent became a “judicial candidate” the moment he made a public announcement of his candidacy on his public campaign Facebook page. The definition of “judicial candidate” in the Rules unambiguously states that “[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.” While his public announcement on January 27, 2019 was sufficient to make him a judicial candidate, Respondent’s campaign activities thereafter further entrenched his status as a judicial candidate within the public domain.

From January 27, 2019 through March 12, 2019, Respondent’s publicly accessible campaign Facebook page was updated with posts concerning his campaign activities, including, but not limited to, announcements of campaign events, his receipts of endorsements, and his solicitation of electors for signatures on his nominating petitions. These posts accurately reflected reality. Respondent and his campaign surrogates solicited electors in the City of Lancaster’s 2<sup>nd</sup> and 6<sup>th</sup> Wards for their signatures on his nominating petitions from February 23, 2019 through March 11, 2019. Respondent received the endorsement of the LCDC on February 11, 2019 and of the Lancaster County Democratic Committee on February 23, 2019. And on March 6, 2019, Respondent participated in a joint campaign event at Molly’s Pub and

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<sup>2</sup> In paragraph [6] of the Preamble to the Rules, terms within the text, such as “may” or “should”, are characterized as “permissive” and reflects an intent to make the conduct being addressed within the Rule as discretionary for the subject judge. Conversely, when evaluating the effect of prescriptive and proscriptive terms used within the Rules, such as “shall” and “shall not”, it is reasonable to presume that the conduct being addressed is compulsory for the subject judge absent an explicitly defined exception.

Carry Out with other persons seeking nomination for non-judicial public office in the City of Lancaster.

In addition to the campaign activities Respondent announced and advertised on his campaign Facebook page, Respondent solidified his status as a candidate for judicial office when he established his campaign committee, LANCASTER FOR LEFEVER, on February 11, 2019. This committee promptly accepted monetary and in-kind contributions (including the classification of some personal campaign expenditures Respondent made prior to his public announcement of candidacy as in-kind contributions) and made expenditures related to Respondent's campaign prior to Respondent's resignation from the LCDC on March 11, 2019.

Finally, in support of the conclusion that Respondent was a judicial candidate prior to his resignation from the LCDC, on March 10, 2019, Respondent, under oath, signed and had notarized Candidate's Affidavits for the Democratic and Republican nominating petitions he and his campaign surrogates 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.

All the while Respondent engaged in campaign activities for judicial office from January 27, 2019 through March 11, 2019, he served as a Committee Person in the LCDC. The LCDC is a "political organization" as defined in the Rules, as it is a group affiliated with the Democratic party that seeks to further the election of Democratic candidates for political office. The official website of the LCDC website at [www.lancastercitydemocrats.com/about](http://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.” This statement announcing the LCDC’s strictly partisan political purpose is sufficient to characterize it as a political organization as defined in the Rules and through the application of common sense and ordinary discernment.

Respondent inaccurately interpreted the case of *In re Nomination Petition of Denick*, 729 A.2d 168 (Pa.Cmwlt. 1999), and the case of *McMenamin v. Tartaglione*, 590 A.2d 802 (Pa.Cmwlt. 1991) when he decided to resign as a Committee Person one day prior to the filing of his nominating petitions instead of one day prior to his public announcement of candidacy. As the Court in *Tartaglione* explained, citing the Pennsylvania Supreme Court case *Mayer v. Hemphill*, 190 A.2d 444 (Pa.1963), a person “becomes a candidate if he or she has filed nomination papers *or* publicly announced his [or her] candidacy for office.” 590 A.2d at 810 (emphasis added). In *Tartaglione*, the Commonwealth Court upheld the trial court’s finding that the individual whose candidacy was in question did not make a public announcement of his candidacy prior to filing his nominating petitions. *Id.* Since there was insufficient evidence to find that the individual became a candidate via a public announcement of candidacy, the “legally significant date” to determine when the individual became a candidate when considering the challenge to his nominating petitions under the Election Code was, per *Mayer*, the date he filed his nominating petitions. *Id.*

The Commonwealth Court’s evaluation of when candidacy arises in *In re Nomination Petition of Denick* is consistent with its earlier evaluation in *McMenamin v. Tartaglione*. In *Denick* there was no appellate review of whether the Appellant, Denick, became a candidate via a public announcement of candidacy because the factual record was devoid of this issue upon review. Instead, the Court considered

the date Denick filed his nominating petitions as the latest possible date on which his candidacy arose. Because Denick did not resign his office as an elected member of a borough's Democratic Committee until one day after he became a candidate by filing his nominating petitions, he violated the then applicable conduct rule prohibiting judicial candidates from holding office in political organizations. The Court concluded that because he was in violation of the conduct rule when he filed his nominating petitions (a *Mayer* factor), Denick was not entitled, per the Election Code, to have filed his nominating petitions for the position of Magisterial District Judge. Citing the section of *Tartaglione* that discussed the two *Mayer* factors, the Court stated that "Denick became a candidate for the office of [Magisterial District Judge] *at the very least* at the time he filed his [nominating petitions]." 729 A.2d at 170 (emphasis added). The Court's language theorized that Denick could have become a candidate through a public announcement of candidacy (the other *Mayer* factor) prior to the filing of his nominating petitions, which would have likewise resulted in Denick's classification as a candidate. It is reasonable to conclude that the Court's decision regarding his eligibility to file his nominating petitions would have been the same had Denick made a preceding public announcement of candidacy when he held office in the Democratic Committee.

The current version of the Rules, including the definition of "judicial candidate" was formulated by the Supreme Court in 2014, after the decisions in *Tartaglione* (1991) and *Denick* (1999) were announced. By explicitly stating that an individual becomes a judicial candidate when he or she makes a public announcement of candidacy, the Court codified that aspect of its earlier decision in *Mayer v. Hemphill*, as accurately described in *Tartaglione*. However, the Court also went further than it

did in *Mayer* when dictating the parameters of when an individual becomes a judicial candidate. Unlike in *Mayer*, the Court, through its inherent power to promulgate the Rules, declared that an individual can also become a *judicial* candidate when he or she “engages in solicitation or acceptance of contributions or support.” It is fair to conclude that an elector’s decision to add his or her name to an individual’s nominating petition is an act of support when the failure to secure sufficient valid signatures would preclude the individual’s name from appearing on the ballot. In Pennsylvania’s electoral process, the signature of an elector on a nominating petition is essential support for an individual seeking nomination for election. As such, it is reasonable to conclude that when enacting the Rules, the Supreme Court viewed the solicitation and acceptance of signatures on nominating petitions for judicial office as a type of support that would make an individual a judicial candidate under the Rules.

When Respondent announced his candidacy via Facebook on January 27, 2019, he was aware of the facts that made his conduct improper. Respondent knew he was publicly seeking nomination and election to judicial office. He was also aware that he was a Committee Person in the LCDC when he made the public announcement of candidacy. In addition to his knowledge of these essential and undisputed facts, through his review of Rule 4.1(A)(1), Respondent was aware of the Rules’ prohibition on judicial candidates holding office in political organizations. Appellant was further aware that the definition of judicial candidates in the Rules dictated that an individual becomes a judicial candidate when he or she makes a public announcement of candidacy *or* when he or she solicits or accepts support for his or her campaign. In addition to the definition of judicial candidate, Respondent, a licensed attorney, was

aware of and reviewed caselaw that expressly held that an individual become a candidate when he or she makes a public announcement of candidacy.

Despite Respondent's asserted intent to comply with the Rules when evaluating his duty to resign from the LCDC, the threat to the judiciary from the evil of political influence in judicial elections, which the Rules seek to curtail, is the same. As stated in Comment [1] to Rule 4.1, judicial candidates must "be free and appear to be free from political influence and political pressure." Respondent, given what he knew regarding his duties and obligations as a judicial candidate, recklessly entangled himself and the judiciary with political influence and political pressure by not separating himself from the LCDC prior to engaging in public judicial campaign activities. "[Respondent], if he [did] not will the violation, [was] in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from [an attorney] who assumed his responsibilities" as a publicly announced candidate for judicial office. *Morissette v. U.S.*, 72 S.Ct. 240, 246 (1952).<sup>3</sup> By making Canon 4 of the Rules applicable to judicial candidates, the Supreme Court intended to give Respondent the duty to determine "at his peril" whether publicly announcing his candidacy for judicial office and soliciting and accepting elector's signatures on his nominating petitions while holding office in the LCDC was in violation of the Rules. See *U.S. v. Balint*, 42 S.Ct. 301, 303 (1922) (which discussed the rationale for eliminating the scienter requirement for statutory public welfare offenses promulgated for social betterment).

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<sup>3</sup> The Court in *Morissette* differentiated the rationale for eliminating the scienter requirement for statutorily enacted "public welfare offenses" from the rationale for not doing so for crimes derived from traditional common law offenses developed to punish acts, such as theft, of an inherently infamous nature.



As such, Respondent imperiled himself and became subject to the disciplinary process when he chose to hold office as a Committee Person within the LCDC at the same time he publicly announced his candidacy for Magisterial District Judge, a violation of Canon 4, Rule 4.1(A)(1). This violation continued unabated while Respondent publicly engaged in various forms of campaign activities, including the acceptance of campaign contributions and the solicitation and acceptance of elector's signatures on his nominating petitions, up until his resignation from the LCDC on March 11, 2019. Such actions served to undermine the purpose of the Rule, which is to insulate the judiciary from the influences of political activity reasonably considered by the Supreme Court to be a threat to the independence, integrity, and impartiality of the judiciary and the judges who occupy its elective judicial offices.

**Respondent's Violation of Canon 4, Rule 4.1(A)(3)**

Canon 4, Rule 4.1(A)(3) prohibits "judicial candidates" from "publicly endors[ing] . . . a candidate for any public office. There is no exception in Canon 4, Rules 4.2, 4.3, and 4.4 to permit Respondent's endorsement of School Director or Lancaster City Council candidates.

On February 11, 2019, when Respondent was a judicial candidate for the office of Magisterial District Judge, Respondent participated in a public LCDC meeting as a Committee Person for the City of Lancaster's 5<sup>th</sup> Precinct in the 6<sup>th</sup> Ward, the purpose of which was to determine which judicial and non-judicial candidates the LCDC would officially endorse for the 2019 municipal election. At the meeting, LCDC Committee Persons voted on candidate endorsements for the offices of Lancaster City Council and School Director.

On March 12, 2020, Respondent provided sworn testimony before undersigned Board Counsel concerning his conduct at the February 11, 2019 public LCDC meeting. At his deposition, Respondent testified that he believed that he voted for the LCDC to endorse the five candidates for School Director. In addition, Respondent testified that he voted for the LCDC to endorse candidates for Lancaster City Council.

Despite Respondent's sworn testimony at his March 12, 2020 deposition before undersigned Board Counsel, Respondent's subsequent answer to the Board Complaint walked back his deposition testimony without specifically stating that he did not vote for the LCDC to endorse the non-judicial candidates for public office. In paragraph 11 of his Answer to Judicial Conduct Board Complaint, Respondent asserts that "[u]pon further reflection, he is now not sure of the accuracy of [his deposition testimony]."

Respondent admits and has stipulated to the fact that he was present for and participated in the February 11, 2019 public LCDC meeting as a Committee Person for the City of Lancaster's 5th Precinct in the 6<sup>th</sup> Ward to determine which judicial candidates and non-judicial candidates the LCDC would officially endorse for the 2019 municipal election. In addition, Respondent admits and has stipulated to the fact that he voted for the LCDC to endorse him for the office of Magisterial District Judge in Magisterial District 02-2-04.

While Respondent intends to present Lauren Edgell, his campaign manager, at trial to testify that Respondent was present at the February 11, 2019 public LCDC meeting and did not vote to endorse candidates for either School Director or Lancaster City Council, her testimony cannot overcome Respondent's conflicting sworn deposition testimony concerning his own conduct at the meeting, especially

when Respondent accurately recalled and testified at his deposition about his vote for the LCDC to endorse him for judicial office.

When he was a judicial candidate, Respondent violated Canon 4, Rule 4.1(A)(3) when he, as a LCDC Committee Person, voted for the LCDC to endorse non-judicial candidates for public office at the February 11, 2019 public LCDC meeting.

### **Respondent's Violation of Canon 4, Rule 4.2(A)(1)**

Canon 4, Rule 4.2(A)(1) places an obligatory duty upon judicial candidates to "act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary." To conform to the responsibilities laid out in Canon 4 of the Rules, judicial candidates must "be free and appear to be free from political influence and political pressure." Comment [1] to Rule 4.1. When developing Canon 4 of the Rules, the Supreme Court of Pennsylvania carefully detailed "narrowly tailored restrictions" on the political and campaign activities of judicial candidates to promote public confidence in the judiciary and protect judicial candidates from having their independence, integrity, and impartiality questioned. *Id.* Engaging in political activities in a campaign for judicial office while holding office in a political organization undermines these essential objectives and subjects the offending judicial candidate to discipline under the Rules and the Pennsylvania Constitution.

When Respondent publicly announced his candidacy for the position of Magisterial District Judge while still holding office in the LCDC, a political organization, he violated Canon 4, Rule 4.1(A)(1) and therefore acted in a manner inconsistent with the independence, integrity, and impartiality of the judiciary. Following this

initial transgression, Respondent maintained his position in the LCDC and continued to engage in campaign activities, including participating in campaign events with candidates for non-judicial office, establishing a campaign committee, which received contributions and made expenditures for his campaign, and soliciting and accepting support from electors in the form of the signatures on his Democratic and Republican nominating petitions. In addition to his initial announcement of candidacy, these acts were also inconsistent with his obligation to act in a manner that promotes public confidence in the independence, integrity, and impartiality of himself and the judiciary. While the campaign activities of Respondent are consistent with the type of activities that regularly occur during campaigns for judicial office and are expressly permitted within the Rules, the fact that Respondent engaged in these activities while actively holding an office in the LCDC makes these otherwise innocent political activities improper. A judicial candidate who simultaneously holds office in a political organization cannot sanitize his campaign activities by claiming he was acting in different roles depending on the type of activity in which he was involved. The obligatory duty prescribed in Rule 4.2(A)(1) applies to judicial candidates "at all times."

Respondent's conduct most glaringly at odds with his duties under the Rules was his use of his political office in the LCDC to benefit his own judicial campaign. On February 11, 2019, while a judicial candidate, Respondent participated in the public LCDC committee meeting as a Committee Person and voted for the LCDC to endorse him for the office of Magisterial District Judge in Magisterial District 02-2-04. Not only did Respondent use his own political influence as a Committee Person to act in a self-serving manner, he did so in the presence of Sharon Watson-Frias, an opposing

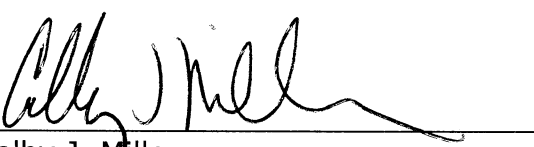
candidate for the office of Magisterial District Judge who was also seeking the endorsement of the LCDC. By using his political office as Committee Person, which as a judicial candidate he was not permitted to hold pursuant to Rule 4.1(A)(1), to his partisan political advantage, Respondent clearly and unequivocally acted in a manner that served to undermine public confidence in Respondent's independence, integrity, and impartiality, which he is obligated to uphold pursuant to Canon 4, Rule 4.2(A)(1).

**Conclusion**

All the above-cited facts in this Statement of the Case are undisputed. Application of these facts to the unambiguous language in Rules 4.1(A)(1), 4.1(A)(3), and Rule 4.2(A)(1), should lead this Court to the inexorable conclusion that Respondent has violated these Rules by clear and convincing evidence. Any violation of the Rules also results in a derivative violation of Article V, § 17(b) of the Pennsylvania Constitution.

Respectfully submitted,

DATE: September 3, 2021

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**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

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Magisterial District Judge :  
Magisterial District 02-2-04 : 7 JD 2020  
2nd Judicial District :  
Lancaster County :

**CERTIFICATE OF COMPLIANCE**

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

Submitted by: Judicial Conduct Board of Pennsylvania  
Signature:   
Name: Colby J. Miller  
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Attorney No.: 311599

**COMMONWEALTH OF PENNSYLVANIA  
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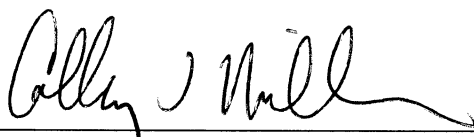
**PROOF OF SERVICE**

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on the date below a copy of Judicial Conduct Board's Statement of Its Case was sent by First Class Mail and Email to Robert A. Graci, Esquire, counsel for Magisterial District Judge Andrew T. LeFever at the following address:

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Respectfully submitted,

DATE: 9/3/2021

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