

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

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	:	

COURT OF JUDICIAL DISCIPLINE  
OF PENNSYLVANIA

NOV 19 2021

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**JUDICIAL CONDUCT BOARD'S PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

**I. 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. (Joint Stipulations of Fact 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. (Joint Stipulations of Fact 2).
3. Based on a Confidential Request for Investigation at Judicial Conduct Board File No. 2019-669, the Board investigated the instant matter. (Joint Stipulations of Fact 3).
4. 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. (Joint Stipulations of Fact 4).

5. Respondent is a licensed attorney in the Commonwealth of Pennsylvania. (Notes of Trial (N.T.), September 14, 2021, at 64:2-6, 98:11-15).
6. Respondent's legal training and experience as an attorney taught him how to read legal authority in the form of statutes, rules, and case law. (N.T., September 14, 2021, at 99:6-10).
7. Respondent's training as an attorney taught him how to interpret legal authority in the form of statutes, rules, and case law. (N.T., September 14, 2021, at 99:11-15).
8. Respondent's training and experience as an attorney taught him how to apply legal authority to a set of facts when evaluating whether the conduct and actions of an individual comply or fail to comply with the law. (N.T., September 14, 2021, at 99:16-22).
9. Respondent's training and experience as an attorney taught him that one aspect of applying legal authority to a set of facts is determining which legal authority controls the situation. (N.T., September 14, 2021, at 100:1-5).
10. Respondent's training and experience as an attorney taught him that another aspect of applying legal authority to a set of facts is distinguishing how different sets of facts comply or fail to comply with the law. (N.T., September 14, 2021, at 100:6-11).
11. 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. (Joint Stipulations of Fact 5).

12. The website at [www.lancastercitydemocrats.com](http://www.lancastercitydemocrats.com) is the official website of the LCDC. (Joint Stipulations of Fact 6).

13. The LCDC website at [www.lancastercitydemocrats.com/about](http://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.*

(Joint Stipulations of Fact 7, Board Trial Exhibit 3).

14. 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." (Joint Stipulations of Fact 8, Board Trial Exhibit 4).

15. The "Terminology" section of the Rules Governing Standards of Conduct of Magisterial District Judges (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.

(Joint Stipulations of Fact 9).

16. 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!*

(Joint Stipulations of Fact 10, Board Trial Exhibit 2).

17. The "Application" section of the Rules states, "Canon 4 applies to all judicial candidates." (Joint Stipulations of Fact 11).
18. 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.

(Joint Stipulations of Fact 12).

19. Canon 4, Rule 4.1(A)(1) of the Rules 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 magisterial district judge or a judicial candidate shall not:

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

(Joint Stipulations of Fact 13).

20. 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” in the Rules. (Joint Stipulations of Fact 14).
21. 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. (Joint Stipulations of Fact 15).
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. (Joint Stipulations of Fact 16).
23. Prior to resigning as a Committee Person in the LCDC, Respondent was aware that to comply with Rule 4.1(A)(1) of the Rules, he could not be a judicial candidate and a committee person at the same time. (N.T., September 14, 2021, at 74:3-15; Board Trial Exhibit 16).
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 to comply with the Rules. (Joint Stipulations of Fact 17).
25. When Respondent reviewed *Denick*, he was aware that the case involved a challenge to an individual’s nominating petitions under the Election Code. (N.T., September 14, 2021, at 103:12-104:2).
26. 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 to comply with the Rules. (Joint Stipulations of Fact 18).

27. When Respondent reviewed *Tartaglione*, he was aware that the case involved a challenge to an individual's nominating petitions under the Election Code. (N.T., September 14, 2021, at 108:23-109:2).
28. A reason for Respondent's research into when he would become a candidate was because he was involved in a "contentious primary" and he wanted to be in compliance. (N.T., September 14, 2021, at 110:15-114:4).
29. As of September 14, 2021, Respondent believed that a "candidate for an office is someone who's on the ballot for that position." (N.T., September 14, 2021, at 153:23-154:3).
30. As of September 14, 2021, Respondent believed that he wasn't a candidate when he publicly announced his candidacy on his campaign Facebook page on January 27, 2019 because, "I didn't know if I was going to be on the ballot or not to be a candidate." (N.T., September 14, 2021, at 156:3-9).
31. In the process of deciding to seek the office of Magisterial District Judge during 2018 or early 2019, Respondent reviewed the Rule's proscriptions and prescriptions on the campaign activities of judicial candidates, including Rule 4.2(A)(1). (N.T., September 14, 2021, at 102:3-16).
32. On January 27, 2019 and until March 11, 2019, Respondent served as a Committee Person in the LCDC for the City of Lancaster's 5<sup>th</sup> Precinct in the 6<sup>th</sup> Ward. (Joint Stipulations of Fact 19).
33. 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. (Joint Stipulations of Fact 20, Board Trial Exhibit 2).

34. Respondent and his campaign associates updated his campaign Facebook page with posts concerning his campaign activities from January 27, 2019 through March 12, 2019. (N.T., September 14, 2021, at 75:5-13; Board Trial Exhibit 2).
35. D.J. Ramsey, an LCDC Committee Person for Ward 4, Precinct 1, made posts concerning Respondent's campaign activities on Respondent's campaign Facebook page. (N.T., September 14, 2021, at 115:12-117:11; Board Trial Exhibit 5).
36. Lauren Edgell, LCDC Northeast Quadrant Director and Respondent's campaign manager, made posts concerning Respondent's campaign activities on Respondent's campaign Facebook page. (N.T., September 14, 2021, at 117:13-17, Board Trial Exhibit 5).
37. Magisterial District 02-2-04 resides within the northeast quadrant of Lancaster City. (N.T., September 14, 2021, at 114:18-115:7; Board Trial Exhibit 5).
38. Respondent was aware of everything being posted on his public campaign Facebook page. (N.T., September 14, 2021, at 122:4-13).
39. On February 11, 2019, 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. (Joint Stipulations of Fact 21, Board Trial Exhibit 5).

40. At the February 11, 2019 LCDC meeting, Committee Persons representing the 2<sup>nd</sup> and 6<sup>th</sup> 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. (Joint Stipulations of Fact 22).
41. Prior to the endorsement vote, Respondent was interviewed by the LCDC Endorsement Committee. (N.T., September 14, 2021, at 133:23-134:18).
42. Jamie Arroyo, an individual seeking the LCDC endorsement for a position on Lancaster City Council, was on the LCDC Endorsement Committee that interviewed Respondent prior to the LCDC endorsement vote. (N.T., September 14, 2021, at 133:23-134:4).
43. Lauren Edgell, LCDC Northeast Quadrant Director and Respondent's campaign manager, was on the LCDC Endorsement Committee that interviewed Respondent prior to the LCDC endorsement vote. (N.T., September 14, 2021, at 134:5-11).
44. Prior to the endorsement vote, Respondent made a stump speech to other LCDC Committee Persons about why they should vote for him to receive the LCDC endorsement for the position of Magisterial District Judge. (N.T., September 14, 2021, at 134:25-135:7).
45. At the February 11, 2019 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. (Joint Stipulations of Fact 23; (N.T., September 14, 2021, at 82:21-83:4).
46. 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 Sharon Watson Frias, an opposing candidate 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; Board Trial Exhibit 5).

47. On February 11, 2019, after a unanimous vote, Respondent received the endorsement of the LCDC for the office of Magisterial District Judge in Magisterial District 02-2-04. (Joint Stipulations of Fact 25).

48. On February 12, 2019, LNP (Lancaster Newspapers) published an article reporting LCDC's February 11, 2019 endorsement of Respondent for the office of Magisterial District Judge. (Joint Stipulations of Fact 26, Board Trial Exhibit 6).

49. On February 12, 2019, Respondent or one of his campaign surrogates made a post on his campaign Facebook page "Andrew LeFever for Magisterial District Judge" stating,

*I am proud to announce that last evening, I received the unanimous endorsement of the northeast quadrant of the Lancaster City Democratic Committee for the position of Magisterial District Judge. As the only endorsed candidate for this position, I am thrilled to have the support of so many great, hardworking individuals, Now the real work can begin!*

(Board Trial Exhibit 2, 08:30 – 08:34)

50. On February 28, 2019, a post on Respondent's campaign Facebook page stated that Respondent was with Amanda Bakay, Jaime Arroyo, and Xavier Garcia-Molina, all Democratic candidates for Lancaster City Council, at their petition signing event. (Board Trial Exhibit 2, 08:04 – 08:06)

51. On February 11, 2019, Respondent established his campaign committee, LANCASTER FOR LEFEVER. (Joint Stipulations of Fact 27).

52. 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. (Joint Stipulations of Fact 28; Board Trial Exhibit 11, at 22).
53. 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. (Joint Stipulations of Fact 29; Board Trial Exhibit 11, at 22).
54. On February 21, 2019, LANCASTER FOR LEFEVER classified Respondent's January 22, 2019 expenditure for photographs as an in-kind contribution. (Joint Stipulations of Fact 30; Board Trial Exhibit 11, at 39).
55. On February 13, 2019, Respondent made a \$100 contribution to his campaign committee. (Joint Stipulations of Fact 31; Board Trial Exhibit 11, at 34).
56. On February 13, 2019, LANCASTER FOR LEFEVER deposited \$100 in its account at Fulton Bank. (Joint Stipulations of Fact 32).
57. On February 13, 2019, LANCASTER FOR LEFEVER made an expenditure at Fulton Bank for checks. (Joint Stipulations of Fact 33; Board Trial Exhibit 11, at 40).
58. On February 17, 2019, Respondent made an expenditure for campaign buttons for his campaign for the office of Magisterial District Judge. (Joint Stipulations of Fact 34; Board Trial Exhibit 11, at 22).
59. On February 21, 2019, LANCASTER FOR LEFEVER classified Respondent's February 17, 2019 expenditure for campaign buttons as an in-kind contribution. (Joint Stipulations of Fact 35; Board Trial Exhibit 11, at 39).

60. On February 23, 2019, LANCASTER FOR LEFEVER received a monetary contribution. (Joint Stipulations of Fact 36; Board Trial Exhibit 11, at 34).
61. On February 23, 2019, LANCASTER FOR LEFEVER received an in-kind contribution for campaign event invitations. (Joint Stipulations of Fact 37; Board Trial Exhibit 11, at 3).
62. On February 28, 2019, LANCASTER FOR LEFEVER received a monetary contribution. (Joint Stipulations of Fact 38; Board Trial Exhibit 11, at 34).
63. 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. (Joint Stipulations of Fact 39; Board Trial Exhibit 11, at 22).
64. On March 6, 2019, LANCASTER FOR LEFEVER made an expenditure at Molly's Pub for a campaign event. (Joint Stipulations of Fact 40; Board Trial Exhibit 11, at 40).
65. On March 7, 2019, LANCASTER FOR LEFEVER received three monetary contributions. (Joint Stipulations of Fact 41 (stating two contributions received); Board Trial Exhibit 11, at 34 (showing three contributions received)).
66. On March 10, 2019, LANCASTER FOR LEFEVER received a monetary contribution. (Joint Stipulations of Fact 42; Board Trial Exhibit 11, at 35).
67. On February 23, 2019, Respondent received the endorsement of the Lancaster County Democratic Committee for the office of Magisterial District Judge in Magisterial District 02-2-04. (Joint Stipulations of Fact 43).
68. From February 23, 2019 through March 11, 2019, Respondent and his circulators solicited electors in the City of Lancaster's 2<sup>nd</sup> and 6<sup>th</sup> Wards for

placement of their signatures on his Democratic and Republican nominating petitions for the office of Magisterial District Judge in Magisterial District Court 02-2-04. (Joint Stipulations of Fact 44; Board Trial Exhibits 9 & 10).

69. From February 23, 2019 through March 11, 2019, Respondent and his circulators accepted the signatures of electors in the City of Lancaster's 2<sup>nd</sup> and 6<sup>th</sup> Wards on his Democratic and Republican nominating petitions for the office of Magisterial District Judge in Magisterial District Court 02-2-04. (Joint Stipulations of Fact 45; Board Trial Exhibits 9 & 10).

70. Among the individuals soliciting electors and accepting the signatures of electors on Respondent's Democratic nominating petitions between February 23, 2019 and March 11, 2019 were:

- a. Phillip Cabassa, an LCDC Committee Person in the 6<sup>th</sup> Ward;
- b. Theresa Flavin, an LCDC Committee Person in the 6<sup>th</sup> Ward;
- c. David Parry, an LCDC Committee Person in the 2<sup>nd</sup> Ward;
- d. Jaime Arroyo, an LCDC endorsed candidate for Lancaster City Council;
- e. Linda Esbenshade, an LCDC Committee Person in the 6<sup>th</sup> Ward;
- f. Michael Gaines, an LCDC Committee Person in the 6<sup>th</sup> Ward;
- g. Lillie West, an LCDC Committee Person in the 6<sup>th</sup> Ward;
- h. Steven Garner, an LCDC Committee Person in the 6<sup>th</sup> Ward;
- i. Lauren Edgell, an LCDC Committee Person in the 6<sup>th</sup> Ward and Respondent's campaign manager; and
- j. Carl Feldman, an LCDC Committee Person in the 6<sup>th</sup> Ward.

(Joint Stipulations of Fact 46; Board Trial Exhibits 9 & 10).

71. 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 2<sup>nd</sup> and 6<sup>th</sup> 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. (Joint Stipulations of Fact 47; Board Trial Exhibit 9, at 2; Board Trial Exhibit 10, at 4).
72. Respondent did not circulate nominating petition of non-judicial candidates for public office because he knew that being a Magisterial District Judge is supposed to be non-political position. (N.T., September 14, 2021, at 138:19-24).
73. On March 5, 2019, a post on Respondent's campaign Facebook page announced that he will be appearing with Lancaster City Council candidates Jaime Arroyo, Amanda Bakay, and Xavier Garcia-Molina at Molly's Pub and Carry Out on March 6, 2019 to "talk about our vision for the Northeast." (Board Trial Exhibit 2, at 07:59).
74. On March 6, 2019, Respondent participated in a campaign event at Molly's Pub and Carry Out. (Joint Stipulations of Fact 48; Board Trial Exhibit 2, at 07:52 - 07:56).
75. Other persons seeking nomination for non-judicial office in the City of Lancaster participated in the campaign event at Molly's Pub and Carry Out on March 6, 2019. (Joint Stipulations of Fact 49).
76. Xavier Garcia-Molina, Democratic candidate for Lancaster City Council, spoke at the campaign event at Molly's Pub and Carry Out on March 6,

2019. (N.T., September 14, 2021, at 123:16-25 (referencing Board Trial Exhibit 2)).
77. Amanda Bakay, an LCDC endorsed Democratic candidate for Lancaster City Council and an LCDC Committee Person for Ward 8, Precinct 9 spoke at the campaign event at Molly's Pub and Carry Out on March 6, 2019. (N.T., September 14, 2021, at 123:16-25 (referencing Board Trial Exhibit 2); Board Exhibit 5).
  78. The campaign event at Molly's Pub and Carry Out on March 6, 2019 was broadcast live on Respondent's campaign Facebook page, "Andrew LeFever for Magisterial District Judge". (N.T., September 14, 2021, at 124:6-125:3; Board Trial Exhibit 2, at 07:52 - 07:56).
  79. On March 11, 2019, 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. (Joint Stipulations of Fact 50, Board Trial Exhibit 7).
  80. At the end of the March 11, 2019 LCDC meeting, Respondent resigned his position as a Committee Person on the LCDC via letter provided to LCDC Chair Diane Topakian. (Joint Stipulations of Fact 51, Board Trial Exhibit 8).
  81. Prior to deciding when to resign from the LCDC to comply with Rule 4.1(a)(1), Respondent did not get an advisory opinion from the Ethics and Professionalism Committee of the Special Courts Judges Association of Pennsylvania regarding that issue. (N.T., September 14, 2021, at 146:18-147:4).
  82. 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. (Joint Stipulations of Fact 52).

83. 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. (Joint Stipulations of Fact 53).
84. 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. (Joint Stipulations of Fact 54).
85. 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. (Joint Stipulations of Fact 55).
86. 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. (Joint Stipulations of Fact 56).
87. On March 12, 2019, Respondent filed his Republican and Democratic nominating petitions with the Lancaster County Board of Elections. (Joint Stipulations of Fact 57, Board Trial Exhibits 9 & 10).
88. On March 19, 2019, an opponent of Respondent, John Kenneff (Kenneff), filed two petitions challenging the Respondent's Democratic and Republican nominating petitions. (Board Trial Exhibits 12, 13 & 14).
89. On March 21, 2019, Respondent and John Kenneff appeared before Lancaster County Court of Common Pleas President Judge Dennis Reinaker for a hearing on Kenneff's petitions. (Board Trial Exhibits 12, 13 & 15).

90. Prior to proceeding with a hearing on the petitions, Respondent and Kenneff agreed that the only matter before President Judge Reinaker was whether Respondent was a LCDC Committee Person when he became a candidate for the office of Magisterial District Judge. (Board Trial Exhibit 15, at 2:18-22).
91. Prior to proceeding with a hearing on the petitions, Respondent and Kenneff stipulated that Respondent's nomination petitions were filed on March 12, 2019. (Board Trial Exhibit 15, at 2:23-24).
92. Prior to proceeding with a hearing on the petitions, Respondent and Kenneff stipulated that Respondent resigned from the LCDC on March 11, 2019. (Board Trial Exhibit 15, at 2:18-3:2).
93. Prior to proceeding with a hearing on the petitions, Respondent and Kenneff stipulated that sometime before March 11, 2019, Respondent formed a campaign committee for the purpose of soliciting campaign contributions. (Board Trial Exhibit 15, at 2:9-18).
94. Prior to proceeding with a hearing on the petitions, Kenneff withdrew his remaining arguments and averments made within his petitions. (Board Trial Exhibit 15, at 3:23-4:1).
95. Neither Respondent nor Kenneff presented additional evidence to President Judge Reinaker at the proceeding on March 21, 2019. (Board Trial Exhibit 15).
96. On March 21, 2019, President Judge Reinaker ruled that Respondent became a candidate for the office of Magisterial District Judge when he filed his nominating petitions on March 12, 2019. (Board Trial Exhibit 15, at 4:2-8).



97. After ruling that Respondent became a candidate for the office of Magisterial District Judge when he filed his nominating petitions on March 12, 2019, President Judge Reinaker dismissed Kenneff's petitions. (Board Trial Exhibit 15, at 4:8-11).
98. On March 21, 2019, LNP published an article reporting President Judge Reinaker's ruling that Respondent became a candidate when he filed his nominating petitions. (Board Trial Exhibit 16).
99. The LNP article published on March 21, 2019 reported that, after the proceeding before President Judge Reinaker, Respondent stated that he was aware that he could not be on the committee while a candidate for magisterial district judge, which is why he resigned when he did. (Board Trial Exhibit 16).
100. The LNP article published on March 21, 2019 reported that, after the proceeding before President Judge Reinaker, Respondent stated, "It's important that we have judges who understand the law and what's at stake for people in the community." (N.T., September 14, 2021, at 146:2-17; Board Trial Exhibit 16).
101. On May 21, 2019, Respondent won the Democratic primary election for the position of Magisterial District Judge in Magisterial District 02-2-04. (Joint Stipulations of Fact 58).
102. On November 5, 2019, Respondent won the municipal election for the office of Magisterial District Judge in Magisterial District 02-2-04. (Joint Stipulations of Fact 59).
103. Respondent began his term as Magisterial District Judge in Magisterial District 02-2-04 on January 2, 2020. (Joint Stipulations of Fact 60).

104. 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. (Additional Joint Stipulations of Fact 61).
105. 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. (Additional Joint Stipulations of Fact 62).
106. Lauren Edgell was present at the February 11, 2019 public LCDC meeting and she would testify that Respondent did not vote to endorse candidates for either school director or Lancaster City Council. (Additional Joint Stipulations of Fact 63).
107. Alan Silverman was present at the February 11, 2019 public LCDC meeting and he would testify that he does not remember if Respondent voted to endorse a candidate for either school director or Lancaster City Council. (Additional Joint Stipulations of Fact 64).
108. Lauren Slessor was present at the February 11, 2019 public LCDC meeting and she would testify that she cannot recall whether Respondent voted to endorse candidates for either school director or Lancaster City Council. (Additional Joint Stipulations of Fact 65).

## **II. Proposed Conclusions of Law**

The Board proved all the alleged misconduct as set forth in the Board Complaint by clear and convincing evidence presented through Respondent's December 9, 2020 Answer to the Board Complaint, the parties' March 23, 2021 Joint Stipulations of Fact and Additional Stipulations of Fact submitted on September 3,

2021, the Board's Trial Exhibits, and through Respondent's trial testimony on September 14, 2021.

On January 27, 2019, Respondent unequivocally announced his candidacy for the position of Magisterial District Judge on his public campaign Facebook page "Andrew LeFever for Magisterial District Judge." Respondent prepared for his campaign announcement by making personal campaign expenditures for a campaign logo design on January 5, 2019, and for campaign photographs on January 22, 2019. On February 21, 2019, Respondent's campaign committee, LANCASTER FOR LEFEVER, classified his expenditure for photographs as an in-kind campaign contribution.

When he made his announcement of candidacy, Respondent was serving as a Committee Person in the LCDC representing the City of Lancaster's 5<sup>th</sup> Precinct of the 6<sup>th</sup> Ward. LCDC Committee Persons are elected by registered Democrats or are appointed to the position by the Lancaster County Democratic Committee Chairperson. Lancaster County Democratic Committee Chairperson, JoAnn Hentz, appointed Respondent to the position on July 12, 2018. Respondent continued serving as a Committee Person in the LCDC until his resignation on March 11, 2019.

In addition to his public announcement of his candidacy on January 27, 2019, Respondent, his campaign surrogates, and LANCASTER FOR LEFEVER engaged in campaign activities between January 27, 2019 and March 11, 2019 that further established his status as a candidate for the office of Magisterial District Judge in Magisterial District 02-2-04. These activities include Respondent seeking and receiving the endorsement of the LCDC for the position of Magisterial District Judge, establishing his campaign committee LANCASTER FOR LEFEVER, making monetary and in-kind contributions to his campaign committee, receiving the endorsement of

the Lancaster County Democratic Committee, soliciting electors in the 2<sup>nd</sup> and 6<sup>th</sup> Wards of Lancaster for signatures on his Democratic and Republican nominating petitions, accepting signatures of electors in the 2<sup>nd</sup> and 6<sup>th</sup> Wards of Lancaster City on his Democratic and Republican nominating petitions, and participating in a campaign event at Molly's Pub and Carry Out on March 6, 2019. His status as a candidate was further solidified when LANCASTER FOR LEFEVER set up a bank account for his campaign and accepted monetary and in-kind campaign contributions and made campaign expenditures between February 11, 2019 and March 11, 2019.

When considering, observing, or becoming aware of the foregoing activities individually or collectively, any reasonable person would conclude that Respondent was a candidate for the office of Magisterial District Judge at the time any of the foregoing activities took place. Beyond the conventional understanding of what activities would reasonably make an individual a candidate for public office, the Rules unambiguously define the types of actions or activities that would make an individual a "judicial candidate."

Under the Terminology section of the Rules, the types of activities that make an individual a "judicial candidate" include the same actions that Respondent and his surrogates engaged in from January 27, 2019 through March 11, 2019. The definition of "judicial candidate" states that an individual "becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy. . .[or] engages in solicitation or acceptance of contributions or support[.]" Here, Respondent became a judicial candidate, as defined in the Rules, when he announced his candidacy for the position of magisterial district judge on January 27, 2019. In addition, Respondent's in-kind contributions to LANCASTER FOR LEFEVER, and his solicitation and acceptance of electors' support in the form of signatures on his nominating petitions,

are actions that made Respondent a judicial candidate as soon as he took these actions. LANCASTER FOR LEFEVER's acceptance of campaign contributions, and his surrogates canvassing of electors for signatures on Respondents' nominating petitions, would also be actions that made Respondent a judicial candidate under the Rules.

Under subsection 4 of the Applicability section of the Rules Governing Standards of Conduct of Magisterial District Judges, Canon 4 of the Rules, titled *A Magisterial District Judge or Candidate for Judicial Office Shall Not Engage in Political or Campaign Activity that is Inconsistent with the Independence, Integrity, or Impartiality of the Judiciary*, is applicable to "judicial candidates."

While Respondent was a judicial candidate, he was also a Committee Person in the LCDC. The LCDC is a "political organization" as defined in the Rules.<sup>1</sup> Under the Terminology section in the Rules, a political organization is "a . . . group . . . affiliated with a political party . . . , the principal purpose of which is to further the election or appointment of candidates for political office[.]" LCDC's stated "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 mission clearly aligns the LCDC with the Democratic Party and the goal of implementing Democratic principles in the City of Lancaster with the election of Democratic candidates into public office. The LCDC endeavored to do just that on February 11, 2019, when its Committee Persons, including Respondent, voted on which Democratic candidates to endorse for the positions of public office on the primary ballot, including the position of Magisterial District Judge in Magisterial

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<sup>1</sup> At trial on September 14, 2021, Respondent testified that he believed that the LCDC is a political organization as defined in the Rules. (N.T., September 14, 2021, at 73:13-23).

District 02-2-04. Respondent welcomed LCDC's assistance in promoting his candidacy by allowing LCDC officials to be involved in his campaign while he maintained his office as an LCDC Committee Person.

**Violation of Canon 4, Rule 4.1(A)(1) of the Rules Governing Standards of Conduct of Magisterial District Judges.**

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

- (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.

Respondent violated Rule 4.1(A)(1) when he held an office, Committee Person for the City of Lancaster's 5<sup>th</sup> Precinct for the 6<sup>th</sup> Ward, in a political organization, the LCDC, when he was a judicial candidate from January 27, 2019 through his resignation from the LCDC on March 11, 2019. There are no exceptions present in Rules 4.2, 4.3, and 4.4 that permitted Respondent's conduct. Comment [3] of the Rule states:

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(A)(1)'s limit on the degree to which a judicial candidate can be associated with a political organization is narrowly tailored to protect the interests of the judiciary and a judicial candidate's right to be involved in political activity during the elective process. While Rule 4.2(B)(7) permits judicial candidates to "identify himself or herself as a member or candidate of a political organization", such as the LCDC, this Rule does not override Rule 4.1(A)(1)'s prohibition on a judicial candidate

acting as a leader, or holding office in, a political organization. These Rules differentiate conduct that relates to a judicial candidate's unofficial participation in a political organization's activities and identification with the political organization's principles, with conduct that relates to a judicial candidate's participation, as an office holder, in the political organization's official acts, especially those that would benefit the judicial candidate's campaign for judicial office. As a Committee Person, Respondent held an office within the LCDC, which gave him power to influence the LCDC's official acts to the benefit of his campaign for judicial office. As such, Respondent has violated Rule 4.1(A)(1) by clear and convincing evidence.

**Violation of Canon 4, Rule 4.1(A)(3) of the Rules Governing Standards of Conduct of Magisterial District Judges.**

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

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

. . .

- (3) Publicly endorse or publicly oppose a candidate for any public office

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 non-judicial candidates for the public offices of School Director and Lancaster City Council.

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]." At trial, Respondent did not deny that he voted for the LCDC to endorse School Director or Lancaster City Council candidates. Instead, while acknowledging that he previously testified under oath that he did make those votes, Respondent testified at trial that he has "no independent recollection of casting those votes", and does not remember *if* he voted for those candidates or not. (N.T., September 14, 2021, at 77:18-80:13).

Respondent admits, has stipulated, and testified 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, has stipulated, and



testified 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 it was stipulated that if Lauren Edgell (Edgell), Respondent's campaign manager, was called to testify at trial, she would have testified 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, this 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 and at trial 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) by clear and convincing evidence 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.

**Violation of Canon 4, Rule 4.2(A)(1) of the Rules Governing Standards of Conduct of Magisterial District Judges.**

*Canon 4, Rule 4.2, Political and Campaign Activities of Judicial Candidates in Public Elections.*

- (A) A judicial candidate in a public election shall:
  - (1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary

Respondent violated Rule 4.2(A)(1) when, as a Committee Person in the LCDC, he participated in the LCDC's endorsement meeting on February 11, 2019 and voted for the LCDC to endorse him for the position of Magisterial District Judge in Magisterial District 02-2-04. Respondent's conduct underscores the reason why Rule 4.1(A)(1) prohibits judicial candidates from holding office in political organizations like the

LCDC. By seeking judicial office, a judicial candidate voluntarily obligates himself or herself to refrain from engaging in conduct that could cause the public to question the judicial candidate's independence, integrity, and impartiality. 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 to which he was obligated to uphold.

By voting as a Committee Person for the LCDC to endorse him as a judicial candidate, Respondent undermined his obligations to the public as a judicial candidate as well as his obligations to his constituents as a Committee Person. Respondent's Democratic constituents of the City of Lancaster's 5<sup>th</sup> Precinct for the 6<sup>th</sup> Ward would expect their representative in the LCDC to take official actions benefiting their interests, not the interests of Respondent. Respondent's vote for himself to receive a personal benefit from the LCDC's official endorsement action is palpably self-interested. Just as his LCDC constituents would not expect him to take official actions for his personal benefit, the public expects judges to conduct themselves in a manner divorced from their personal interests. Under Rule 4.2(A)(1), judicial candidates are held to the same standard as elected judges in that they refrain from engaging in conduct that compromises public perception of the judiciary (Rule 1.2., *Promoting Confidence in the Judiciary*). Respondent's endorsement vote for himself as a judicial candidate was an act rooted in self-interest, itself divorced from the values of independence, integrity, and impartiality he was obligated to uphold. Respondent's act of self-interest designed to benefit his judicial campaign is a stark example as to why Rule 4.1(A)(1)'s prohibition on judicial candidates holding office in political organizations exists. Had Respondent complied with Rule 4.1(A)(1)

and resigned his office as Committee Person in the LCDC prior to announcing his campaign, the additional violation of Rule 4.2(A)(1) would not have occurred.

An aggravating factor in this matter is Respondent's use of his position as Committee Person in the LCDC to help secure its endorsement of him over that of Sharon Watson-Frias (Watson-Frias), an opposing candidate for Magisterial District Judge in Magisterial District 02-2-04 who was also seeking LCDC's endorsement. Respondent's apparent lack of appreciation for how his vote for the LCDC to endorse him for the office of Magisterial District Judge was inconsistent with the values of independence, integrity, and impartiality cannot be more clearly highlighted than when considering that his vote occurred in the presence of Watson-Frias on February 11, 2019. Again, had Respondent resigned his office in the LCDC prior to announcing his campaign, he and Watson-Frias would have appeared before the LCDC seeking its endorsement similarly situated. While Respondent may have received the benefit of his prior association with the LCDC when the Committee Persons submitted their votes, the implicating factors of his holding office in the LCDC and acting in his official capacity to vote for himself would not have been present to taint the propriety of his endorsement or to place him in jeopardy of Board action for this violation of the Rules if elected to the position of Magisterial District Judge.

Compounding the impropriety of Respondent's vote for his own LCDC endorsement, Respondent used to his benefit the conflict of interests present in his interview with the LCDC's Endorsement Committee, on which sat Jamie Arroyo, a non-judicial candidate for Lancaster City Council who was seeking and eventually received the LCDC endorsement, and Edgell, Respondent's campaign manager. In fact, Respondent attempted to leverage the conflict of interests present in the endorsement process to his advantage when he gave a stump speech to his fellow

Committee Persons representing the 2<sup>nd</sup> and 6<sup>th</sup> Wards of the City of Lancaster about why they should vote to endorse him. Respondent's involvement in the endorsement process and his public vote for his own endorsement in the presence of Watson-Frias demonstrated his lack of concern about how his conduct could impact his perceived fitness for office or the public perception of and confidence in the judiciary. The public became aware of LCDC's endorsement of Respondent when LNP (Lancaster Newspapers) reported the endorsement to the public on February 12, 2019. As the conduct of judges is an essential component in how public perception of the judiciary is established and maintained, Respondent's self-interested vote in the presence of an opposing candidate without similar power or advantage is conduct that failed to meet the standard of how judges should act to promote the independence, integrity, and impartiality of the judiciary.

In addition to his participation in the LCDC endorsement meeting on February 11, 2019 and his vote for the LCDC to endorse him for the position of magisterial district judge in the presence of Watson-Frias, Respondent's engagement in otherwise permissible campaign activities while maintaining his office as a Committee Person in the LCDC also implicates Rule 4.2(A)(1). Aggravating this conduct was Respondent's entanglement with other Committee Persons in the LCDC and the LCDC's endorsed non-judicial candidates for public office who supported Respondent and participated in his judicial campaign activities.

During the time Respondent maintained his office in the LCDC following his public announcement of candidacy on January 27, 2019, he, D.J. Ramsey (Ramsey), and Edgell made posts concerning Respondent's campaign activities on his publicly viewable campaign Facebook page, "Andrew LeFever for Magisterial District Judge". Respondent was aware of everything being posted on his campaign Facebook page.

When these posts were made, Ramsey, Edgell, and Respondent were all Committee Persons in the LCDC. During Respondent's campaign, Edgell, also serving as Respondent's campaign manager, held a leadership position within the LCDC as its Northeast Quadrant Director. The Northeast Quadrant of Lancaster City encompasses Magisterial District 02-2-04, which is the Magisterial District Court for which Respondent was campaigning.

On February 12, 2019, Respondent used his campaign Facebook page to make a public announcement about his LCDC endorsement. On that day, Respondent, Ramsey, or Edgell made a post stating,

*I am proud to announce that last evening, I received the unanimous endorsement of the northeast quadrant of the Lancaster City Democratic Committee for the position of Magisterial District Judge. As the only endorsed **candidate** for this position, I am thrilled to have the support of so many great, hardworking individuals, Now the real work can begin!*

(emphasis added).

The post was accompanied with a link to the LNP article published the same date titled "City Democrats endorse two for City Council, leave third spot open for primary", which discussed the LCDC endorsement of Amanda Bakay (Bakay) and Jaime Arroyo (Arroyo) for Lancaster City Council. This was not the only instance of Respondent's campaign Facebook page posting information on non-judicial candidates Bakay and Arroyo. On February 28, 2019, a post on Respondent's campaign Facebook page stated that Respondent was with Bakay, Arroyo, and Xavier Garcia-Molina (Garcia-Molina), all Democratic candidates for Lancaster City Council, at their petition signing event.

Respondent also publicized his appearance at a public campaign event with another LCDC endorsed non-judicial candidate and fellow LCDC Committee Persons. On March 5, 2019, a post on Respondent's campaign Facebook page announced that

he will be appearing with Lancaster City Council candidates Arroyo, Bakay, and Garcia-Molina at Molly's Pub and Carry Out on March 6, 2019 to "talk about *our* vision for the Northeast." (emphasis added). The post was accompanied by Respondent's campaign logo. On March 6, 2021, Respondent participated in the campaign event at Molly's Pub and Carry Out. Edgell spoke at the event, as did LCDC endorsed City Council Candidate Bakay, who was also an LCDC Committee Person. In addition to the individuals associated with the LCDC, a Democratic candidate for Lancaster City Council, Garcia-Molina, who sought but did not receive the LCDC endorsement, also spoke at the campaign event. The event was broadcast live on Respondent's campaign Facebook page.

Another of the campaign activities Respondent and his surrogates posted about on his campaign Facebook page was the circulation of his nominating petitions between February 23, 2019 and March 11, 2019 in the 2<sup>nd</sup> and 6<sup>th</sup> Wards of the City of Lancaster. On and between those dates, Respondent, fellow LCDC Committee Persons, and LCDC endorsed non-judicial candidate Arroyo solicited and accepted electors' signatures for Respondent's Democratic nominating petitions. Each of the LCDC Committee Persons assisting Respondent in this solicitation and acceptance of support were representatives for areas of the 2<sup>nd</sup> and 6<sup>th</sup> Wards on the LCDC. Magisterial District 2-2-04, for which Respondent was campaigning, comprises the 2<sup>nd</sup> and 6<sup>th</sup> Wards of the City of Lancaster.

Respondent's utilization of, and coordination with, LCDC officials and LCDC endorsed candidates for his judicial campaign activities, was a violation of Rule 4.2(A)(1)'s prescription for judicial candidates to act "at all times" in a manner consistent with the independence, integrity, and impartiality of the judiciary. Respondent's maintenance of his partisan political office within the LCDC while

campaigning between January 27, 2019 and March 11, 2019 eliminated the separation between his role as a judicial candidate and his role as an office holder in a partisan political organization. The union of Respondent's partisan political identity with his judicial aspirations, coupled with the support from, and his support of, fellow LCDC officials and LCDC endorsed candidates, served to undermine public confidence in the independence, integrity, and impartiality of the judiciary, which judicial candidates are obligated to uphold. As such, Respondent violated Rule 4.2(A)(1) by clear and convincing evidence.

### **III. Respondent's Liability for Conduct in Violation of the Rules Governing Standards of Conduct of Magisterial District Judges.**

In 2018 or early 2019, Respondent reviewed the definitions of "judicial candidate" and "political organization" in the Rules. Respondent also reviewed Canon 4 of the Rules, including Rules 4.1(A)(1), 4.1(A)(3), and 4.2(A)(1). From his review of the definitions and the Rules, Respondent, a licensed attorney, knew or should have known that he would become a judicial candidate as soon as he made a public announcement of candidacy and that he was thereafter precluded from holding office in the LCDC or endorsing non-judicial candidates for public office. Respondent understood that being a Magisterial District Judge is a non-political position and that he, as a judicial candidate for that office, was obligated to act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary. This understanding should have motivated him to divorce himself from the LCDC prior to announcing his candidacy and entangling his judicial campaign with LCDC officials, the LCDC endorsement process, and its endorsed candidates.

The record supports a conclusion that Respondent considered himself a candidate as of January 27, 2019 when he made his public announcement of his

"candidacy" for the position of Magisterial District Judge. This announcement was made on a public Facebook page titled "Andrew LeFever for Magisterial District Judge" and included photographs and a campaign logo he procured specifically for his candidacy. In addition, Respondent sought and received the endorsement of the LCDC for the position of Magisterial District Judge at the LCDC's February 11, 2019 endorsement meeting. The individuals seeking the LCDC's endorsement were called "candidates" in the LCDC's minutes from that endorsement meeting. Following receipt of this endorsement, Respondent made a post on his campaign website calling himself the "only endorsed candidate" for the position of Magisterial District Judge. Even at trial, Respondent called himself a "judicial candidate" when discussing the types of offices that were being considered for the LCDC endorsement on February 11, stating, "there were judicial candidates seeking endorsement." (N.T., September 14, 2021, at 76:8-13).

Nonetheless, it appears that Respondent wants this Court to conclude, despite the unambiguous definition of the term and his own statements during his campaign, that he was not a judicial candidate until he filed his nominating petitions. Respondent wants this Court to accept this argument because that was what he subjectively believed prior to making his public announcement of candidacy. However, Respondent failed to test whether his conclusion was accurate by not obtaining an advisory opinion regarding the issue from the Ethics and Professionalism Committee of the Special Courts Judges Association of Pennsylvania.

To support the alleged reasonableness of his conclusion, Respondent cites his review of two cases discussing when an individual becomes a candidate; *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). In *Denick*, the



Commonwealth Court upheld a trial court's decision finding that Denick was a candidate when he filed his nominating petitions for the position of Magisterial District Judge with the County Board of Elections. 729 A.2d at 170. When announcing this conclusion, the Court referenced the section of *Tartaglione* citing the Pennsylvania Supreme Court's opinion in *Mayer v. Hemphill*, 190 A.2d 444 (Pa.1963) that an individual "becomes a candidate if he or she has filed nomination papers or publicly announced his [or her] candidacy for office." *Id.*; *Tartaglione*, 590 A.2d at 810 (emphasis added). As a public announcement of candidacy would necessarily predate the filing of nominating petitions, and no facts were before the Court to suggest Denick made a prefiling announcement of candidacy, the *Denick* Court looked back at Denick's conduct and concluded that Denick became a candidate "at the very least" when he filed his nominating petitions.

The Court in *Tartaglione*, which Respondent also reviewed prior to announcing his candidacy on January 27, 2019, considered whether the "pre-filing activities" of a candidate constituted a public announcement of candidacy under *Mayer*. 590 A.2d at 810. Upon review, *Tartaglione* 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.*

Because Respondent reviewed *Denick* and *Tartaglione* prior to his announcement of candidacy on January 17, 2019, he was on sufficient notice that a public announcement of candidacy was one of at least two actions he could take for

him to be considered a candidate under the Election Code. While *Denick* did not review whether candidate Denick made a public announcement of candidacy because no facts appeared on the record to require such a review, *Tartaglione* explicitly cited the *Mayer* factor of making public announcement of candidacy when reviewing whether such an announcement took place. Respondent's failure to accurately evaluate those cases in conjunction with the largely consistent definition of "judicial candidate" in the Rules when determining when to resign from the LCDC does not excuse him from culpability. As a licensed attorney trained to read, interpret, and apply legal authority in the form of statutes, rules, and case law, Respondent was or should have been aware that he would be considered a candidate upon making a public announcement of candidacy.

In addition, because Respondent reviewed the definition of "judicial candidate" in the Rules prior to his public announcement, he knew or should have known that soliciting and accepting electors support through the placement of their signatures on his nominating petitions would also make him a judicial candidate. 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, Respondent knew or should have known that the solicitation and acceptance of signatures on his nominating petitions was the type of support that would make him a judicial candidate under the Rules.

For his defense, Respondent cites an unpublished Commonwealth Court single-judge opinion concerning a challenge to nominating petitions under the Election Code to argue that his interpretation of when he had to resign from the LCDC to comply with the Rules was reasonable. This case, *In Re Nomination Petition for Leonard*, 2017 Pa. Commw. Unpub. LEXIS 536, does not support his argument. In *Leonard*, the Court reviewed a trial court's denial of a challenge to the nominating petitions of a candidate for magisterial district judge because the candidate held office in a political organization when she circulated her nominating petitions. Like Respondent, the candidate resigned from her office prior to filing her nominating petitions. While not referencing the definition of "judicial candidate" in the Rules, which includes the solicitation and acceptance of support as a basis to make an individual a judicial candidate, the Court cited *Tartaglione's* quotation of *Mayer*, "one becomes a candidate if he or she has filed nomination papers or publicly announced his [or her] candidacy for office." *Id.* at 6. Unlike in *Tartaglione*, the Court did not review whether the individual became a candidate via a public announcement, as the record on review included no such facts. Since there were no facts concerning a public announcement, the Court affirmed the trial court's decision, finding that the candidate did not become

a candidate until she filed her nominating petitions. *Id.* at 6, 10. While Respondent did not review or rely on *Leonard* when deciding when to resign from the LCDC, his contention that the case supports his belief that he was not a candidate until he filed his nominating petitions is unreasonable. Not only does the case not help answer the question about whether he became a candidate on January 27, 2019 when he made his public announcement, Respondent's conclusion that it supports his belief that he was not a candidate until he filed his petitions ignores what Respondent admitted is a "clear" definition of "judicial candidate" in the Rules (N.T., September 14, 2021, at 100:20-101:9), which he reviewed prior to making his public announcement, and which is the controlling law for this Court to consider in its evaluation of when Respondent became a judicial candidate for the office of Magisterial District Judge.

From review of the record, it appears that Respondent was more concerned about avoiding the consequences from a challenge to his nominating petitions under the Election Code than he was with the consequences for violating the Rules as a judicial candidate. At trial, Respondent admitted that a reason for his research into when he would become a candidate was because he was in a "contentious primary" and he wanted to be in compliance. When explaining the reason why he signed and had notarized Candidate's Affidavits for the Democratic and Republican nominating petitions stating that he is eligible to hold the office of Magisterial District Judge, Respondent testified that he had the affidavits notarized on March 10, 2019, a day before his resignation from the LCDC, because he would no longer be a Committee Person in the LCDC when he filed his nominating petitions. Since Respondent would no longer be a LCDC Committee Person when he filed his nominating petitions, he believed himself to be eligible to hold the office of magisterial district judge as of the date of his resignation. Respondent evidently failed to consider that the *Denick* court

based its holding that candidate Denick was ineligible to file nominating petitions because he violated the Rule's clear prohibition on judicial candidates holding office in political organizations. Instead of endeavoring to comply with the plain language of the Rules, which becomes applicable to a judicial candidate as soon the individual makes a public announcement of candidacy, Respondent focused his concern mainly on avoiding a successful challenge to his nominating petitions. In so doing, Respondent recklessly ignored the definition of "judicial candidate" in the Rules and the *Mayer* standard, as quoted in *Tartaglione* and implied in *Denick*, that an individual becomes a candidate when they make a public announcement of candidacy.

Respondent avoided a successful challenge to his nominating petitions, but not because there was an insufficient factual basis available to support such a challenge. On March 19, 2019, an opponent of Respondent, John Kenneff (Kenneff), filed two petitions challenging the Respondent's Democratic and Republican nominating petitions. Within the petitions, Kenneff cited, *inter alia*, *Denick*, Rule 4.1(A)(1), Respondent's creation of his campaign Facebook page, his circulation of nominating petitions, and his campaign event at Molly's Pub and Carry Out to support his allegation that Respondent was not eligible to file his nominating petitions because he was a Committee Person in the LCDC while a judicial candidate. At a hearing on the petitions on March 21, 2019 before Lancaster County Court of Common Pleas President Judge Dennis Reinaker, Kenneff abandoned many of his averments when he limited his evidence to several stipulations agreed upon with Respondent, none of which included Respondent's public announcement of candidacy or his circulation of nominating petitions prior to his resignation from the LCDC. After President Judge Reinaker decided that Respondent became a candidate when he filed his nominating petitions, Respondent informed a reporter from LNP that "he was aware that he could

not be on the committee while a candidate for district judge which is why he resigned when he did.”

Respondent’s statement to the LNP reporter indicates that he ignored the definition of “judicial candidate” in the Rules, and inappropriately relied on his inaccurate and unreasonable interpretation of *Denick* and *Tartaglione* when deciding when to resign from the LCDC. Contrary to what Respondent would have this Court believe, President Judge Reinaker’s decision does not support a conclusion that Respondent’s interpretation of when he became a candidate was reasonable. Like for the trial courts reviewed in *Denick* and *Leonard*, there were no facts for President Judge Reinaker to consider whether Respondent became a candidate when he made a public announcement of candidacy. Had Respondent’s January 27, 2019 announcement on his campaign Facebook page been made part of the record, like it has in this disciplinary action, President Judge Reinaker would have had a sufficient factual basis to conclude, given the unequivocal definition of “judicial candidate” in the Rules, that Respondent was candidate under the Rules and the Election Code on January 27, 2019, well before he filed his nominating petitions and while he held office in the LCDC.

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, and that being a Magisterial District Judge is supposed to be a non-political position. Respondent 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 cited the Pennsylvania Supreme Court's opinion 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 regardless of his intent. 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). By making Canon 4 of the Rules applicable to judicial candidates, the Pennsylvania Supreme Court intended to give Respondent the duty to determine "at his peril" whether to take actions plainly 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).

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) and Rule 4.2(A)(1). These violations continued unabated while Respondent publicly engaged in various forms of campaign and political activities, including, but not limited to, his vote for himself to receive the LCDC endorsement and 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.

#### **IV. Conclusion**

The conditions that would cause an individual to become a "candidate" in an election for public office have remained relatively unchanged since 1963 when the Pennsylvania Supreme Court in *Mayer v. Hemphill* stated that an individual becomes a candidate if he has filed nomination papers *or* publicly announced his candidacy for office. In 2014, the Pennsylvania Supreme Court defined "judicial candidate" in the Rules, maintaining the conditions defined in *Mayer*, and adding an individual's solicitation and acceptance of support as a condition that would make someone a candidate for judicial office. Respondent was on notice of these conditions, and had the capacity and training to understand and utilize them to guide his campaign activities consistent with the prohibitions and prescriptions in the Rules. Respondent unreasonably failed to do so. Application of the above-listed proposed facts to the



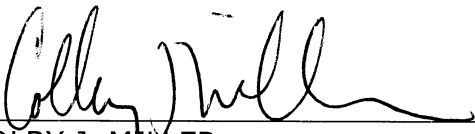
unambiguous language in Rules 4.1(A)(1), 4.1(A)(3), and Rule 4.2(A)(1), should lead this Court to the inexorable conclusion that Respondent, at the very least, recklessly violated these Rules by clear and convincing evidence and is subject to sanction. Any violation of the Rules also results in a derivative violation of Article V, § 17(b) of the Pennsylvania Constitution.

Respectfully submitted,

RICHARD W. LONG  
Chief Counsel

Date: November 12, 2021

By:

  
COLBY J. MILLER  
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**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

IN RE:

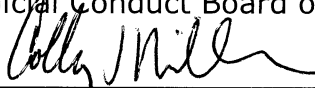
Judge Andrew T. LeFever :  
Magisterial District Judge :  
Magisterial District 02-2-04 :  
2<sup>nd</sup> Judicial District : 7 JD 2020  
Lancaster County :

**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  
*Deputy Counsel*

Attorney No.:

311599

**COMMONWEALTH OF PENNSYLVANIA  
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IN RE:

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

**PROOF OF SERVICE**


In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, the date below, a copy of the Judicial Conduct Board's Proposed Findings of Fact and Conclusions of Law was sent by First Class Mail and Email to Robert A. Graci, Esquire, counsel for Magisterial District Judge Andrew LeFever, at the following address:

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Saxton & Stump, LLC  
4250 Crums Mill Road, Suite 201  
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Respectfully submitted,

DATE: November 12, 2021

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