

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

COURT OF JUDICIAL DISCIPLINE  
OF PENNSYLVANIA

SEP 10 2021

RECEIVED AND FILED

IN RE:

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

**PREHEARING MEMORANDUM**

NOW COMES Magisterial District Judge Andrew T. LeFever, Respondent herein, by and through his counsel, Robert A. Graci, Esquire, and Saxton & Stump, LLC, and, in conformity with the Order of June 11, 2021, files this Prehearing Memorandum as follows:

**A. Introduction.**

“Probably wrong interpretation[.] See definition of ‘Judicial Candidate [sic]’ in R[ules]G[overning]S[tandards of]C[onduct of ]M[agisterial ]D[istrict ]J[udges] /Public announc[ement] on 2-1-19.” See Board Exhibit 1, p. 6. So says a handwritten note along the margin of a newspaper article that is attached to the “Confidential Request for Investigation” form completed by the Judicial Conduct Board’s Chief Counsel that initiated the Board’s investigation into Respondent,

Magisterial District Judge Andrew T. LeFever.<sup>1</sup> The article recounts how a challenge to then-candidate LeFever's nominating petitions to appear on the Republican and Democratic ballots in the May 2019 primary election had been denied by then-President Judge Dennis Reinaker of the Lancaster County Court of Common Pleas. This handwritten note starts adjacent to a paragraph in the news article which quotes President Judge Reinaker as saying, "In my opinion, he [referring to Respondent] became a candidate when he filed nominating petitions." Board Exhibit 1, p. 6. The hand-written note continues past the next two paragraphs which read:

After the hearing, LeFever said he thought the ruling was "appropriate." He said he was aware that he could not be on the [Lancaster City Democratic C]ommittee while a candidate for district judge which was why he resigned when he did.

"It's important that we have judges who understand the law and what's at stake for people in the community," he said.

*Id.*

This note clearly explains why Judge LeFever's case is before this Court. Though this is not the forum in which to address it, the note shows a dissatisfaction with the result reached by President Judge Reinaker in the challenge to Judge

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<sup>1</sup> A different version of the same article without the hand-written note, was previously before this Court as an exhibit to the Board's Petition for Relief for Interim Suspension With or Without Pay. See Petition for Relief for Interim Suspension With or Without Pay, Exhibit B.

LeFever's nominating petitions and seeks to remedy it. As will be shown, Judge Reinaker's decision was correct based on precedent by which he was bound that states that that a judicial candidate violates Rule 4.1(A)(1) of the Rules Governing Standards of Conduct of Magisterial District Judges (Rules) only if he or she has not resigned his or her office in a political organization as of the time of filing his or her nominating petitions. The testimony at trial will demonstrate that Judge LeFever consulted precedent interpreting the prohibition on holding office in a political organization in deciding when he had to resign as a committee person to act in compliance with the Rules. It will demonstrate his intent and efforts to comply with the Rules.

Each of the charges against Judge LeFever, starting with Rule 4.1(A)(1) which states that "a magisterial district judge or a judicial candidate shall not ... act as a leader in, or hold an office in, a political organization," hinge on the timing of his resignation as a member of the Lancaster City Democratic Committee (LCDC). The trial testimony should establish that he has not violated the Rules with which he is charged either because his actions were not contrary to the Rules or because he lacked the requisite intent to violate the Rules or both.

**B. Respondent Intended and Attempted to Comply With Rule 4.1(A)(1) Regarding the Timing of His Resignation as a Member of the Lancaster City Democratic Committee.**

At the outset it should be noted that, with one exception, Judge LeFever has not contested the factual allegations contained in the Board Complaint as is reflected in his answer to the Complaint and in the stipulations that have been submitted to and accepted by the Court. Without belaboring them, suffice it to say that before his resignation as a LCDC committee person on March 11, 2019 he participated in a number of campaign related activities: he announced his candidacy via a Facebook post and his campaign Facebook page was routinely updated with posts concerning his campaign activities (Stipulations, ¶¶ 10 and 20); he made expenditures to support his campaign for the office of magisterial district judge (Stipulations, ¶¶ 28 and 29); he formed a campaign committee (Stipulations, ¶ 27); his campaign committee accepted contributions, including in-kind contributions, and made expenditures (Stipulations, ¶¶ 30-42);<sup>2</sup> he and his circulators gathered signatures on his Republican and Democratic Nominating Petitions (Stipulations, ¶¶ 44-46); he received the endorsement of the Lancaster County Democratic Committee (Stipulations, ¶ 43); he attended a fundraiser with other candidates for non-judicial elective office (Stipulations, ¶¶ 48-49); as a committee member, he participated in a public meeting of the LCDC the purpose of which was to determine which judicial and non-judicial candidates the LCDC

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<sup>2</sup> It is noted that Judge LeFever and his campaign committee reported the receipts and expenditures made in support of his campaign. Those reports were filed after he resigned as a member of the LCDC on March 11, 2019. *See* Board Exhibit 11.

would officially endorse for the 2019 municipal election (Stipulation, ¶ 21); as a committee member, he voted with other committee members at a meeting of the LCDC for the LCDC to endorse him for the position of magisterial district judge (Stipulations, ¶¶ 22-25); and he signed the circulators affidavits for his nominating petitions stating that he was eligible to hold the office of magisterial district judge (Stipulations, ¶ 47).

The only factual allegation that Judge LeFever has not admitted is whether he voted, as a committee person, at the LCDC meeting of February 11, 2019, for the LCDC to endorse candidates for Lancaster City Council and School Board Director. Nevertheless, he has stipulated that during his Board deposition he testified that he believed that he voted for the LCDC to endorse the five candidates for school director and that he voted for the LCDC to endorse candidates for Lancaster City Council. (Stipulations, ¶¶ 61 and 62) Presently, as reflected in his answer to the Board Complaint, Judge LeFever is no longer sure about the accuracy of those responses and will so testify. Answer to Judicial Conduct Board Complaint (Answer), ¶ 11.<sup>3</sup>

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<sup>3</sup> It has been stipulated that another witness who was present at the February 11, 2019 LCDC meeting, Lauren Edgell, will testify that, as a member of the LCDC, Judge LeFever did not vote to endorse the candidates for these non-judicial offices. (Stipulations, ¶ 63) It has been further stipulated that two other persons who were present at the February 11, LCDC meeting, Alan Silverman and Lauren Slessor, do not remember or recall if Judge LeFever voted to endorse these non-judicial candidates. (Stipulations, ¶¶ 64 and 65)

There is no question that Judge LeFever was mindful of the Rules, including the proscription of Rule 4.1(A)(1). (Stipulations, ¶ 16) When deciding if he would run for magisterial district judge, he reviewed the definitions of “Judicial candidate” and “Political organization” found in the “Terminology” section of the Rules. (Stipulations, ¶¶ 14 and 15) Like the good lawyer that he is, Judge LeFever researched the prohibition on being a candidate for judicial office while serving as a committee person and sought to follow what little precedent there was on the subject. He reviewed the Rules, including Rule 4.1(A)(1) and the definitions of “Judicial candidate” and “Political organization” found in the Terminology section. (Stipulations, ¶¶ 14-16) He reviewed *In re Nomination Petition of Denick*, 729 A.2d 168 (Pa. Cmwlth. 1999) (which interpreted the predecessor of Rule 4.1(A) of the Rules), and *McMenamin v. Tartaglione*, 590 A.2d 802 (Pa. Cmwlth. 1991) (which stated, *inter alia*, that circulating nominating petitions does not make one a candidate) in an attempt to ascertain when he had to resign his office in the LCDC. (Stipulations, ¶¶ 17 and 18) The minutes of the meeting of the LCDC held on March 11, 2019 show that Judge LeFever resigned because he understood that, under the Rules, he could not be a committee person in a political organization while he was a candidate for judicial office. *See* Board Trial Exhibit 7, p. 2 (“Andrew [LeFever] announced that because he is a candidate for judge, he must resign from his seat on the [LCDC], in accordance with ethics rules”).

proscription of Rule 4.1(A)(1). This is established by subsequent decisions of the Commonwealth Court interpreting and applying *Denick* and *Tartaglione*.<sup>4</sup>

In 2015, the Commonwealth Court decided a pair of cases relying on *Denick, Hanratty v. Litman*, 2015 Pa. Commw. LEXIS 958 (Pa. Cmwlth. 2015), and *Tarpey v. Mosesso*, 2015 Pa. Commw. LEXIS 959 (Pa. Cmwlth. 2015). In both cases, the Court upheld orders of the court of common pleas striking candidates from ballots because they violated Rule 4.1(A)(1) by failing to resign their respective offices as committee persons prior to filing their nominating petitions. In both cases the common pleas court said that it was bound by the opinion in *Denick* which it described as “indistinguishable” based on the timing of the respective candidates’ resignations which came after they filed their nominating petitions. *Hanratty v. Litman*, 2015 Pa. Commw. LEXIS 958, 3-4; *Tarpey v. Mosesso*, 2015 Pa. Commw. LEXIS 959, 3. In virtually identical language, the Commonwealth Court judge in *Hanratty* and *Tarpey* quoted extensively from *Denick* and concluded:

*Denick* controls here as it is indistinguishable from the present case. Specifically, as in *Denick*[,] Candidate here does not dispute that at the time he filed his nomination petition with the Montgomery County Office of Voter Services, he held office as a committeeman

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<sup>4</sup> The following cases represent single-judge opinions of the Commonwealth Court. By virtue of Pa.R.A.P. 126(c)(2) they may be persuasive authority but they do not represent binding precedent for this Court. They are cited and explained as they are relevant to Judge LeFever’s good faith and his intent to comply with the Rules which they interpret.

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for the Republican Party of Towamencin Township. Pursuant to Rule 4.1(A)(1) of the Pennsylvania Magisterial District Judge Rules: “[A] magisterial district judge or a judicial candidate shall not ... (1) act as a leader in, or hold an office in a political organization[.]” Pa. R.M.D.J. No. 4.1(A)(1) (emphasis added). In turn, the Rules define a “political organization,” in pertinent part, as: “A political party ....” Pa. R.M.D.J. (“Terminology”). Based on *Denick*, which interpreted Section 977 of the Election Code and a substantively identical rule for district justices, the trial court here correctly determined that Candidate was not entitled to file a nomination petition for the office of magisterial district justice because he held an office with the Republican Party at the time he filed his nomination petition.

*Tarpey, supra*, at 7-8; *Hanratty, supra*, at 8-9 (changing only references to “Republican Party” to “Democratic Party”).

Two years later, the Commonwealth Court in a single-judge opinion decided another *Denick* case, *In re Nomination Petition of Leonard*, 2017 Pa. Commw. Unpub. LEXIS 536 (Pa. Cmwlth. 2017). In *Leonard*, the court refused to strike the candidate’s name from the ballot because the person was not a candidate when she circulated nominating petitions for magisterial district judge and because she resigned as party committee person before filing her nominating petitions and so did not violate Rule 4.1(A)(1) of the Rules. In rejecting this challenge to the nominating petitions, the Commonwealth Court explained:

*Objectors misstate the law when they assert that an individual circulating nomination petitions is a “judicial candidate” under Rule 4.1(A)(1) who may not also hold an office. To the contrary, an individual becomes a candidate for office upon filing the nomination petitions. Blank v. Berks Cnty. Bd. of Elections, 873 A.2d 817, 819 (Pa. Cmwlth. 2005) (construing prior district justice rule; affirming trial court’s “assessment [that] Candidates were entitled to file their*

nomination petitions while holding other elected office. ... [Only] if Candidates prevail, they would be required ... to resign their other elected positions.”); *Denick*; see also *McMenamin v. Tartaglione*, 139 Pa. Commw. 269, 590 A.2d 802 (Pa. Cmwlth. 1991). Our Supreme Court explained the legally significant date in determining whether nomination petitions should be stricken is not the date electors sign the petitions, but rather the date the petitions were filed “since, quite logically, if one is unable to obtain a sufficient number of signatures[,] he might never bother to file the nomination petitions at all.” *Id.* at 810 (citing *Mayer v. Hemphill*, 411 Pa. 1, 190 A.2d 444 (Pa. 1963)). Addressing when one becomes a candidate, the *Mayer* Court “opined that one becomes a candidate if he or she has *filed* nomination papers or publicly announced his [or her] candidacy for office.” *Id.* (emphasis added).

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

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

*Leonard, supra*, at 5-6 (emphasis in first sentence and last paragraph added; other emphasis in original; footnote omitted).

These last three cases specifically refer to Rule 4.1(A)(1) of the RGSCMDJ and the definition of “Political organization” found in the “Terminology” section of the Rules, but none of them refer to the definition of “Judicial candidate” found in the same section. Each concluded that a member of a political committee seeking the office of magisterial district was a candidate after filing nominating petitions and not at any earlier time that may be derived from the definition of

“Judicial candidate” as found in the Rules. *See In re Nomination Petition of Leonard, supra*, at 4 and 6; *Tarpey v. Mosesso, supra*, at 8; and *Hanratty v. Litman, supra*, at 8-9.

These opinions relying on *Denick* are consistent with Judge LeFever’s interpretation and application of *Denick*. Like the candidate in *Leonard*, Judge LeFever or a person in his position could reasonably conclude that circulating nominating petitions did not make him a candidate. Similarly, like the candidate in *Leonard*, Judge LeFever could conclude that he was complying with Rule 4.1(A)(1) if he resigned his committee person’s position before he filed his nominating petitions. While *Leonard* said that the *Mayer* Court “opined that one becomes a candidate if he or she has *filed* nomination papers or publicly announced his [or her] candidacy for office,” emphasizing the word “filed” in its opinion and not again returning to the concept of “publicly announcing” a candidacy, it concluded this portion of the opinion before turning to the date of the candidate’s resignation as a committee person by explaining that “[a]pplicable law holds that a judicial candidate violates Rule 4.1(A)(1) if she has not resigned her office as of the time of filing.” For this point which is at issue here, it cited *Denick* and *Tarpey v. Mossesso*. So it was not unreasonable for Judge LeFever to reach the same conclusion in deciding when he had to resign as a committee person.

It is because Judge LeFever may have been mistaken in his view of the law which is consistent with the view of the Commonwealth Court in election cases interpreting and applying Rule 4.1(A)(1) that the Board asks this Court to find him in violation of the Rules and sanction him. That should not be. As noted at paragraph [5] of the Preamble to the Rules, the Rules “are rules of reason that should be applied consistently with constitutional requirements, statutes, other court rules, and *decisional law*, and with due regard for all relevant circumstances.” Rules, Preamble [5]. Judge LeFever’s conduct in resigning on March 11, 2019, before he filed his nominating petitions the following day was consistent with the only decisional law of the Commonwealth regarding conduct governed by Rule 4.1(A)(1). Moreover, “*it is not intended that disciplinary action would be appropriate for every violation of the Conduct Rules’ provisions. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the intent of the magisterial district judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.*” Rules, Preamble [6] (emphasis added). Instantly, it would be inappropriate to find Judge LeFever in violation of this Rule or to punish him for his well-founded mistake.

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

As noted above, this charge, like the charge under Rule 4.1(A)(1), the charge under Rule 4.1(A)(3) hinges the timing of Judge LeFever's resignation as a member of the LCDC. Accordingly, what is said above is incorporated herein by reference as it relates to the timing of his resignation and his intent and attempt to comply with the law consistent with the decisional law of the Commonwealth Court interpreting and applying Rule 4.1(A)(1). Rule 4.1(A)(3) states: "a magisterial district judge or a judicial candidate shall not ... publicly endorse or publicly oppose a candidate for any public office."

In addition to the reasons set forth above, it is noted that the actions that Judge LeFever took at the meeting of the LCDC of February 11, 2019 were all taken in his capacity as a LCDC committee person, not as a judicial candidate. That is the evidence to which the Board and Judge LeFever have stipulated. *See Stipulations*, ¶ 21 ("Respondent participated in a public LCDC meeting *as a Committee Person*"); ¶ 23 ("Respondent, *as a Committee Person*, voted for the LCDC to endorse him for the office of Magisterial District Judge"); ¶ 61 ("At his March 12, 2020 deposition before Board counsel, Respondent testified that, *as a LCDC Committee Person at the February 11, 2019 public LCDC meeting*, he believed that he voted for the LCDC to endorse the five candidates for school

director”); and ¶ 62 (“At his March 12, 2020 deposition before Board counsel, Respondent testified that, *as a LCDC Committee Person at the February 11, 2019 public LCDC meeting*, he voted for the LCDC to endorse candidates for Lancaster City Council”). There is no evidence that he was acting as a “Judicial candidate” at that meeting except when he sought the LCDC endorsement for his own candidacy for magisterial district judge.

One must ask if casting a vote at an endorsement meeting as a member of a political party committee is the type of public endorsement which Rule 4.1(A)(3) contemplates and prohibits. When one thinks of that type of public endorsement one envisions a specific person writing a letter on his or her stationery or a person appearing in a newspaper, television, website, radio or other type of campaign advertisement urging the reader, viewer or listener to vote for a specific person. That is not what Judge LeFever did at the LCDC committee meeting. At most, he cast votes for himself and the other candidates (although there is some question as to whether he actually cast any votes for the non-judicial candidates as noted above).

That being said, Judge LeFever only violated Rule 4.1(A)(3) if he cast his votes (assuming such a vote is the type of public endorsement proscribed by the Rule) while he was a “Judicial candidate” under the Rules at the time he cast his votes. While he understands that the definition of “Judicial candidate” found in the

Terminology section of the Rules is broader than the interpretation that he reasonably attributed to it based on his review of the Rules, *Denick* and *Tartaglione*, that he may have been mistaken in this view as noted above, Judge LeFever nevertheless believed that on February 11, 2019 he was not yet subject to the Rules. For the reasons set forth above, his interpretation, based as it was on decisional law interpreting Rule 4.1(A)(1), was not unreasonable and should not form the basis of the finding of a violation or any discipline.

**C. Respondent Intended and Attempted to Comply With Rule 4.2(A)(1).**

Rule 4.2(A)(1) states: “A judicial candidate in a public election shall ... act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary.” The Board argues that, because Judge LeFever voted with the other members of the LCDC from 2<sup>nd</sup> and 6<sup>th</sup> Wards of the City of Lancaster that comprise Magisterial District 02-2-04 for his endorsement for the position of magisterial district judge and because another candidate was present at the meeting and seeking the endorsement of the LCDC, he violated this Rule as being inconsistent with the broad proscription. *See* Statement of the Case, pp. 11-13.<sup>5</sup> In partial support of its view, the Board quotes a part of Comment [1] to Rule

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<sup>5</sup> As initially charged, the Board also alleged that Judge LeFever’s votes as an LCDC Committee Person to endorse candidates for the non-judicial offices of school director and city council violated this prohibition. *See* Board Complaint, ¶ 43. That conduct is governed, assuming it applies, by Rule 4.1(A)(3) discussed

4.1 stating: “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.’” *Id.*, at 11. The Board then continues to quote from and paraphrase Comment [1] to Rule 4.1 writing “[w]hen developing Canon 4 of the Rules, the Supreme Court of Pennsylvania carefully detailed ‘narrowly tailored restrictions’ on the political 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.*

It is first observed that the Board only quotes part of Comment [1] to Rule 4.1. The language leading up to the language quoted by the Board should not be overlooked by the Court. It says:

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

Rule 4.1, Comment [1] (emphasis added). This passage recognizes that, in a jurisdiction like Pennsylvania which selects the members of the judiciary through

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above. Accordingly, Judge LeFever, like the Board, will only address Rule 4.2(A)(1) in the context of the vote for his own endorsement by the LCDC.



contested, partisan elections, politics plays a role. That recognition is borne out by the vast array of political activity in which a judicial candidate may engage as set forth in Rule 4.2(B) as will be detailed more fully below. Nevertheless, the Board condemns Judge LeFever for voting, as a member of the LCDC, for his own endorsement saying he “use[d] his own political influence as a Committee Person to act in a self-serving manner” and “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.” Statement of the Case, pp. 11-12. Then, in an effort to shoe-horn Judge LeFever’s casting a vote as a committee person for his own endorsement into a violation of the broad language of Rule 4.2(A)(1), the Board jumps to the conclusion that Judge LeFever used his “political office as a 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” which “clearly and unequivocally acted ... to undermine public confidence in [Judge LeFever’s] independence, integrity and impartiality.” *Id.*, p. 12.

The first response is to say that like the charges under Rule 4.1, there is only a violation if Judge LeFever was a judicial candidate when he cast the vote. He attempted to and intended to comply with the Rules as he understood them after being informed by *Denick* and *Tartaglione* as described above. He did not believe he was a candidate until he filed his nominating petitions as Judge Reinaker

decided in the action challenging Judge LeFever's nominating petitions and as the Commonwealth Court has decided. The arguments advanced above are incorporated herein as though set forth in full.

Additionally, while many of the rules set out in Canon 4 are "carefully detailed" as the Board suggests, Rule 4.2(A)(1) is not of that ilk. It is not among the other narrowly tailored restrictions found in Canon 4. *See, e.g.*, Rule 4.1(A)(7) ("a magisterial district judge or a judicial candidate shall not ... personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4"). Its broad language can hardly be described as "narrowly tailored." Different from Rule 4.1(A)(3) which prohibits magisterial district judges and judicial candidates from endorsing candidates for public office, it cannot be reasonably said that the language of Rule 4.2(A)(1) put Judge LeFever or anyone on notice that casting a vote as a member of a political organization for the organization to endorse the committee member for office violated this rule.<sup>6</sup>

Perhaps more importantly, given the level of political activity that Rule 4.2 allows a judicial candidate to engage in, it is hard to imagine that the casting of a vote for one's own endorsement (or for the endorsements of non-judicial

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<sup>6</sup> The Board has conceded that Rule 4.2(A)(1) "does not prescribe or prohibit defined Conduct." Memorandum in Support of the Judicial Conduct Board's Request for the Court to Reconsider Its Decision to Deny Its Motion in Limine, p. 4.

candidates to the extent that they are still considered under this 4.2(A)(1) charge) is not acting “at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary.” Consistent with Rule 4.2(B), a judicial candidate may engage in the following political activity, including partisan political activity: (1) establish a campaign committee, Rule 4.2(B)(1); (2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature, Rule 4.2(B)(2);<sup>7</sup> (3) publicly endorse or speak on behalf of, or publicly oppose or speak in opposition to, candidates for the same judicial office for which he or she is a judicial candidate, or publicly endorse or speak on behalf of candidates for any other elective judicial office appearing on the same ballot, Rule 4.2(B)(3); (4) *attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office*, Rule 4.2(B)(4); (5) *seek, accept, or use endorsements from any person or organization*, Rule 4.2(B)(5); (6) *contribute to a political organization or candidate for public office*, Rule 4.2(B)(6); and (7) *identify himself or herself as*

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<sup>7</sup> In his Response to the Board’s Motions in Limine, Judge LeFever argued that this provision supports his vote as a committee member of the LCDC for his own endorsement by the LCDC. *See* Response to Motions in Limine, ¶ 11. By Order filed September 9, 2021, the Court denied the Board’s Motions.

*a member or candidate of a political organization*, Rule 4.2(B)(7).<sup>8</sup> Rule 4.2(B)(1)-(7)(emphasis added).

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

Rule 4.2 and its Comments allow judicial candidates to publicly speak for or against other judicial candidates for the same judicial office and for candidates for other judicial candidates appearing on the same ballot, to identify themselves as

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<sup>8</sup> Judge LeFever has never suggested that Rule 4.2(B)(7) provides an exception to the prohibition found in Rule 4.1(A)(1). *See* Statement of the Case, p. 2 n.1.

candidates of a particular party, to purchase tickets to and attend events sponsored by political organizations, to purchase tickets to and attend events sponsored by candidates for public office, to seek, accept, or use endorsements from any person or organization, to contribute to a political organization, to contribute to a candidate for public office, and to identify himself or herself as a member or candidate of a political organization.

Under these provisions, a judicial candidate may call himself or herself a Republican or Democratic candidate. (In elections for magisterial district court like the one in which Judge LeFever was involved where candidates may cross file as he did, the candidate might identify himself as a candidate for both parties.) The judicial candidate could attend political events sponsored by a political party. He or she is permitted to purchase tickets to and attend events sponsored by candidates for public office despite the prohibition on endorsing candidates for non-judicial public office found in Rule 4.1(A)(3). Judicial candidates may contribute to political organizations. They may also contribute to candidates for non-judicial public office. Judicial candidates may seek endorsements from any organization, including a political organization, and from any person, including a politician. Given this level of permissible political activity by judicial candidates, it is incomprehensible that a judicial candidate's vote for himself as a member of a political committee at an endorsement meeting of the political committee acts in a

manner inconsistent with the independence, integrity, and impartiality of the judiciary in violation of Rule 4.2(A)(1).

But the Board paints Judge LeFever as some sort of political power broker who somehow used his position as a committee person to sway the endorsement vote to his personal advantage. *See* Statement of the Case, pp. 12-13. The facts reflect otherwise. He had been a member of the LCDC for a mere seven months before the February 11, 2019 meeting. (Stipulations, ¶ 5) His endorsement was the result of a unanimous vote of the LCDC. (Stipulations, ¶ 25) His vote for his own endorsement was inconsequential. There is no indication that any LCDC committee member was pressured, politically or otherwise, to vote for Judge LeFever or against anyone else seeking the endorsement. His act of casting a vote in his capacity as a member of the LCDC for his own endorsement did not undermine public confidence in Judge LeFever's independence, integrity and impartiality.

The Comments to Rule 4.1 show that the Board misinterprets the Rules it wants this Court to apply to Judge LeFever. Comment [3] to Rule 4.1 explains: "Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates *are perceived to be subject to political influence*. Although magisterial district judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from

assuming leadership roles in political organizations.” Rule 4.1, Comment [3] (emphasis added). The Board suggests that Committee Person LeFever was exerting political influence or pressure not that he would be perceived as being subject to political influence by his vote as a committee person. *See* Statement of the Case, pp. 12-13.

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

Paragraphs (A)(2) and (A)(3)<sup>9</sup> *prohibit magisterial district judges from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others.* See Rule 1.3.

Rule 4.1, Comment [4] (emphasis added). This explanation is important in that it shows that it is intended to prevent sitting judges from abusing the prestige of judicial office. Judicial candidates are unable to abuse the prestige of judicial office. That was Judge LeFever’s status at the time of his alleged violations.

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<sup>9</sup> As discussed at length above, Judge LeFever is charged with a violation of Rule 4.1(A)(3).

Like his other activities in the months leading up to his resignation as a member of the LCDC on March 11, 2109, he only acted in the various ways to which he has stipulated because of his view, based on his research, that he was not yet a judicial candidate subject to the proscriptions and limitations of the Rules. That view was in error under the terms of the Rules, but it was an error made in good faith as set forth above. He never intended<sup>10</sup> to violate the Rules as demonstrated by his resignation as a committee person at the time he thought it was required under the decisional law of the Commonwealth and was consistent with that law.

**D. The Court Should Take This Opportunity to Clarify the Application of Rule 4.1 and the Definition of “Judicial Candidate” Under the Rules.**

*Denick* and its progeny were improperly decided in that they have engrafted upon challenges under the Election Code a proscription found in the Rules.<sup>11</sup> Years

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<sup>10</sup> In his Response to Motions in Limine and Brief in Opposition to Judicial Conduct Board Motions in Limine, Judge LeFever has argued at length based on precedent from this Court why his intent to comply with the Rules is relevant to these proceedings. Those documents and the arguments made therein are incorporated herein by reference as though set forth in full. By Order filed September 9, 2021, the Court denied the Board’s Motions in Limine.

<sup>11</sup> That is not to say that *Denick* and its progeny were not binding precedent that Judge Reinaker was bound to follow when he denied the challenge to then-Candidate LeFever’s nominating petitions. *Denick* was a decision by a three-judge panel (with one judge concurring). *Hanratty*, *Tarpey* and *Leonard* which all relied on *Denick* were single-judge opinions decided after October 1, 2013 and were binding precedent in the election law matter before Judge Reinaker pursuant to Rule 126(c)(1) of the Rules of Appellate Procedure. Pa.R.A.P. 126(c)(1).



before the Commonwealth Court decision in *Denick*, the Supreme Court explained in *Reilly by Reilly v. SEPTA*, 489 A.2d 1291, 1298 (Pa. 1985), that the Code of Judicial Conduct (Code) “does not have the force of substantive law” and “the rules do not give standing to others, including [the lower courts], to seek compliance or enforcement of the Code because its provisions merely set a norm of conduct for all our judges and do not impose substantive legal duties on them.” Of particular importance for present purposes is the Supreme Court’s directive, in a case on appeal from the Superior Court, that “[p]erceived violations or either Code [referring to the Code of Judicial Conduct and the then-extant Code of Professional Conduct applicable to lawyers] do not permit the trial courts or intermediate appellate courts to alter the rules of law, evidentiary rules, presumptions or burdens of proof. More importantly, violations of the Codes are not a proper subject for consideration of the lower courts to impose punishment for attorney or judicial misconduct.” *Id.* at 1299. Of course, the Commonwealth Court imposes civil liability when it applies Rule 4.1 to strike candidates from ballots as in *Denick*. *See also Tarpey v. Mosesso*, 2015 Pa. Commw. LEXIS 959 (Pa. Cmwlth. 2015) (striking name from ballot because candidate resigned party committee person position only after filing nominating petitions in violation of Rule 4.1(A)(1) of the Rules and 25 P.S. § 2937 of the Election Code; following *Denick*); and *Hanratty v. Litman*, 2015 Pa. Comms. LEXIS 958 (Pa. Cmwlth. 2015) (same). *See also In re*

*Nomination Petition of Leonard*, 2017 Pa. Commw. Unpub. LEXIS 536, 6 (Pa. Cmwlth. 2017) (relying on *Denick* and stating “[a]pplicable law holds that a *judicial candidate violates Rule 4.1(A)(1)* if she has not resigned her office as of the time of filing”)(emphasis added). It is imposing punishment for what it sees as judicial misconduct, a role it is not permitted to play under *Reilly*.

By extension, what the Supreme Court said in *Reilly* about the rules in the Code applies equally to the rules in the Rules. Of course, the rule at issue in this case is equally applicable to all judges as it is found in both the Code and the Rules. That the Code and Rules are not substantive law is found in the Code and Rules themselves. Paragraph [7] of the Preambles to the Code and the Rules state, in pertinent part, that the rules contained in both “are not intended as a basis for civil or criminal liability.” See Code, Preamble [7], and Rules, Preamble [7]. Applying the Rules to election contests provides a basis for civil liability.

Further confusion is caused in this area in that the cases that rely on *Denick* after 2014 cite the definition of “Political organization” found in the “Terminology” section of the new Rules. However, they do not cite or otherwise mention the definition of “Judicial candidate” found in the Rules.

Of course, this Court cannot overrule *Denick* and its progeny for election law purposes. That would be the role of the Commonwealth Court or the Supreme Court in a proper appeal. However, this Court may issue an opinion saying that it is

not bound by the decisions of the Commonwealth Court in interpreting or applying the Code or the Rules. It could explain that going forward Rule 4.1 will be interpreted and applied in the context of all the applicable definitions found in the Terminology sections of the Code and the Rules, including the definition of “Judicial candidate.” It can also explain that the Court of Judicial Discipline, rather than the Commonwealth Court, is the expositor of the provisions of the Code and the Rules at least until review by the Supreme Court on a proper judicial discipline appeal. Though not recognized in *Denick*, the Commonwealth Court has recognized the place of this Court in that regard in another Election Code appeal, stating: “Alleged violations of the Rules are not brought in the courts of common pleas, but, rather, must come before the Court of Judicial Discipline.” *Scott v. Wilkinson*, 863 A.2d 62, 67-68 (Pa. Cmwlth. 2004)(citation omitted).

This case provides this Court with its first opportunity to address Rule 4.1(A)(1) and the definitional provisions related to it, including when a person becomes a “judicial candidate.” It should do so but be mindful that its new pronouncement should not apply to Judge LeFever who acted in good faith reliance on the Commonwealth Court’s rulings regarding this subject. *See In re Carney*, 79 A.3d 490, 507-508 (Pa. 2013)(refusing to apply new interpretation to rule to conduct that predated new interpretation).

**E. Conclusion**

For the foregoing reasons, it is respectfully requested that, as he, in good faith, intended to comply with the Rules, Judge LeFever should not be found to have violated Rule 4.1(A)(1), Rule 4.1(A)(3), and Rule 4.2(A)(1), or any derivative violation under Article V, ¶ 17(b) of the Pennsylvania Constitution, and should issue its opinion clarifying the law related to Rule 4.1(A)(1) and when a person becomes a judicial candidate subject to Canon 4 of the Rules.

Respectfully submitted,



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Attorney for Andrew T. LeFever  
Magisterial District Judge

Date: September 10, 2021

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

IN RE:

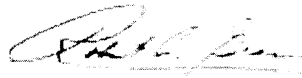
Andrew T. LeFever, Esquire :  
Magisterial District Judge : 7 JD 2020  
Magisterial District 02-2-04 :  
2nd Judicial District :  
Lancaster County :

CERTIFICATE OF COMPLIANCE

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

Submitted by: Counsel for Andrew T. LeFever

Signature:



Name: Robert A. Graci, Esquire

Attorney ID Number: 26722

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

IN RE:

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

**PROOF OF SERVICE**

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

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Respectfully submitted,



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