

NOV 13 2020

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

IN RE:

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

**ANSWER TO PETITION FOR RELIEF FOR INTERIM SUSPENSION
WITH OR WITHOUT PAY**

NOW COMES Magisterial District Judge Andrew T. LeFever, Respondent herein, by and through his counsel, Robert A. Graci and Saxton & Stump, and files this Answer to Petition for Relief for Interim Suspension With or Without Pay pursuant to Rule 703 of the Rules of Procedure of the Court of Judicial Discipline and, in support thereof, avers as follows: endorse

1. It is admitted that Article V, § 18(d)(2) of the Pennsylvania Constitution provides the Court of Judicial Discipline with the authority to impose interim suspension of a magisterial district judge, with or without pay, against whom the Judicial Conduct Board has filed formal charges.

2. Admitted.

3. Denied as stated. It is admitted that the Board filed a Board Complaint against Judge LeFever alleging violations of the Rules Governing Standards of Conduct of Magisterial District Judges (RGSCMDJ) and the Article V, § 17(b) of the Pennsylvania Constitution on November 9, 2020, and that a copy of the Board Complaint is attached to the Board's Petition for Relief as "Exhibit A." Exhibit A is a writing that speaks for itself. Any attempt to explain or characterize its contents is denied.

4. Denied as conclusions of fact and law and argument requiring no response. It is denied that Judge LeFever was not entitled to file his nominating petitions and to be included on the 2019 Democratic and Republican municipal primary ballots. To the contrary, he was entitled to file his nominating petitions and to be included on the 2019 Democratic and Republican municipal primary ballots as was determined by then-President Judge Dennis Reinaker of the Lancaster County Court of Common Pleas who presided over a challenge to Judge LeFever's nominating petition and denied relief. A copy of the Petition to Set Aside Nominating Petition filed by Judge LeFever's primary election opponent is attached hereto as Appendix A. A copy of President Judge Reinaker's Order denying the petition is attached hereto as Appendix B.

5. Denied as conclusions of fact and law and argument requiring no response. By way of further response, *In re Nomination Petition of Denick*, 729

A.2d 168 (Pa. Cmwlth. 1999), and Canon 4, Rule 4.1(A)(1) are written documents which speak for themselves. Any attempt to explain or characterize their contents is denied.

6. Denied as stated. It is admitted that Judge LeFever was a Committee Person in the Lancaster City Democratic Committee (LCDC) when he posted on his Facebook page that he was a candidate for the position of Magisterial District Judge on January 27, 2019, and that the Board's Complaint so alleges. See Exhibit A, p. 4, ¶ 6.

7. Denied as stated. It is admitted that Judge LeFever was a Committee Person in the LCDC when he engaged in various campaign activities from January 27, 2019 through March 11, 2019, when he resigned from the LCDC and that the Board's Complaint so alleges. See Exhibit A, pp. 5-6, ¶¶ 8-21.

8. Admitted.

9. Admitted. *See* Appendix A.

10. Denied as stated. The Petition to Set Aside Nominating Petition is a writing which speaks for itself. Any attempt to explain or characterize its contents is denied. It is admitted that the petition cited several rules from the RGSCMDJ and *Denick*.

11. Admitted.

12. Admitted.

13. Admitted.

14. Denied as stated. It is admitted that President Judge Reinaker denied the Petition to Set Aside Nominating Petition filed by Judge LeFever's opponent, Mr. Kenneff. The Order issued by President Judge Reinaker does not provide his reasons for denying the petition. *See* Appendix B. It is believed, and therefore averred, that President Judge Reinaker's decision was based on the stipulated facts as well as the applicable law and, based thereon, properly concluded that Judge LeFever became a candidate on March 12, 2019 when he filed his nominating petitions. *See Denick, supra. See also In re Nomination Petition of Leonard, 2017 Pa. Commw. Unpub. LEXIS 536 (Pa. Cmwlt. 2017) (refusing to strike name from ballot because person was not a candidate when she circulated nominating petitions for magisterial district judge; resigned as party committee person before filing her nominating petitions; and did not violate Rule 4.1(A)(1) of the RGSCMDJ; Tarpey v. Mosesso, 2015 Pa. Commw. LEXIS 959 (Pa. Cmwlt. 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 RGSCMDJ and 25 P.S. § 2937 of the Election Code; following Denick); and Hanratty v. Litman, 2015 Pa. Comms. LEXIS 958 (Pa. Cmwlt. 2015) (same).*

15. Denied as stated. It is admitted that LNP published an article and that the article is attached to the Board's Petition for Relief as "Exhibit B." The article

is a writing that speaks for itself. Any attempt to explain or characterize its contents is denied. It is admitted that the article purports to quote President Judge Reinaker as stating: "In my opinion, he became a candidate when he filed his nominating petitions." This opinion attributed to President Judge Reinaker is entirely consistent with *Denick, Leonard, Mosesso and Hanratty, supra*.

16. Denied as stated. It is admitted that LNP published an article and that the article is attached to the Board's Petition for Relief as "Exhibit B." The article is a writing that speaks for itself. Any attempt to explain or characterize its contents is denied. It is admitted that the article purports to quote Judge LeFever and summarize comments he made, including that "he thought the ruling was 'appropriate'" and that "he was aware that he could not be on the committee while a candidate for district judge which was why he resigned when he did." Exhibit B, p. 1. That the article "indicates" anything is denied as improper conclusions of fact and law and argument requiring no response.

17. Denied as stated. It is admitted that LNP published an article and that the article is attached to the Board's Petition for Relief as "Exhibit B." The article is a writing that speaks for itself. Any attempt to explain or characterize its contents is denied. It is admitted that the article purports to quote Judge LeFever and summarize comments he made, including that "he thought the ruling was 'appropriate'" and that "he was aware that he could not be on the committee while

a candidate for district judge which was why he resigned when he did.” Exhibit B, p. 1. That the article “indicates” anything is denied as improper conclusions of fact and law and argument requiring no response.

18. Denied as stated. It is admitted that LNP published an article and that the article is attached to the Board’s Petition for Relief as “Exhibit B.” The article is a writing that speaks for itself. Any attempt to explain or characterize its contents is denied. It is admitted that the article purports to quote Judge LeFever as saying, “It’s important that we have judges who understand the law and what’s at stake for people in the community.” Exhibit B, p. 1.

19. Admitted.

20. Denied as stated. The definition of “judicial candidate” found in the Terminology section of the RGSCMDJ is a writing which speaks for itself. Any attempt to explain or categorize it is denied as argument requiring no response. The Board’s Petition for Relief accurately quotes the definition of “judicial candidate.” The remainder of this averment is argument requiring no response. By way of further response, while several Commonwealth Court cases address challenges to nominating petitions based on a person being a candidate for magisterial district judge while serving as an officer of a political party and refer to Rule 4.1(A)(1) of the RGSCMDJ and the definition of “political organization” found in the Terminology section of the RGSCMDJ, none of those cases refer to the definition

of “judicial candidate” found in the Terminology section. *See In re Nomination Petition of Leonard*, 2017 Pa. Commw. Unpub. LEXIS 536 at 4 (Pa. Cmwlth. 2017) (Terminology section of RGSCMDJ defines “political organization” to include “political party”); *Tarpey v. Mosesso*, 2015 Pa. Commw. LEXIS 959 at 8 (Pa. Cmwlth. 2015) (same); and *Hanratty v. Litman*, 2015 Pa. Comms. LEXIS 958 at 9 (Pa. Cmwlth. 2015) (same).

21. Denied as conclusions of law and argument requiring no response. By way of further response, in *Mayer v. Hemphill*, the person whose candidacy was in question was determined to be a candidate only after he filed his nominating papers *and* publicly announcing his candidacy for the office of Mayor of Philadelphia. *Id.*, 190 A.2d at 451 (emphasis added). The Commonwealth Court in *In re Nomination Petition for Leonard*, 2017 Pa. Commw. Unpub. LEXIS 536 (Pa. Cmwlth. 2017), addressed a challenge to nominating petitions filed by a person seeking the office of magisterial district judge on the ground that she violated the proscription of Rule 4.1(A)(1) by gathering signatures on her petitions for MDJ before resigning as a member of the local Democratic committee. An identical allegation is leveled against Judge LeFever. *See, e.g.*, Petition for Relief, p. 2, ¶ 7; and Exhibit A, p. 6, ¶¶ 18 and 19. In *Leonard*, the Commonwealth Court rejected the objectors’ argument that an MDJ candidate was a “‘candidate’ under applicable law during circulation” of her nominating petitions which occurred before she resigned as a

committee person. The Court, citing Rule 4.1(A)(1), stated: “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.” *Id.* at 5. After citing *Mayer v. Hemphill* and quoting *McMenamin v. Tartaglione*, 590 A.2d 802, 810 (Pa. Cmwlth. 1991), and its explanation that “the *Mayer* Court ‘opined that one becomes a candidate if he or she has filed nomination papers or announced his [or her] candidacy for office,’” *Leonard* explained that “[u]ntil nomination petitions are filed, an individual is only a potential candidate, who may or may not successfully meet the criteria for nomination.” *Id.*, at 6. The *Leonard* Court then stated: “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.” *Id.* For this proposition, *Leonard* cites *In re Nomination Petition of Denick*, 729 A.2d 168 (Pa. Cmwlth. 1999), and *Tarpey v. Mosesso*, 2015 Pa. Commw. LEXIS 959 (Pa. Cmwlth. 2015). *Leonard*, *supra*, at 6. In both *Denick* and *Mosesso*, the magisterial district judge candidates had not resigned their positions as party committee persons when they filed their nominating papers for the judicial positions they sought, and their names were stricken from the ballot. *Leonard*, at 6. Again referring to Rule 4.1(A)(1), the *Leonard* Court

explained: “Stated differently, candidates are not permitted to hold other party offices at the time of filing their nominating petitions.” *Id.*

Instantly, the Board pleads that Judge LeFever resigned from the LCDC on March 11, 2019, the day before he filed his nominating petitions to get on the ballots as a candidate for Magisterial District Judge. *See* Petition for Relief, p. 3, ¶ 13. *See also*, Exhibit A, Board Complaint, p. 6, ¶ 22. It is further noted that while *Leonard*, *Mossesso* and *Litman* are single-judge opinions from the Commonwealth Court, under Rule 126 of the Rules of Appellate Procedure, since each of these opinions was reported after October 1, 2013, they were binding precedent in the nominating petition challenge before Judge Reinaker as that was “an election law matter.” Pa.R.A.P. 126(c)(1). As to the Court of Judicial Discipline, these opinions are, at best, persuasive but not binding. *See* Pa.R.A.P. 126(c)(2).

President Judge Reinaker was bound to follow these pronouncements and deny the petition filed by Mr. Kenneff since Judge LeFever had resigned as a committee person before he filed his nominating petitions. It was not unreasonable in light of this precedent for Judge LeFever and anyone else contemplating running for the office of Magisterial District Judge to look to these decisions from the Commonwealth Court which addressed challenges based on Rule 4.1(A)(1) of the RGSCMDJ, rather than *Mayer v. Hemphill* which addressed when an elected official was a candidate and barred from running for another office under the

dictates of the Philadelphia Home Rule Charter. As Judge LeFever was properly on the ballot for the position of Magisterial District Judge, was duly elected by a majority of the votes cast for that position, and is accused of no criminal conduct or on-bench or other conduct during his service as Magisterial District Judge, his interim suspension, either with or without pay, during the pendency of the Board Complaint is unwarranted and would be an abuse of this Court's constitutional discretion. See, e.g., *In re Joy*, 2 JD 2016 (magisterial district judge suspended without based on filing of felony charges against him); *In re Jennings*, 4 JD 2014 (magisterial district judge suspended without based on filing of felony charges against him); *In re Roca*, 14 JD 2015 (judge suspended without pay based on complaint asserting improper *ex parte* communications); *In re Segal*, 3 JD 2015 (same judicial duty-related conduct); *In re Dougherty*, 1 JD 2016 (magisterial district judge suspended without based on filing of felony charges against him); *In re Hladio*, 3 JD 2017 (magisterial district judge suspended with pay based on allegations of retaliation against co-workers, including constables, and those appearing in court); *In re Tranquilli*, 4 JD 2020 (judge suspended without pay for use of racial epithets in court proceedings); *In re Cabry*, 5 JD 2020 (magisterial district judge suspended without based on filing of felony charges against him); and *In re Schechterly*, 6 JD 2020 (magisterial district judge suspended without based on filing of felony charges against him). Compare *In re Maruszczak*, 1 JD

2018 (no suspension of magisterial district judge accused of campaign-related misconduct).

22. Denied as stated. The definition of “candidate” found in the Election Code is a writing which speaks for itself. Any attempt to explain or categorize it is denied. The Board’s Petition for Relief accurately quotes the definition of “candidate” as set forth in the Election Code. By way of further response, the definition of “candidate” in the Election Code applies only to matters arising under the Election Code. *See* 25 P.S. § 2602 (“[t]he following words, *when used in this act*, shall have the following meanings ...;” emphasis added). The Election Code’s definition of “candidate” and has no relevance to proceedings before this Court when applying the proscriptions of the RGSCMDJ.

23. Denied as conclusions of law and argument requiring no response. Moreover, the opinions in *Denick*, *Mayer* and *Tartaglione* are writings which speak for themselves. Any attempts to explain or characterize their contents are denied as argument requiring no response. Furthermore, neither *Mayer* nor *Tartaglione* involved ballot challenges to candidates for magisterial district judge or application of the RGSCMDJ, but instead addressed when a public official in Philadelphia was a candidate for another elected position under the Philadelphia Home Rule Charter.

24. Denied as conclusions of law and argument requiring no response.

Moreover, the opinion in *Denick* is a writing which speaks for itself. Any attempts to explain or characterize its contents are denied as argument requiring no response.

25. Denied as conclusions of fact and law and argument requiring no response. By way of further response, the decisional law of the Commonwealth Court interpreting and applying the proscriptions of Rule 4.1(A)(1) of the RGSCMDJ as recited above was properly applied by then-President Judge Reinaker when deciding and denying a ballot challenge to Judge LeFever's candidacy and Judge LeFever properly relied on those decisions when deciding when he had to resign as a committee person. Assuming, *arguendo*, that he was mistaken in his interpretation of Rule 4.1(A)(1) and the definition of "judicial candidate" as found in the Terminology section of the RGSCMDJ, that interpretation was nevertheless not unreasonable under the circumstances and his suspension from his judicial duties based on that interpretation would be an abuse of this Court's constitutional discretion when compared to those other cases where the Court of Judicial Discipline has ordered interim suspensions. *See* ¶ 21, above (listing representative interim suspension cases).

26. Denied as conclusions of fact and law and argument requiring no response. By way of further response, the decisional law of the Commonwealth

Court interpreting and applying the proscriptions of Rule 4.1(A)(1) of the RGSCMDJ as recited above was properly applied by then-President Judge Reinaker when deciding and denying a ballot challenge to Judge LeFever's candidacy and Judge LeFever properly relied on those decisions when deciding when he had to resign as a committee person. Assuming, *arguendo*, that he was mistaken in his interpretation of Rule 4.1(A)(1) and the definition of "judicial candidate" as found in the Terminology section of the RGSCMDJ, that interpretation was nevertheless not unreasonable under the circumstances and his suspension from his judicial duties based on that interpretation would be an abuse of this Court's constitutional discretion when compared to those other cases where the Court of Judicial Discipline has ordered interim suspensions. *See* ¶ 21, above (listing representative interim suspension cases). Moreover, as explained above, in *Leonard, supra*, the Commonwealth Court rejected the objectors' argument that an MDJ candidate was a "'candidate' under applicable law during circulation" of her nominating petitions which occurred before she resigned as a committee person. The Court, citing Rule 4.1(A)(1), stated: "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." *Id.*, 2017 Pa. Commw. Unpub. LEXIS 536 at 5.

27. Denied as conclusions of fact and law and argument requiring no response. Paragraphs 25 and 26, above, are incorporated herein by reference as though set forth in full.

28. Denied as conclusions of law and argument requiring no response. Paragraphs 25 and 26, above, are incorporated herein by reference as though set forth in full.

29. Denied as conclusions of law and argument requiring no response. Paragraphs 25 and 26, above, are incorporated herein by reference as though set forth in full.

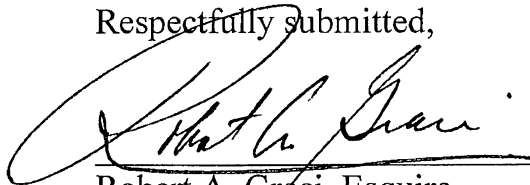
30. Denied as conclusions of law and argument requiring no response. Paragraphs 25 and 26, above, are incorporated herein by reference as though set forth in full.

31. Denied as stated and as conclusions of fact and law and argument requiring no response. Paragraphs 25 and 26, above, are incorporated herein by reference as though set forth in full. By way of further response, it is admitted that discipline of Judge LeFever under the Pennsylvania Constitution for campaign activity in violation of the RGSCMDJ remains available to protect and maintain the legitimacy and integrity of the judiciary if the Board proves its allegations against Judge LeFever to the satisfaction of this Court by clear and convincing evidence. Pa. Const., Art. V, § 18(d)(5). None of the campaign related allegations

made by the Board have any bearing on the way in which Judge LeFever has comported himself both on and off the bench since being installed on January 2, 2020. He won his election in 2019 after his candidacy was challenged on much the same ground as asserted by the Board and the challenge was rejected by a judge applying settled law. Suspending Judge LeFever will deny the people of his district of his services despite the fact that none of his conduct shows any impropriety in the handling of the business coming before his court and will cause other magisterial district judges to have to cover Judge LeFever's duties. That he may have acted to endorse non-judicial candidates while serving as a committee member of the LCDC before he resigned as a committee member and filed his nominating petitions based on his understanding of the RGSCMDJ and the precedent recited above does not undermine confidence in the independence, integrity or impartiality of the judiciary.

WHEREFORE, it is respectfully requested that this Honorable Court schedule a hearing or argument on the Petition for Relief for Interim Suspension and, for the reasons stated herein, deny the petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert A. Graci", is written over a horizontal line.

Robert A. Graci, Esquire
Supreme Court ID No. 26722
Saxton & Stump, LLC
4250 Crums Mill Road
Harrisburg, Pa 17112
Phone: 717-216-5511
Cell: 717-585-3684
Fax: 717-547-1900
rag@saxtonstump.com

Date: November 13, 2020

APPENDIX A

2 ORIGINAL

THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL

IN RE:
Nomination Petition of ANDREW LEFEVER :
:
:
A CANDIDATE for the OFFICE OF :
MAGISTERIAL DISTRICT JUDGE :

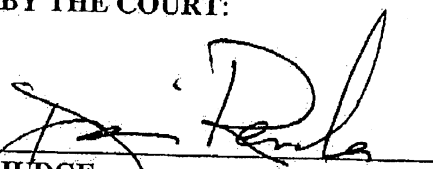
No. 19-02537
ELECTION MATTER
MARCH TERM, 2019

ORDER

AND NOW, this 19th day of March, 2019, in consideration of the Petition to Set
Aside Nomination Petition, and pursuant to 25 P.S. § 2937, a hearing is scheduled on
March 21st, 2019, at 10:00 a.m. ~~p.m.~~, in Courtroom number 8 of the Lancaster
County Courthouse, 50 North Duke Street, Lancaster, PA 17608. Notice must be given
to the candidate named in the nomination petitions sought to be set aside in the following
manner:

ATTEST:

BY THE COURT:


JUDGE

**IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
COURT ADMINISTRATION OFFICE SCHEDULING COVER SHEET (CAOSCS)
IN ORDER TO BE PROCESSED ALL REQUESTED INFORMATION MUST BE COMPLETED**

PLEASE TYPE OR PRINT LEGIBLY
ORIGINAL CAPTION

PLAINTIFF CHANGE OF ADDRESS

JOHN W. KENNEFF

DOCKET NO. CI- 19-02537

DEFENDANT CHANGE OF ADDRESS

ANDREW LEFEVER

ENTERED AND FILED
 2019 MAR 19 PM 3:40
 COURT CLERK'S OFFICE
 LANCASTER, PA

NAME, ADDRESS AND TELEPHONE NUMBER OF ATTORNEYS/PRO SE

PLAINTIFF CHANGE OF ADDRESS

DEFENDANT CHANGE OF ADDRESS

Check one

CIVIL FAMILY DOMESTIC RELATIONS (SEE INSTRUCTIONS ON BACK OF FORM)

Name of person submitting CAOSCS: _____

SECTION A: EVENT INFORMATION

Hearing type: _____ Conference type: _____ Length of time HALF DAY
PETITION CHALLENGE

SECTION B: SCHEDULING INFORMATION (Select one option below)

REQUEST TO SCHEDULE AN EVENT: Family Business Court pick-up date if applicable: _____
 Date: _____ Time: _____ Place: _____ Judge/CCO/DM: _____

REQUEST FOR CHANGE OF A SCHEDULED EVENT:
 _____ Continuance _____ Cancellation Opposing counsel/Parties IS IS NOT in agreement
 Presently scheduled for: Date: _____ Time: _____ Place: _____ Judge/CCO/DM: _____
 Continued to: Date: _____ Time: _____ Place: _____ Judge/CCO/DM: _____
 Reason: _____

Special instructions for rescheduling event: _____

REQUEST TO SCHEDULE A CONTINUATION AFTER START OF HEARING:

Date Started: _____ Time: _____ Place: _____ Judge/CCO/DM: _____
 Continuation scheduled for: Date: _____ Time: _____ Place: _____ Judge/CCO/DM: _____

SECTION C: COURT USE ONLY

Approved by Judge _____ Date: _____

For Court Administration Use Only

Report Enter/Deleted on CCSC CDAEVNT Scheduled in BANNER Letters Sent
 (If a continuation, this must be indicated on CCSC) Initials/Date _____

Updated 06/14/11

THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL

IN RE:
Nomination Petition of ANDREW LEFEVER

No. 19-02537
ELECTION MATTER
MARCH TERM, 2019

A CANDIDATE for the OFFICE OF
MAGISTERIAL DISTRICT JUDGE

ORDER

AND NOW, this day of March, 2019, in consideration of the Petition to Set Aside Nomination Petition, a Rule is issued upon Andrew Lefever to show cause why his Nomination Petitions should not be set aside and his name not be stricken from the Official Ballots of the Democratic and Republican Party in Magisterial District 02-2-04, for the Municipal Primary for the year 2019, as a candidate for the Office of Magisterial District Judge.

ATTEST:

BY THE COURT:

JUDGE

ORIGINAL

THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL

IN RE:
Nomination Petition of ANDREW LEFEVER :
:
:
A CANDIDATE for the OFFICE OF :
MAGISTERIAL DISTRICT JUDGE :

No. 19-0253
ELECTION MATTER
MARCH TERM, 2019

ENTERED AND FILED
2019 MAR 19 PM 3:41
CLERK OF COURT
LANCASTER, PA

PETITION TO SET ASIDE NOMINATION PETITION

John Kenneff ("Petitioner"), *pro se*, respectfully requests that the Nomination Petition of Andrew Lefever ("Candidate") be set aside and avers that:

1. Petitioner is a duly qualified elector of Lancaster County, Pennsylvania and Magisterial District 02-2-04, residing at 245 N. Lime Street, Lancaster, Pennsylvania 17602, and is a registered and enrolled member of the Democratic Party.

2. Candidate is a duly qualified elector of Lancaster County, Pennsylvania and Magisterial District 02-2-04, residing at 237 E. Chestnut Street, Lancaster, Pennsylvania 17602, as well as a licensed attorney in the Commonwealth of Pennsylvania and an Assistant District Attorney, and is a registered and enrolled member of the Democratic Party.

3. On or about March 12, 2019, Candidate cross-filed Democratic and Republican Nomination Petitions for the Office of Magisterial District Judge in Magisterial District 02-2-04 with the Board of Election of Lancaster County (the "Board").

4. Therein, Candidate petitioned the Board to have his name printed on both the Official 3-19-2019 Ballots of the Democratic and Republican Party in Magisterial District 02-2-04, for the (i) OTC to Municipal Primary for the year 2019 as a candidate for the Office of Magisterial District Judge. Petitioner AS

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receipt 101191

5. On March 11, 2019, Petitioner also cross-filed two Nomination Petitions with the Board, petitioning to have his name printed on both the Official Ballots of the Democratic and Republican Party in Magisterial District 02-2-04, for the Municipal Primary for the year 2019 as a candidate for the Office of Magisterial District Judge. Thus, Petitioner has standing to challenge Candidate's Democratic and Republican Nomination Petitions as a duly qualified elector of Magisterial District 02-2-04 who is a registered and enrolled member of the Democratic Party and/or as a duly filed candidate who is eligible to participate, and has an interest, in the both primary elections.¹

6. "Pursuant to Section 977 of the Code, 25 P.S. § 2937, the Court of Common Pleas has jurisdiction to hear objections made to the sufficiency, propriety and completeness of nomination petitions." *In re Denick*, 729 A.2d 168, 169 (Pa. Commwlth. 1999).

7. For the reasons set forth *infra*, Candidate's Nomination Petitions fails to conform to the requirements of the Election Code, 25 Pa. C.S.A § 2867, *et seq.*, and/or the Ethics Act, 25 P.S. § 2600, *et seq.*, and must be set aside and Candidate's name stricken from the Official Ballots of the Democratic and Republican Party in Magisterial District 02-2-04, for the Municipal Primary for the year 2019 as a candidate for the Office of Magisterial District Judge.

OBJECTION I: THE NOMINATION PETITION WAS NOT FILED BY A PERSON ENTITLED TO FILE THE SAME

8. The averments in paragraphs 1 through 7, inclusive, are incorporated by reference as though set forth at length.

9. Section 997 of the Election Code states that the court must strike a candidate's name

¹ A duly filed candidate of a party's primary election is eligible to participate, and has an interest, in that party's primary election, and as such, a candidate for office, who is a registered member of one political party but by statute may cross-file in the other party's primary election, has standing to challenge the candidacy of individuals registered with that other party who are seeking the same office. *See In re Petition to Set Aside Certain Nominating Petition for Office of Lower Moreland Twp. School Director*, 657 A.2d 1382, 1384 (Pa. Commwlth. Ct. 1995)

from the ballot if “the court shall find that said nomination petition or paper is defective under the provisions of section 976 or does not contain a sufficient number of genuine signatures of electors entitled to sign the same under the provisions of this act, or was not filed by persons entitled to file the same, or if any accompanying or appended affidavit contains a material defect or error...” 25 P.S. § 2937.

10. “Therefore, a candidate’s name can be stricken from the ballot if the candidate is not entitled to file a nomination petition, i.e., is precluded from being a candidate.” *In re Denick*, 729 A.2d at 170.

11. A candidate’s name is properly stricken from the primary ballot on the ground that he or she is not qualified to run for the position of district justice if he or she holds office in a political party.² *See id.*

12. “A magisterial district judge or a judicial candidate shall not act as a leader in, or hold office in, a political organization.” 207 Pa. Code 51 Canon 4, Rule 4.1(A)(1).

13. As explained in the Comment to Rule 4.1: “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.” *Id.* at Comment.³

² Section 28 of Act 207 of 2004 provided that any reference to “district justice” or “justice of the peace” shall be deemed references to a magisterial district judge.

³ *See also Mezvinsky v. Davis*, 459 A.2d 307, 309-10 (Pa. 1983) (“It is the function of the judiciary at every level to decide cases impartially and without regard to political considerations. Furthermore, although judges are chosen in a political forum, a judge’s further participation in party politics is forbidden expressly by Pa. Const. Art. 5, § 17(a), which proscribes a judge’s holding office in political parties or organizations, and implicitly by § 17(b), which proscribes activity violative of the canons of judicial conduct, as Canon 7 of the Code of Judicial Conduct admonishes jurists to abstain from political activity...Any suggestion that jurists decide matters before them based on party politics is an affront to the dignity and integrity of the Judiciary; and any encouragement to judicial officers to actively participate in political activities is condemned.”).

14. Pursuant to *In re Denick*, an individual becomes a candidate for the office of magisterial district judge at the very least at the time he files his nomination petition with the county Board of Elections. See *In re Denick*, 729 A.2d at 170 (citing *McMenamin v. Taraglione*, 139 Pa.Cmwlth. 269, 590 A.2d 802, 810, affirmed, 527 Pa. 286, 590 A.2d 753 (1991)).

15. Pursuant to 207 Pa. Code 51 Canon 4, “[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...” *Id.* at Preamble.

16. Pursuant to the Election Code, “[t]he word “candidate” shall mean any individual who seeks nomination or election to public office, other than a judge of elections or inspector of elections, whether or not such individual is nominated or elected. For the purpose of this article, an individual shall be deemed to be seeking nomination or election to such office if he has: (1) Received a contribution or made an expenditure or has given his consent for any other person or committee to receive a contribution or make an expenditure, for the purpose of influencing his nomination or election to such office, whether or not the individual has made known the specific office for which he or she will seek nomination or election at the time the contribution is received or the expenditure is made; or (2) Taken the action necessary under the laws of the Commonwealth to qualify himself for nomination or election to such office.” 25 P.S. § 3241(a).

17. A political organization is “[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 [Rule 4.4].” 207 Pa. Code 51 Canon 4, Preamble.

18. In January of 2019, Candidate created, or caused to be created, and made public the

“Andrew Lefever for Magisterial District Judge – Lancaster, PA” campaign Facebook page.

19. On February 22, 2019, Candidate stated in the first person in a post on his campaign Facebook page, “Please join me for a get-together at Molly’s Pub & Carry Out on March 6...If you can’t make it, please consider supporting my campaign online,” and asked individuals to show their support at <http://secure.anedot.com/lancforlefever/donate>. The sole function and purpose of this website, which was paid for by “Lancaster for Lefever,” is to solicit and accept financial contributions for Candidate’s campaign for Magisterial District Judge.

20. On or about February 19, 2019, Candidate began circulating Nomination Petitions to have his name printed on both the Official Ballots of the Democratic and Republican Party in Magisterial District 02-2-04, for the Municipal Primary for the year 2019 as a candidate for the Office of Magisterial District Judge.

21. On or about March 12, 2019, Candidate filed his Nomination Petitions with the Board of Election of Lancaster County.

22. Pursuant to *In re Denick*, Candidate became a candidate at the latest when he filed his Nomination Petition with the Lancaster County Board of Elections; pursuant to the Election Code, Candidate became a candidate when he received a contribution or made an expenditure or gave his consent for any other person or committee to receive a contribution or make an expenditure, for the purpose of influencing his nomination or election to such office; pursuant to 207 Pa. Code 51 Canon 4, Candidate became a “candidate for judicial office” when he created the “Andrew Lefever for Magisterial District Judge – Lancaster, PA” campaign Facebook page, which constitutes a public announcement of candidacy.

23. When Candidate’s campaign Facebook page was launched, and at all relevant time through the date of filing of the Nomination Petitions with the Board of Elections of Lancaster

County and the date of filing of the instant Petition,, Candidate's "Bio" has stated, "Andrew is a Lancaster City Democratic Committee-person..."

24. Additionally, on March 6, 2019, City Council candidate Amanda Bakay stated while publicly speaking on Candidate's behalf during a campaign event at Molly's Pub and Carryout, "I'm very proud to be here to speak about my friend, Andy Lefever, *and fellow Democratic Committer person as well.*" The campaign event was advertised to the public in the weeks preceding it and made open to the public. A video of the event was streamed live on Candidate's campaign Facebook page and subsequently archived for future public viewing.

25. On information and belief, at all relevant times through the date of filing of the Nomination Petitions with the Board of Elections of Lancaster County and the date of filing of the instant Petition, Candidate was a Lancaster City Democratic Committee person.

26. Specifically, Candidate was a Lancaster City Democratic Committee person at the time he publicly announced his campaign for Magisterial District Judge, created his campaign committee and began personally soliciting campaign contributions and/or donations, began circulating his Nomination Petition and filed his Nomination Petitions with the Board of Elections of Lancaster County and the date of filing of the instant Petition.

27. The Lancaster City Democratic Committee is a political organization and a Lancaster City Democratic Committee person and/or member is a leader and/or officer therein.

28. Because Candidate was a leader of and/or held office in the Lancaster City Democratic Committee while a candidate for Magisterial District Judge, he was not entitled to file a nomination petition for that office. *See In re Denick*, 729 A.2d at 170.

29. Thus, Candidate's Nomination Petition was not filed by a person entitled to do so, and pursuant to Section 997 of the Election Code, Candidate's Nomination Petition must be set

aside and Candidate's name be stricken from the primary ballot.

OBJECTION II: THE NOMINATION PETITION'S CANDIDATE'S AFFIDAVIT IS DEFECTIVE

30. The averments in paragraphs 1 through 29, inclusive, are incorporated by reference as though set forth at length.

31. "Each candidate for any State, county, city, borough, incorporated town, township, ward, school district, poor district, election district, party office, party delegate or alternate, or for the office of United States Senator or Representative in Congress, shall file with his nomination petition his affidavit stating... (d) that he is eligible for such office; (e) that he will not knowingly violate any provision of this act, or of any law regulating and limiting nomination and election expenses and prohibiting corrupt practices in connection therewith..." 25 P.S. § 2870.

32. In his Candidate's Affidavit, Candidate swore that he was eligible for the office of Magisterial District Judge 02-02-04 and that he would not knowingly violate any election law, or any law regulating and limiting nomination and election expenses, and prohibiting corrupt practices in connection therewith.

33. For the reasons discussed *supra*, Candidate was not eligible for the office of Magisterial District Judge 02-02-04 at the time he signed his Candidate's Affidavit.

34. For the reasons discussed *infra*, Candidate knowingly violated and/or continues to violate 207 Pa. Code 51 Canon 4, which prohibits corrupt practices in connection election laws.

35. As indicated *supra*, 207 Pa. Code 51 Canon 4, Rule 4.1(A)(1) states, "[a] magisterial district judge or a judicial candidate shall not act as a leader in, or hold office in, a political organization."

36. Candidate violated this rule for the reasons discussed *supra*.

37. Rule 4.1(A)(2) states, “[a] magisterial district judge or a judicial candidate shall not make speeches on behalf of a political organization or a candidate for public office.”

38. 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.”

39. As explained in the Comment to Rule 4.1, the purpose of paragraphs (A)(2) and (A)(3) is to prevent magisterial district judges or judicial candidates from abusing the prestige of the judicial office to advance the interests of others.

40. On March 1, 2019, Candidate posted a link to a campaign event for three Lancaster City Council candidates on his campaign Facebook page and stated that he was “happy to support candidates like Amanda Bakay for City Council, Jamie Arroyo for Lancaster and Xavier Garcia-Molina for City Council at their petition signing event.” The candidates’ names linked to their respective Facebook campaign pages.

41. On March 3, 2019, Candidate posted two pictures of a BINGO game on his campaign Facebook page and stated, “I had to stop and take a BINGO break with Xavier Garcia-Molina for City Council who was engaging residents of Cedar Acres East, Inc. in the political process.” The candidate’s name linked to his Facebook campaign page.

42. During the March 6, 2019, campaign event, Candidate made public statements in support of three Lancaster City Council candidates - Amanda Bakay, Jamie Arroyo and Xavier Garcia-Molina. Specifically, Candidate stated that all three of the candidates were great, before explaining that he was proud to stand there with them because they all shared a vision for Lancaster.

43. Rule 4.1(A)(7) states, “[a] magisterial district judge or a judicial candidate shall not personally solicit or accept contributions other than through a campaign committee authorized by Rule 4.4.”

44. On February 22, 2019, Candidate stated in the first person in a post on his campaign Facebook page, “Please join me for a get-together at Molly’s Pub & Carry Out on March 6...If you can’t make it, *please consider supporting my campaign online*” (emphasis added), and asked individuals to show their support at <http://secure.anedot.com/lancforlefever/donate>. The sole function and purpose of this website is to solicit and accept financial contributions for Candidate’s campaign for Magisterial District Judge.

45. On March 9, 2019, Candidate stated in the first person in a post on his campaign Facebook page about his campaign website, <http://www.votelefever.com>, “[c]heck it and feel free to drop me a question or concern, sign up for our email list, or *donate*.” (Emphasis added). Candidate’s campaign website includes a link to <http://secure.anedot.com/lancforlefever/donate>, and stated

46. Rule 4.1(A)(11) states, “[a] magisterial district judge or a judicial candidate shall not engage in any political activity on behalf of a political organization or candidate for public office except on behalf of measures to improve the law, the legal system, or the administration of justice.”

47. Candidate violated this rule for the same reasons as Rule 4.1(A)(1), (2) and (3). Candidate is a Lancaster City Democratic Committee person and continuously supports and/or promotes the campaigns of the aforementioned three City Council candidates.

48. In general, the four candidates have approached the campaign process collectively, as a team. During the March 6, 2019, campaign event, city council candidate Jaime Arroyo stated,

"I know as I run for Lancaster City Council, I believe that we're stronger together when we're running as a team and I'm very proud to have someone like Andrew on the team with me. So I hope all of you can join me in supporting Andrew as we take on this journey together." During that event, while discussing the three city council candidates, Candidate explained, "...and that's why we're all doing this. All of us."

49. Rule 4.1(A)(12) states, "[a] magisterial district judge or a judicial candidate shall not, in connection with cases, controversies or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office."

50. Rule 4.1(B) states, "[a] magisterial district judge or a judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the magisterial district judge or judicial candidate, any activities prohibited under paragraph (A)."

51. During the March 6, 2019, campaign event, city council candidate Jaime Arroyo stated that Candidate believes that "families shouldn't be burdened with parking tickets, or anything like that that's gonna be a burden on their finances."

52. During the March 6, 2019, campaign event, city council candidate Amanda Bakay stated that she knows Candidate is "committed to ensuring that very basic issues should not go on to place undue financial burdens on working families and the community as a whole."

53. During the March 6, 2019, campaign event, and immediately following the speeches of the three city council candidates, Candidate discussed the cases that may come before him if elected, and stated, "...or maybe they're just contesting a ridiculous street cleaning parking ticket."

54. As explained in the Comment to Rule 4.1, “[t]he making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine whether the candidate for judicial office has specifically undertaken to reach a particular result.”

55. When the totality of these statements are examined, it becomes clear that Candidate has specifically undertaken to reach the particular result of potential voters believing that, if Candidate is elected, they will not be burdened by parking violations or the financial penalties which accompany those violations.

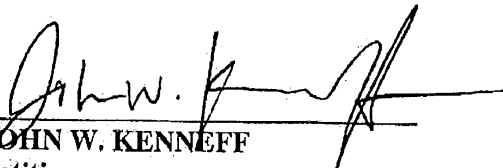
56. Even worse, by permitting city council candidates Jamie Arroyo and Amanda Bakay to make public statements on his behalf which specifically reference “families” and “working families”, Candidate is creating the impression that, if elected, he will give favoritism to families and working families.

57. Additionally, by permitting city council candidates Jamie Arroyo and Amanda Bakay to make public statements on his behalf which indicated Candidate would not enforce parking violations or minor infractions, while showing no subsequent disapproval of those statements when speaking minutes later, Candidate failed to take reasonable measures to ensure that other persons do not undertake any activities prohibited under paragraph (A) on his behalf.

58. Objector believes and therefore avers that, considering Candidate’s status as a licensed attorney in the Commonwealth of Pennsylvania and his position as an Assistant District Attorney, the total and reckless disregard for the well-established and widely known rules requiring that judicial elections be conducted differently than legislative elections is sufficient to establish that Candidate knowingly violated laws that prohibit corrupt practices in connection election laws.

WHEREFORE, Petitioner respectfully requests that this Honorable Court set aside Candidate's Nomination Petitions and rule that Candidate's name be stricken from the Official Ballots of both the Democratic and Republican Party in Magisterial District 02-2-04, for the Municipal Primary for the year 2019, as a candidate for the Office of Magisterial District Judge. In the alternative, Petitioner respectfully requests that this Honorable Court issue a Rule upon Candidate to show cause why this Nomination Petitions should not be set aside and his name not be stricken from the Official Ballots of the Democratic and Republican Party in Magisterial District 02-2-04, for the Municipal Primary for the year 2019, as a candidate for the Office of Magisterial District Judge.

Respectfully Submitted,



JOHN W. KENNEFF
Petitioner, *pro se*
245 N. Lime Street
Lancaster, PA 17602
(717)-826-2007

THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL

IN RE:
Nomination Petition of ANDREW LEFEVER

A CANDIDATE for the OFFICE OF
MAGISTERIAL DISTRICT JUDGE

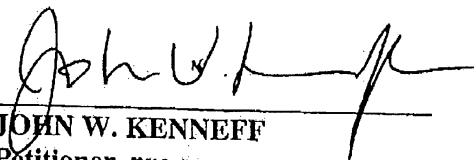
No. 19-02537
ELECTION MATTER
MARCH TERM, 2019

VERIFICATION

I, the undersigned, hereby affirm that this verification is executed by the undersigned and that the facts contained in the Petition to Set Aside Nomination Petition are true and correct to the best of my knowledge and belief.

I understand that the statements made herein are made to subject to the provisions and penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

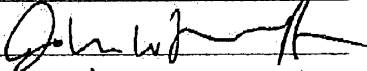
Respectfully Submitted,


JOHN W. KENNEFF
Petitioner, *pro se*

DATE: March 19, 2019

CERTIFICATE OF COMPLIANCE

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

Submitted by: JOHN W. KENNEFF
Signature: 
Name: JOHN W. KENNEFF
Attorney No. (if applicable): _____

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
PROTHONOTARY
CIVIL COVER SHEET

PLEASE LIST NAMES AND ADDRESSES OF ADDITIONAL PARTIES ON A SEPARATE SHEET.

ALL PARTY INFORMATION IS REQUIRED INCLUDING ZIP CODES. ALL PARTY INFORMATION MUST MATCH THE PLEADING. PLEASE DO NOT STAPLE THE COVER SHEET TO THE PLEADING. IF AN EVENT NEEDS TO BE SCHEDULED, A CAO SCHEDULING COVER SHEET MUST ALSO BE ATTACHED.

For Prothonotary Use Only
DOCKET NO: 19-02337

TYPE OF ACTION: _____

PARTY INFORMATION

PLAINTIFF'S NAME: JOHN W. KENNEDY DEFENDANT'S NAME: ANDREW LEVNER

ADDRESS: _____ ADDRESS: _____

*If confidential,
use 2nd sheet*

245 N. LIME ST.

MUNICIPALITY: LANCASTER, PA 17602 MUNICIPALITY: _____

TWP/BOROUGH: _____ TWP/BOROUGH: _____

DOB: 06/10/1986 TELEPHONE #: (717)-826-2007 DOB: _____ TELEPHONE #: _____
(mm/dd/yyyy) (#####) (mm/dd/yyyy) (#####)

FILING ATTORNEY / FILING PARTY INFORMATION

FIRM/OFFICE: _____

FILING ATTORNEY/PARTY: _____ AOPC: (Attorney ID) #: _____

ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE #: _____ EMAIL: _____
(#####)

TAX LIEN INFORMATION

MUNICIPALITY: _____ MAP REFERENCE: _____

DEED BOOK: _____ DEED PAGE: _____ DEED DATE: _____

SALE PRICE: _____ TAX YEAR: _____ TAX LIEN AMOUNT: _____

PROPERTY DESCRIPTION: _____

PFA/SVPO/PFI INFORMATION

HEARING DATE: _____ SOCIAL SECURITY #: (Defendant - Last 4 digits) _____

POLICE DEPARTMENT: _____

PREVIOUS PETITIONS: YES NO If 'YES', File Date: _____

PROTHONOTARY'S OFFICE
LANCASTER, PA
2019 APR 19 PM 3:40
ENTERED AND FILED

Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet

LANCASTER

County



For Prothonotary Use Only:

Docket No:

19-02537

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:
 Complaint Writ of Summons Petition Notice of Appeal
 Transfer from Another Jurisdiction Declaration of Taking

Lead Plaintiff's Name: **JOHN W. KENNEFF** Lead Defendant's Name: **ANDREW LEFEVER**

Check here if you are a Self-Represented (Pro Se) Litigant

Name of Plaintiff/Appellant's Attorney: _____

Are money damages requested? : Yes No Dollar Amount Requested: _____
(Check one) within arbitration limits outside arbitration limits

Is this a *Class Action Suit*? Yes No

ENTERED AND FILED
2018 MAR 19 PM 3:40
PROTHONOTARY
LANCASTER

SECTION B

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Libel/ Defamation
 Other:

CONTRACT (do not include Judgments)

Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other

 Employment Dispute: Discrimination
 Employment Dispute: Other

 Other:

CIVIL APPEALS

Administrative Agencies
 Board of Assessment
 Board of Elections
 Dept. of Transportation
 Zoning Board
 Statutory Appeal: Other

Judicial Appeals
 MDJ - Landlord/Tenant
 MDJ - Money Judgment
 Other:

MASS TORT

Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other:

REAL PROPERTY

Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure
 Partition
 Quiet Title
 Other:

MISCELLANEOUS

Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations Restraining Order
 Quo Warranto
 Replevin
 Other:

PROFESSIONAL LIABILITY

Dental
 Legal
 Medical
 Other Professional:

APPENDIX B

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY,
PENNSYLVANIA

CIVIL

IN RE:

NOMINATION PETITION OF
ANDREW LEFEVER

A CANDIDATE FOR THE OFFICE
OF MAGISTERIAL DISTRICT JUDGE

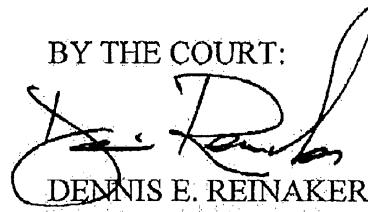
No. CI-19-02536

ENTERED AND FILED
2019 MAR 21 PM 12:12
PROthonotary's OFFICE
LANCASTER, PA

ORDER

AND NOW, this 21st day of March, 2019, the Petition to Set Aside Nomination
Petition of Andrew Lefever filed by John Kenneff is hereby DENIED.

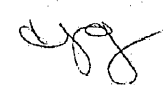
BY THE COURT:



DENNIS E. REINAKER
PRESIDENT JUDGE

Copies to:

Lancaster County Board of Elections
John Kenneff, Esquire
~~Andrew Lefever, Esquire~~

FILED
2019 MAR 25 11:00 AM
3-25-19 

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 :
York County :

VERIFICATION

I, Andrew T. LeFever, verify that the statements in this Answer to Petition for Interim Relief for Interim Suspension With or Without Pay are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Respectfully submitted,


Andrew T. LeFever

Date: November 13, 2020

**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 :
York County :

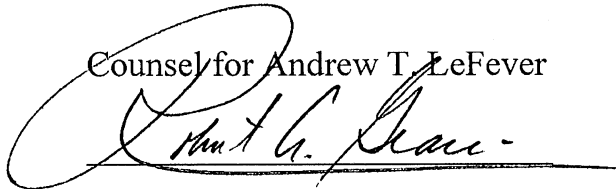
CERTIFICATE OF COMPLIANCE

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	:	
York County	:	

PROOF OF SERVICE

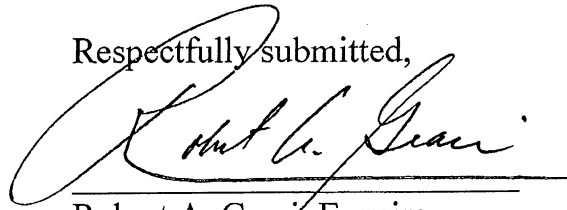
In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on the date below a copy of the Answer to Petition for Review for Interim Suspension With or Without Pay was mailed and emailed to Colby J. Miller, Judicial Conduct Board Deputy Counsel, at the following addresses:

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

and

Colby.Miller@jcbpa.org

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert A. Graci". The signature is written in a cursive style with a large, looping initial "R". A horizontal line is drawn across the signature.

Robert A. Graci, Esquire
Supreme Court ID No. 26722
Saxton & Stump, LLC
4250 Crums Mill Road
Harrisburg, Pa 17112
Phone: 717-216-5511
Cell: 717-585-3684
Fax: 717-547-1900
rag@saxtonstump.com

Date: November 13, 2020

In re Nomination Petition for Leonard

Commonwealth Court of Pennsylvania

March 29, 2017, Submitted; April 3, 2017, Decided; April 3, 2017, Filed

No. 327 C.D. 2017

Reporter

2017 Pa. Commw. Unpub. LEXIS 536 *; 167 A.3d 300; 2017 WL 2992807

In Re: Nomination Petition for Suzan Leonard,
Candidate for Magisterial District Judge for Magisterial
District 38-1-21. Appeal of Jennifer Ely, Sarah Susanne
Methlie Boggs, Rudolph Alberts and Robert M. Sobeck

Notice: An unreported opinion of the Commonwealth Court may be cited and relied upon when it is relevant under the doctrine of law of the case, res judicata or collateral estoppel. Parties may also cite an unreported panel decision of the Commonwealth Court issued after January 15, 2008 for its persuasive value, but not as binding precedent. A single-judge opinion of the Commonwealth Court, even if reported, shall be cited only for its persuasive value, not as a binding precedent.

PUBLISHED IN TABLE FORMAT IN THE ATLANTIC REPORTER.

Core Terms

Candidate, resignation, Emails, nomination, Election, circulation, Magisterial, ballot, holder

Judges: [*1] BEFORE: HONORABLE ROBERT SIMPSON, Judge. MEMORANDUM OPINION BY JUDGE SIMPSON.

Opinion by: ROBERT SIMPSON

Opinion

MEMORANDUM OPINION BY JUDGE SIMPSON

In this election appeal, Jennifer Ely, Sarah Susanne Methlie Boggs, Rudolph Alberts and Robert M. Sobeck (collectively, Objectors) filed objections to the nomination petitions (Petitions) of Suzan Leonard (Candidate) for Magisterial District Judge (MDJ) for Magisterial District 38-1-21. After a hearing, the Court of Common Pleas of Montgomery County (trial court)¹ entered an order on March 16, 2017, denying their objections. Objectors appeal from that order, arguing Candidate was an office holder in a political party (as Upper Gwynedd Ward 2 Democratic Committeewoman) when she circulated the Petitions. Objectors contend Candidate is disqualified because she held a party office at the same time that she was a candidate for MDJ. This Court affirms.

I. Background

Candidate authorized circulation of her Petitions for MDJ, which were signed by electors in the Magisterial District as early as March 3, 2017. On March 6, 2017, Candidate sent two emails, one to Municipal Chairman Robert Wilkinson (Wilkinson Email) and one to Area Chairman Al Rieck (Rieck Email), advising [*2] she resigned from her party office effective March 6th (collectively, Resignation Emails). Rieck responded the same day, confirming receipt.

The following day, on March 7, 2017, Candidate filed her Petitions. Objectors timely filed objections to the Petitions, alleging the Petitions violated the Pennsylvania Election Code² (Election Code) because Candidate held office in a political party in violation of

¹ The Honorable Emanuel A. Bertin, S.J., presiding.

² Act of June 3, 1937, P.L. 1333, as amended, 25 P.S. §§2600-3591.

Rule 4.1(A)(1) of the Pennsylvania Rules for MDJs.

The trial court held a hearing where Candidate testified on her own behalf, and the Resignation Emails and responses were admitted into evidence. Candidate also presented testimony of Wilkinson, as a party official who received her Resignation Emails. Objectors called Candidate as a witness, as if on cross-examination; they presented the testimony of no other witnesses.

Ultimately, the trial court denied the objections. Objectors filed a timely appeal to this Court. In their statement of issues presented on appeal, Objectors claim that Candidate became a "candidate" under applicable law at the time she circulated her Petitions. Further, Objectors argue the Resignation Email does not constitute an effective resignation because the method did [*3] not comply with party procedure. Additionally, presuming the Resignation Email constituted a proper means of resigning, Objectors assert it was effective as a resignation only as to her municipal party office and not her office with the County party.

In a subsequently filed opinion liberally construing the Election Code, the trial court explained that it denied the objections because it determined Candidate effectively resigned before filing her Petitions. The trial court credited both Candidate and Wilkinson's testimony. The matter is now ripe for disposition.³

II. Discussion

Pursuant to Section 977 of the Election Code, 25 P.S. §2937, the trial court has jurisdiction to hear objections to the sufficiency, propriety and completeness of nomination petitions. Section 977 provides the trial court must strike a candidate's name from the ballot if:

the court shall find that said nomination petition ... is defective under the provisions of section 976 or does not contain a sufficient number of genuine signatures of electors entitled to sign the same under the provisions of this act, or was not filed by persons entitled to file the same, or if any accompanying or appended affidavit contains a

³ This Court may only reverse a trial court's order as to validity challenges to a nomination petition if the findings are not supported by substantial evidence, there was an abuse of discretion, or there was an error of law. In re Nomination Petition of Driscoll, 577 Pa. 501, 847 A.2d 44 (Pa. 2004).

material defect or error....

25 P.S. §2937 (emphasis added). [*4] Therefore, a candidate's name can be stricken from the ballot if the candidate is not entitled to file a nomination petition, i.e., is precluded from being a candidate.

The Pennsylvania Rules for Magisterial District Judges clearly prohibit a candidate for the office of MDJ from holding an office in a political party. Pursuant to Canon 4, Pa. R.M.D.J. Rule 4.1, "a magisterial district judge or a judicial candidate shall not: (1) Act as a leader in, or hold an office in, a political organization" Rule 4.1(A)(1) (emphasis added). Under paragraph (A)(1), candidates are prohibited from assuming leadership roles in political organizations. The Rules define a "political organization" to include a "political party" Pa. R.M.D.J. ("Terminology").

This Canon applies "[w]hen a person becomes a judicial candidate " Cmt. to Rule 4.1. This Court construes Rule 4.1(A)(1) and its predecessor, Pa. R.M.D.J. No. 15(B)(1)⁴ to preclude a "candidate" from also holding an office. In re Denick, 729 A.2d 168 (Pa. Cmwlth. 1999); Mosso (Pa. Cmwlth., No. 483 C.D. 2015, 2015 Pa. Commw. Unpub. LEXIS 959, filed April 17, 2015) (single j. op., Simpson, J.) (unreported). Thus, we consider the parties' arguments as to when Candidate became a "candidate" for the office of MDJ under applicable law.

Candidate argues the trial court properly denied the [*5] objections because she resigned her party office before she filed her Petitions. She contends that circulating the Petitions while still an office holder is not grounds to bar her nomination. Objectors counter that circulation of the Petitions prior to her resignation is sufficient grounds to remove her name from the ballot, claiming she was a "candidate" under applicable law during circulation. Objectors also challenge the efficacy of the Resignation Emails as a resignation from party office.

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;

⁴ Before Rule 4.1(A)(1) became effective on December 1, 2014, Pa. R.D.J. No. 15 (B)(1) applied, stating: "[a] district justice or a candidate for such office shall not: hold office in a political party or political organization or publicly endorse candidates for political office."

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;⁵ 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 [*6] 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).

Additionally, this Court reasoned there is "no prohibition on elected office holders becoming candidates for judge, and we take judicial notice that it frequently occurs." Blank, 873 A.2d at 820 (citing Code of Judicial Conduct, Canon 7). 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. [*7]

Here, Candidate sent the Resignation Emails before filing her Petitions. Accordingly, the relevant inquiry is whether Candidate held office when she filed her Petitions. To that point, the crucial factual determination is whether Candidate effectively resigned her party office before she filed her Petitions.

There is no dispute as to when Candidate sent the

⁵ Objectors cite Judge Friedman's one sentence concurrence as precedent. Objectors' Br. at 9. Her concurrence reflects her disagreement as to part of the majority's rationale, and Objectors cite it for that minority proposition. "[A] concurring opinion ... is not binding on this Court." Tamaqua Borough v. Rush Twp. Sewer Auth., 85 Pa. Commw. 421, 482 A.2d 1167, 1171 (Pa. Cmwlth. 1984).

Resignation Emails. Presuming the Resignation Emails constituted an effective resignation, Candidate was not an office holder at the time she filed her Petitions.

The trial court found the Resignation Emails constituted an effective resignation as of March 6, 2017. The record supports this finding.

The Resignation Emails consist of the Wilkinson Email sent to the Municipal Chairman, and the Rieck Email forwarding the Wilkinson Email to the Area Chairman. The Wilkinson Email states: "Dear Rob, Please accept this email as my resignation as a committeeperson for Upper Gwynedd Ward 2 Democratic Committee effective March 6, 2017." Notes of Testimony (N.T.), 3/15/17, at 8 (emphasis added). The Rieck Email states: "Dear Al, Please see below whereby I sent my resignation as a committeeperson for Upper Gwynedd 2 to Rob Wilkinson, Upper Gwynedd [*8] Township Democratic Chair." Id. at 9. Candidate sent the Resignation Emails on March 6, 2017, during business hours. That same day, Rieck responded to Candidate, acknowledging receipt of her resignation, and thanking her for "all you have done for the Committee over the years." Id. at 10.

During the hearing, Wilkinson confirmed he received the Wilkinson Email prior to Candidate filing her Petitions. Wilkinson acted on Candidate's resignation by removing her name from the office, and replacing it with his own because he was within the same district. Id. at 18. Further, Wilkinson testified that the form showing he replaced Candidate as Democratic committeeperson for Ward 2 "was sent to the area leader" on March 6, 2017. Id.

Objectors maintain Candidate remained a County Democratic Committeewoman after she filed her Petitions, despite sending the Resignation Emails, because her name remained on the official list of committee people maintained by the County Board of Elections.⁶ This Court is not persuaded.

The term "resign" is defined in Black's Law Dictionary as a formal announcement or notification. Tr. Ct., Slip Op., 3/29/17, at 3-4. Without evidence of specific, formal procedures to resign her office, the trial [*9] court found the Resignation Emails sufficed. This Court agrees.

Further, Objectors cite no factual or legal basis for their

⁶ The trial court noted the objections contain no allegation that she held any office with the County party. Tr. Ct., Slip Op., 3/29/17, at 1.

contention that a resignation is not effective until approved.

As a matter of law, our Supreme Court holds a resignation is effective as of the effective date stated in the resignation. Simmons v. Tucker, 444 Pa. 160, 281 A.2d 902 (Pa. 1971). Following Simmons, this Court held the effective date of resignation is that stated in the resignation instrument. Chesnov v. Cortes, 927 A.2d 666 (Pa. Cmwlth. 2007) (single judge op., Kelley, S.J.); see also King v. Weiser, 140 Pa. Commw. 90, 591 A.2d 770, 772 (Pa. Cmwlth. 1991) (reasoning "resigning supervisor establishes the effective date that his or her office is vacated"). More recently, this Court reasoned a resignation could not be retroactive to a date earlier than the date the candidate submitted it. Hanratty v. Litman (Pa. Cmwlth., No. 482 C.D. 2015, 2015 Pa. Commw. Unpub. LEXIS 958, filed April 17, 2015) (unreported) (resignation was effective on date submitted). Pursuant to decisional law, Candidate's resignation was effective as of the date specified in the Resignation Emails, March 6, 2017.

As a matter of fact, party leadership acknowledged and accepted Candidate's resignation. N.T. at 10, 18. Candidate's resignation created a vacancy. There is no support in the record that Candidate ignored a protocol for resignation or that "approval" [*10] was required. By its clear and unambiguous terms, the approval requirement Objectors emphasize pertains to the *appointment* to fill the vacancy created by Candidate's resignation, not to her resignation. Id. at 22; Hr'g Tr., 3/15/17, Ex. P-7. To conclude otherwise would allow an appointing authority to withhold approval of her resignation, and thus impede Candidate's 'right to run for office and the voters' right to elect the candidate of their choice.'" In re Nomination Petition of Vodvarka, 636 Pa. 16, 140 A.3d 639, 641 (Pa. 2004) (citation omitted).

III. Conclusion

The law is clear that an individual may not simultaneously be an office holder in a political party and a judicial candidate. Denick. Candidate was not a judicial candidate when she circulated her petitions, so it was immaterial that she had not resigned at the time of circulation. This Court discerns no abuse of discretion by the trial court in finding Candidate effectively resigned as of March 6, 2017, as specified in the Resignation Emails sent the same day. Because Candidate resigned her party office before she filed her

Petitions, Objectors' arguments for removing Candidate from the ballot lack merit.

/s/ Robert Simpson

ROBERT SIMPSON, Judge

ORDER

AND NOW, this 3rd day of April, 2017, the order of the Court [*11] of Common Pleas of Montgomery County is **AFFIRMED**.

/s/ Robert Simpson

ROBERT SIMPSON, Judge

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Tarpey v. Mosesso

Commonwealth Court of Pennsylvania

April 9, 2015, Submitted; April 17, 2015, Decided; April 17, 2015, Filed

No. 483 CD. 2015

Reporter

2015 Pa. Commw. Unpub. LEXIS 959 *

Michael Tarpey, Robert Kurnik and Edward Levine v.
David Mosesso, Appellant

Opinion by: ROBERT SIMPSON

Notice: An unreported opinion of the Commonwealth Court may be cited and relied upon when it is relevant under the doctrine of law of the case, res judicata or collateral estoppel. Parties may also cite an unreported panel decision of the Commonwealth Court issued after January 15, 2008 for its persuasive value, but not as binding precedent. A single-judge opinion of the Commonwealth Court, even if reported, shall be cited only for its persuasive value, not as a binding precedent.

Opinion

MEMORANDUM OPINION BY JUDGE SIMPSON

In this election appeal, David Mosesso (Candidate) asks whether the Court of Common Pleas of Montgomery County (trial court) erred in sustaining the Objections to a Nomination Petition filed by Objectors¹ and ordering that Candidate's name not be placed on the ballot as a candidate of the Republican Party for the Office of Magisterial District Judge of Magisterial District 38-1-28 for the May 19, 2015 primary. Upon review, this Court affirms.

Core Terms

candidate, nomination, magisterial, Election, ballot, Objectors, Township, leader

Counsel: [*1] For Mosesso, David, Appellant: Litman, Donald Saunders, Litman Law Offices, Ltd., Litman Law Office, Lansdale, PA.

For Kurnik, Robert, Levine, Edward, Tarpey, Michael, Appellees: Keightly, David A., Lansdale, PA.

Kotula, Kathleen Marie, Other, Pro se, Harrisburg, PA.

Judges: BEFORE: HONORABLE ROBERT SIMPSON, Judge.

I. Background

On March 10, 2015, Candidate filed a nomination petition for the Office of Magisterial District Judge of Magisterial District 38-1-28. On March 16, 2015, Objectors filed objections to the nomination petition, alleging Candidate's petition violated the Pennsylvania Election Code² (Election Code) because, at the time Candidate filed his nomination petition he held office in a political party, [*2] namely he served as a committeeman for the Republican Party of Towamencin Township in violation of Rule 4.1(A)(1) of the

¹ Objectors are Michael Tarpey, Robert Kurnik and Edward Levine.

² Act of June 3, 1937, P.L. 1333, as amended, 25 P.S. §§2600-3591.

Pennsylvania Rules for Magisterial District Judges. A hearing ensued before the trial court.

At the hearing, the parties presented argument on the issue of whether Candidate was entitled to file his nomination petition for magisterial district judge in light of the fact that he held office as a committeeman with the Republican Party at the time he filed his nomination petition.

Ultimately, the trial court issued an order striking Candidate's nomination petition and ordering that Candidate's name not be placed on the ballot for the May 2015 primary election. Candidate filed a notice of appeal to this Court.³

³ Objectors point out that Attorney Donald Litman (Litman), who is the appellant in two related appeals pending before this Court and who also sought to be placed on the ballot as a magisterial district judge candidate for the same office, filed this appeal on Candidate's behalf. They note Litman did not represent Candidate before the trial court, and he did not enter his appearance on Candidate's behalf before this Court. Objectors assert only an aggrieved party can file an appeal, and while Litman may appeal orders that are adverse to him, he may not do so on another party's behalf. Because there is no evidence that Litman represents Candidate and because Candidate did not himself timely file an appeal, Objectors argue this Court should dismiss the appeal. Objectors also contend it is a conflict of interest for Litman to proceed with this appeal on Candidate's behalf because he and Candidate are political opponents.

Objectors assert Litman violated Pa. R.A.P. 120(a) by failing to enter his appearance before this Court. That Rule states, as pertinent: "Any counsel filing papers required or permitted to be filed in an appellate court must enter an appearance with the prothonotary of the appellate court unless that counsel has been previously noted on the docket as counsel pursuant to Rules 907(b), 1112(f), 1311 (d), or 1514(d). New counsel appearing for a party after docketing pursuant to Rules 907(b), 1112(f), 1311(d), or 1514(d) shall file an entry of appearance simultaneous with or prior to the filing of any papers signed by new counsel. ..." *Id.* (emphasis added). In turn, Pa. R.A.P. 907(b) states:

(b) Entry of appearance. Upon the docketing of the appeal the prothonotary of the appellate court shall note on the record as counsel for the appellant the name of counsel, if any, set forth in or endorsed upon the notice of appeal The prothonotary of the appellate court shall upon praecipe of any such counsel for other parties, filed within 30 days after filing [*3] of the notice of appeal, strike off or correct the record of appearances. Thereafter a counsel's appearance for a party may not be withdrawn without leave of court, unless another lawyer has entered

In a subsequently filed opinion, the trial court explained that it ordered Candidate's name be stricken from the ballot based on the fact that, at the time Candidate filed his nomination petition with the Montgomery County Office of Voter Services, he held office in the Republican Committee of Towamencin Township. Candidate did not resign from that position until two days after he filed his nomination petition. Because Candidate held office in a political party at the time he filed his nomination petition for magisterial district judge, the trial court held this Court's decision in *In re Denick*, 729 A.2d 168 (Pa. Cmwlth. 1999) was "indistinguishable *stare decisis* authority, [which] mandate[d] that this Court strike the Nomination Petition." Tr. Ct., Slip Op., 4/9/15, at 2.

The trial court also rejected Candidate's reliance on a single-judge opinion of this Court, *In re May*, 973 A.2d 443 (Pa. Cmwlth.) (single judge op., Cohn Jubelirer, J.), *aff'd per curiam*, 601 Pa. 88, 971 A.2d 488 (Pa. 2009), on the ground that the case was distinguishable. The [*4] trial court also noted that, as a single-judge opinion, *May* was not binding precedent like the panel opinion in *Denick*. The trial court further determined that, because it was undisputed that Candidate held office in a political party when he became a candidate for magisterial district judge, Candidate's subsequent resignation from his committeeman position on March 12, 2015 was irrelevant. This matter is now before this Court for disposition.⁴

or simultaneously enters an appearance for the party.

Pa. R.A.P. 907(b) (emphasis added). Here, Litman filed the notice of appeal on Candidate's behalf. As such, he was not required to separately file an entry of appearance. *Id.*; Pa. R.A.P. 120(a).

Further, while Objectors are correct that Litman himself was not aggrieved by the trial court's order in this case, clearly Candidate was aggrieved, and Litman apparently represents Candidate in this appeal, which was timely filed. Additionally, although Objectors raise issues as to whether Candidate, in fact, authorized Litman to represent him in this appeal and whether such representation constitutes a conflict of interest, Objectors cite no authority that would authorize dismissal of Candidate's appeal on this basis. Also, Objectors' argument is based largely on bare assertions in their brief as to factual matters surrounding Litman's representation of Candidate. However, unverified statements in a brief do not constitute facts of record. *See Erie Indem. Co. v. Coal Operators Cas. Co.*, 441 Pa. 261, 272 A.2d 465, 466-67 (Pa. 1971) ("[B]riefs are not part of the record, and the court may not consider facts not established by the record." (internal footnotes omitted)).

II. Discussion

Candidate argues the trial court erred in determining he was not entitled to file a nomination petition as a candidate for magisterial district judge on the ground that he held an elected committeeman position. He contends that while the trial court relied on Denick in support of its position that he was ineligible on this basis, more recent decisions of this Court support a determination that his position as committeeman did not render him ineligible to file a nomination petition for the office of magisterial district judge. See May; Blank v. Berks Cnty. Bd. of Elections, 873 A.2d 817 (Pa. Cmwlth. 2005). Candidate also notes he resigned his committeeman position two days after filing his nomination petition, which was prior to the filing of Objectors' objections to his nomination petition.

In Denick, [*5] a three-judge panel opinion of this Court, the candidate filed a nomination petition with the Montgomery County Board of Elections seeking to have his name placed on the Democratic Party primary ballot as a candidate for district justice. Objections were filed on the ground that, among other things, the candidate's nomination petition violated the Election Code because the candidate, as an elected member of the Democratic Committee of Bridgeport Borough, could not be a district justice candidate. The trial court agreed, striking the candidate's name from the ballot. Affirming the trial court, this Court, speaking through then-President Judge Colins, explained:

[The candidate] contests the [trial court's] finding that his name had to be stricken from the primary ballot because he held an office in the Democratic Party at the time he filed his [p]etition. [The candidate] does not dispute that he was a Democratic Committeeperson on the date he filed his [p]etition; however, [the candidate] contends that the [trial court] did not have jurisdiction to address his status as party officeholder as a disqualification to assuming the position of [d]istrict [j]ustice. In essence, [the candidate] [*6] asserts that objections brought pursuant to Section 997 of the [Election] Code, 25 P.S. § 2937, are limited to

challenging the sufficiency of the nomination petition and cannot be directed at the candidate's qualifications for the office. In the present case, we must disagree.

Pursuant to Section 977 of the [Election] Code, 25 P.S. § 2937, the [trial court] has jurisdiction to hear objections made to the sufficiency, propriety and completeness of nomination petitions. Section 977 provides that the court must strike a candidate's name from the ballot if:

the court shall find that said nomination petition or paper is defective under the provisions of section 976 or does not contain a sufficient number of genuine signatures of electors entitled to sign the same under the provisions of this act, *of was not filed by persons entitled to file the same*

25 P.S. § 2937 (emphasis added). Therefore, a candidate's name can be stricken from the ballot if the candidate is not entitled to file a nomination petition, i.e., is precluded from being a candidate.

Moreover, the Pennsylvania Rules for District Justices clearly prohibit a **candidate** for the office of District Justice from holding an office in a political party. The rules governing the standards of conduct of District Justices [*7] state that "[a] district justice or a candidate for such office shall not: hold office in a political party or political organization or publicly endorse candidates for political office." Pa. R.D.J. No. 15 (B)(2).

[The candidate] became a candidate for the office of [d]istrict [j]ustice at the very least at the time he filed his [nomination] [p]etition with the [county board of elections]. McMenamin v. Tartaglione, 139 Pa. Commw. 269, 590 A.2d 802, 810 (Pa. Cmwlth. 1991), *affirmed*, 527 Pa. 286, 590 A.2d 753 (1991). Since he held an office with the Democratic Party at this point, he was not entitled to file a nominating petition for the office of [d]istrict [j]ustice, as per the rules governing candidates for the office of [d]istrict [j]ustice. Thus, the [trial court] acted in accordance with the [Election] Code in striking [the candidate's] name from the primary ballot.

Denick, 729 A.2d at 169-70 (underlined emphasis added).

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

⁴ This Court may only reverse a trial court's order concerning the validity of challenges to a nomination petition if the trial court's findings are not supported by substantial evidence, there was an abuse of discretion, or there was an error of law. In re Nomination Petition of Driscoll, 577 Pa. 501, 847 A.2d 44 (2004).

Services, he held office as a committeeman for the Republican Party of Towamencin Township. Pursuant to Rule 4.1(A)(1) of the Pennsylvania Magisterial District Judge Rules: "[A] magisterial district [*8] 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.

Moreover, although Candidate notes he resigned his committeeman position after he filed his nomination petition, but before Objectors filed their objections, he 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. Thus, under Denick, the trial court properly struck Candidate's name from the primary ballot.

In addition, May and Blank, relied on by Candidate, are distinguishable. In Blank, this Court determined that two magisterial district [*9] judge candidates were not barred from filing nomination petitions on the ground that they held elected office, one as a township tax collector and the other as a township supervisor. We rejected the argument that the Magisterial District Judge Rules barred candidates from holding those elected offices. To that end, although the Rules governing sitting magisterial district judges contained such a prohibition, the Rules governing candidates did not.

Unlike Blank, this case does not concern a magisterial district judge candidate who holds elected office in township government. Rather, at issue here is a magisterial district judge candidate who, at the time he filed his nomination petition, held elected office in a *political party*, which is expressly prohibited by Pa. R.M.D.J. 4.1(A)(1). Compare Pa. R.M.D.J. 3.9(B) (expressly prohibiting sitting magisterial district judges, *but not candidates*, from holding another office or position of profit in the government of the United States, the Commonwealth or any political subdivision), with Pa. R.M.D.J. 4.1(A)(1) (expressly prohibiting a magisterial district judge *or a judicial candidate* from, among other things, holding an office in a political [*10] party).

Also distinguishable is May. There, a single judge of this Court was asked whether a candidate for common pleas court judge was disqualified from appearing on the primary ballot because she violated Canon 7(A)(1) of the Code of Judicial Conduct by holding office as a committeewoman when she filed her nomination petition. Canon 7(A)(1) stated: "A judge or a candidate for election to judicial office should not ... act as a leader or hold any office in a political organization." Id. at 445 (emphasis added). The objector there did not allege the candidate failed to meet applicable statutory requirements in the Election Code or the Public Official and Employee Ethics Act (Ethics Act), 65 Pa. C.S. §§1101-1113, for placement on the primary ballot for common pleas court judge. Rather, the objector premised his argument on Canon 7(A)(1) of the Code of Judicial Conduct. A single judge of this Court agreed with the candidate that neither the Election Code nor the Ethics Act required candidates for judicial office to conform to the Code of Judicial Conduct in order to be placed on the ballot. Rather, there were other appropriate tribunals that had jurisdiction to hear a claim that a candidate's conduct violated the Code of Judicial Conduct. Concluding that this Court lacked jurisdiction over the objector's claim [*11] that the candidate violated the Code of Judicial Conduct, and because the objector did not allege the candidate failed to comply with the applicable requirements of the Election Code or the Ethics Act, a single judge denied the objector's petition to set aside the nomination petition.

Also, in a footnote in May, the single judge stated: "Assuming this Court did have jurisdiction to review a judicial candidate's conduct during a campaign, we would still deny [the] [o]bjector's [p]etition to [s]et [a]side. We agree with [the candidate] that the language used in Canon 7(A)(1), 'should not', does not have a mandatory connotation like the words 'shall not.'" May, 973 A.2d at 446, n.2.

Here, unlike in May, this Court is not confronted with an allegation that a candidate for common pleas court judge violated the Code of Judicial Conduct. Instead, Objectors here alleged Candidate was not entitled to file a nomination petition under the Election Code and the Rules for Magisterial District Judges. Further, the operative language of the Canon of the Code of Judicial Conduct at issue in May stated: "A judge or a candidate for election to judicial office should not ... act as a leader or hold any office in a political organization." [*12] Id. at 445 (emphasis added). In contrast, the applicable Magisterial District Judge Rule at issue here states "a magisterial district judge or a judicial candidate shall not

... 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). Thus, unlike in May, the language of the applicable rule here is expressed in mandatory terms.

/s/ Robert Simpson

ROBERT SIMPSON, Judge

Of further note, after May, the Code of Judicial Conduct was amended to align with the language set forth in Rule 4.1 of the Magisterial District Judge Rules. See Rule 4.1 of the Code of Judicial Conduct (“[A] judge or judicial candidate shall not ... act as a leader in, or hold office in, a political organization[.]”) (emphasis added). For these reasons, and in light of the binding nature of this Court’s controlling panel decision in Denick, May does not compel the result Candidate seeks here.⁵

ORDER

AND NOW, this 17th day of April, 2015, the order of the Court of Common Pleas of Montgomery County is **AFFIRMED as modified** to reflect the correct magisterial district, “38-1-28.”

/s/ Robert Simpson

ROBERT SIMPSON, Judge

Accordingly, the order of the trial court is affirmed.⁶

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⁵ Pursuant to Section 414 of this Court’s Internal Operating Procedures:

(b) Except as provided in subsection (d) (relating to single judge opinions in election law matters), a single-judge opinion of this court, even if reported, shall be cited only for its persuasive value and not as a binding precedent.

(c) A reported opinion of the Court en banc or panel may be cited as binding precedent.

(d) A reported opinion of a single judge filed after October 1, [*13] 2013, in an election law matter may be cited as binding precedent in an election law matter only.

210 Pa. Code §69.414(b)-(d) (emphasis added). Thus, In re Denick, 729 A.2d 168 (Pa. Cmwlth. 1999), a reported panel opinion, is binding precedent. Because In re May, 973 A.2d 443 (Pa. Cmwlth.) (single judge op.), affd per curiam, 601 Pa. 88, 971 A.2d 488 (Pa. 2009) was decided in April 2009, it is not binding precedent. Further, the Supreme Court’s per curiam affirmance of the single judge order in May carries no precedential weight. See Commonwealth v. Thompson, 604 Pa. 198, 985 A.2d 928, 937 (Pa. 2009) (“This Court has made it clear that *per curiam* orders have no stare decisis effect.”) (citations omitted).

⁶ Candidate also takes issue with the fact that the body of the trial court’s order striking his name from the ballot indicated the magisterial district at issue here was “38-1-18” when, in fact, the correct district is “38-1-28.” In the absence of any alleged or perceived prejudice resulting from this typographical error, and in light of the fact that both the caption to the trial court’s order and the trial court’s opinion correctly identify the magisterial district at issue as “38-1-28,” this Court disagrees that this typographical error serves as a basis upon which to overturn the trial court’s order. See, e.g., Davidson v. Dep’t of Transp., Bureau of Traffic Safety, 109 Pa. Commw. 188, 530 A.2d 1021, 1022 (Pa. Cmwlth. 1987) (dismissing appellant’s argument that his license could not be revoked because

conviction certification contained a mistake regarding the date of the violation as “immaterial” to any legal issue in the case).

Hanratty v. Litman

Commonwealth Court of Pennsylvania

April 9, 2015, Submitted; April 17, 2015, Decided; April 17, 2015, Filed

No. 482 C.D. 2015

Reporter

2015 Pa. Commw. Unpub. LEXIS 958 *

James A. Hanratty, Edward Levine, Marc Washington v.
Donald Litman, Appellant

Judges: BEFORE: HONORABLE ROBERT SIMPSON,
Judge. MEMORANDUM OPINION BY JUDGE
SIMPSON.

Notice: An unreported opinion of the Commonwealth Court may be cited and relied upon when it is relevant under the doctrine of law of the case, res judicata or collateral estoppel. Parties may also cite an unreported panel decision of the Commonwealth Court issued after January 15, 2008 for its persuasive value, but not as binding precedent. A single-judge opinion of the Commonwealth Court, even if reported, shall be cited only for its persuasive value, not as a binding precedent.

Opinion by: ROBERT SIMPSON

Opinion

MEMORANDUM OPINION BY JUDGE SIMPSON

In this; election appeal, Donald Litman (Candidate), an attorney representing himself, asks whether the Court of Common Pleas of Montgomery County (trial court) erred in sustaining the Objections to a Nomination Petition filed by Objectors¹ and ordering that Candidate's name not be placed on the ballot as a candidate of the Democratic Party for the Office of Magisterial District Judge of Magisterial District 38-1-28 for the May 19, 2015 primary. Upon review, this Court affirms.

Core Terms

candidate, nomination, Election, Objectors, magisterial, notice, ballot, resign, Township, leader, retroactively, Voter

I. Background

On March 6, 2015, Candidate filed a nomination petition for the Office of Magisterial District Judge of Magisterial District 38-1-28.² Objectors filed objections to the

Counsel: [*1] For Litman, Donald, Appellant: Litman, Donald Saunders, Litman Law Offices, Ltd., Lansdale, PA.

For Hanratty, James A., Levine, Edward, Washington, Marc, Appellees: Keightly, David A., Brookwood Professional Bldg, Lansdale, PA.

For Kotula, Kathleen, Other: Kotula, Kathleen Marie, PA Department of State, Harrisburg, PA.

¹ Objectors are James A. Hanratty, Marc Washington and Edward Levine.

² This appeal involves the objections to Candidate's nomination petition for the Democratic Party for the Office of Magisterial District Judge of Magisterial District 38-1-28. At issue in the companion case, docketed at 481 C.D. 2015, are the objections to Candidate's nomination petition for the Republican Party for the Office of Magisterial District Judge of

nomination petition on March 16, 2015, alleging Candidate's nomination petition violated the Pennsylvania [*2] Election Code³ (Election Code) because: (1) at the time Candidate filed his nomination petition he held office in a political party, namely he served as a committeeman for the Democratic Party of Towamencin Township, as expressly prohibited by Rule 4.1(A)(1) of the Pennsylvania Magisterial District Judge Rules; and, (2) numerous signatures on Candidate's nomination petition were invalid. On the same date, Candidate filed preliminary objections to Objectors' objections. A hearing ensued before the trial court.

At the outset of the hearing, the parties presented argument on the issue of whether Candidate was entitled to file his nomination petition for the office of magisterial district judge in light of the fact that he held office as a committeeman with the Democratic Party at the time he filed his nomination petition. Objectors then presented the testimony of Albert Rieck, the area leader for the Montgomery County Democratic Committee, Area 5, who explained that Candidate sent him an e-mail on March 16, 2015, in which Candidate attempted to retroactively resign his position as a committeeman for the Democratic Party as of March 1, 2015. Rieck testified he considered Candidate's resignation [*3] effective March 16, 2015, the date he received the resignation, as he was unaware of any authority that would authorize a retroactive resignation. Objectors also presented the testimony of Sharon Proietto, Voter Registration Coordinator for Montgomery County, who testified regarding the residency or party affiliation of several individuals who signed Candidate's nomination petition. The parties also filed briefs in support of their respective positions.

Ultimately, the trial court issued an order striking Candidate's nomination petition and ordering that Candidate's name not be placed on the ballot for the May 2015 primary election. Candidate filed a notice of appeal to this Court.

In a subsequently filed opinion, the trial court explained that it ordered Candidate's name stricken from the ballot based on the fact that, at the time Candidate filed his nomination petition with the Montgomery County Office of Voter Services, he held office with the Democratic Committee of Towamencin Township. Candidate did not resign from that position until 10 days after he filed his

Magisterial District 38-1-28.

³Act of June 3, 1937, P.L. 1333. as amended, 25 P.S. §§2600-3591.

nomination petition. Because Candidate held office in a political party at the time he filed his nomination petition for [*4] magisterial district judge, the trial court held this Court's decision in In re Denick, 729 A.2d 168 (Pa. Cmwlth. 1999) was "indistinguishable *stare decisis* authority, [which] mandate[d] that this Court strike the Nomination Petition." Tr. Ct., Slip Op., 4/9/15, at 2.

The trial court also rejected Candidate's reliance on a single-judge opinion of this Court, In re May, 973 A.2d 443 (Pa. Cmwlth.) (single judge op., Cohn Jubelirer, J.), aff'd per curiam, 601 Pa. 88, 971 A.2d 488 (Pa. 2009), on the grounds that the case was distinguishable. Further, the trial court noted that, as a single-judge opinion, May was not binding precedent like the panel opinion in Denick. The trial court further stated that, because it was undisputed that Candidate held office in a political party when he became a candidate for magisterial district judge, Candidate's attempt to "retroactively" resign his committeeman position was irrelevant. Based on its decision to strike Candidate's nomination petition on the ground that he held office in a political party at the time he filed his nomination petition, the trial court did not address Objectors' challenge to the validity of signatures on Candidate's nomination petition. This matter is now before this Court for disposition.⁴

II. Discussion

A. Candidate's Entitlement to File Nomination [*5] Petition

Candidate argues the trial court erred in determining he was not entitled to file a nomination petition as a candidate for magisterial district judge on the ground that he held an elected committeeman position. He contends that while the trial court relied on Denick in support of its position that he was ineligible on this basis, more recent decisions of this Court support a determination that his position as a committeeman does not render him ineligible to file a nomination petition for the office of magisterial district judge. See May; Blank v. Berks Cnty. Bd. of Elections, 873 A.2d 817 (Pa. Cmwlth.

⁴This Court may only reverse a trial court's order concerning the validity of challenges to a nomination petition if the trial court's findings are not supported by substantial evidence, there was an abuse of discretion, or there was an error of law. In re Nomination Petition of Driscoll, 577 Pa. 501, 847 A.2d 44 (Pa. 2004).

2005).

In any event, Candidate asserts, if a magisterial district judge candidate resigns his committeeman position immediately upon receipt of an objection to his nomination petition, any such objection is eliminated. Here, he maintains, upon receipt of the objections to his nomination petition on March 16, 2015, he resigned retroactive to March 1, 2015. He also contends he did not engage in any activity as a committeeman after February 2015, when he merely attended a meeting of the party, and thus he took part in no partisan activity after March 1, 2015.

In Denick, a three-judge panel opinion of this Court, the candidate filed a nomination petition [*6] with the Montgomery County Board of Elections seeking to have his name placed on the Democratic Party primary ballot as a candidate for district justice. Objections were filed on the ground that, among other things, the candidate's nomination petition violated the Election Code because the candidate, as an elected member of the Democratic Committee of Bridgeport Borough, could not be a district justice candidate. The trial court agreed, striking the candidate's name from the ballot. Affirming the trial court, this Court, speaking through then-President Judge Colins, explained:

[The candidate] contests the [trial court's] finding that his name had to be stricken from the primary ballot because he held an office in the Democratic Party at the time he filed his [p]etition. [The candidate] does not dispute that he was a Democratic Committeeperson on the date he filed his [p]etition; however, [the candidate] contends that the [trial court] did not have jurisdiction to address his status as party officeholder as a disqualification to assuming the position of [d]istrict [j]ustice. In essence, [the candidate] asserts that objections brought pursuant to Section 997 of the [Election] Code, 25 P.S. § 2937, are limited [*7] to challenging the sufficiency of the nomination petition and cannot be directed at the candidate's qualifications for the office. In the present case, we must disagree.

Pursuant to Section 977 of the [Election] Code, 25 P.S. § 2937, the [trial court] has jurisdiction to hear objections made to the sufficiency, propriety and completeness of nomination petitions. Section 977 provides that the court must strike a candidate's name from the ballot if:

the court shall find that said nomination petition

or paper is defective under the provisions of section 976 or does not contain a sufficient number of genuine signatures of electors entitled to sign the same under the provisions of this act, *or was not filed by persons entitled to file the same*

25 P.S. § 2937 (emphasis added). Therefore, a candidate's name can be stricken from the ballot if the candidate is not entitled to file a nomination petition, i.e., is precluded from being a candidate.

Moreover, the Pennsylvania Rules for District Justices clearly prohibit a **candidate** for the office of District Justice from holding an office in a political party. The rules governing the standards of conduct of District Justices state that '[a] district justice or a *candidate* for such office shall not: hold [*8] office in a political party or political Organization or publicly endorse candidates for political office.' Pa. R.D.J. No. 15 B(1).

[The candidate] became a candidate for the office of [d]istrict [j]ustice at the very least at the time he filed his [nomination] [p]etition with the [county board of elections]. McMenamin v. Tartaglione, 139 Pa. Commw. 269, 590 A.2d 802, 810 (Pa. Cmwith. 1991), *affirmed*, 527 Pa. 286, 590 A.2d 753 (1991). Since he held an office with the Democratic Party at this point, he was not entitled to file a nominating petition for the office of [d]istrict [j]ustice. as per the rules governing candidates for the office of [d]istrict [j]ustice. Thus, the [trial court] acted in accordance with the [Election] Code in striking [the candidate's] name from the primary ballot.

Denick, 729 A.2d at 169-70 (underlined emphasis added).

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 elected office as a committeeman for the Democratic 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 [*9] 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 in the Democratic Party at the time he filed his nomination petition.

Moreover, although Candidate contends he "retroactively" resigned his committeeman position as of March 1, 2015, thereby mooting this issue, he 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.⁵ Thus, under Denick, the trial court properly struck Candidate's name from the primary ballot.

In addition, May and Blank, relied on by Candidate, are distinguishable. In Blank, this Court determined that two magisterial district judge candidates were not barred from filing nomination petitions on the ground that they [*10] held elected office, one as a township tax collector and the other as a township supervisor. We rejected the argument that the Magisterial District Judge Rules barred candidates from holding those elected offices. To that end, although the Rules governing sitting magisterial district judges contained such a prohibition, the Rules governing candidates did not.

Unlike Blank, this case does not concern a magisterial district judge candidate who holds elected office in township government. Rather, at issue here is a magisterial district judge candidate who, at the time he filed his nomination petition, held elected office in a *political party*, which is expressly prohibited by Pa. R.M.D.J. 4.1(A)(1). Compare Pa. R.M.D.J. 3.9(B) (expressly prohibiting sitting magisterial district judges, *but not candidates*, from holding another office or position of profit in the government of the United States, the Commonwealth or any political subdivision), with Pa. R.M.D.J. 4.1(A)(1) (expressly prohibiting a magisterial district judge *or a judicial candidate* from, among other things, holding an office in a political party).

Also distinguishable is May. There, a single judge of this

⁵ Further, as set forth above, before the trial court, Albert Rieck, the area leader for the Montgomery County Democratic Committee, Area 5, testified Candidate sent him an e-mail on March 16, 2015, in which Candidate attempted to retroactively resign his position as a committeeman for the Democratic Party as of March 1, 2015. Rieck explained he considered Candidate's resignation effective March 16, 2015, the date he received it, as he was unaware of any authority that would authorize a retroactive resignation.

Court was asked whether [*11] a candidate for common pleas court judge was disqualified from appearing on the primary ballot because she violated Canon 7(A)(1) of the Code of Judicial Conduct by holding office as a committeewoman when she filed her nomination petition. Canon 7(A)(1) stated: "A judge or a candidate for election to judicial office should not ... act as a leader or hold any office in a political organization." Id. at 445 (emphasis added). The objector there did not allege the candidate failed to meet applicable statutory requirements in the Election Code or the Public Official and Employee Ethics Act (Ethics Act), 65 Pa. C.S. §§1101-1113, for placement on the primary ballot for common pleas court judge. Rather, the objector premised his argument on Canon 7(A)(1) of the Code of Judicial Conduct. A single judge of this Court agreed with the candidate that neither the Election Code nor the Ethics Act required candidates for judicial office to conform to the Code of Judicial Conduct in order to be placed on the ballot. Rather, there were other appropriate tribunals that had jurisdiction to hear a claim that a candidate's conduct violated the Code of Judicial Conduct. Concluding this Court lacked jurisdiction over the objector's claim that the candidate violated the Code of Judicial Conduct, and because the objector did not [*12] allege the candidate failed to comply with the applicable requirements of the Election Code or the Ethics Act, a single judge denied the objector's petition to set aside the nomination petition.

Also, in a footnote in May, the single judge stated: "Assuming this Court did have jurisdiction to review a judicial candidate's conduct during a campaign, we would still deny [the] [o]bjector's [p]etition to [s]et [a]side. We agree with [the candidate] that the language used in Canon 7(A)(1), 'should not', does not have a mandatory connotation like the words 'shall not.'" May, 973 A.2d at 446, n.2.

Here, unlike in May, this Court is not confronted with an allegation that a candidate for common pleas court judge violated the Code of Judicial Conduct. Instead, Objectors here alleged Candidate was not entitled to file a nomination petition under the Election Code and the Rules for Magisterial District Judges. Further, the operative language of the Canon of the Code of Judicial Conduct at issue in May stated: "A judge or a candidate for election to judicial office should not ... act as a leader or hold any office in a political organization." Id. at 445 (emphasis added). In contrast, as in Denick, the applicable Magisterial District [*13] Judge Rule at issue here states "a magisterial district judge or a judicial candidate shall not ... 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). Thus, unlike in May, the language of the applicable rule here is &pressed in mandatory terms.

Of further note, after May, the Code of Judicial Conduct was amended to align with the language set forth in Rule 4.1 of the Magisterial District Judge Rules. See Rule 4.1 of the Code of Judicial Conduct ("[A] judge or judicial candidate shall not ... act as a leader in, or hold office in, a political organization[.]") (emphasis added). For these reasons, and in light of the binding nature of this Court's panel decision in Denick, May does not compel the result Candidate seeks here.⁶

B. Procedural Issues

Candidate also takes issue with the trial court's failure to rule on his preliminary objections to Objectors' objections to his nomination petition. This Court's review of Candidate's preliminary objections reveals that, aside from numerous boilerplate allegations premised on the Pennsylvania Rules of Civil Procedure, Candidate essentially asserted: no notice to defend was attached to Objectors' objections to the nomination petition; Objectors lacked standing to file objections because one of the Objectors, who is also a magisterial district judge candidate, engaged in unethical conduct that violated

⁶Pursuant to Section 414 of this Court's Internal Operating Procedures:

(b) Except as provided in subsection (d) (relating to single judge opinions in election law matters), a single-judge opinion of this court, even if reported, shall be cited only for its persuasive value and not as a binding precedent.

(c) A reported opinion of the Court en banc or panel may be cited as binding precedent.

(d) A reported opinion of a single judge filed after October 1, 2013, in an election law matter may be cited as binding precedent in an election [*14] law matter only.

210 Pa. Code §69.414(b)-(d) (emphasis added). Thus, In re Denick, 729 A.2d 168 (Pa. Cmwlth. 1999), a reported panel opinion, is binding precedent. Because In re May, 973 A.2d 443 (Pa. Cmwlth.) (single judge op.), aff'd per curiam, 601 Pa. 88, 971 A.2d 488 (Pa. 2009) was decided in April 2009, it is not binding precedent. Further, the Supreme Court's per curiam affirmance of the single judge order in May carries no precedential weight. See Commonwealth v. Thompson, 604 Pa. 198, 985 A.2d 928, 937 (Pa. 2009) ("This Court has made it clear that *per curiam* orders have no stare decisis effect.") (citations omitted).

the rules governing candidates for magisterial district judge⁷: Objectors' objections to the nomination petition did not include a notice of hearing; and, Objector's objections were invalid based on their failure to timely cure these defects.

As for Candidate's assertions that Objectors' objections did not comply with the Rules of Civil Procedure, our Supreme Court holds: "The sole and exclusive remedy for challenging a person's right to run for political office in Pennsylvania is provided by Section 977 of the [Code]." In re Johnson, 509 Pa. 347, 502 A.2d 142, 144 (citation and [*15] quotation omitted). The Court in Johnson identified four requirements of Section 977:

(1) the petition to set aside must be filed within seven (7) days after the last day for filing the challenged nomination petition or paper; (2) the petition must specifically set forth the objections; (3) the petition must contain a prayer that the nomination petition or paper be set aside; and (4) the petition must be served upon the officer or board with whom the nomination petition or paper was filed.

Id. In holding the Rules of Civil Procedure do not apply to a challenge to a nomination petition, the Court explained: "The overriding consideration embodied in [S]ection 977 of the [Code] is the expeditious resolution of objections to a prospective candidate's filings." Id. at 145. Thus, the Court did not believe that "engrafting technical rules of pleading and procedure onto the mechanism prescribed by the legislature serves that end, nor do we find the addition of such a requirement

⁷In particular, Candidate asserts the trial court erred in ignoring the status of the parties objecting to the nomination petition as being in violation of the rules governing judicial conduct. He contends he objected to Objectors' standing because Objector Edward Levine, who is also a candidate for magisterial district judge, used constables as circulators of his nomination petitions, and he has a Facebook page that displays fundraising activities showing him with his arms around young girls and him with alcoholic beverages. He asserts such conduct does not exhibit proper behavior for a judge, especially for one who, if elected, will adjudicate cases of driving while intoxicated and lewd conduct.

Contrary to Candidate's suggestions, and in the absence of any clear explanation to the contrary, this Court fails to see how this issue has any bearing on Objectors' objections to Candidate's nomination petition. Further, neither the trial court nor this Court is the appropriate forum in which to raise such allegations about the campaign conduct of a magisterial district judge candidate.

would materially enhance the integrity of the election process." Id. Further, "[t]o encumber the election process with 'niceties in form' by incorporating the rules of civil procedure by judicial interpretation would frustrate the carefully [*16] designed time frame established under the Code for the expeditious disposition of these objections." Id.

The Supreme Court also cited its prior decision in Appeal of Beynon, 370 Pa. 532, 88 A.2d 789, 792 (Pa. 1952), where it held: "A petition challenging [a candidate's] qualification need not be drafted with the nicety required of a formal pleading in an action at law. If it is timely filed and alleges a prima facie case, the court should, in the public interest, undertake its consideration." The Election Code's requirements relating to the form of nomination petitions is to prevent fraud and to preserve the integrity of the election process. In re Nomination Petition of Cianfrani, 467 Pa. 491, 359 A.2d 383 (Pa. 1976). While the Election Code should be liberally construed to protect a candidate's right to run for office and the voters' rights to elect the candidate of their choice, In re Nomination Petition of Gales, 618 Pa. 93, 54 A.3d 855 (Pa. 2012), the ability to file objections to a nomination petition provides a valuable check on the nomination process. In re Nomination Papers of James, 596 Pa. 442, 944 A.2d 69 (Pa. 2008).

Here, Candidate does not clearly dispute the fact that Objectors' objections to Candidate's nomination petition satisfied the four requirements in Section 977 of the Election Code delineated by our Supreme Court in Johnson. Further, because the Rules of Civil Procedure do not apply in the context of a challenge to a nomination petition, [*17] Candidate's argument that Objectors were required to include a notice to defend as contemplated by Pa. R.C.P. No. 1018.1 with their objections to the nomination petition lacks merit. Id. (holding that objector was not required to file a verification as required by Pa. R.C.P. No. 1024(a) with his objections to a nomination petition).

Candidate also asserts Objectors' objections to his nomination petition did not include an order for hearing. Further, he argues, the notice of hearing was improperly served because service was effectuated by a private person rather than by sheriff. Because the trial court did not enter an order fixing the manner of service, he maintains, the only rule regarding service is Pa. R.C.P. No. 400, which requires service by sheriff. Candidate also asserts his attendance at the hearing does not cure the defect in service.

The primary purpose of service is to give adequate notice of the pendency of an action. In re Sale of Real Estate by Lackawanna County Tax Claim Bureau, 22 A.3d 308 (Pa. Cmwlth. 2011). Pursuant to Section 977 of the Election Code: "Upon the presentation of ... a petition [to set aside a nomination petition], the court shall make an order fixing a time for hearing ... and specifying the time and manner of notice that shall be given to the candidate ... named in the nomination petition ... sought to be set aside." [*18] 25 P.S. §2937. Under Section 977, a trial court "has complete control to regulate the time and manner of giving notice and the fixing of hearings." In re Morgan, 59 Pa. Commw. 161, 428 A.2d 1055, 1058 (Pa. Cmwlth. 1981) (quoting In re Moore, 447 Pa. 526, 291 A.2d 531, 535 (Pa. 1972)). This is because selection of the time and manner of giving notice and fixing hearings is clearly an exercise of the judicial function and, therefore, purely directory. See In re Wilson, 728 A.2d 1025 (Pa. Cmwlth. 1999) (citing Moore; In re Nomination Papers of Am. Labor Party, 352 Pa. 576, 44 A.2d 48 (Pa. 1945)).

In Wilson, this Court held that a trial court's failure to enter an order specifying the time or manner for serving notice of a hearing was not a fatal defect where the candidate had timely, actual notice of the hearing. There, the candidate's counsel conceded his client had actual notice, several days to prepare for trial, and never argued he suffered any prejudice as a result of the service. Under these circumstances, service on the candidate's co-worker at the candidate's place of employment was deemed acceptable. We stated that our primary concern regarding notice is that candidates, whose petitions are challenged, be "quickly and surely notified." Id. at 1029 (quoting In re Morgan, 428 A.2d at 1058).

In addition, this Court has "sanctioned service made personally on the candidate or a family member in cases brought under [S]ection 977 of the Election Code" Wilson, 728 A.2d at 1028 (emphasis added). Thus, service on a candidate's [*19] wife is proper. In re Passio, 102 Pa. Commw. 125, 516 A.2d 782 (Pa. Cmwlth. 1984).

Here, on March 16, 2015, Objectors filed their objections to Candidate's nomination petition. Candidate admits he received the objections on that date. Appellant's Br. at 1. Also on March 16, 2015, the trial court scheduled a hearing on Objectors' objections to Candidate's nomination petition for March 19, 2015 at 9:30 a.m. Certified Record, Tr. Ct. Order 3/16/15. The trial court's scheduling order did not specify the manner

of service, but rather merely required Objectors to notify Candidate of the scheduled hearing. Id. Candidate admits that, on the same date the trial court issued its order, Objectors at approximately 8:00 p.m. personally served Candidate's wife with a copy of the order scheduling the hearing. Appellant's Br. at 2.. Contrary to Candidate's assertions, Section 977 of the Election Code does not state that the trial court's order scheduling the hearing (or a proposed order scheduling a hearing) must be served together with the objections to the nomination petition. 25 P.S. §2937.

Further, at the hearing here, Candidate admitted receiving notice of the scheduled hearing. Certified Record, Tr. Ct. Hearing 3/19/15, Notes of Testimony, at 7-8. At that time, he presented his position [*20] in response to Objectors' objections. Indeed, Candidate alleges no prejudice arising from any purported defect in service of notice of the hearing.

In addition, while Candidate maintains service was not effectuated by sheriff in accordance with Pa. R.C.P. No. 400, he ignores the fact that, "the Rules of Civil Procedure regarding service are not applicable to challenges to nomination petitions brought pursuant to [S]ection 977 of the Election Code." Wilson, 728 A.2d at 1028 n.11 (citing Morgan). Also, because the trial court did not enter an order specifying the time or manner of service, Objectors' method of serving Candidate with notice of the hearing did not violate a court order. Wilson. Under these circumstances, this Court discerns no basis upon which to reverse the trial court's order.

For all the foregoing reasons, the order of the trial court is affirmed.⁸

⁸ Candidate also takes issue with the fact that the body of the trial court's order striking his name from the ballot indicated the magisterial district at issue here was "38-1-18" when, in fact, the correct district is "38-1-28." In the absence of any alleged or perceived prejudice resulting from this typographical error, and in light of the fact that both the caption to the trial court's order and the trial [*21] court's opinion correctly identify the magisterial district at issue as "38-1-28," this Court disagrees that this typographical error serves as a basis upon which to overturn the trial court's order. See, e.g., Davidson v. Dep't of Transp., Bureau of Traffic Safety, 109 Pa. Commw. 188, 530 A.2d 1021, 1022 (Pa. Cmwlth. 1987) (dismissing appellant's argument that his license could not be revoked because conviction certification contained a mistake regarding the date of the violation as "immaterial" to any legal issue in the case).

Finally, Candidate challenges the trial court's decision to admit "screen shots" from the county's voter registration system.

/s/ Robert Simpson

ROBERT SIMPSON, Judge

ORDER

AND NOW, this 17th day of April, 2015, the order of the Court of Common Pleas of Montgomery County is **AFFIRMED as modified** to reflect the correct magisterial district as "38-1-28."

/s/ Robert Simpson

ROBERT SIMPSON, Judge

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Based on this Court's decision to affirm the trial court's decision that Candidate was ineligible to file his nomination petition because he held political office at the time he filed his nomination petition, this Court need not address this issue, which relates to Objectors' challenges to the validity of signatures on Candidate's nomination petition.