

RECEIVED AND FILED

AUG 20 2021

COURT OF JUDICIAL DISCIPLINE  
OF PENNSYLVANIA

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

IN RE:

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

**MOTIONS IN LIMINE AND MEMORANDUM OF LAW**

AND NOW, this 20<sup>th</sup> day of August, 2021, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (Board) by and through undersigned counsel, moving this Court for an order excluding the proffered testimony from Magisterial District Judge Andrew LeFever (Respondent) relating to his intent to comply with the Rules Governing Standards of Conduct of Magisterial District Judges (Rules), and for orders excluding the proffered testimonies of Alan Silverman and Lauren Slesser. The following is averred in support of this motion:

**Respondent’s Proffered Testimony that He Intended to Comply with the Rules Governing Standards of Conduct of Magisterial District Judges**

1. On November 9, 2020, the Board filed a Board Complaint alleging Respondent violated three provisions of the Rules, including:
  - a. Canon 4, Rule 4.1(A)(1),
  - b. Canon 4, Rule 4.1(A)(3), and
  - c. Canon 4, Rule 4.2(A)(1).
2. Canon 4, Rule 4.1(A)(1) provides that “a judicial candidate shall not . . . act as a leader in, or hold an office in, a political organization.”
3. Canon 4, Rule 4.1(A)(3) provides that “a judicial candidate shall not . . . publicly endorse or publicly oppose a candidate for any public office.”

4. Canon 4, Rule 4.2(A)(1) provides that “[a] judicial candidate in a public election shall . . . act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary.”
5. In Respondent’s Pre-Trial Memorandum filed on June, 3, 2021, Respondent asserted his intent to “testify about the charges against him and his intent to comply with the Rules Governing Standards of Conduct of Magisterial District Judges.”
6. Pennsylvania Rule of Evidence 401 defines “relevant evidence” as evidence that has any tendency to make a fact more or less probable than it would be without the evidence when the fact is of consequence in determining the action.
7. Respondent’s intent to comply with Canon 4, Rule 4.1(A)(1) is not a fact of consequence when determining whether Respondent was a judicial candidate while acting as a leader in, or holding office in, a political organization.
8. Respondent’s intent to comply with Canon 4, Rule 4.1(A)(1) is irrelevant and immaterial to the Court’s evaluation of whether Respondent was a judicial candidate while acting as a leader in, or holding an office in, a political organization because proof of scienter is not a necessary element of the alleged violation.
9. Respondent’s intent to comply with Canon 4, Rule 4.1(A)(3) is not a fact of consequence when determining whether Respondent, as a judicial candidate, publically endorsed or publically opposed non-judicial candidates for any public office.
10. Respondent’s intent to comply with Canon 4, Rule 4.1(A)(3) is irrelevant and immaterial to the Court’s evaluation of whether Respondent, as a judicial candidate, publically endorsed or publically opposed non-judicial candidates for any public office because proof of scienter is not a necessary element of the alleged violation.
11. Respondent’s intent to comply with Canon 4, Rule 4.2(A)(1) is not a fact of consequence when determining whether Respondent, as a judicial candidate, acted in a manner consistent with the independence, integrity, and impartiality of the judiciary.
12. Respondent’s intent to comply with Canon 4, Rule 4.2(A)(1) is irrelevant and immaterial to the Court’s evaluation of whether Respondent, as a judicial candidate, acted in a manner consistent with the independence, integrity, and impartiality of the judiciary because proof of scienter is not a necessary element of the alleged violation.

13. Permitting Respondent to testify that he intended to comply with the Rules when scienter is irrelevant and immaterial to the adjudication of the alleged violations would only serve to confuse the issues and waste time.
14. Respondent's proffered testimony regarding his intent to comply with the Rules is relevant only to mitigate his level of liability, and, as such, it is properly the subject of the sanction phase of the judicial disciplinary process.
15. Respondent's intent to comply with the Rules is irrelevant and immaterial to the Court's evaluation of whether Respondent violated the Rules by his conduct, and the Board will provide argument regarding this conclusion in its attached Memorandum of Law.

**Respondent's Intent to Present Witnesses to Testify About Whether Respondent Voted to Endorse Non-Judicial Candidates for Public Office**

16. On November 9, 2020, the Board filed a Board Complaint alleging Respondent violated Canon 4, Rule 4.1(A)(3) of the Rules.
17. In Respondent's Pre-Trial Memorandum, Respondent asserted that Alan Silverman "will testify that he does not remember or recall if Judge LeFever, as a Committee Person, voted to endorse the candidates for City Council and School Director during that meeting."
18. The proffered testimony from Alan Silverman does not include facts that would assist the Court in determining whether Respondent voted for the Lancaster City Democratic Committee to endorse candidates for City Council and School Director on February 11, 2019.
19. Alan Silverman's testimony that "he does not remember or recall if" Respondent voted to endorse the candidates for City Council and School Board Director is irrelevant because the testimony would not make it more or less probable that Respondent made such a vote.
20. In Respondent's Pre-Trial Memorandum, Respondent asserted that Lauren Slesser "will testify that she does not remember or recall if Judge LeFever, as a Committee Person, voted to endorse the candidates for City Council and School Director during that meeting."
21. The proffered testimony from Lauren Slesser does not include facts that would assist the Court in determining whether Respondent voted for the Lancaster City Democratic Committee to endorse candidates for City Council and School Director on February 11, 2019.
22. Lauren Slesser's testimony that "she does not remember or recall if" Respondent voted to endorse the candidates for City Council and School

Board Director is irrelevant because the testimony would not make it more or less probable that Respondent made such a vote.

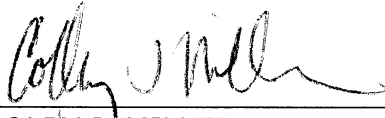
WHEREFORE, based upon the averments set forth above and the arguments in the Board's supporting Memorandum, incorporated herein by reference as though set forth in full, the Board respectfully requests that this Honorable Court grant the Board's Motions in Limine, and exclude the admission of testimony from Respondent regarding his intent to comply with the Rules, and the testimony from Alan Silverman and Lauren Slesser regarding whether Respondent voted to endorse the candidates for City Council and School Director during the February 11, 2019 Lancaster City Democratic Committee meeting.

Respectfully submitted,

RICHARD W. LONG  
*Chief Counsel*

Date: August 20, 2021

BY:

  
\_\_\_\_\_  
COLBY J. MILLER  
*Deputy Counsel*  
Pa. Supreme Court ID No. 311599  
Judicial Conduct Board  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 3500  
P.O. Box 62525  
Harrisburg, PA 17106  
(717)234-7911

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

IN RE:

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

**MEMORANDUM OF JUDICIAL CONDUCT BOARD REGARDING MOTION IN  
LIMINE TO EXCLUDE TESTIMONY FROM RESPONDENT RELATED TO HIS  
INTENT TO COMPLY WITH THE RULES GOVERNING STANDARDS OF  
CONDUCT OF MAGISTERIAL DISTRICT JUDGES**

**I. ARGUMENT**

Whether a given offense includes a culpability requirement of proof (scienter) "is a matter of construction to be determined by the language of the statute, in light of its manifest purpose and design." ***Commonwealth v. Lower Merion Township***, 414 A.2d 415, 416-417 (Pa.Cmwlt.1980) (quoting ***Commonwealth v. Morakis***, 220 A.2d 900, 903 (Pa.Super.1966)). While the Rules Governing Standards of Conduct of Magisterial District Judges (Rules) are not statutes developed by a legislature, they were created by the Supreme Court of the Commonwealth of Pennsylvania for the express purpose of governing the conduct of magisterial district judges to ensure they "treat and honor the judicial office as a public trust." **Preamble ¶ [2], Rules (2014)**. The Rules serve as a "basis for disciplinary agencies to regulate magisterial district judge's conduct." ***Id.*** at ¶ [4]. Violations of the Rules can result in a magisterial district judge's suspension from office, removal from office, or receipt of other forms of discipline. **Pa.Const.art.V, § 18(d)(1)**. As a result, the disciplinary process for judges in the Commonwealth of Pennsylvania is quasi-criminal in nature. ***In re Berkheimer***, 930 A.2d 1255, 1258 (Pa. 2007). As such, any evaluation of whether specific Rules require proof of scienter when violations are alleged should be conducted similarly to that employed when considering statutory criminal offenses.

For criminal offenses, while "generally disfavored", proof of scienter is not required when there is some indication of legislative intent to dispense with *mens rea* to form an absolute liability offense. ***Commonwealth v. Mayfield***, 832 A.2d 418 (Pa.2003). The plain language of the statute under consideration is the best indication as to whether the legislative intent was to dispense with scienter. ***Commonwealth v. Ludwig***, 874 A.2d 623, 630 (Pa.2005). Only when the plain language of the

statute is ambiguous will other factors contained in the Statutory Construction Act<sup>1</sup> be applied to determine legislative intent. *Id.*

In *Commonwealth v. Raban*, 85 A.3d 467 (Pa.2014), the Supreme Court considered whether a second violation of the Pennsylvania Dog Law was an absolute liability offense. Consistent with the process by which a court is to determine whether the legislature intended to dispense with scienter, the Court evaluated the plain language of the Dog Law. The statutory language reviewed states, "It shall be unlawful for the owner or keeper of any dog to fail to keep at all times the dog confined within the premises of the owner." In its evaluation, the Court noted that the language of the statute did not expressly contain a culpability element. *Id.* at 470. As such, the Court examined the statutory language to determine whether a legislative intent to impose absolute liability "plainly appears." *Id.* (quoting the language in 18 Pa.C.S.A. § 305(a)(2)). In examining the language of the Dog Law, the Court found that the intent of the legislature to impose an absolute liability offense plainly appeared. *Id.* The Court reasoned that the word "fail" was not accompanied by any language suggesting that the actor's intent to comply with the law, or an excuse for any failure to comply, should be considered when evaluating liability. *Id.* In addition, the Court cited the "clearly obligatory terms" used in the statute, emphasizing the legislature's use of the phrase "It shall be unlawful" and the word "fail". *Id.* In comparing the language in the Dog Law with similar absolute liability offenses, the Court explained that when an individual is charged with exceeding the maximum speed limit, there is no consideration given to the reasons why the individual failed to drive within the speed limit when determining liability. *Id.* Describing the circumstance simply, the Court explained that when an individual fails to comply with the speed limit, the individual is in violation regardless of his or her intent to comply. *Id.*

Here, Respondent is charged with three violations within Canon 4 of the Rules; Rule 4.1(A)(1), Rule 4.1(A)(3), and Rule 4.2(A)(1). Evaluating these Rules to determine whether scienter is included as an element of any alleged violation, as the Court did in *Raban*, reveals that these Rules were written by the Supreme Court to be absolute liability misconduct offenses, an intent that "plainly appears" upon review of the language used to regulate the conduct of judicial candidates.

Rule 4.1(A)(1) states that "a judicial candidate shall not . . . act as a leader in, or hold an office in, a political organization." Rule 4.1(A)(3) states that "a judicial candidate shall not . . . publicly endorse or publicly oppose a candidate for any public office." Like the Dog Law reviewed in *Raban*, the language of Rule 4.1(A)(1) and Rule 4.1(A)(3) do not expressly contain culpability elements. A review of the plain language shows that the Rules contain the obligatory phrase "shall not" without any language to suggest that the intent of a judicial candidate to comply, or reasons for his or her failure to comply, should be considered when evaluating whether the judge is in violation of either Rule. Instead, the Rules state unambiguously the acts in which

---

<sup>1</sup> Statutory Construction Act of 1972, 1 Pa.Cons.Stat. Ann. § 1501 et. seq.

a judicial candidate shall not engage. Like the Dog Law reviewed in **Raban**, a consideration of whether a judicial candidate is in violation of the Rules is comparable to the evaluation conducted when an individual is charged with a speed limit violation. When sufficient facts are present to prove a failure to comply with the strict dictates of the Rule, the judge in is in violation of the Rule, regardless of his or her intent to comply.

Like Rules 4.1(A)(1) and Rule 4.1(A)(3), a review of the language of Rule 4.2(A)(1) reveals the intent of the Supreme Court to make it an absolute liability offense. Rule 4.2(A)(1) states that “[a] judicial candidate in a public election shall . . . act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary.” Again, the Rule expresses no culpability element and includes the obligatory phrase “shall . . . act at all times” without consideration of a judicial candidate’s intent when acting in a manner inconsistent with the independence, integrity, or impartiality of the judiciary. If such a consideration was contemplated by the Supreme Court, the Court would have included language such as “shall *take reasonable measures to act at all times*”, which is the language the Court chose to include in Rule 4.2(A)(4) when describing a judicial candidate’s responsibility to ensure that others do not engage in proscribed activities on behalf of the candidate. The conspicuous absence of the phrase “take reasonable measures”, or similar text, in the language of Rule 4.2(A)(1) is indicative of the Supreme Court’s intent to make the failure to comply with the Rule an absolute liability offense. **See Raban**, 85 A.2d at 471 (referencing the inclusion of language in a separate section of the Dog Law to show that the legislature knew how to make the offense charged a crime of intent but chose not to do so.) While consideration of the judicial candidate’s acts to determine whether the acts were inconsistent with the independence, integrity, and impartiality of the judiciary is appropriate, like the consideration of a driver’s speed to determine whether the driver exceeded the speed limit, an evaluation of the judicial candidate’s intent to comply with the Rule is not appropriate given the plain language of the Rule.

Further, requiring proof of scienter in Rules 4.2(A)(1), 4.1(A)(3), and 4.2(A)(1) would frustrate a fundamental purpose of the Rules, which is to serve as a “basis for disciplinary agencies to regulate magisterial district judge’s conduct.” **Preamble, supra**. In criminal matters, permitting convictions “without regard to defendant’s motive, intent, reasonableness or good faith, are stated to be (1) To require a degree of diligence for the protection of the public and (2) convenience of enforcement.” **Commonwealth v. Fine**, 70 A.2d 677, 679 (Pa.Super.1950). When applied to judicial disciplinary matters, withholding such considerations when evaluating whether a judge is in violation of these Rules will promote the predictable and consistent enforcement of judicial conduct rules that the Supreme Court unambiguously stated in obligatory terms without reference to a judge’s or judicial candidate’s intent. Regulating judicial candidates’ compliance with Rules related to their political activity without consideration of the actor’s intent will reliably protect the independence, integrity, and independence of the judiciary from the eroding tides of political influence.

Respondent's intent to comply with the Rules, if to be offered and considered in this matter, should only be done upon the Court's determination that Respondent violated Rules 4.2(A)(1), 4.1(A)(3), and/or 4.2(A)(1). Paragraph [6] of the Preamble to the Rules states, "Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the intent of the magisterial district judge, whether there is a pattern of improper activity, and the effect of the proper activity on others or on the judicial system." Since Respondent's intent is not relevant to whether he, by his actions, violated the Rules and whether disciplinary action was appropriate, the Court should only consider such testimony at a sanction hearing when considering what degree of discipline should be imposed.

## **II. CONCLUSION**

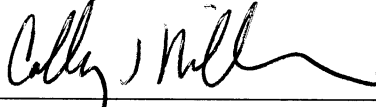
For the foregoing reasons, the Board respectfully requests that this Court exclude testimony from Respondent related to his intent to comply with the Rules at trial.

Respectfully submitted,

RICHARD W. LONG  
*Chief Counsel*

August 20, 2021

BY:

  
\_\_\_\_\_  
COLBY J. MILLER  
*Deputy Counsel*  
Pa. Supreme Court ID No. 311599  
Judicial Conduct Board  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 3500  
P.O. Box 62525  
Harrisburg, PA 17106  
(717)234-7911



**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

IN RE:

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

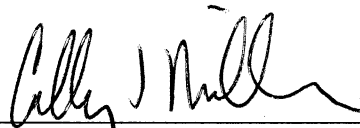
**VERIFICATION**

I, Colby J. Miller, verify that the statements in the Motions in *Limine* and Memorandum of Law are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

Respectfully submitted,

DATE: August 20, 2021

BY:

  
\_\_\_\_\_  
Colby J. Miller  
Deputy Counsel  
Pa. Supreme Court ID No. 311599  
Judicial Conduct Board  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 3500  
P.O. Box 62525  
Harrisburg, PA 17106  
(717) 234-7911

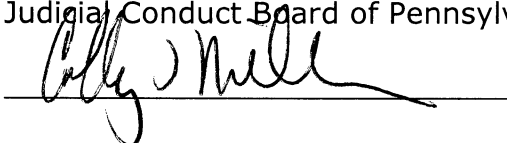
**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

IN RE:

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

**CERTIFICATE OF COMPLIANCE**

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

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

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

IN RE:

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

**PROOF OF SERVICE**

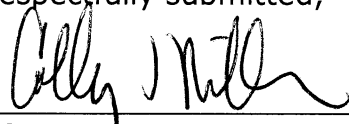
In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on the date below, a copy of the Judicial Conduct Board's Motions in *Limine* and Memorandum of Law was sent via first class mail and email to Robert A. Graci, Esquire, counsel for Magisterial District Judge Andrew T. LeFever, at the following address and via email:

Robert A. Graci, Esquire  
Saxton & Stump, LLC  
4250 Crums Mill Road, Suite 201  
Harrisburg, PA 17112  
[rag@saxtonstump.com](mailto:rag@saxtonstump.com)

Respectfully submitted,

DATE: August 20, 2021

By:



COLBY J. MILLER  
*Deputy Counsel*  
Pa. Supreme Court ID No. 311599  
Judicial Conduct Board  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 3500  
P.O. Box 62525  
Harrisburg, PA 17106  
(717) 234-7911