

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

SEP - 3 2021

RECEIVED AND FILED

IN RE:

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

RESPONSE TO MOTIONS IN LIMINE

NOW COMES Magisterial District Judge Andrew T. LeFever, Respondent herein, by and through his counsel, Robert A. Graci, Esquire, and Saxton & Stump, LLC, and, in conformity with the Order of June 11, 2021, files this Response to Motions in Limine filed by the Judicial Conduct Board Complaint, and, in support thereof, avers as follows:

Respondent's Proffered Testimony That He Intended to Comply With The Rules Governing Standards of Conduct of Magisterial District Judges

1. Denied as stated. The Board Complaint filed with this Court on November 9, 2020 is a document which speaks for itself. Any attempts to explain or characterize its contents are denied. It is admitted that the only violations of the Rules Governing Standards of Conduct of Magisterial Judges (Rules) alleged to have been violated by Respondent are:

- 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. Admitted.

3. Admitted.

4. Admitted.

5. Denied as stated. Respondent's Pre-trial Memorandum is a writing which speaks for itself. Any attempt to explain or characterize its contents is denied. It is admitted that Respondent's Pre-trial Memorandum states, *inter alia*, that Respondent "will testify about the charges against him and his intent to comply with the Rules Governing Standards of Conduct of Magisterial District Judges." Pre-Trial Memorandum of Respondent, Magisterial District Judge Andrew T. LeFever, ¶ A.1., p. 1. The Pre-trial Memorandum also explained that Respondent "will describe the research he conducted leading to his decision as to when he had to resign his position as a committee person." *Id.*, pp. 1-2.

6. Denied as stated. Pennsylvania Rule of Evidence 401 is a writing which speaks for itself. Any attempt to explain or characterize its contents is denied. It is admitted that Rule 401 states that "[e]vidence is relevant if ... it has any tendency to make a fact more or less probable than it would be without the evidence; and ... the fact is of consequence in determining the action." The *Comment* to Rule 401 explains, *inter alia*, that "[w]hether evidence has a tendency

to make a given fact more or less probable is to be determined by the court in light of reason, experience, scientific principles and other testimony offered in the case.”

See Pa.R.E. 401 *Comment*.

7. Denied as an improper conclusion of law and argument requiring no response. By way of further response, Respondent’s intent to comply with the Rules is a fact of consequence in determining whether Respondent violated Rule 4.1(A)(1). *See* Rules, Preamble [6] (“[I]t is not intended that disciplinary action would be appropriate for every violation of the Conduct Rules’ provisions. *Whether disciplinary action is appropriate*, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and *should depend on such factors as* the seriousness of the violation, *the intent of the magisterial district judge*, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.”)(emphasis added). *See also In re Hasay*, 686 A.2d 809, 817 (Pa. 1996)(“[t]he discipline of a judicial officer is a process which begins the moment a complaint is received by the [Judicial Conduct B]oard.”); and *In re Whittaker*, 948 A.2d 279, 296, 299, 301 (Pa.Ct.Jud.Disc. 2008)(holding that respondent judge’s consciousness of a violation of the charged rule was at issue and finding that *mens rea* was not eliminated from rule providing that a magisterial district judge “*shall not hold*

another office or position of profit in the government of the United States, the Commonwealth or any political subdivision thereof”(emphasis added).

8. Denied as an improper conclusion of law and argument requiring no response. By way of further response, Respondent’s intent to comply with the Rules is a fact of consequence in determining whether Respondent violated Rule 4.1(A)(1). *See* ¶ 7, *supra*, that is incorporated herein by reference as though set forth in full.

9. Denied as an improper conclusion of law and argument requiring no response. By way of further response, Respondent’s intent to comply with the Rules is a fact of consequence in determining whether Respondent violated Rule 4.1(A)(3). *See* Rules, Preamble [6] (“[I]t is not intended that disciplinary action would be appropriate for every violation of the Conduct Rules’ provisions.

Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and *should depend on such factors as* the seriousness of the violation, *the intent of the magisterial district judge*, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.”)(emphasis added). *See also In re Hasay*, 686 A.2d 809, 817 (Pa. 1996)(“[t]he discipline of a judicial officer is a process which begins the moment a complaint is received by the [Judicial Conduct B]oard.”); and *In re Whitaker*, 948 A.2d 279, 296, 299, 301

(Pa.Ct.Jud.Disc. 2008)(holding that respondent judge's consciousness of a violation of the charged rule was at issue and finding that *mens rea* was not eliminated from rule providing that a magisterial district judge "*shall not hold another office or position of profit in the government of the United States, the Commonwealth or any political subdivision thereof ...*")(emphasis added).

10. Denied as an improper conclusion of law and argument requiring no response. By way of further response, Respondent's intent to comply with the Rules is a fact of consequence in determining whether Respondent violated Rule 4.1(A)(1). See ¶ 9, *supra*, which is incorporated herein by reference as though set forth in full.

11. Denied as an improper conclusion of law and argument requiring no response. By way of further response, Respondent's intent to comply with the Rules is a fact of consequence in determining whether Respondent violated Rule 4.2(A)(1). See Rules, Preamble [6] ("[I]t is not intended that disciplinary action would be appropriate for every violation of the Conduct Rules' provisions.

Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the intent of the magisterial district judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.")(emphasis

added). *See also In re Hasay*, 686 A.2d 809, 817 (Pa. 1996) (“[t]he discipline of a judicial officer is a process which begins the moment a complaint is received by the [Judicial Conduct Board.]”); and *In re Whittaker*, 948 A.2d 279, 296, 299, 301 (Pa.Ct.Jud.Disc. 2008)(holding that respondent judge’s consciousness of a violation of the charged rule was at issue and finding that *mens rea* was not eliminated from rule providing that a magisterial district judge “*shall not hold another office or position of profit in the government of the United States, the Commonwealth or any political subdivision thereof . . .*”)(emphasis added). *Accord In re Singletary*, 61 A.3d 402, 412 n. 7 (Pa.Ct.Jud.Disc. 2012)(applying *Whittaker* to charge under Disrepute Clause, Pa. Const. Art. V, § 18(d)(1)). By way of further response, pursuant to Rule 4.2(B)(2), a judicial candidate may “speak on behalf of his or her candidacy through any medium” RGSCMDJ, Rule 4.2(B)(2). According to *OxfordDictionaries*, to “endorse” means to “declare one’s public support of.” If a candidate for magisterial district judge may “publicly endorse or speak on behalf of, or publicly oppose or speak in opposition to, candidates for the same judicial office for which he or she is a judicial candidate, or publicly endorse or speak on behalf of candidates for any other elective judicial office appearing on the same ballot” as allowed by Rule 4.2(B)(3), RGSCMDJ, Rule 4.2(B)(3), such a candidate may certainly speak on behalf of or in support of himself or herself through the medium of an endorsement. Furthermore, it is

admitted that whatever actions he took at the February 11, 2019 Lancaster City Democratic Committee (LCDC) meeting were taken solely in his capacity as a Committee Person as stipulated by the Board and Respondent. *See* Joint Stipulation of Fact Pursuant to C.J.R.D.P. 502(D)(2), ¶ 23, which has been accepted by the Court by Order of June 11, 2021, and states that “Respondent, *as a committee person*, voted for the LCDC to endorse him for the office of Magisterial District Judge in Magisterial District 02-2-04. (emphasis added)”

12. Denied as an improper conclusion of law and argument requiring no response. By way of further response, Respondent’s intent to comply with the Rules is a fact of consequence in determining whether Respondent violated Rule 4.2(A)(1). *See* Rules, Preamble [6] (“[I]t is not intended that disciplinary action would be appropriate for every violation of the Conduct Rules’ provisions. *Whether disciplinary action is appropriate*, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and *should depend on such factors as* the seriousness of the violation, *the intent of the magisterial district judge*, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.”)(emphasis added). *See also In re Hasay*, 686 A.2d 809, 817 (Pa. 1996)(“[t]he discipline of a judicial officer is a process which begins the moment a complaint is received by the [Judicial Conduct B]oard.”); and *In re Whittaker*, 948 A.2d 279, 296, 299, 301

(Pa.Ct.Jud.Disc. 2008)(holding that respondent judge's consciousness of a violation of the charged rule was at issue and finding that *mens rea* was not eliminated from rule providing that a magisterial district judge "*shall not hold another office or position of profit in the government of the United States, the Commonwealth or any political subdivision thereof*")(emphasis added).
Accord In re Singletary, 61 A.3d 402, 412 n. 7 (Pa.Ct.Jud.Disc. 2012)(applying *Whittaker* to charge under Disrepute Clause, Pa. Const. Art. V, § 18(d)(1)).

13. Denied as an improper conclusion of law and argument requiring no response. By way of further response, Respondent's intent to comply with the Rules is a fact of consequence and is relevant and material in determining whether Respondent committed the Rules violations with which he is charged. *See also* ¶¶ 7 – 12, *supra*, which are incorporated herein by reference as though set forth in full.

14. Admitted in part and denied in part as stated and as improper conclusions law and argument requiring no response. It is admitted that Respondent's testimony regarding his intent to comply with the Rules is relevant to mitigate his level of liability, and, as such, is properly subject to the sanction phase of the judicial disciplinary process should this matter proceed to that phase. As to the "guilt" phase of the judicial disciplinary process, *see* ¶¶ 7 – 13, *supra*, which are incorporated herein by reference as though set forth in full.

15. Denied as an improper conclusion of law and argument requiring no response. By way of further response, Respondent's intent to comply with the Rules is a fact of consequence and is relevant and material in determining whether Respondent committed the Rules violations with which he is charged. *See also* ¶¶ 7 – 14, *supra*, which are incorporated herein by reference as though set forth in full and Respondent's Memorandum of Law In Opposition To The Motions In Limine Filed By The Judicial Conduct Board which is incorporated herein by reference as though set forth in full.

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

16. Admitted. By way of further responses, see ¶ 1.b. which is incorporated herein by reference as though set forth in full.

17. Denied as stated. Respondent's Pre-trial Memorandum is a writing which speaks for itself. Any attempt to explain or characterize its contents is denied. It is admitted that Respondent's Pre-trial Memorandum states, *inter alia*, that Alan Silverman attended the meeting of the Lancaster City Democratic Committee held on February 11, 2019" and that he "will testify that he does not remember or recall if [Respondent] Judge LeFever, as a Committee Person, voted to endorse the candidates for City Council or School Board Director during that meeting." Pre-Trial Memorandum of Respondent, Magisterial District Judge Andrew T. LeFever, ¶ A.7., p. 3. By way of further response, the anticipated

testimony attributed to Mr. Silverman was derived from a Report of Interview of Mr. Silverman prepared by a Judicial Conduct Board Investigator and provided to Respondent, through undersigned counsel, by Board Counsel Miller which he provided pursuant to Rule 401(E) of the Court of Judicial Discipline Rules of Procedure, C.J.D.R.P. 401(E), stating that the documents provided, including the Report of Interview of Alan Silverman, “*may contain evidence that could be considered exculpatory regarding the charges against [Respondent]*”(emphasis added).” A copy of Board Counsel’s Letter of November 9, 2020 is attached hereto, made a part hereof and incorporated herein by reference as though set forth in full and marked “Respondent’s Exhibit 1.”

18. Denied as an improper conclusion of law and argument requiring no response. By way of further response, that a person who was present at the meeting at which it is alleged that Respondent engaged in conduct violative of Rule 4.1(A)(3) and does not recall or remember that Respondent voted for non-judicial candidates for either Lancaster City Counsel or School Board Director, is potentially exculpatory as noted by Board Counsel and, whether considered alone or in conjunction with other testimony on that issue, will assist the Court in deciding if the Board has carried its constitutional burden of proving the charge under Rule 4.1(A)(3) by clear and convincing evidence as required by Article V, § 18(b)(5), and is relevant as having a tendency to make that fact of endorsements of

non-judicial candidates less probable than it would be without the evidence and is clearly of consequence in determining that charge. *See* Pa.R.E. 401.

19. Denied as an improper conclusion of law and argument requiring no response. See ¶ 18, *supra*, which is incorporated herein by reference as though set forth in full.

20. Denied as stated. Respondent's Pre-trial Memorandum is a writing which speaks for itself. Any attempt to explain or characterize its contents is denied. It is admitted that Respondent's Pre-trial Memorandum states, *inter alia*, that Lauren Slessor "attended the meeting of the Lancaster City Democratic Committee held on February 11, 2019" and that she "will testify that she does not remember or recall if [Respondent] Judge LeFever, as a Committee Person, voted to endorse the candidates for City Council or School Board Director during that meeting." Pre-Trial Memorandum of Respondent, Magisterial District Judge Andrew T. LeFever, ¶ A.8., p. 3. By way of further response, the anticipated testimony attributed to Ms. Slessor was derived from a Report of Interview of Ms. Slessor prepared by a Judicial Conduct Board Investigator and provided to Respondent, through undersigned counsel, by Board Counsel Miller which he provided pursuant to Rule 401(E) of the Court of Judicial Discipline Rules of Procedure, C.J.D.R.P. 401(E), stating that the documents provided, including the Report of Interview of Lauren Slessor, "*may contain evidence that could be*

considered exculpatory regarding the charges against [Respondent](emphasis added). ” See Respondent’s Exhibit 1.

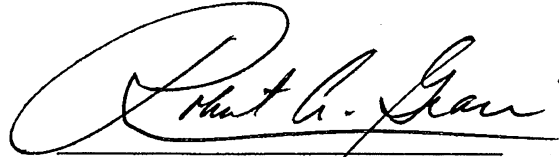
21. Denied as an improper conclusion of law and argument requiring no response. By way of further response, that a person who was present at the meeting at which it is alleged that Respondent engaged in conduct violative of Rule 4.1(A)(3) and does not recall or remember that Respondent voted for non-judicial candidates for either Lancaster City Counsel or School Board Director, is potentially exculpatory as noted by Board Counsel and, whether considered alone or in conjunction with other testimony on that issue, will assist the Court in deciding if the Board has carried its constitutional burden of proving the charge under Rule 4.1(A)(3) by clear and convincing evidence as required by Article V, § 18(b)(5) and is relevant as having a tendency to make that fact of endorsements of non-judicial candidates less probable than it would be without the evidence and is clearly of consequence in determining that charge. *See* Pa.R.E. 401.

22. Denied as an improper conclusion of law and argument requiring no response. See ¶ 21, *supra*, which is incorporated herein by reference as though set forth in full.

WHEREFORE, based upon this Response to Motions in Limine and the arguments set forth in the accompanying Memorandum of Law in Opposition to

the Motions in Limine of the Judicial Conduct Board, and it is respectfully requested that this Honorable Court deny the Motions in Limine in their entirety.

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".

Robert A. Graci, Esquire
Supreme Court ID No. 26722
Saxton & Stump, LLC
4250 Crums Mill Road
Harrisburg, Pa 17112

Attorney for Andrew T. LeFever
Magisterial District Judge

Date: September 3, 2021

Respondent's Exhibit 1



**COMMONWEALTH OF PENNSYLVANIA
JUDICIAL CONDUCT BOARD**

PENNSYLVANIA JUDICIAL CENTER
601 COMMONWEALTH AVENUE, SUITE 3500
P.O. BOX 62525
HARRISBURG, PA 17106-2525
WWW.JCBPA.ORG

RICHARD W. LONG
CHIEF COUNSEL

717-234-7911

November 9, 2020

UPS Overnight
Tracking No. 1ZY4X7450191982932

Honorable Andrew T. LeFever
c/o Robert A. Graci, Esquire
Pa. Supreme Court ID No. 26722
Saxton & Stump, LLC
4250 Crums Mill Road, Suite 201
Harrisburg, PA 17112

Re: *In Re: Andrew T. LeFever*
7 JD 2020

Dear Attorney Graci:

Pursuant to C.J.D. R.P. No. 401(E), enclosed you will find copies of the following documents, which may contain evidence that could be considered exculpatory regarding the charges pending against your client:

- Report of Interview of Sharon Watson-Frias by Investigator Leo P. Zuvich (09/08/2020);
- Report of Interview of David Parry, Ph.D. by Investigator Leo P. Zuvich (09/14/2020);
- Report of Interview of Lauren Edgell by Investigator Leo P. Zuvich (09/14/2020);
- Report of Interview of Alan Silverman by Investigator Leo P. Zuvich (09/15/2020);
- Report of Interview of Lauren Slessor by Investigator Leo P. Zuvich (09/16/2020); and

Honorable Andrew T. LeFever
November 9, 2020
Page 2 of 2

- Report of Interview of James C. Ballentine by Investigator Leo P. Zuvich (11/05/2020).

If you have any questions, please feel free to contact our office.

Very truly yours,

A handwritten signature in black ink, appearing to read "Colby J. Miller", with a long horizontal flourish extending to the right.

Colby J. Miller
Deputy Counsel

CJM/jec
Enclosure (Exculpatory Evidence)

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

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

VERIFICATION

I, Andrew T. LeFever, verify that the statements in this Response to Motions in Limine are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Respectfully submitted,


Andrew T. LeFever

Date: September 2, 2021

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

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

7 JD 2020

VERIFICATION

I, Andrew T. LeFever, verify that the statements in this Response to Motions in Limine are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Respectfully submitted,

Andrew T. LeFever

Date: September __, 2021