

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

Judge Mark B. Cohen
Court of Common Pleas
1st Judicial District
Philadelphia County

.....

1 JD 2023

JUDICIAL CONDUCT BOARD PRE-TRIAL MEMORANDUM

AND NOW, this 7th day of June, 2023, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (the Board), by and through undersigned counsel and files this pre-trial memorandum, as follows:

A. TRIAL WITNESSES

1. The Honorable Margaret T. Murphy
Administrative Judge, Family Court Division
Court of Common Pleas
1501 Arch Street
Philadelphia PA, 19102

Administrative Judge Murphy will testify regarding the facts giving rise to the Board's investigation, her attempt to deter Judge Cohen from his Facebook posting conduct, and her subsequent contact with the Board regarding Judge Cohen's Facebook posting conduct.

2. Paul A. Fontanes
Senior Investigator
Judicial Conduct Board of Pennsylvania
601 Commonwealth Avenue, Ste. 3500
Harrisburg, PA 17106

Senior Investigator Fontanes will testify regarding the factual findings and process of the Board's investigation of Judge Cohen's Facebook posting conduct.

3. Alison H. Merrill, Ph.D.
Assistant Professor
Department of Political Science
Susquehanna University
514 University Avenue
Selinsgrove, PA 17870-1350

Professor Merrill will provide expert testimony regarding the partisan political nature of Judge Cohen's Facebook posting conduct.

B. EXHIBITS

1. A true and correct copy of the letter dated November 16, 2021, sent by Judge Murphy to former Board Chief Counsel Richard Long regarding Judge Cohen's Facebook posting conduct and her meeting with Judge Cohen.
2. A true and correct copy of the Confidential Request for Investigation dated December 1, 2021, that initiated the Board's investigation of Judge Cohen.
3. A true and correct copy of the Notice of Full Investigation, with attachments, dated April 20, 2022, issued to Judge Cohen.
4. A true and correct copy of Judge Cohen's verified response to the April 20, 2022 Notice of Full Investigation, dated May 5, 2022.
5. A true and correct copy of the transcript of the July 19, 2022 deposition of Judge Cohen by Board counsel, with exhibits.
6. A true and correct copy of the supplemental Notice of Full Investigation dated December 6, 2022, issued to Judge Cohen, with attachments.
7. A true and correct copy of Judge Cohen's verified response to the December 6, 2022 supplemental Notice of Full Investigation, with attachment.
8. True and correct printed copies of the Facebook postings made by Judge Cohen described in Paragraphs 9(i)-(lxvi) of the February 23, 2023 Board Complaint.
9. A true and correct copy of the *curriculum vitae* of Professor Merrill.
10. A true and correct copy of the April 20, 2023 expert report authored by Professor Merrill regarding the nature of Judge Cohen's Facebook posts.

C. PROPOSED STIPULATIONS

11. The parties stipulate to the authenticity of all exhibits set forth at Paragraphs B (1)-(10).

12. The parties stipulate to the admissibility of all exhibits set forth at Paragraphs B (1)-(9).
13. Article V, § 18 of the Constitution of the Commonwealth of Pennsylvania grants to the Board the authority to determine whether probable cause exists to file formal charges against a judicial officer in this Court, and, when it determines that probable cause exists, to prosecute the case in support of such charges in this Court.
14. From January 2, 2018, until the present, Judge Cohen served continuously as a judge of the Court of Common Pleas, First Judicial District, Philadelphia County.
 - i. Presently, Judge Cohen is on leave for an issue unrelated to this Complaint.
15. The Board received a report contending that Judge Cohen authored and made improper posts to his personal Facebook page.
16. Based on this report, former Board Chief Counsel opened a complaint on his authority against Judge Cohen for investigation.
17. Pursuant to Article V, § 18(a)(7) of the Constitution of the Commonwealth of Pennsylvania, the Board determined that probable cause exists to file formal charges against Judge Cohen in this Court based on his postings to his personal Facebook page.
18. Judge Cohen's Facebook page is accessible to any member of Facebook.
19. Judge Cohen's Facebook page noted his status as a judge, despite the fact that it was a personal Facebook page.
20. Judge Cohen's admitted Facebook postings that the Board found to warrant formal charges are set forth as follows in Paragraphs 21(i) through 21(ixvi) (which, unless otherwise noted, were authored personally by Judge Cohen):
 - i. October 29, 2022, 12:28 p.m. – "David DePape, captured Pelosi assailant, continues to gain notoriety as more and more of his extremist posts come to light. It is clear that he is a failed and hateful man capable of many awful things."
 - ii. October 28, 2022, 9:16 p.m. – "CNN: David DePape, 42 accused attempted murderer of Paul and Nancy Pelosi, apparently made hateful, bigoted posts against LGBTQ people, Jews, the January 6 Committee, and other right-wing targets. Why am I not surprised?"

- iii. November 20, 2022, time not listed – “Today is President Joe Biden’s Birthday. Many people his age are impaired. But he has proven to be an excellent President. His experience enables him, and does not wear him down. I look forward to many more achievements!”
- iv. November 21, 2022, time not listed – “Philly DA Larry Krasner’s credibility gained when a federal jury voted to dismiss a claim by former ADA Carlos Vega that Krasner had discriminated against him by age when he fired him. Krasner saw him as flawed, the City said in defense.”
- v. November 10, 2022, 6:40 p.m. – “The victories of Governor-Elect Josh Shapiro & Senator-Elect John Fetterman show Gov Tom Wolf should be credited with improving public respect for Pa. state government. Fetterman first LG to win statewide for other post since 1966.”
- vi. November 9, 2022, 3:22 a.m. – “My friend and former House colleague Josh Shapiro, whose father Dr. Steve Shapiro was a classmate of mine at Central High, has been elected Pa’s Governor. I have no doubt he is up to the job.”
- vii. November 3, 2022, 7:10 p.m. – “MSNBC: Former President Barack Obama: When we vote, we win.”
- viii. November 2, 2022, 4:43 p.m. – “My former legislative colleague Kenyatta Johnson, now completing his 3rd term in the Philly City Council has been found – along with his wife Dawn Chavous – to be not guilty on all charges in federal court today by a jury verdict. A vindication!” In the subsequent posts to this posting, Judge Cohen was asked the question if Councilman Johnson would have his legal bills paid, and Judge Cohen provided the following response: “To the best of my knowledge, no. Friends and admirers can choose to contribute to a defense fund, if he has set one up.”
- ix. September 22, 2022, (approximate) - “Philly DA Krasner, in switch of tactics, now demands to testify before Pa House Committee seeking evidence of wrongdoing to begin impeachment proceedings. Good move!”
- x. September 21, 2022 (approximate), time not listed – “MSNBC: Presidential Press Secretary Kanine [sic] Jean-Pierre says Administration has reduced the severity of COVID with widespread

vaccinations, but more efforts are needed. She's right, but its wrong to say pandemic is over."

- xi. September 20, 2022 (approximate), time not listed – "Babette Josephs was the most public and persistent fighter for women's rights in Post-Roe Pennsylvania. I would like to see her birthday, August 4, be publicly celebrated as Babette Josephs Day."
- xii. September 13, 2022, 5:50 p.m. – "Ken Starr, independent prosecutor of Bill Clinton, whose overzealousness led to issuing X-rated report on Clinton's sex life, has died at 76. The report led to Clinton's impeachment, but surprisingly led to increase of public support for him."
- xiii. September 5, 2022, 2:47 p.m. – "New Deal Labor Secretary Frances Perkins, the first woman to serve as a Cabinet Secretary, is a great leader to remember on Labor Day." The posting includes a photograph of former Secretary Perkins reposted from the "A Mighty Girl" Facebook page (originally posted September 5, 2022), which includes the following text: "FRANCES PERKINS[,] as U.S. Secretary of Labor and the first woman in the Cabinet, Perkins fought to establish a minimum wage, overtime pay, the 40-hour work week and to end child labor." The posting concludes with further text from the "A Mighty Girl" Facebook page noting that the page is honoring former Secretary Perkins as a labor rights pioneer and a New Deal champion.
- xiv. September 5, 2022, 11:04 a.m. – "Philadelphia/Tri-State Labor Day Parade brings back memories of Wendell Young, [III,] father of the current UFCW leader, Wendell Young[,] IV. Key early events in the union's history happened in my original legislative district, in neighborhoods of East Oak Lane and Olney." The posting also includes a photograph of Mr. Young reposted from the "Bob Ingram" Facebook page. The post includes the following text, originally posted to the "Bob Ingram" Facebook page: "Remembering my late friend the great labor leader Wendell Young 3rd on this Labor Day. He told me, 'Life is all stories,' which I've never forgotten."
- xv. August 4, 2022, 2:51 a.m. – "As a young man, I remember journalistic anger at Roger Maris & Eugene McCarthy for becoming national heroes with heroic achievements. John Nichols' hit job against Liz Cheney [sic] in the The Nation is of the same sad kind." In the midst of the exchange of posts that ensued from this post, Judge Cohen posted the following: "I believe from personal experience that people can and do change their views over time."

As a judge, I am not permitted to endorse or otherwise back any candidate for anything. But I strongly disbelieve that good works by anyone should subject them to harsh criticism while those who do far fewer good things remain totally ignored."

- xvi. August 1, 2022, 9:26 a.m. – "The killing of Osama Ben [sic] Laden's number two by drone in downtown Kabul at the age of 71 shows intense & nuanced focus of this Administration on the national interest. Withdrawing troops is clearly not the same as accepting terrorism."
- xvii. October 24, 4:20 p.m. – "A plea for more domestic spending and less military spending." The posting reposts a photograph of a fighter jet, with the headline "Just in case you didn't know what different parts of fighter jet [sic] are called." There are lines to different parts of the fighter jet that indicate which domestic spending cuts allegedly paid for that part of the fighter jet. For example, the line to the nose of the fighter jet indicates that Medicare cuts paid for that part of the plane. This photograph was originally posted by the "Rebecca Hains, Author" Facebook page on September 8, 2022.
- xviii. September 1, 2022, 5:59 p.m. – "There's a lot of anti-city, anti-NYC, and anti-intellectual people in this world. A teacher in Oklahoma is being threatened with loss of her teaching certification for giving her students the phone number for online books from the Brooklyn public library. A once famous book was titled 'A Tree Grows in Brooklyn;' minds grow there too." The posting includes a reposting of a photograph of a letter sent by Oklahoma Secretary of Education Ryan Walters regarding the firing of High School English Teacher Summer Boismier and his intent to request the Oklahoma State Board of Education to revoke Ms. Bosimier's teaching certificate. This photograph was originally posted to the "Warner West" Facebook page on August 31, 2022. The post concludes with text reposted from the "Warner West" Facebook page that recounted Ms. Boismier's story.
- xix. September 1, 2022, 7:20 a.m. – "An example of the madness of book banning." The posting includes a reposting of a photograph of students in a classroom with the following text: "At George Dawson Middle School[,] an autobiography co-authored by George Dawson at 103 has been banned. Mr. Dawson was the grandson of a slave. He learned to read at 98. His book is an inspiration to all readers except it can't be read at the school that bears his name." This photograph was originally posted by the "Andi Cude" and "True Blue Party" Facebook pages on August 31, 2022.

- xx. August 30, 2022, 8:56 a.m. – “Canada requires a license to own firearms, and passing a test on firearm safety. Automatic weapons are prohibited. Murders in Canada (38.3 million people) are only about 50% higher than in Philadelphia (1.7 million).”
- xxi. August 29, 2022, 8:55 p.m. – “With allies among the leaders of both parties, I spearheaded Pennsylvania’s pioneering 2015 law against the Boycott, Divestment and Sanctions movement seeking [to] deprive Israel of foreign trade on a state by state basis. A federal appeals court has recently ruled in favor of the constitutionality of a similar law in Arkansas.” The posting includes a link to an opinion article from the National Jewish Advocacy center bearing the following title: “A Federal Appeals Court Just Struck a Huge Blow to the BDS Movement.” The post contains a comment from the “Ed Doogan” Facebook page which states the following: “So take away from the Palestinians the only nonviolent way they have to pressure Israel and when they resort to violence[,] give Israel an excuse to kill more Palestinian men, women, and children. This is a terrible law and as a judge[,] you should be ashamed of yourself.”
- xxii. August 5, 2022, 9:19 p.m. – “Inquirer: Unemployment falls to 3.5%, tying for the lowest since 1969. More people are employed in US than ever before, showing a very strong economy and strengthening Social Security System. It’s time for critics to re-evaluate this Administration.”
- xxiii. August 3, 2022, 9:39 p.m. – “Senator Amy Klobuchar predicts Sen. Kirsten [sic] Sinema will be on board with Inflation Reduction Act next week, & it will pass Senate, lowering annual deficit, fighting climate change, & reducing prescription costs. A victory for fiscal responsibility.”
- xxiv. August 3, 2022, 1:13 a.m. – “By a 59% to 41% vote, Kansas voters rejected a constitutional amendment that would have allowed the legislature to ban abortion. High turnout took place on 100 degree day, and sent a message that even conservative states are not on board with US Supreme Court reversal of Roe v. Wade.” The posting reposts an article from Apnews.com entitled “Kansas voters resoundingly protect their access to abortion.” This article was originally posted by the “Stephen Drachler” Facebook page on August 3, with the following statement from that page: “When Kansas speaks, the nation will be listening. Kansas voters repudiated the radical U.S. Supreme Court on Tuesday as they rejected a Constitutional amendment that would have opened to

door [sic] to the Legislature banning abortion in the Jayhawk state. It wasn't close 60-40 with a record turnout in 100 degree weather. Independent voters turned out in droves to vote in a primary election where they normally could not vote."

- xxv. August 2, 2022, 3:28 p.m. – "A plea for credit unions, which often offer lower fees, lower cost loans, higher interest rates and better customer service than commercial banks do." The post also reposts a photograph that contains the following text: "Women should remove their money from banks. Seriously. Every penny. Use credit unions. Let's stop them from using our money to pay for lobbyists that take our rights away." This photograph was originally posted by the "Addicting Info" Facebook page on July 13, 2022.
- xxvi. August 2, 2022, 3:23 p.m. – "Truth!" This posting also contains a reposting of a photograph of a tweet made by Nina Turner, a former Democratic Ohio State Senator, which contains the following text: "There's nothing moderate about letting our planet burn, allowing our food air & water to be poisoned, or letting people go without food and shelter. These are not moderate positions." This photograph was originally posted by the "Corinna Bloom" Facebook page on July 19.
- xxvii. July 30, 2022, 6:06 p.m. – "Despite the support of Baer, Gov. Tom Wolf, and many others, the legislature still has not raised the minimum wage above the current \$7.25 level. When Pa. raised the minimum wage to \$7.15 (10 cents less than the federal level which ultimately followed), under my leadership in 2006, I immediately advocated that it should soon go up to \$8.00. Even after 16 years, and a \$15.00 an hour minimum wage in NJ, NY, California and other states, the minimum wage in Pa and the USA has remained stagnant. The posting includes a reposting of a photograph originally posted on July 30, 2021, on Judge Cohen's Facebook page, that bears the text "Legislative critic John Baer endorses higher Pa minimum wage. He says it would be a big step for legislative credibility and help a million people."
- xxviii. July 28, 2022, 10:29 p.m. – "Texas calls itself the Lone Star state, due to its brief experience as a separate country, after winning independence from Mexico. But in these days of five star ratings, and Texas' passage of a variety of dubious laws, being a one star takes on a new – and accurate – meaning." The post includes a reposting of a photograph of a cartoon depicting a highway and a billboard that reads: "Welcome to Texas, the Lone Star State – based on recent reviews" and a five-star rating system with only

one star filled. This photograph was originally posted by the "Ava Levin Leas" Facebook page on July 27, 2022. In the comment discussion that follows, one commenter stated "I prefer originality. Texas should again become a one star country." Judge Cohen replied, "You are not alone!"

- xxix. July 28, 2022, 7:09 p.m. – "Joe Manchin seems to be retreating a bit on opposition to legislation dealing with climate change and investing in human infrastructures for social services. We'll soon see if his possible change of heart leads anywhere."
- xxx. July 27, 2022, 5:50 p.m. – "Prophetic words from the Rev. Billy Graham 41 years ago." The post includes a reposting of a photograph of the former Reverend Graham with the following quotation, attributed to him: "I don't want to see religious bigotry in any form. It would disturb me if there was a wedding between the religious fundamentalists and the political right. The hard right has no interest in religion except to manipulate it." The photograph was originally posted by the "Chester Hitchcock" Facebook page on July 26, 2022.
- xxxi. July 26, 2022, 5:20 p.m. – "NYT: Former Philadelphians Bruce Marks and Mike Roman were key players in alternate elector scheme. At least the poor records of Philly sports teams did not disqualify them. Marks is stepping up to defend his role, citing Hawaii in 1960." This posting led to an intense comment argument between Mr. Marks, who was, in fact, one of Judge Cohen's Facebook friends, and other individuals who were his Facebook friends, including Marc Stier, who is a well-known progressive political figure. Some of these persons accused Mr. Marks, who is an attorney, of professional misconduct and criminal conduct. Judge Cohen attempted to bow out of the conversation at one point, by stating the following: "And as a judge, I am limited in the degree to which I can comment on political actors, attorneys or judges in court proceedings."
- xxxii. July 26, 2022, 8:13 a.m. – "Words of wise advice from Canada!" The posting includes reposting of a photograph of a tweet from "Aaron Hoyland," which contains the following text: "In Canada, our schools have more than one door too. We have folks struggling with mental illness. We watch the same movies, listen to the same music and play the same violent video games as Americans. And, since Columbine, the US had 200 school shootings. We had 3. It's the guns." This photograph was originally posted on June 2, 2022 by the "David Reid" Facebook page.

- xxxiii. November 1, 2022, 10:08 a.m. – “Did you know that both Frankenstein and Dracula were played by union members? Neither did I.” The post includes a reposting of a photograph of the Boris Karloff-version of Frankenstein and the Bela Lugosi-version of Dracula, with the following text: “DID YOU KNOW?.. Frankenstein & Dracula were union organizers? Boris Karloff, who played Frankenstein, along with Bela Lugosi who played Dracula, were founding members of the actors union, Screen Actors Guild (SAG). Both men actively recruited Actors and Actresses to join the then unrecognized Union (between 1933 and 1937). It was not uncommon to see Karloff in full monster makeup, handing out applications to join the Screen Actors Guild.” This photograph was originally posted by the “John Meyerson” Facebook page on November 1, 2022, with the following additional text: “Solidarity Forever!”
- xxxiv. September 18, 2022 (approximate), time not listed – “Philadelphia Museum of Art stayed open yesterday during a one-day warning strike. Bad news for labor!”
- xxxv. September 14, 2022, 3:30 p.m. – “Record profits are undermining tough corporate bargaining stances.” The post also includes a photo with the following statement posted from the “Labor 411” Facebook page: “BNSF is the largest rail company in the US. Last year they had a net income of \$8.8B. They have 35k workers. If they kept half of their profit and split the rest with all employees everyone could receive a \$125k RAISE. Instead BNSF is cutting sick days. This is why they strike.”
- xxxvi. September 14, 2022, 2:05 p.m. – “Bad news for Texas kids and school boards. Perhaps good news for Texas educators’ future pay raises and working conditions.” The post contains a photo of an article from the Houston Chronicle bearing the headline “Poll: 77% of Texas teachers want to quit” that was posted from the Facebook page of “Johnny Mitchell.”
- xxxvii. September 11, 2022, 2:40 a.m. – “Bruce Springsteen is also a fan of unions, as are not about 60% of our country.” The posting also includes a photograph of Bruce Springsteen reposted from the “Jeff Rechenbach” Facebook page (originally posted on September 5, 2022), bearing the following quotation attributed to Springsteen: “Unions have been the only powerful and effective voice working people have ever had in the history of this country.” The post concludes with the following additional text reposted from the “Jeff Rechenbach” Facebook page: “The Boss understands

the value of unions. On this day set aside for the recognition of workers, let's remember it is the Labor Movement that built the middle class in our nation."

- xxxviii. September 11, 2022, 2:18 a.m. – "A strong endorsement of the labor movement of his time from famed defense attorney Clarence Darrow." The posting also includes a photograph of Clarence Darrow reposted from the "Ron Klink" Facebook page (originally posted on September 10, 2022), bearing the following quotation attributed to Darrow: "With all their faults, trade-unions have done more for humanity than any other organization of men that ever existed. They have done more for decency, for honesty, for education, for the betterment of the race, for the developing of character in man, than any other association of men." The post concludes with the following additional text reposted from the "Ron Klink" Facebook page: "I believe this with all my heart and soul."
- xxxix. September 10, 2022, 4:27 p.m. – "Good news for empowering people. Too bad for Superman." The posting also includes a cartoon reposted from the "Glen Williams" Facebook page, which depicts a child speaking to an obviously-dejected Superman; the child states "Sorry Superman[.] My new heroes are union members. They've been fighting for me and my family our whole lives."
- xl. September 5, 2022, 4:53 p.m. – "Farm workers are vital to our food supply. Thanks to Mary Rose Cunningham for sharing." The posting also includes a photograph of a painting reposted from the "Jonathan Zasloff" Facebook page (originally posted September 4, 2022) depicting farm workers carrying bushels of food with the text "Honoring the immigrants on Labor Day who put food on our tables" on the photograph.
- xli. September 5, 2022, 11:30 a.m. – "Another good Labor Day Greeting!" The posting also includes a photograph reposted from the "Mike McDonough" Facebook page, which depicts men at an apparent labor organization meeting with the following text: "This long holiday weekend has been brought to you by the blood, sweat, and tears of the labor movement."
- xlii. September 5, 2022, 11:18 a.m. – "More well thought-out Labor Day greetings!" The posting also includes a photograph reposted from the political Facebook page of Pennsylvania State Senator Tina Tartaglione (D-Philadelphia) (originally posted September 5, 2022), which depicts a cartoon of happy workers of various professions, i.e., a cook, a nurse, a fireman, with the following text

from Senator Tartaglione: "During Labor Day we honor and celebrate the contributions of America's workers and the fights that got us here. American was built by the middle class, and the middle class was built by unions."

- xliii. September 4, 2022, 6:15 p.m. – "Tomorrow is Labor Day. As you enjoy it, remember why workers successfully fought to have it established during the Presidency of Grover Cleveland." The posting includes a reposting of a photograph originally posted on the "John Meyerson" Facebook page that same day. The photograph depicts a wall with the graffiti "Never Cross a Picket Line. Class War," painted on the wall. The post concludes with the following text originally posted to the "John Meyerson" Facebook page: "Happy Labor Day! We must never forget the reason we celebrate the sacrifices that workers have made in their fight for social and economic justice! We still have a long way to go!"
- xliv. July 28, 2022, time not listed – "This speaks for the views of many workers." The posting contains a reposting of a photograph of a tweet from "Blondie," which contains the following text: "Jobs need to understand that the ONLY way to make me feel appreciated is to pay me what I'm worth, that's it. No amount of 'lunch is on me', T Shirts or 'team building' is going to cut it." The photograph was originally posted by the "More Perfect Union" Facebook page on July 21, 2022.
- xlv. July 28, 2022, 6:44 p.m. – "A very good point!" The posting includes a reposting of a photograph of a cartoon with Lisa Simpson making a speech, with a projection screen behind her. The screen bears the following text: "Trickle down economics has never gotten Billionaires to spread the wealth. That's what unions are for." This photograph was originally posted on the "Americans for Tax Fairness" Facebook page on July 26, 2022.
- xlvi. August 30, 2022, 1:14 p.m. – "Still another take on the student loan debt repayment plan." The posting includes a reposting of a cartoon of a man at a trolley track switch and five people tied to the tracks on one of the track branches where they trolley is headed. Behind the trolley are the bodies of a number of people who the trolley had already run over. The man at the train track switch states "But if I divert the trolley now[,] that would be unfair to all the people it's already killed."
- xlvii. August 29, 2022, 11:10 a.m. – "Another take from a supporter of student debt cancellation!" The posting includes a reposting of a

photograph bearing the following statement: "If you're mad about student loan forgiveness, I feel bad for you son. I got 99 problems but being weirdly bitter that life is getting slightly easier for other people ain't one." This photograph was posted originally by the "Marti Murphy" Facebook page on August 28, 2022.

- xlviii. August 28, 2022, 7:46 a.m. – "My former colleague in Harrisburg wades into theology to support debt forgiveness for education loans." The posting includes a reposting of a photograph bearing the following statement: "If you're a Christian and you're big mad about the possibility of student loan debt being cancelled, let me remind you that the entirety of your faith is built upon a debt you couldn't pay that someone stepped in and paid for you." This photograph was originally posted on August 27, 2022, by the "Brett Cott" Facebook page.
- xlix. August 26, 2022, 2:09 p.m. – "One more way to say that reducing student loan debt makes a lot of sense." The posting also includes a reposting of a photograph of a religious painting of Jesus miraculously distributing the loaves and fishes to the multitude with the following text: "Jesus's [sic] miracle of the loaves and fishes was a slap in the face to all the people who brought their own lunch." This photograph was originally posted on August 25, 2022, by the "Bob Kefauver" Facebook page.
 - i. August 26, 2022, 12:49 p.m. – "Another Facebook friend with a big [heart emoji]!" The post is a reposting of a post made by the "Kiernan Majerus-Collins" Facebook page on August 26, 2022, which states the following: "I paid off my relatively modest undergraduate student loans a few years ago, and I'm thrilled that at least some other people won't have to do the same. Higher education – which benefits our whole society – should be free."
 - ii. August 25, 2022, 1:34 p.m. – "I agree with this!" The posting also includes a reposting of a photograph with the following text on it: "I worked hard to pay off my student loans, others should have to too! I swam across that river, how dare they build a bridge!" The photograph was originally posted on August 25, 2022 by the "Warren Fretwell" Facebook page.
 - iii. August 13, 2022, 6:40 p.m. – "Former US Secretary of Labor Robert Reich is absolutely right on this." The post includes a reposting of a photograph of former Secretary Reich with the following quotation, attributed to him: "A decent society wouldn't push millions of students into debt. It would recognize that higher education isn't mainly a personal investment; it's a public good."

This photograph was originally posted by the "Steve Sherman" Facebook page on August 12, 2022.

- liii. October 15, 2021, time not listed – "Rick Wilson, MSNBC, urging more vigor in January 6 investigation: 'Unpunished terrorism is just a practice run.'"
- liv. October 19, 2021, time not listed – "The state that gave us Estes Kefauver and two Al Gores is now trying to make knowledge of black history illegal. Shameless retrogression!" This posting includes a newspaper opinion piece that criticized the passage of an anti-Critical Race Theory bill in Tennessee.
- lv. November 6, 2021, 3:11 p.m. – "One year ago, our country voted for massive change. We are starting to get it, but more can be done."
- lvi. November 7, 2021, 11:01 p.m. – "Takeaways from Four Seasons doc: (1) The Trump Presidential campaign was out of money, and the Four Seasons was willing to host the press conference for free; (2) a flood of hate calls and ridicule led to company choice to develop PR campaign."
- lvii. November 14, 2021, 8:44 p.m. – "6.2% inflation hurts those with salaries or pensions. It encourages workers to unionize & those with pensions to seek gains."
- lviii. November 15, 2021, 3:14 p.m. – "Latest figures in contested court races of Philly judges show little change: Dumas up 18,801 for Commonwealth Court, McLaughlin down for Supreme Court by 28,252. Barring discovery of major error, Dumas & Kevin Brobson to win." A person responded to this post, stating, "So sad for [McLaughlin] and Lane."
- lix. November 17, 2021, 7:36 p.m. – "President Joe Biden eloquently advocates for his Build Back Better Plan." In addition to Judge Cohen's commentary, he re-posted a post from President Joe Biden, part of which is immediately visible on his Facebook page, as follows: "I ran for president believing it was time to rebuild the backbone of this nation – working people and the middle class. To rebuild the economy from the botto....."
- lx. November 18, 2021, 11:33 p.m. – "Good night Kevin McCarthy. Good night moon. No matter how long Kevin talks, we'll have House passage of Build Back Better soon."
- lxi. November 19, 2021, 7:52 a.m. – "At 8:00 a.m., US House returns to session, delayed by Kevin McCarthy speech of record length, to

pass Build Back Better bill and improve many, many American lives.”

- lxii. November 19, 2021, 3:22 p.m. – “President President Joe Biden’s [sic] Build Back Better Bill passed the US House this morning. Chuck Schumer says he wants passage by Christmas.”
 - a. In response to another poster’s question about whether the bill would actually help many people after the “moderate” Ds and Rs “gut it,” Judge Cohen posted “I think so, but we’ll see.” The other poster remarked, “I guess a little help is still better than zero. Progress in a democracy is so slow,” to which Judge Cohen responded, “Yes it is, unfortunately!”
- lxiii. November 20, 2021, 12:04 a.m. – “Joe Biden turns 79 today. Happy Birthday Mr. President! Enjoy your five days a week of workouts!”
- lxiv. November 23, 2021, 11:14 a.m. – “David Morrison [another poster] says the JFK assassination was a major transition for his life. In tribute, he posts this excerpt from a speech Kennedy was prepared to give in Dallas had he lived.” Judge Cohen then re-posted David Morrison’s November 22, 2021 posting of the undelivered Kennedy speech, part of which is immediately visible on Judge Cohen’s page as follows: “Neither the fanatics nor the faint-hearted are needed. And our duty as a Party is not to our Party alone, but to the nation, and, indeed, to all mankind. Our d...”
- lxv. November 23, 2021, 4:00 p.m. – “Lori Dumas now leads for Commonwealth Court by 22,227. Her opponent Drew Compton conceded today. Congratulations to my fellow Philadelphia Common Pleas Judge! Her victory is well-deserved.”
- lxvi. November 26, 2021, 9:42 a.m. – “Organizing for progressive change can be very difficult. Longtime activist Marc Stier and his commenters discuss the reasons why.” In addition to Judge Cohen’s commentary, he re-posted a post from Marc Stier, part of which is immediately visible on his page, as follows: “Listening to a call about progressive messaging on taxes. Our problem is not that majority doesn’t agree with us. Our problem is mobilizing people and encou...”

D. DISCOVERY CERTIFICATION

The Board, by and through undersigned counsel, hereby certifies that Judge Cohen has been furnished with all non-privileged evidence relevant to the charges contained in the Board Complaint as required by C.J.D.R.P. 401(D)(1).

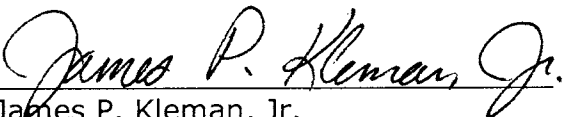
E. EXCULPATORY CERTIFICATION

The Board, by and through undersigned counsel, hereby certifies that Judge Cohen has not been provided with any exculpatory evidence relevant to the charges contained in the Board Complaint as required by C.J.D.R.P. 401(E), as no exculpatory evidence exists.

Respectfully submitted,

MELISSA L. NORTON
Chief Counsel

DATE: June 7, 2023

BY: 
James P. Kleman, Jr.
Senior Deputy Counsel
Pa. Supreme Court ID No. 87637
Judicial Conduct Board
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 3500
P.O. Box 62525
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**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

Judge Mark B. Cohen
Court of Common Pleas
1st Judicial District
Philadelphia County

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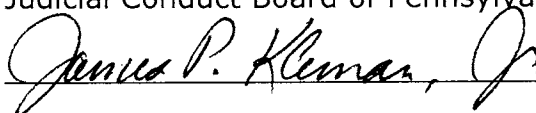
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CERTIFICATE OF COMPLIANCE

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:

JAMES P. KLEMAN, JR.
Deputy Counsel

Attorney No.:

87637

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

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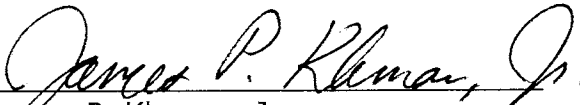
PROOF OF SERVICE

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on June 7, 2023, a copy of the Board's Pre-Trial Memorandum was sent by UPS Overnight Mail to Mr. Samuel C. Stretton, Esquire, counsel for Judge Cohen, at the following address:

Samuel C. Stretton, Esquire
301 South High Street
P.O. Box 3231
West Chester, PA 19381

Respectfully submitted,

DATE: June 7, 2023



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