

COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

SEP 18 2023

RECEIVED AND FILED

**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 SANCTION HEARING MEMORANDUM

AND NOW, this 18th day of September, 2024, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (the Board), by and through undersigned counsel and files this Sanction Hearing Memorandum, as follows:

A. SANCTION HEARING WITNESSES

1. Edward Howley
Investigator
Judicial Conduct Board of Pennsylvania
601 Commonwealth Avenue, Ste. 3500
Harrisburg, PA 17106

Investigator Howley will testify regarding the current state of the 66 postings made by Judge Cohen that formed the basis for the charges and found violations in this matter.

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

Chief Investigator Fontanes will testify regarding Judge Cohen's Facebook posting conduct subsequent to the trial that took place in this matter on July 24, 2023.

B. EXHIBITS

1. A true and correct copy of the of the Facebook postings made by Judge Cohen described in Paragraphs 9(i)-(lxvi) of the February 23, 2023 Board Complaint, previously entered as Board's Exhibit 8 at trial.
2. A true and correct copy of the report dated May 15, 2024, authored by Board Investigator Edward Howley.
3. A true and correct copy of the Facebook postings made by Judge Cohen after the July 24, 2023 trial in this matter.

C. PROPOSED STIPULATIONS

1. The parties stipulate to the authenticity of all exhibits set forth at Paragraphs B (1)-(2).
2. The parties stipulate to the admissibility of all exhibits set forth at Paragraphs B (1)-(2).

D. JUDICIAL CONDUCT BOARD LEGAL MEMORANDUM REGARDING SANCTION

When passing upon the appropriate sanction for a jurist found in violation of the rules governing their conduct, this court utilizes a non-exclusive series of factors, sometimes referred to as the "**Deming** factors" as a nod to the original case from the State of Washington from which they were first exposted. **See In re Maruszczak**, 220 A.3d 742, 743 (Pa.Ct.Jud.Disc. 2019) (citations omitted).

These factors are as follows: (1) whether the misconduct is an isolated instance or evidenced a pattern of misconduct; (2) the nature, extent, and frequency of occurrence of the acts of misconduct; (3) whether the conduct occurred in or out of the courtroom; (4) whether the misconduct occurred in the judge's official capacity; (5) whether the judge acknowledged or recognized that the acts occurred; (6) whether the judge has evidenced an effort to change or modify his conduct; (7) the judge's length of service on the bench; (8) whether there have been prior complaints about the judge; (9) the effect the misconduct has upon the integrity of and respect for the judiciary; and (10) the extent to which the judge exploited his position to satisfy personal desires. **Maruszczak**, 220 A.3d at 743-744.

What one sees from trial in this case is that factors 1, 5, and 6 carry predominant weight in this Court's sanction decision in this case.

To explain, Judge Cohen's problematic Facebook conduct occurred with such frequency that the Board was obligated to issue two notices of full investigation to Judge Cohen prior to trial in order to ensure that it met its constitutional notice requirements prior to charging him. **See *In re Cohen***, ___ A.3d ___, 1 JD 2023, Slip Op., at 7, 9 (Pa.Ct.Jud.Disc. 2024). Then, at trial, Judge Cohen's response was to disregard any issue with his conduct and claim that such was a "good faith challenge" to provisions of the Code that he believed were unduly restrictive of his First Amendment Rights. Nevertheless, as demonstrated by the Board's offer of proof attached hereto as **Attachment A**, *despite this Court's finding of numerous violations* for his Facebook postings in its Opinion of May 3, 2024 and its concomitant rejection of his "good faith challenge," Judge Cohen continues to make posts of a nearly identical nature in an ongoing fashion. This can be seen in the July 21, 2024 post set forth at **Attachment A** (which, among others, the Board will introduce formally into evidence at the sanction hearing, **see supra**, at (B)(3)). In the July 21, 2024 post Judge Cohen stated that "[President] Joe Biden has yielded to massive public pressure from longtime allies to withdraw as a candidate for re-election due to widespread concern about his physical and mental health. He will address the nation about this decision on Wednesday or so." Thereafter, Judge Cohen "liked" comments from his Facebook friends in response to his original post that expressed support of President Biden or criticized his detractors; one post from a "friend," which Judge Cohen "liked" states, "I respect this man and respect his decision. It not only is in the best interest of the nation and the party but also in his best interest. God Bless him and his family." Judge Cohen "liked" another post from a "friend" that stated, "[...]. Frankly I think it's appalling how they treated Biden."

It is likewise clear that Judge Cohen both acknowledged his Facebook posting by admitting to same at trial, and he also acknowledged by admission that he enjoyed the good feelings that he got from posting and from his "friends'" reactions to his posts. **See *Cohen***, at 36. However, far from evidencing any effort to change or modify his conduct, Judge Cohen continued to make posts of a problematic nature even after the Board notified him of its concerns about his conduct in two Notices of Full Investigation, and, as shown in the Board's offer of proof set forth at **Attachment A**, he continued to make such posts even after this Court found him in violation of the Code after trial. Thus, what this Court observed in its May 3, 2024 Opinion is even more apt today than it was at that time; to wit:

There was no need for Judge Cohen to commit these repeated violations; if he wanted to test the extent of the First Amendment, he could have consulted the Judicial Ethics Advisory Board or its predecessor, told the Board what he intended to do, received advice from the Board and pursued the issue without

crossing any ethical lines. Instead, he defied his supervisory judge and eventually the Judicial Conduct Board. These are not the actions of a reasonable person seeking the solution to an ethical dilemma.

Cohen, at 82. Thus, *this Court* has now been added to the list of authorities Judge Cohen has defied by his continued conduct. In assigned counsel's experience, there has not ever been a judicial officer who appeared before this Court and struck a more defiant, oblivious, and incurious position at both the outset of disciplinary charges and then beyond this Court's findings of violations. Stated simply, Judge Cohen is obsessed with making problematic posts to Facebook of the nature that resulted in disciplinary charges against him, and, even after the wrongfulness of his conduct has been explained to him at length by this Court, he will not retreat from his conduct or apologize for it in even the slightest measure.

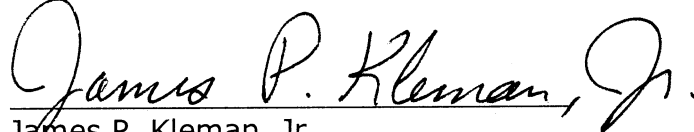
The novelty of this set of facts frustrates any attempt to cite to precedent to account for it. Nevertheless, it is clear that the arms of the judicial disciplinary apparatus of this Commonwealth, the Board and this Court, are important parts of the judicial branch of its government and are charged with a unique mission. Thus, the Code's command that a judge "**act at all times** in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary," **see** Canon 1, Rule 1.2 (emphasis added), also requires a judge to promote confidence in and respect for the disciplinary system that calls them to account for their conduct. Judge Cohen's conduct leading to charges, his response to his conduct at trial, and his post-trial conduct fails this test entirely. As such, the seriousness of Judge Cohen's initial conduct and his defiance of or blithe disregard of the disciplinary system in this case cries out for a serious sanction. Therefore, **at a minimum**, the Board requests that Judge Cohen be suspended without pay for the remainder of his judicial term and barred from future judicial service in this Commonwealth.

Respectfully submitted,

MELISSA L. NORTON
Chief Counsel

DATE: September 18, 2024

BY:



James P. Kleman, Jr.
Deputy Chief Counsel

Pa. Supreme Court ID No. 87637
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 Mark B. Cohen
Court of Common Pleas
1st Judicial District
Philadelphia County

:
:
: 1 JD 2023
:
:

VERIFICATION

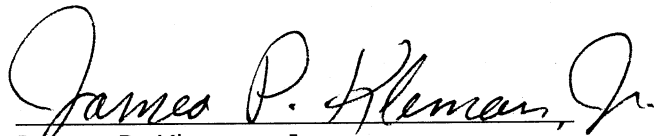
I, James P. Kleman, Jr., Deputy Chief Counsel to the Judicial Conduct Board, verify that the facts set forth in the foregoing Sanction Hearing Memorandum are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904, relating to unsworn falsification to authorities.

Respectfully submitted,

MELISSA L. NORTON
Chief Counsel

Date: September 18, 2024

By:



James P. Kleman, Jr.
Deputy Chief Counsel
Pa. Supreme Court ID No. 87637
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 Mark B. Cohen
Court of Common Pleas
1st Judicial District
Philadelphia County

:
:
:
:
:
:

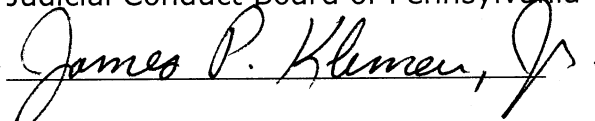
1 JD 2023

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 Chief Counsel

Attorney No.:

87637

**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

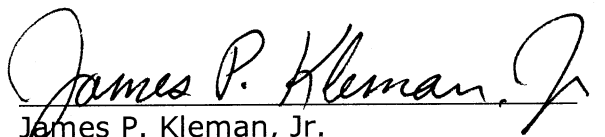
PROOF OF SERVICE

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on September 18, 2023, a copy of the Board's Sanction Hearing Memorandum was sent by first class 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: September 18, 2024



James P. Kleman, Jr.
Deputy Chief Counsel
Pa. Supreme Court ID No. 87637
Judicial Conduct Board
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 3500
P.O. Box 62525
Harrisburg, PA 17106
(717) 234-7911

ATTACHMENT "A"

ATTACHMENT "A"

Mark's Post

Mark S. Cohen

Sunday, July 21, 2024 at 2:19 PM

about this decision. We...



Cary Katz

Was a bit of a disaster behind the scenes. But in his front he knew stopping that was wrong the long run.



Jack Meigs

I respect the man and respect his decision. It's not always in the best interest of the nation and the party, but it is in his best interest, God Bless him and his family.



Norman Carter Jr.

In days of old hubris would have been done behind closed doors. But today too many want to be stars. Now the Democratic Party looks awful.



Margaret Valentini

Norman Carter Jr. I agree. Frankly I think it's appalling how they treated Biden.



(July 21, 2024 Part 1 of 4)

Mark's Post

Mark B. Cohen
I'm not sure if you've read the book "The Best of Enemies" by Howard Fast. It's a story about the relationship between a Jewish immigrant and a Communist Party member. It's a great read.



Mark B. Cohen
I'm not sure if you've read the book "The Best of Enemies" by Howard Fast. It's a story about the relationship between a Jewish immigrant and a Communist Party member. It's a great read.



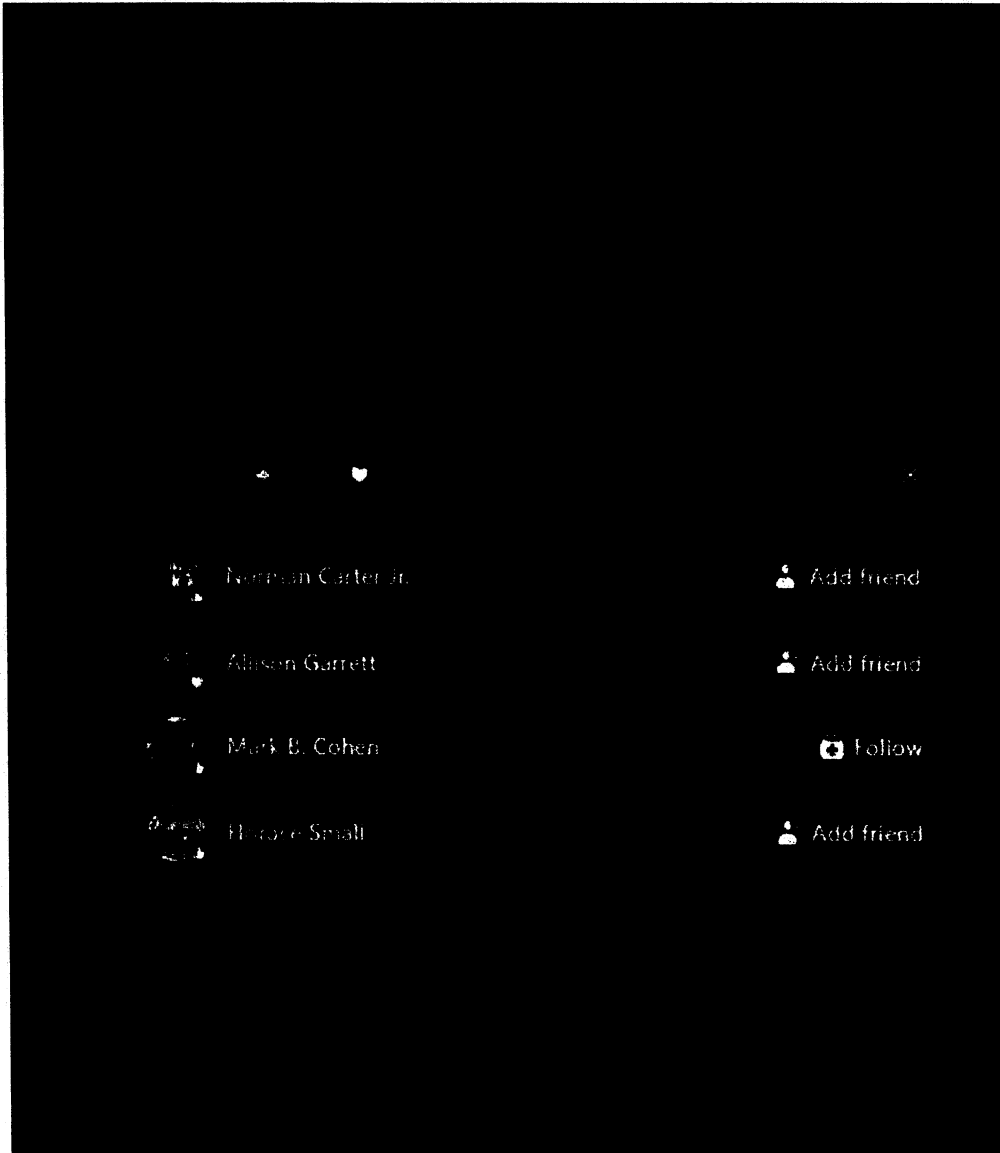
Mark B. Cohen
I'm not sure if you've read the book "The Best of Enemies" by Howard Fast. It's a story about the relationship between a Jewish immigrant and a Communist Party member. It's a great read.



Mark B. Cohen
I'm not sure if you've read the book "The Best of Enemies" by Howard Fast. It's a story about the relationship between a Jewish immigrant and a Communist Party member. It's a great read.

Mark B. Cohen
Norman Carter Jr. I agree, frankly I think it's appalling how they treated B...

1
Mark B. Cohen



(July 21, 2024 Part 4 of 4)

Mark's Post

Mark B Cohen

Eden is a beautiful woman and a public figure. She is a role model for many young women. I hope she can find a way to continue her work and help others. I hope she can find a way to continue her work and help others.

1

Late Post

Take a lot of time to not get beaten down, but in the end, we know it's going to be a long and hard fight.

Mark B Cohen

I respect the man and respect his decision. It's not in the best interest of the nation and the party but also in the best interest of Ed's kids and his family.

Norman Carter Jr

In many ways, I wish I had been done behind closed doors. But today, the party wants to be seen. Now the then-woman party looks awkward.

Maryam Valentin

Norman Carter Jr. I agree. Frankly I think it's appalling how they treated Eden.

1

Mark B Cohen

(July 21, 2024 Part 3 of 4)